

FILED

January 13 2012

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. \_\_\_\_\_ AF12-0028

FILED

JAN 13 2012

IN THE MATTER OF ESTABLISHING AN  
APPELLATE PRO BONO PROGRAM

)  
)  
)

ORDER

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Based on the increasing numbers of parties appearing before this Court without attorneys, the Court is considering the creation of an Appellate Pro Bono Program to further access to justice for civil litigants who lack financial means to retain counsel. A description outlining the program is attached to this Order. The program is designed to offer the assistance of appellate counsel to qualified litigants in cases in which the Court has determined that supplemental briefing would be beneficial to the Court. As an incentive to encourage attorneys and law students to offer pro bono assistance to qualified litigants, the Court will offer an opportunity to counsel for both parties for oral argument of cases selected for participation in the program.

The Court will accept public comment on the proposed Appellate Pro Bono Program for a period of sixty days from the date of this Order. All comments should be filed in writing with the Clerk of this Court.

A copy of this Order and the attached program description will be posted on both the Montana Supreme Court website and on the State Bar of Montana website with a request that it be published in the next available issue of *The Montana Lawyer*. In addition, the Clerk is directed to provide copies of this order to the Chairs of the Equal Justice Task Force, the Commission on Self-Represented Litigants, the State Bar's Access to Justice Committee, the Montana Legal Services Association, and the University of Montana School of Law.

DATED this 13 day of January, 2012.

  
\_\_\_\_\_  
Chief Justice

## **Proposed Appellate Pro Bono Program (APBP)**

### **Volunteer counsel:**

The Montana Supreme Court's Pro Bono Coordinator will develop a volunteer database and registry for attorneys and law students who volunteer to assist pro se litigants in appeals pending before the Supreme Court. Each volunteer will fill out an on-line application which will include, among other information, areas of the attorney's or student's subject matter expertise and interest. Experienced appellate attorneys may volunteer to mentor less experienced volunteer attorneys in supplemental briefing and arguing the appeal. Law students under supervision of the UM Law School also may apply to participate as volunteer counsel in accordance with the Court's student practice protocol.

### **Program Eligibility:**

Cases involving at least one self-represented party may be selected by the Court for participation in the program where the Court determines, after briefing has been completed, that the Court will benefit from additional briefing on one or more issues. The Court's staff and Law Clerks may bring appropriate cases to the Court's attention during the briefing process on appeal or, in original proceedings involving self-represented litigants, during their review of motions or petitions.

Once the Supreme Court identifies an appeal where pro bono assistance may be beneficial to the Court, the Montana Supreme Court's Pro Se Law Clerk (PSLC) will provide the identified self-represented litigant with an application form for participation in the program, which explains eligibility requirements and the scope of representation. Should the litigant choose not to participate in the program, the case will be submitted on the litigant's pro se briefing.

Financial eligibility for the program will be determined in accordance with the criteria used to determine eligibility for services from the Montana Legal Services Association (MLSA). Appointment of pro bono counsel will be coordinated with MLSA's pro bono referral process to ensure proper financial eligibility screening for litigants and provision of malpractice insurance coverage for pro bono counsel who otherwise lack such coverage.

If the litigant applies and is approved for appointment of counsel under the Appellate Pro Bono Program, the Pro Bono Coordinator will circulate a case-specific confidential memorandum to a pool of volunteer attorneys for determination of conflicts of interest. The Pro Bono Coordinator will select an attorney from the qualified pool. The Pro Bono Coordinator will notify the volunteer attorney or student and the litigant of the attorney or student selected.

In the event multiple parties to the appeal are appearing pro se, volunteer counsel will be offered as described above for each qualified self-represented litigant.

### **Volunteer counsel/student:**

The volunteer counsel will provide the litigant with an engagement letter and file a notice of appearance (noting the appointment is under the Appellate Pro Bono Program). The Court will set a briefing schedule and the Montana Rules of Appellate Procedure will apply as in all other proceedings.

**Supreme Court:**

Once the supplemental briefing process is complete, the Court will review the supplemental briefs for classification and schedule an oral argument, unless a majority of the Court determines that argument would not be appropriate for the case. The Court shall schedule the oral argument and determine the time allowed to each party in accordance with its Internal Operating Rules.

**Pro Bono Coordinator/Pro Se Law Clerk:**

The Pro Bono Coordinator and Pro Se Law Clerk will be cross-trained so that the appointment of counsel is not interrupted due the temporary unavailability of either. Back-up staff can be trained as needs are identified.

The Pro Bono Coordinator will develop the database and access to attorneys and law student volunteers. A rotation or randomized system of selecting counsel will be established.

The PSLC will prepare the case-specific confidential memorandum for each case with review and oversight by the Court.

The PSLC and Pro Bono Coordinator will develop the forms required to support this program.