

PRO BONO PANEL PERIODICAL

WELCOME TO THE SPRING 2020 PANEL PERIODICAL!

This Spring 2020 edition of the Panel Periodical newsletter contains updates pertinent to your participation on the U.S. District Court for the District of Colorado's civil pro bono panel of attorneys, including information about court operations during the COVID-19 (coronavirus) measures by Chief Judge Philip A. Brimmer, an article summarizing the court's administrative functions for *pro se* cases by Magistrate Judge Kristen L. Mix, a statement from Leslie Kelly regarding the Federal Pro Se Clinic, and insight from Daniel Graham, Panel attorney. Information about the Panel, answers to frequently asked questions, helpful forms, and a list of available cases are available on the court's website at:

<http://www.cod.uscourts.gov/attorneyinformation/civilprobonopanel-details,andavailablecases.aspx>

A MESSAGE FROM CHIEF JUDGE PHILIP A. BRIMMER

The federal courts, like institutions and businesses everywhere, have faced huge challenges caused by the COVID-19 pandemic. But courts have a strong tradition of staying open regardless of crises, and the District of Colorado has worked hard to do precisely that. While there are restrictions on trials and entry to the courthouses, we are trying to facilitate as many hearings as possible through electronic means. The Clerk's Office has continued to operate efficiently and, among other things, has created a drop-box for *pro se* filers who do not have electronic access to CM/ECF. Our judicial officers and staff have continued to work full-time, most of them remotely. And our IT department has been working overtime to make video teleconferences possible and to ensure that employees can telecommute. On a related note, while the pandemic has put a halt to some activities, many people's legal problems go on. As a result, I encourage attorneys who are able to assist with *pro se* matters on a pro bono basis to contact the court's Legal Officer, Ed Butler, for a list of cases where help is needed. Thanks very much.

A Comprehensive List of Resources Relating to Pro Se Litigation in the United States District Court for the District of Colorado

By Hon. Kristen L. Mix

Over the past several years, the United States District Court for the District of Colorado has developed and/or implemented multiple resources to improve access to the court by pro se litigants, as well as to improve the court's management of pro se cases. The purpose of this article is to provide a guide to those resources.

Court Committees

The court has formed two committees to address issues relating to pro se litigation. The **Standing Committee on Pro Se Litigation** handles general issues relating to pro se litigants and litigation and includes members who are external to the Court (*see* D.C.COLO.LAttyR 15). The purpose and mission of the Standing Committee is to oversee the Civil Pro Bono Program (see more information below), report annually to the court on the status of the Program, and promote access to the court by unrepresented parties. In addition to administering the Civil Pro Bono Program, the Committee has also, for example, approved forms for use by both prisoner and non-prisoner pro se litigants and has addressed development of projects to assist the court with pro se litigation, like the Colorado Bar Association Young Lawyers' Division "FLAP" program (described in more detail below). I chair the Standing Committee, which also includes Hon. Daniel D. Domenico, Hon. Scott T. Varholak, Legal Officer Edward Butler, Pro Se Staff Attorney Nicole Salamander Irby, Executive Director of Colorado Legal Services Jon Asher, Attorney and Colorado Bar Association representative Fred Baumann, Professor Ann England of the University of Colorado School of Law, Attorney and Faculty of Federal Advocates representative Daniel Graham, Attorney and private law firm representative Nora Passamaneck, Professor Laura Rovner of the University of Denver Sturm College of Law, and Deputy Attorney General Maritza Braswell in a non-voting capacity, representing the Colorado Attorney General's Office.

The second pro se focused court committee is the **Working Group on Pro Se Litigation**, which includes only internal court personnel and is Chaired by Magistrate Judge Gordon P. Gallagher. The other Working Group members are Hon. Lewis T. Babcock, Hon. S. Kato Crews, Clerk of Court Jeffrey P. Colwell, Legal Officer Edward Butler, Pro Se Staff Attorneys Shawn Helgeson and Nicole Salamander Irby, Clerk's Office Supervisor Andrea Garcia-Gallegos and myself. The Working Group also tackles general issues related to pro se litigation, like filing upgrades for pro se prisoners, court forms, and court procedures for handling pro se cases.

Pro Se Division of the United States District Court for the District of Colorado

The United States District Court for the District of Colorado benefits from the assistance of a Pro Se Division staffed by attorneys who provide initial review of all civil cases filed by prisoners, all civil cases filed by non-prisoners who request to proceed *in forma pauperis* (i.e., without prepayment of the filing fee), all habeas corpus cases except death penalty cases or counseled federal immigration actions, and all requests to proceed *in forma pauperis* on appeal. This review is required by D.C.COLO.LCivR 8.1, 28 U.S.C. § 1915, 28 U.S.C. § 1915A, and/or 42 U.S.C. § 1997e. In recent years, the Pro Se Division reviewed on average one-third of the civil cases filed in the District. The Court's Pro Se Division is supervised by Senior Judge Lewis T. Babcock and Magistrate Judge Gordon P. Gallagher.

Federal Pro Se Clinic ("FPSC")

The FPSC was opened in June of 2018 and provides assistance to individuals who wish to file a civil case or have filed a civil case without a lawyer, or who have been named as a defendant in a civil

case filed in federal court and intend to proceed without paid counsel. The Clinic is run by the Colorado Bar Association and funded by bi-annual fees paid by attorneys who are admitted to the bar of the Court. The FPSC is led by Project Attorney Leslie Kelly, who is assisted by Program Coordinator Jessica Harner. A small army of attorney volunteers help handle the work of the FPSC by meeting with pro se litigants to offer guidance on drafting of pleadings, the discovery process, and other questions relating to federal civil litigation. The Clinic is currently dedicated to non-prisoner litigation, and most often assists litigants with civil rights, employment, and personal injury matters. The Federal Pro Se Clinic Advisory Committee meets several times each year to oversee Clinic operations and assist with necessary Local Rule changes to support the Clinic. The Advisory Committee is chaired by Attorney Mark Schwane and includes Colorado Bar Association representative Kathleen Schoen, Colorado Lawyers Committee Executive Director Connie Talmage, Attorney Reenie Terjak of Colorado Legal Services, Attorney Cheyenne Moore, Attorney Ken Rossman, Legal Officer Edward Butler and myself. To volunteer at the clinic, please send an email to lkelly@cobar.org or jharner@cobar.org, or call the Clinic at 303-380-8786.

Civil Pro Bono Program

The Court maintains a list of attorneys and law firms who are willing to accept federal civil cases on a pro bono basis, referred to as the Civil Pro Bono Panel. (*See* D.C.COLO.LAttyR 15). When a judicial officer enters an Order “appointing” pro bono counsel for a pro se litigant, Legal Officer Edward Butler and Paralegal Kelsey Montalban contact attorneys on the Panel to ask them to consider undertaking pro bono representation in the case. The Court’s Local Rules were recently amended to permit limited representation by attorneys in civil cases, including pro se matters, as well. *See* D.C.COLO.LAttyR 2(b)(1); 5(a) and (b). Panel attorneys who agree to undertake either full or limited representation receive malpractice insurance coverage and are also eligible to receive reimbursement for costs through the Faculty of Federal Advocates. *See* D.C.COLO.LAttyR 15(i). Funding for the cost reimbursement program comes from a small percentage of attorney admission fees. In addition, D.C.COLO.LAttyR 15(h) allows attorneys to enter into certain fee agreements with clients obtained through the Pro Bono Program. Although the number of cases where counsel has been “appointed” by the Court regularly exceeds the number of available pro bono attorneys, Mr. Butler and Ms. Montalban are tireless in their efforts to find suitable pro bono representation in every eligible case. Applications to join the Panel are available on the Court’s [website here](#), as are other forms related to pro bono representation in the federal court.

Roster of Private Professional Mediators

The Faculty of Federal Advocates has compiled a roster of attorneys who practice full or part-time and who are available to serve as mediators in federal lawsuits. Several of these attorneys are also available to serve on a reduced fee or pro bono basis in pro se litigation. The roster can be found at www.dcolomediators.org.

Pro bono mediation services are also available for cases assigned through the Civil Pro Bono Program (described above). Attorney mediation specialists have volunteered to provide these services

on a pro bono basis. For more information on pro bono mediation for Panel cases, please contact Legal Officer Edward Butler at 303-335-2043 or email COD_ProBonoPanel@cod.courts.gov.

Proposal for Colorado Bar Association Young Lawyers Division “FLAP” Program

The Colorado Bar Association Young Lawyers Division is proposing a program whereby volunteer attorneys would enter limited appearances in federal court on behalf of pro se litigants and provide legal information, consultation services and/or representation to them before, during and immediately after scheduled appearances in court. Attorney Danaé Woody and the Hon. S. Kato Crews have been instrumental in developing the proposed “Federal Limited Appearance Program” (“FLAP”), which is slated for presentation to the court in the upcoming months. Please stay tuned for additional details regarding FLAP.

Written Resources Available on the Court’s Website

A. Guide to Civil Lawsuits for Unrepresented Parties

The court’s [website](#) features a Guide to Civil Lawsuits, which is designed to walk pro se litigants through many of the issues they encounter when trying to represent themselves in federal court and to provide answers to frequently-asked questions. The court is in the process of updating the Guide with a “plain English version,” which will be posted on the website and available for use by mid-2020.

B. Pro Se Prisoner Handbook

The court’s [website](#) offers a procedural guide to incarcerated individuals wishing to file a complaint in the United States District Court for the District of Colorado under 42 U.S.C. § 1983/Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), a habeas corpus action under 28 U.S.C. §§ 2254 or 2241, or a motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255.

C. Guide for Pro Bono Attorneys Representing Prisoners

As a service to attorneys who would like to assist pro se prisoners with civil rights lawsuits, the court is in the process of updating a handbook with a comprehensive review of the legal issues most frequently encountered in such cases, along with applicable case law. The handbook will be made available on-line by mid-2020.

D. Forms

The court’s [website](#) provides a variety of forms and instructions for use by pro se litigants, whether prisoner or non-prisoner. Examples of the types of forms available in pro se cases include a complaint form, an employment discrimination complaint form, and a sample motion for appointment of counsel. Forms available in prisoner cases include an application for writ of habeas corpus, a complaint in a section 1983 case, and a motion for appointment of pro bono counsel.

E. Limited Representation Guide

The court's [website](#) also includes an attorney instruction packet for limited representation in the federal court, along with answers to frequently-asked questions about limited representation.

Conclusion

As the country grows, the courts become busier. Pro se litigation has increased steadily in both state and federal courts in the 21st century. Increasing judicial personnel to address busy dockets in the federal courts is largely the province of Congress. In the United States District Court for the District of Colorado, the number of authorized Article III judges has not changed since 1984, despite Colorado's exponential population growth since that time. *See* S.R. Gallagher and J.M. Lyons, "A Call for Additional Federal Judges," *The Docket* December 28, 2015. Growing dockets and limited judicial resources mean more work per judge; more work per judge means more time from filing to resolution of federal court lawsuits. Attorney assistance with pro se litigation not only enhances the court's ability to address this ever-increasing area of the docket, but also correspondingly enhances the court's ability to address fully-lawyered cases. Most importantly, attorney assistance with pro se litigation improves access to justice, a cornerstone of our American constitutional system. The court remains grateful for the efforts of the attorneys who volunteer at the FPSC, serve on the Pro Bono Panel, undertake limited or general representation of a pro se litigant, and otherwise provide invaluable help in improving access to justice for all.

Law in the Time of Coronavirus: Federal Pro Se Clinic Still Open for Business!

by Leslie Kelly, Project Attorney, CBA Federal Pro Se Clinic

On March 13, 2020, due to the outbreak of coronavirus/Covid-19 in Denver, the Colorado Bar Association (CBA) implemented a remote working policy for all staff, including at the Federal Pro Se Clinic. Thanks to technology, this has not meant big changes in our ability to help pro se parties. Pro se litigants still can reach the Clinic by telephone or email, or through the Clinic website (cobar.org/fpsc). Our staff members still are working full-time, Monday through Friday, to answer questions, hold appointments and generally be as responsive as possible to whatever the litigants may need.

The one thing we have put on hold is monthly volunteer shifts. Instead, volunteers are helping on an ad hoc basis. The Clinic is, however, planning to send out a sign-up list for May. If you are interested in volunteering in May or at any point in the future, please contact Program Coordinator Jessica Harner at jharner@cobar.org.

The CBA's current plan is to keep staff working remotely through June 1. The CBA will continue to evaluate its plan based on public health guidance and in coordination with the U.S. District Court of Colorado.

Your participation in pro bono services helps all litigants understand and improve upon the functions of the judiciary: “The judiciary has an important role to play in civic education . . . Civic education, like all education, is a continuing enterprise and conversation. Each generation has an obligation to pass on to the next, not only a fully functioning government responsive to the needs of the people, but the tools to understand and improve it.” John G. Roberts, Jr., Chief Justice of the United States, December 31, 2019.

FEATURED ATTORNEY INSIGHT

The Panel Periodical offers the opportunity for a Panel Attorney to share his or her experiences working on a Panel case. (The views of such attorneys do not represent the views of the U.S. District Court for the District of Colorado.) Panel Attorney Daniel Graham shares the following experience.

A team from Perkins Coie represented the family of a Navajo man who died in jail after being treated in the emergency department of a hospital. The family’s claims included an alleged violation of the Emergency Medical Treatment & Labor Act (EMTALA).

The Perkins Coie team included two junior associates who, through their work on the case, had the opportunity to handle all aspects of a case pending in federal court. For example, these associates had the opportunity to appear before Magistrate Judge Craig Shaffer at hearings (and benefit from his wisdom regarding eDiscovery), take multiple depositions, and work with a medical expert. These are opportunities that can be difficult for more junior associates to come by in practice today.

Throughout their work on the case, the team at Perkins Coie benefited from the mentorship of several attorneys in the Denver community who had more experience litigating EMTALA claims. The Panel offers this type of mentorship to its participants who take cases.

Working on this case provided the team at Perkins Coie invaluable experience. They would recommend that other attorneys participate in Panel cases, and they look forward to taking another case soon.

With regard to retaining experts for work on Panel cases, the costs of expert services are potentially eligible for reimbursement up to \$7,500 through the Faculty of Federal Advocates (FFA). Please see the FFA’s Web site for more information.
<http://www.facultyfederaladvocates.org/pro-bono-programs/>