

# PRO BONO PANEL PERIODICAL

## ***CELEBRATE PRO BONO!* - THE FALL 2021 PANEL PERIODICAL - AND ANNOUNCING THE FEDERAL COURT PRISON LITIGATION HANDBOOK**

Keeping with the spirit of [National Pro Bono Week](#)<sup>1</sup> (Oct. 24-30, 2021), the Fall 2021 edition of the Panel Periodical newsletter features the publication of the **Federal Court Prison Litigation Handbook**, a complete “how-to” guide about prison litigation, written for pro bono lawyers. Also, attorney **Clarissa Collier** offers her thoughts about a Panel case that she took and was able to reach a favorable outcome for her client. Her perspective about assisting a litigant in need – and in the process, create a life-changing outcome for the client – provides a great reminder about the enriching experience pro bono work provides. Finally, **Magistrate Judge Michael E. Hegarty**’s annual **Federal Court Statistics CLE** in August gave some insight about the numbers and trends with pro se cases.

Please remember that information about the Panel, answers to frequently asked questions, helpful forms, and a list of available cases are available on the court’s website on the **Civil Pro Bono Panel Details and Available Cases** page (<http://www.cod.uscourts.gov/AttorneyInformation/CivilProBonoPanel-Details,AndAvailableCases.aspx>). Also, the **Faculty of Federal Advocates** has an informative instruction sheet about its Pro Bono Reimbursement Program, available on the **Pro Bono Programs page**, **FFA Civil Pro Bono Reimbursement Form** (<https://www.facultyfederaladvocates.org/Pro-Bono-Programs>).Pt: <http://www.cod.uscourts.gov/attorneyinformation/civilprobonopanel-details,andaavailablecases.aspx>

*Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe.*

- FREDERICK DOUGLASS

*Speech On The Twenty-Fourth Anniversary Of Emancipation In The District Of Columbia, Washington, D.C., Apr. 1886*

<sup>1</sup> “The National Celebration of Pro Bono is an annual opportunity to shine a spotlight on the amazing pro bono work by lawyers, paralegals, and law students across the country. Each October, we encourage organizations to host events recognizing pro bono volunteers and highlighting opportunities for pro bono. Join us to celebrate pro bono in 2021, October 24-30.” – *American Bar Association*

# The FEDERAL COURT PRISON LITIGATION HANDBOOK

Fall 2021 Edition

A project of the Standing Committee on Pro Se Litigation, the Prison Litigation Handbook “Provides procedural and substantive information for pro bono attorneys representing incarcerated people in civil actions in the District of Colorado.” Contributors to the Handbook include prison litigation specialists from the Civil Pro Bono Panel, contributors from the Faculty of Federal Advocates’ Pro Bono Committee, court staff, and input from members of the Standing Committee. The Committee thanks all the contributors for their efforts, and hopes the Handbook will be a useful tool for Civil Pro Bono Panel members who volunteer for prison litigation cases.

The Prison Litigation Handbook covers such topics as the Pro Bono Appointment process, procedural and substantive approaches to a new case, the mechanics of prison litigation including discovery and trial, the forms of relief and the Prison Litigation Reform Act, settlement issues, and additional resources available for litigators.

The Handbook is available on both the [Civil Pro Bono Panel](#) page of the U.S. District Court’s website – with approval from the district judges of the court – as well as on the Faculty of Federal Advocates [Pro Bono Programs](#) page. Of course, the contents of the Handbook are for informational purposes only, and do not constitute legal advice.



## FEDERAL COURT PRISON LITIGATION HANDBOOK

Fall 2021 Edition

This handbook provides procedural and substantive information for pro bono attorneys representing incarcerated people in civil actions in the District of Colorado.

Contributors to this Handbook:

Laura Rovner  
Nora Q.E. Passamaneck  
Dan Shaffer  
Danielle C. Jefferis  
Alec Gibson, CU Fellow Scholar for U.S. Magistrate  
Judge Kristen L. Mix  
Nicole Salamander-Irby  
Edward Butler

*Photo of Colorado State Penitentiary courtesy of the Colorado Department of Corrections website*

## Featured ATTORNEY INSIGHT

*The Panel Periodical offers the opportunity for a Panel Attorney(s) to share his or her experiences working on a Panel case. The following is presented as a guest column authored by attorney Clarissa M. Collier, Of Counsel, at Wheeler Trigg O'Donnell LLP who shares her experience as pro bono counsel in a case that reached a successful outcome. (The views of the attorneys do not represent the views of the U.S. District Court for the District of Colorado.)*

### *A Fresh Start for a Young Client*

A team from Wheeler Trigg O'Donnell ("WTO") represented a Black teenage young woman who asserted claims of assault by the police in 2018. At the time, she was only 17 years old and visibly pregnant. While visiting a county courthouse in Colorado, WTO's client was improperly accused of possessing drug paraphernalia. Having done nothing wrong, she left the courthouse. A sheriff's officer followed her out and told her to stop; she declined since she had done nothing wrong.

Though WTO's client is 4'11" and weighed 129 pounds at the time of the incident, the officer restrained her, took her to the ground, and dragged her by the hair across the road, handcuffing her there. Thankfully, the client and her baby did not suffer permanent injuries.

WTO joined the case through the Panel program. After entering the case, WTO lawyers amended the complaint, deposed all officers involved, filed motions for sanctions and spoliation for a surveillance video and the client's purse related to the incident and filed *Daubert* motions. WTO lawyers also opposed the various defendants' motions for summary judgment on qualified immunity grounds.

After filing oppositions to the motions for summary judgment, and at the final pretrial conference, the federal judge hearing the case called WTO lawyers to the bench. The defendants did not want to litigate any further, he said, and suggested that WTO's client was in position for an "overpayment" if she would consider settling her claims.

After conferring with the client, WTO lawyers entered negotiations with the intent of settling the case for an amount that would give WTO's client a fresh start. Through WTO's determined negotiation, the defendants ultimately agreed to pay \$495,000.

After the settlement, the WTO team met with their client, had lunch with her and handed over her check for \$495,000. The client was overcome with emotions and cried while expressing her thanks. She could not have been more appreciative for the result the WTO team obtained for her. The client plans to move to Houston, finish cosmetology school, and "start fresh" with her children, away from some of the toxic family issues she faces here in Colorado. In her words, the client has been given a "second chance" at life because of the work WTO performed for her through the Panel program. The client and her uncle (who helped her draft the initial complaint and file the lawsuit) wrote thank you letters to LaMar Jost and Clarissa Collier of the WTO team.

As with all litigation, achieving this kind of result took a lot of time, work, determination and grit. In return, however, the WTO team received the fulfillment of actually changing a young girl's life, while also honing their litigation skills in federal court. A truly invaluable experience that was worth every hour the WTO team spent on it.

## ARE YOU ALL SET WITH NextGen ECF?

Remember – if you have not e-filed in the U.S. District Court since Aug. 2nd of this year, you may run into difficulties unless you do the following:

- Upgrade your PACER Account (all accounts were automatically upgraded if created in 2014 or after)
- Know your “legacy” Dist. of Colo. ECF login (starts with “co-“) and password. If you know neither, contact the court’s Attorney Services Division at: COD\_attorneyservices@cod.uscourts.gov or call 303-335-2043.
- Then link your “legacy” Dist. of Colo. ECF account to your upgraded PACER login – this is your so-called Central Sign-On. Once you see the “civil” and “criminal” along with “query” and “reports” on your CM/ECF tabs, you have successfully converted to NextGen!

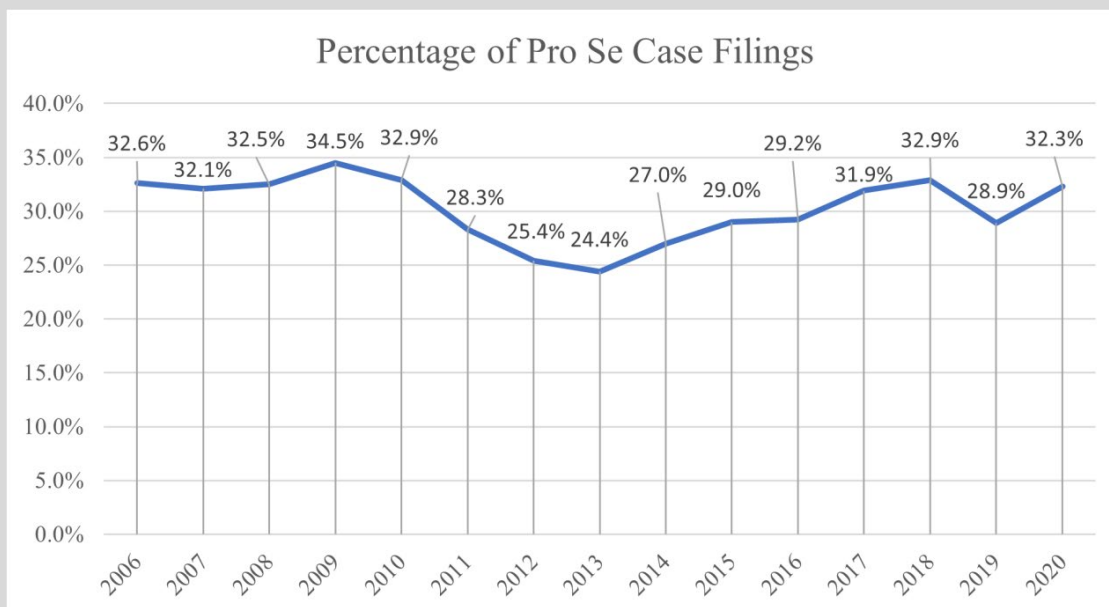
For more information on the NextGen conversion, visit the court’s NextGen webpage:

<http://www.cod.uscourts.gov/CourtOperations/CMECFNextGen.aspx>

### *Magistrate Judge Hegarty’s*

#### ***2020: THE YEAR IN REVIEW U.S. DISTRICT COURT DISTRICT OF COLORADO***

“Over the past fifteen years, pro se case filings have averaged around 30% of the total number of civil cases filed per year. ... In 2020, the pro se filing rate rebounded to 32.3%. These figures are shown in the chart below:”



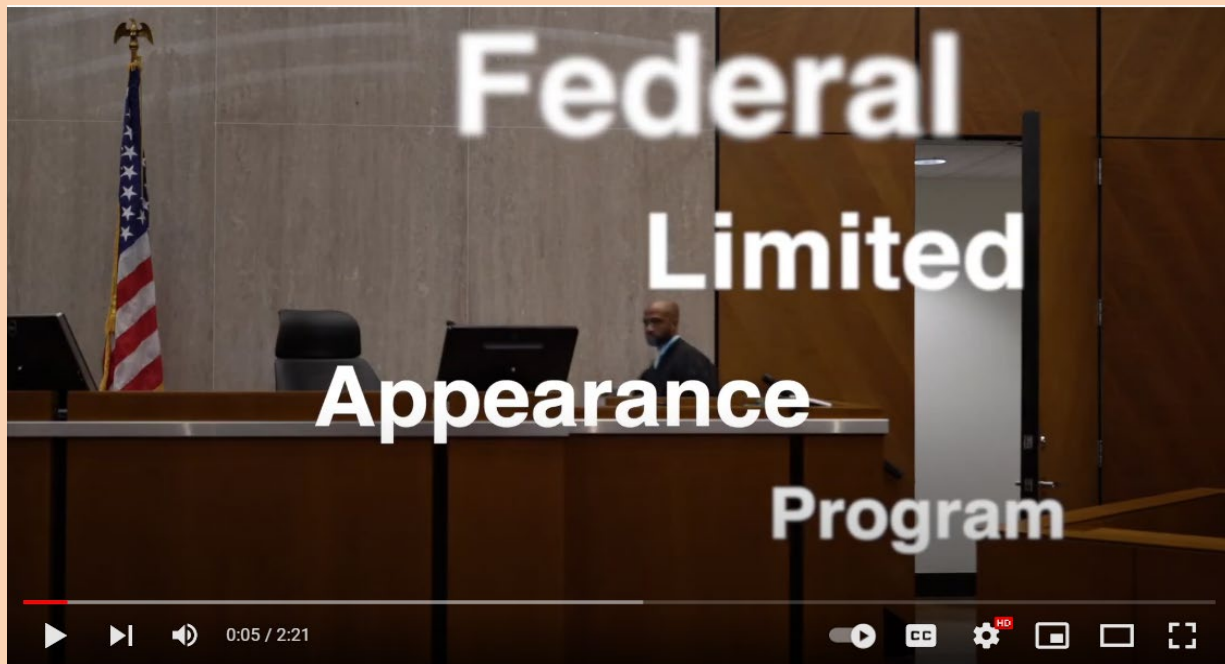
*Please visit the Faculty of Federal Advocates’ Events page for a link to the judge’s Annual Report [Link [HERE](#)] ... the pro se statistics start at page 25.*

# The Federal Limited Appearance Program (FLAP)

Please visit FLAP's YouTube link and the program's Introductory Video:

[https://youtu.be/ PwMCvdlWAI](https://youtu.be/PwMCvdlWAI)

The FLAP administrators, the Colorado Bar Association – Young Lawyers Division (a Civil Pro Bono Panel member) have developed a two-minute video to aid with recruitment of volunteer attorneys. The program recently provided its first FLAP representation of a pro se litigant during a settlement conference before Judge Neureiter.



Home > For Members > Young Lawyers Division > FLAP Resources

## Resources

### Orientation

If you are a lawyer, who is licensed to practice in federal court, and would like to become a FLAP volunteer, please email [jham@cobar.org](mailto:jham@cobar.org). The first step to completing the process to becoming a FLAP Volunteer will be to watch the CLE-approved Orientation presentation.

### Volunteer Application

Motion for Panel Appointment - Attorney Resource

FLAP Service Agreement - Attorney Resource

Motion to Withdraw-Attorney Resource

Volunteer Evaluation form COMING SOON!

*For more information about how FLAP works, and how to volunteer, visit the Colorado Bar Association – Young Lawyer Division's website and FLAP page below:*

<https://www.cobar.org/For-Members/Young-Lawyers-Division/FLAP-Resources>

## Reminder – Important Aspects and Benefits of Accepting a case through the Civil Pro Bono Panel

- **Malpractice insurance** is provided through the Faculty of Federal Advocates. See the FFA website: <http://www.facultyfederaladvocates.org/pro-bonoprograms/>.
- Up to 9 **CLE credits** are available for accepting a pro bono case. See Form 8 and Instructions, Colo. Attorney Regulation Counsel page: <https://www.coloradosupremecourt.com/Current%20Lawyers/Rules.asp>. The Panel program is the appointing court, and court staff will approve, sign and send completed Form 8s to the CLE office.
- **Costs:** Reimbursement funding for costs incurred by counsel (not fees) is available from the **Faculty of Federal Advocates**. Reimbursement in any single case will be limited to **\$5,000 for non-expert costs**. An additional reimbursement of up to **\$7,500 for expert fees** may be requested in advance in cases where expert witnesses are reasonably required. See the FFA website: <http://www.facultyfederaladvocates.org/pro-bonoprograms/>.
- **Fees:** As a general rule, the focus of the program is to have counsel represent the unrepresented parties without remuneration; however, the court recognizes the sacrifice Panel members make to take such cases. Accordingly, local rule **LAttyR 15** also permits counsel to enter into a contingent fee agreement that complies with the Colorado Rules Governing Contingent Fees, or in the alternative, retain attorney fees that are earned if an unrepresented party recovers attorney fees or a monetary award or settlement.
- **Limited Representation:** Under the court's local rules, attorneys are now permitted – either on a pro bono basis, or for a fee – to represent ALL unrepresented parties on a limited basis. See <http://www.cod.uscourts.gov/AttorneyInformation/LimitedRepresentation.aspx>.
- The individual attorney or law firm selected to review a case has the **absolute freedom to decline** accepting a case for any reason, and during the initial review process, counsel remains anonymous. No penalty occurs when cases are declined, and Panel members can specify which types of cases to accept.
- **Mentors:** Counsel may request additional co-counsel assigned to assist, as either a mentor or “second chair.”
- Cases are **initially screened** by the court, and selected based on their merit.
- Please also keep in mind that if you are currently representing any party in a Pro Bono Panel case, both non-prisoner and prisoner, the Pro Bono Panel has a group of distinguished **pro bono mediators** who are willing to conduct a pro bono mediation if you believe it would be beneficial. Please contact us if you are interested in pursuing

**SAVE THE DATE – the 2021 Pro Bono Panel Member Recognition Ceremony – Tuesday, December 07, 2021 5:00 PM, a Virtual Event**

*Your chance for public and judicial recognition!*

*From the Faculty of Federal Advocates:*

**FFA VIRTUAL RECEPTION AND RECOGNITION OF THE U.S. DISTRICT COURT CIVIL PRO BONO PANEL & FFA ANNUAL MEETING**

**Tuesday, December 7, 2021  
5:00-5:45 p.m.**

Please join the FFA at a virtual reception recognizing 2021 participants in the Civil Pro Bono Panel of the U.S. District Court for the District of Colorado.

The FFA will announce newly-elected Board members and acknowledge outgoing Board members at the FFA Annual Meeting to follow.

This is a free event but you do need to register in advance so you may be provided with the Zoom login link for December 7.

We hope you can join us for this annual event--again this year from the comfort of your office or home.

