

PRO BONO PANEL PERIODICAL

WELCOME SPRING! ... AND ANOTHER UPDATE FOR PRO BONO PANEL ENTHUSIASTS!

This quarter's newsletter reprints an article from *Colorado Politics* journalist Michael Karlik that gives well-deserved recognition to the Civil Pro Bono Panel lawyers and their work as a whole, represented by three specific lawyers – Deborah Yim, Matthew Buck, and Kevin Homiak. Thanks to all of you, and Mr. Karlik! Also, our Spring newsletter provides some helpful means to uncover statistical data concerning pro se cases in our court and federal court's around the nation, an excerpt from U.S Magistrate Judge Mix's insightful article in the April 2021 [IAALS Report](#) about the Federal Pro Se Clinic, Upcoming news on NextGen and PACER access, the upcoming Federal Pro Se Clinic Volunteer Recognition Event, and an upcoming [Attorney Pro Bono Handbook for § 1983 Litigation](#).

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PLEASE REMEMBER - Information is always available about the [Civil Pro Bono 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 page available here: <http://www.cod.uscourts.gov/AttorneyInformation/CivilProBonoPanel-Details,AndAvailableCases.aspx>

FEDERAL PRO SE CLINIC

Besides the rewarding pro bono case opportunities available through the Civil Pro Bono Panel, please remember that legal advice /limited representation appointment opportunities are available through the Colorado Bar Association's Federal Pro Se Clinic. Volunteer registration information is available [here](#). The Clinic will also hold a Zoom-based **Recognition Ceremony** for the existing volunteers on **Friday, April 23 from 12:00 – 1:00 p.m.** If interested in attending, please contact the Clinic's Staff Attorney Leslie Kelly at lkelly@cobar.org. Also, please enjoy Magistrate Judge Kristen L. Mix's article – "[Federal Pro Se Clinic in Colorado Helps the Public Navigate Our Federal Courts](#)" in the April 2021 [IAALS Report](#) [Institute for the Advancement of the American Legal System] about the Clinic.

FEATURED PRO BONO PANEL ATTORNEYS

The Panel Periodical is pleased to share with you the March 31, 2021 *Colorado Politics* article by Michael Karlik with the title “Colorado Program Gives Federal Litigants Representation, Hope.” The Standing Committee on Pro Se Litigation is pleased that the Civil Pro Bono Panel lawyers – Deborah Yim, Matthew Buck, and Kevin Homiak - were able to share their experiences with Mr. Karlik and readers of *Colorado Politics* – and that the Committee’s recently published [2019-2020 Annual Report of the Civil Pro Bono Panel](#) was able to provide Mr. Karlik the source of the data referenced in the article. The following is a reprint of the article in its entirety, published with permission of *Colorado Politics*.

Colorado Program Gives Federal Litigants Representation, Hope

By MICHAEL KARLIK michael.karlik@coloradopolitics.com, Mar 31, 2021

From July 2019 through the end of 2020, 67 parties gained free legal representation in Colorado’s federal trial court through a program that lawyers say helps clients who otherwise might lose legitimate cases.

The Civil Pro Bono Panel at the U.S. District Court for Colorado allows attorneys to choose to take on cases ranging from employment discrimination and inmate petitions to those involving constitutional violations. Typically the intervention comes on the side of plaintiffs, who are 88% of the population in need of representation.

“I looked at these cases and I was like, ‘Wow, these people have cases here. They’ve taken that brave first step to file a lawsuit on their own,’ ” said Deborah Yim, an attorney with Primera Law Group who was involved with four employment discrimination and Americans with Disabilities Act cases in the past year and a half. “A lot of times in these cases, they have meritorious claims. But they’re unable to take their cases all the way because they don’t understand the legal language.”

In the district court’s annual report released earlier this month, there were 83 orders from mid-2019 through 2020 to appoint pro bono — or free — counsel for pro se litigants representing themselves. Judges, when deciding whether to issue such orders, consider

the complexity of the case, the possible merit of the claims and whether justice would be served by the appointment.

COMING SOON! *ATTORNEY PRO BONO HANDBOOK FOR § 1983 LITIGATION*

A group of experienced prison civil rights litigators from the Standing Committee on Pro Se Litigation and the Faculty of Federal Advocates’ Pro Bono Committee have completed a draft of *Pro Bono Prison Case Handbook*, with the Civil Pro Bono Panel members – and really, any interested lawyers – as the target audience. Once approved by the Standing Committee and District Court, the *Attorney Pro Bono Handbook* will be distributed to all the members of the Panel and given further details.

Of the 83 orders, the successful placement rate with attorneys was 55%. The majority of all orders occurred in prisoner civil rights cases, which involved excessive force, cruel and unusual punishment, and due process violations, among other claims.

Ten other cases involved civil rights, and nine pertained to employment discrimination. For the 137 lawyers registered with the pro bono panel, they volunteer to take cases off of a list. Some attorneys join cases after they survive summary judgment, which occurs when the facts are sufficiently clear for a judge to dismiss the case without a trial.

“Crazy people like myself take the very early ones,” said Matthew Buck of Red Law, LLC, who has joined multiple prisoner rights cases. “It’s a significant amount of work. It’s difficult because you can’t work with your client in the way you can with someone who is in society or on the streets.”

Buck estimated he spends 2,000 hours per year on his pro bono cases, and labeled them his “second full-time job.”

“A lot of these guys are actually excellent legal writers — far better than any lawyers in Colorado. They know the limitations of practicing law inside a prison with no access to experts and no legal researchers,” he added. “I think of myself as a tool for them. I don’t think of me coming on as a nanny for them. That’s not what I am.”

Judges — particularly magistrate judges, who interact with cases at earlier stages — recognize the uphill climb for incarcerated individuals to take a claim to trial. When one plaintiff indicated that he could not communicate with witnesses because of prison rules, had no access to the Internet, and could not locate expert witnesses or investigators, U.S. Magistrate Judge Kristen L. Mix allowed pro bono representation for him.

“[W]hile Plaintiff has appeared capable in many respects of representing himself up to this point, it is likely that Plaintiff’s ability to present his claims will diminish now that the summary judgment motion has been denied and the case will proceed through the completion of discovery and depositions, the designation of witnesses and experts, and the trial,” she wrote.

The plaintiff, a pretrial detainee in El Paso County, alleged jail personnel caused him facial trauma by assaulting him when he was in handcuffs and not resisting. His attorney, Kevin Homiak, used to work at a prominent Denver law firm and first encountered the pro bono program when a magistrate judge contacted his colleague about a case heading to trial involving an elderly inmate representing himself.

“The thing that’s by far the most difficult is actually doing a trial because there are so many different procedural formalities,” Homiak said. He and his colleague ended up getting involved in the inmate’s case.

“What was amazing about that is before the jury even came back, our client said, ‘Basically, I feel like I’ve already won because I got my day in court. I got to have my claims heard by a jury of my peers,’” Homiak recalled. “We realized more than anything

else just having that opportunity to get the facts and the truth out about happened is valuable regardless of the verdict.”

A jury awarded their client, Waldo Mackey, \$180,000 in his case. The judge also decided Mackey was owed more than \$100,000 in attorney fees because he was the prevailing party.

Attorneys who spoke to Colorado Politics believed the pro bono program at Colorado's district court was successful, and something for other judicial districts to emulate. The Administrative Office for the U.S. Courts said that of the 94 federal districts in the country, at least 58% have pro bono programs — although they may be different from Colorado's model. At the state level, the Colorado Supreme Court's pro bono initiative does not go as far as the federal program, and serves largely to recognize law firms that fulfill the Colorado Bar Association's directive to "aspire to render at least fifty hours of pro bono public legal services per year."

The federal program in Colorado began in 2013 as a pilot, and became permanent in 2014. In all, 253 clients have received free counsel. The demand for representation, however, is far greater: there were more than 1,200 pro se civil cases filed in 2019 alone in Colorado.

Have you recently completed a Panel case?

Please share your experience with other Panel lawyers! Please contact Edward Butler, Legal Officer at 303-335-2043 or e-mail

COD_ProBonoPanel@cod.uscourts.gov with your observations. Please also provide notable work product that could be helpful for other Panel lawyers in providing representation, such as a response to a dispositive motion.

Among the downsides, the COVID-19 pandemic has also affected the work of pro bono lawyers, with trials going forward on a limited basis and difficulty reaching clients who are incarcerated. And in the case of an appeal, a sample letter for attorneys states plainly: "We are not agreeing at this time to prosecute or defend any appeal."

While attorneys participating in the program do not receive pay from the panel, the Faculty of Federal Advocates reimburses for expenses, which amounted to \$24,122 in 2019. There is also an opportunity for mentoring, in which some lawyer take on cases with colleagues who want to gain more federal experience or learn about an area of law.

Yim, who moved to Colorado three years ago and has practiced law for more than 20 years, said the client sees the benefit of a "legal team" on their case when there is a mentorship. Earlier in her career, she was a federal prosecutor and a corporate attorney on the side of management. Now, she represents clients who are women or women of color with discrimination or labor claims.

"I know this because I was on the other side: I saw a lot of pro se litigants and I often felt bad because if they had competent attorneys representing them, they probably could have gotten better results," Yim said.

The cases she is currently taking, Yim said, would have likely gotten dismissed early on for lack of the plaintiffs' procedural knowledge in the absence of her participation. The

claims could also, "fizzle out because they don't have the time, the means or the ability to continue with their case. Some of them might just give up hope if they keep losing."

Though uncommon, it is possible for an unrepresented party to win their case on their own. Earlier this month, a judge sided with an inmate whose constitutional rights the Colorado Department of Corrections violated by confiscating his mail.

Civil lawsuits against government employees are particularly difficult because of the presence of qualified immunity, the judicially-created shield that prevents liability for law enforcement or

corrections workers unless there is a violation of a clearly-established legal right. For prisoners, Homiak said, documentation is difficult to come by and there will usually be multiple authority figures testifying against a plaintiff.

Even so, he said, his clients have always been appreciative — and he feels similarly towards them.

"This was one of the most rewarding things we've ever done, to be able to represent this gentleman who had managed to teach himself all of the complexities of federal constitutional law," Homiak said of Mackey. "He got the ball up to the one-yard line and we just punted it through the end zone at trial. The victory was really his."

JUST THE FACTS: TRENDS IN PRO SE CIVIL LITIGATION FROM 2000 TO 2019

From the Federal Judiciary's [USCourts.gov](https://uscourts.gov) public website, Just the Facts is a feature that highlights issues and trends in the Judiciary. The latest feature is the Facts and Figures on Pro Se Litigation page, which includes the types and categories of pro se cases nationwide and per district, the number of prisoner cases contrasting with non-prisoner cases, etc. It includes an interactive [map](#) showing the pro se case filings by prisoners and non-prisoners by year and district across the country, as shown below with Colorado prisoner petitions in 2019:

