



Guide To Volunteer Pro Bono Appeals In The Federal Courts

Acknowledgements

The American Bar Association's Pro Bono and Professional Opportunities Subcommittee of the Litigation Section's Appellate Practice Committee compiled this guide. Present and past Subcommittee members who contributed to this guide include: Michael Bentley (Bradley, Arant, Boult & Cummings), Thomas Burch (University of Georgia), Jehmal Hudson, Chuck Miller (Eaton & Van Winkle LLP), Jennifer Lynn Peters (Otis, Bedingfield & Peters), Anthony T. Eliseuson (Dentons US LLP), and Subcommittee Chairs Ian Barker (Dentons US LLP) and Mary-Christine (M.C.) Sungaila (Haynes and Boone LLP), with editing support from Shaunta Knibb (Smyth & Mason PLLC), Anna-Rose Mathieson (California Appellate Law Group), and Peter Busscher (Hunton & Williams LLP). Pro Bono partner Ben Weinberg of Dentons US LLP also contributed to this project. This guide was made possible by support of present and past Appellate Practice Committee leadership, including Stephen Feldman (Ellis & Winters LLP), Fred Rowley (Munger Tolles & Olson), Kannon Shanmugam (Williams & Connolly LLP), and Sonia Escobio O'Donnell (Carlton Fields Jorden Burt, P.A.).

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FIRST CIRCUIT

Point of Contact for Court:

Attorneys interested in being appointed for pro bono appeals in the First Circuit should contact the main number, which is (617) 748-9057, and they will be directed to the appropriate person.

Information Regarding Appointments In Non-CJA Cases:

The First Circuit does not maintain a formal pro bono panel for civil matters. However, attorneys who are interested in pro bono work can send a letter and resume to the clerk. The court keeps the letters on file and they are a resource if the court decides to appoint pro bono counsel in a civil case.

Court Links for Additional Information:

Website: <http://www.ca1.uscourts.gov/>

CJA Information: <http://www.ca1.uscourts.gov/criminal-justice-act>

CJA Plan: http://www.ca1.uscourts.gov/sites/ca1/files/cja_plan.pdf

SECOND CIRCUIT

Point of Contact for Court:

Attorneys interested in being appointed for non-CJA pro bono appeals in the Second Circuit should contact:

Office of Legal Affairs
Thurgood Marshall United States Courthouse
40 Foley Square, Room 612
New York, New York 10007

Information Regarding Appointments:

The Second Circuit has a pro bono plan for civil cases. To become a member of the pro bono panel, you must be a member of the Second Circuit bar with at least three years of appellate experience. If accepted on the panel, the commitment is three years, after which time a volunteer must reapply. The court makes an effort to rotate membership on the pro bono panel to give new applicants an opportunity to serve. While a significant percentage of the pro bono cases are prisoner civil rights cases, the court also assigns volunteers to cases involving other civil issues, such as labor and employment, discrimination, social security, immigration, and tax law. Appointment does not include preparing of a petition for certiorari in the U.S. Supreme Court unless specifically requested by the court. The court requires volunteer pro bono counsel to promptly transmit to the client a copy of the court's decision, and to advise the client in writing of the right to petition the U.S. Supreme Court for writ of certiorari and the procedures for filing a pro se petition. The court does not generally reimburse costs and expenses for pro bono counsel, although the court indicates a limited reimbursement might be available for pro bono volunteers if such costs and expenses cause undue hardship.

Court Links for Additional Information:

Website: <http://www.ca2.uscourts.gov>

Pro Bono Plan: http://www.ca2.uscourts.gov/clerk/attorneys/pro_bono_counsel_plan.html

Application for Appointment:

http://www.ca2.uscourts.gov/clerk/case_filing/forms/pdf/Application%20for%20appointment%20to%20the%20pro%20bono%20panel%20112011.pdf

THIRD CIRCUIT

Point of Contact for Court:

Attorneys interested in being appointed for pro bono appeals in the Third Circuit should contact:

Kelly Glaum
Phone: (267) 299-4904
Email: Kelly_Glaum@CA3.uscourts.gov

Information Regarding Appointments In Non-CJA Cases:

Attorneys who are interested in non-CJA pro bono appeals and wish to be added to the Third Circuit pro bono panel should send the court a letter outlining their interest along with a resume or CV. The clerk will review the resume to determine if the attorney should be added to the list. Attorneys who are added to the clerk's list will receive an appointment letter. The Third Circuit also works regularly with local area law schools within the Circuit.

Court Links for Additional Information:

Website: <http://www.ca3.uscourts.gov/>

CJA Website:

<http://www.ca3.uscourts.gov/criminal-justice-act-and-appointed-counsel-information>

Appointment of Attorneys for Mediation: <http://www.ca3.uscourts.gov/mediation>

FOURTH CIRCUIT

Point of Contact for Court:

Attorneys interested in being appointed for pro bono appeals in the Fourth Circuit should contact:

Melissa L. Wood
Senior Staff Counsel
Office of Staff Counsel
United States Court of Appeals, Fourth Circuit
1100 E. Main St., Suite 325
Richmond, VA 23219
(804) 916-2900

Information regarding appointments:

The best way to receive appointed cases is to apply to become a member of the CJA panel, which is a three-year commitment. To become a member, counsel must first join the Fourth Circuit bar and must maintain a physical office within the Circuit. Non-CJA cases include civil rights cases, prisoner civil rights, employment discrimination, agency review, including black lung, workers' compensation, immigration, tax cases, bankruptcy cases, and civil cases of any type that do not implicate an interest protected by the CJA. Counsel appointed for non-CJA assignments are paid a \$750 stipend plus expenses. Where the court finds that formal briefing and oral argument would be helpful, but a pro se party is not financially eligible for a counsel appointment, the court also may assign counsel to brief and argue the case as amicus curiae.

Court Links for Additional Information:

Website: <http://www.ca4.uscourts.gov/>

Appointed Counsel Policies:

<http://www.ca4.uscourts.gov/rules-and-procedures/appointed-counsel-policies>

Additional Appointed Counsel Information: <http://www.ca4.uscourts.gov/appointed-counsel>

FIFTH CIRCUIT

Points of Contact for Court and Information Regarding Appointments In Non-CJA Cases:

While the Fifth Circuit does not maintain a formal pro bono program, the court does keep a list of attorneys who are interested in pro bono appointment in civil appeals. Attorneys who would like to be considered for a pro bono appointment should send a cover letter and resume in a pdf format to Katherine E. Clark at the address provided below. The cover letter should identify the attorney's practice areas or interests, the location of his or her primary office, and should also indicate if the attorney is willing to travel for oral argument if necessary. The contact person for this general pro bono list is:

Katherine E. Clark
The Office of the Appellate Conference Attorney
U.S. Court of Appeals for the Fifth Circuit
600 Camp Street
New Orleans, LA 70130
Katherine_Clark@ca5.uscourts.gov
Tel: 504-310-7799
Fax: 504-310-7583

In addition to the court's internal pro bono list, Adams and Reese LLP established an immigration-specific pro bono appeals program and maintains a list of attorneys who are qualified and willing to assist with immigration appeals on a pro bono basis. Pro se immigration appeals warranting pro bono assistance are referred by the court to the program. Attorneys who are interested in volunteering for this immigration-specific pro bono program should contact:

Martin Stern
Adams and Reese LLP
701 Poydras Street, Suite 4500
New Orleans, LA 70139
Martin.Stern@arlaw.com
Tel: 504-581-3234
Fax: 504-566-0210

Court Links for Additional Information:

Website: <http://www.ca5.uscourts.gov/>

CJA Website: <http://www.lb5.uscourts.gov/cja/>

SIXTH CIRCUIT

Point of Contact for Court:

Attorneys interested in being appointed to non-CJA pro bono appeals in the Sixth Circuit should contact Ken Loomis at (513) 564-7067 or ken_loomis@ca6.uscourts.gov.

Information Regarding Appointments In Non-CJA Cases:

Attorneys who are interested in pro bono appeals in the Sixth Circuit for either CJA or non-CJA cases should apply for pro bono panel membership using the Sixth Circuit CJA Panel Application, available on the court's website at <http://www.ca6.uscourts.gov/sites/ca6/files/documents/cja/Application.pdf>. All panel members must agree to accept at least one appointment per year. Admission to the Sixth Circuit is required for a non-CJA appointment, but the court may waive the admission fee.

The court assigns an appointment based on a rotation of available attorneys and law students. Law students may handle non-CJA pro bono appeals only in association with a supervising attorney, pursuant to Sixth Circuit Rule 46(d). Pro-bono appointments in civil appeals are uncommon; usually less than 10 non-CJA pro bono appointments are made each year. The most common types of non-CJA appointments are § 1983 cases.

An appointment is effective throughout all stages of the appellate proceeding, up to and including filing a petition for writ of certiorari. Appointed counsel must file a petition for a writ of certiorari in the U.S. Supreme Court if the client requests it and, in counsel's considered judgment, there are grounds for seeking Supreme Court review. An appointed attorney's out-of-pocket expenses are reimbursable.

Court Links for Additional Information:

Website: <http://www.ca6.uscourts.gov/>

CJA Information: <http://www.ca6.uscourts.gov/criminal-justice-act>

SEVENTH CIRCUIT

Point of Contact for Court:

Attorneys interested in being appointed for pro bono appeals in the Seventh Circuit should contact the clerk's office at (312) 435-5850 to be directed to the appropriate person for additional information.

Information Regarding Appointments In Non-CJA Cases:

A description of the court's process for appointing pro bono counsel in non-CJA cases is available on page 88 of the court's Practitioner's Handbook at <http://www.ca7.uscourts.gov/forms/Handbook.pdf>. The court will reimburse certain of volunteers' out-of-pocket expenses up to a maximum of \$1000. Attorneys interested in non-CJA pro bono appeals should provide their current resume and fill out the Volunteer Panel Attorney Questionnaire at <http://www.ca7.uscourts.gov/forms/cjaques.pdf>. Applicants may send the resume and form to:

Donald J. Wall, Counsel to the Circuit Executive
U.S. Court of Appeals
219 South Dearborn Street, #2722
Chicago, IL 60604
don_wall@ca7.uscourts.gov

Court Links for Additional Information:

Website: <http://www.ca7.uscourts.gov/>

CJA Information: <http://www.ca7.uscourts.gov/criminal-justice-act/cja.htm>

CJA Plan: <http://www.ca7.uscourts.gov/Rules/rules.htm#plan>

EIGHTH CIRCUIT

Point of Contact for Court:

Attorneys interested in being appointed for pro bono appeals in the Eighth Circuit should contact Diane Hogenmiller or Robin Weinberger at (314) 244-2400. Court staff generally will direct counsel to submit, in writing, a statement indicating what sorts of cases counsel are willing to take, such as criminal cases, habeas cases, or civil appointments.

Information Regarding Appointments In Non-CJA Cases:

Volunteers are placed on a list that the docketing department uses when appointments are required. Counsel who receive requests to take a case are free to decline. Although appointments are relatively rare in non-CJA cases, the court will from time to time appoint counsel for litigants proceeding *in forma pauperis* or who request appointment of counsel. Civil appeal appointments are most commonly for certain prisoner civil rights cases where the court determines appointment is appropriate.

Admission to the Eighth Circuit is not required for counsel providing pro bono representation, but court staff usually contact counsel who practice in the Eighth Circuit before offering an appointment to an attorney practicing elsewhere.

Appointed counsel may submit an itemized request for reimbursement of reasonable out-of-pocket expenses, per guidelines available on the court's website (<http://media.ca8.uscourts.gov/newcoa/forms/ihpinfo.pdf>).

Court Links for Additional Information:

Website: <http://www.ca8.uscourts.gov/>

CJA Information: <http://www.ca8.uscourts.gov/cja-information>

NINTH CIRCUIT

Point of Contact for Court:

Attorneys interested in being appointed for pro bono appeals in the Ninth Circuit should contact the Pro Bono Coordinator:

Email: ProBono@ca9.uscourts.gov

Phone: (415) 355-8020

Information Regarding Appointments In Non-CJA Cases:

A description of the court's appointment of pro bono counsel in non-CJA cases is on the court's website at http://www.ca9.uscourts.gov/probono/view.php?pk_id=0000000118. According to the court's website, the Ninth Circuit's Pro Bono Program has grown from 12 cases per year to approximately 160. Judges or court staff prescreen appeals for inclusion in the program, and select only cases presenting issues of first impression or some complexity, or cases otherwise warranting further briefing and oral argument, for the appointment of counsel under the program. Although a significant percentage of the cases are prisoner civil rights appeals or immigration petitions, many other civil cases are included, such as labor and employment cases, discrimination, bankruptcy, social security, Indian law, mining law, contract and civil forfeiture appeals.

The Ninth Circuit is divided into several districts for the purpose of appointment of volunteer pro bono attorneys. Each district has a district coordinator who maintains the current list of volunteers, and locates individual attorneys to accept specific appointments. (A list of the district coordinators and their contact information is provided with the attorney sign-up form, which is available on the court's web site at www.ca9.uscourts.gov/probono.) The court's pro bono coordinator works with the district coordinators in locating counsel for each appeal and for recruiting volunteers for the program.

The district coordinators generally email the next volunteer on the pro bono waiting list to offer them an available case. Volunteers are always able to decline a request, and usually have up to two weeks to evaluate whether they can take a case, including whether a conflict of interest precludes the representation. Alternatively, the district coordinator may email all the volunteers currently on the list, and the first to respond gets the case (this typically requires a fast response, often less than a minute). Because there are more attorneys on the list than there are cases, attorneys often must wait one to three years for an available appointment. Attorneys outside the circuit are occasionally appointed as pro bono counsel in Ninth Circuit cases.

When a volunteer elects to take a case, the court's coordinator works with volunteer pro bono counsel to arrive at a mutually acceptable briefing schedule, resulting in a clerk's order appointing the attorney and setting a briefing schedule. The court advises pro bono counsel to send a letter to the client outlining the terms of representation and seeking the client's written consent.

Pro bono counsel must become a member of the Ninth Circuit bar prior to appointment. With the potential exception of some *amicus curiae* appointments and appointments specifically for purposes of mediation, the court is committed to hearing oral argument in all cases selected for the program.

The pro bono appointment includes only handling the appeal before the Ninth Circuit (and the preparation of a petition for rehearing where appropriate), and does not include petitioning the U.S. Supreme Court for certiorari or any other proceedings in any other court or agency except as the court specifically requests or as the attorney and client agree.

The Ninth Circuit also permits law students to handle pro bono appeals through law clinics at registered law schools, and can arrange for an expedited schedule to permit briefing and oral argument within the academic year. (Student practice forms are available on the court's Forms page at <http://www.ca9.uscourts.gov/forms/>.)

One district coordinator served as a volunteer and described his experience with the Ninth Circuit's Pro Bono program in an article linked to the court's website, available at http://www.fedbar.org/Resources_1/Federal-Lawyer-Magazine/2008/The-Federal-Lawyer-May-2008/Features/The-Ninth-Circuits-Pro-Bono-Program.aspx.

Pro bono attorneys may request reimbursement of their reasonable expenses via a form available on the court's website at <http://www.ca9.uscourts.gov/probono/>. Because the court has limited funds to reimburse eligible costs in these appeals, the court asks pro bono volunteers to consider absorbing some or all of their eligible costs where feasible.

Court Links for Additional Information:

Website: <http://www.ca9.uscourts.gov/>

CJA Information: <http://www.ca9.uscourts.gov/attorneys/>

TENTH CIRCUIT

Point of Contact for Court:

Attorneys interested in being appointed for pro bono appeals in the Tenth Circuit should contact the clerk's office at (303) 844-3157 and ask to speak to the Clerk of the Court or the Chief Deputy Clerk.

Information Regarding Appointments In Non-CJA Cases:

Attorneys who are interested in pro bono appeals should provide a letter outlining their interest along with a resume or CV. Those attorneys then will be added to the clerk's list, from which appointments will be made. Attorneys on the list are generally admitted to the Tenth Circuit, but admission is not required. The court waives the admission fee for appointed pro bono counsel.

Attorneys on the list often are contacted based on their experience with the particular type of case for which counsel is required, and the clerk's office prefers to appoint practitioners with appellate experience. Attorneys who are contacted are free to decline the appointment.

Addendum II to the Tenth Circuit Rules sets forth the criteria and procedure for appointment of pro bono counsel in civil appeals. (The Tenth Circuit Rules, including Addendum II, are available on the court's website at <https://www.ca10.uscourts.gov/clerk/rules>.)

The Tenth Circuit only appoints attorneys in a handful of cases a year and has a number of attorneys willing to accept appointments. Therefore, attorneys may have to wait a significant amount of time to receive an appointment. Attorneys are appointed only in cases where the judges determine the litigation presents complex and significant legal issues. The cases to which attorneys are appointed vary, but prisoner civil rights cases are the most common. Appointed pro bono attorneys are not guaranteed oral argument and a significant portion of cases involving pro bono attorney appointments are submitted without oral argument.

The appointment is effective throughout all stages of a proceeding in the Tenth Circuit. The appointment includes filing a petition for writ of certiorari with the U.S. Supreme Court, if the client requests such a filing and reasonable grounds exist for counsel properly to do so.

Pro bono appointees may file a motion for reasonable and necessary out-of-pocket expenses, but the court grants such requests only in exceptional cases.

Court Links for Additional Information:

Website: www.ca10.uscourts.gov

CJA Forms & Links: <https://www.ca10.uscourts.gov/cja>

ELEVENTH CIRCUIT

Attorneys interested in being appointed for pro bono appeals in the Eleventh Circuit should contact:

Clerk of Court
56 Forsyth Street, N.W.
Atlanta, GA 30303
Phone: (404) 335-6100

Information Regarding Appointments:

Attorneys who are interested in pro bono appeals in the Eleventh Circuit should fill out the CJA form and check the box for pro bono representation. They also may send the clerk of the court a cover letter (indicating interest) and a resume. The letter should list the types of cases of interest, for example, general civil appeals, habeas corpus appeals, and 42 U.S.C. § 1983 appeals.

Court Links for Additional Information:

Website: www.ca11.uscourts.gov

CJA Information and Forms: <http://www.ca11.uscourts.gov/attorney-info/criminal-justice-act>

D.C. CIRCUIT

Point of Contact for Court:

Attorneys interested in being appointed for pro bono appeals in the D.C. Circuit should contact:

Nancy Dunn, Deputy Special Counsel to the Clerk

Phone: 202-216-7313

Email: Nancy_Dunn@cadc.uscourts.gov

Information Regarding Appointments In Non-CJA Cases:

An unrepresented appellant may file a motion for the appointment of counsel. If the court grants the motion or elects to appoint *amicus curiae* in lieu of counsel, it may select a member of a legal aid organization or a law school clinical program, or it may appoint an attorney who has indicated a willingness to serve without compensation in non-criminal cases. The decision whether to appoint counsel or an *amicus* in a civil case is usually made by the special panel. The court will appoint a private attorney or *amicus* only when a panel determines it is in the interest of the court. Appointed *amicus curiae* has full briefing rights, and presents oral argument when it is ordered by the merits panel.

Counsel who wish to be considered for appointment in civil cases should write to Ms. Dunn, providing information about their background and experience, and listing any cases they have previously handled in the court. Those selected must be members of the bar of the Circuit before the appointment is made and most often are located in the Washington, D.C., metropolitan area.

Because the court is a small appellate court, appointments typically do not exceed 10 appeals per year.

Court Links for Additional Information:

Website: <http://www.cadc.uscourts.gov/internet/home.nsf>

CJA Information: <https://www.cadc.uscourts.gov/internet/home.nsf/Content/Criminal+Justice+Act+Information+and+CJA+eVoucher>

FEDERAL CIRCUIT

Point of Contact:

Although the Federal Circuit does not have a procedure for appointing pro bono counsel, attorneys interested in being appointed for pro bono appeals in the Federal Circuit should contact the Federal Circuit Bar Association:

Hee Kim
Federal Circuit Bar Association
Office Staff Coordinator
Committee, Pro Bono and CLE
kim@fedcirbar.org
(202) 536-4160

Information Regarding Appointments In Non-CJA Cases:

The Federal Circuit Bar Association connects certain clients in need of pro bono representation with volunteer pro bono counsel. The FCBA has formed three committees to facilitate pro bono representation:

- The Government Employees Pro Bono Committee facilitates pro bono representation in appeals to the U.S. Merit Systems Protection Board and to the Federal Circuit in government personnel cases. (More information on the Government Employees Pro Bono Committee is available at <http://fedcirbar.org/Committees/Committee-Information/ArticleID/25/Government-Employees-Pro-Bono>.)
- The Veterans Pro Bono Committee facilitates pro bono legal representation of veterans, including representation before the Federal Circuit. (More information on the Veterans Pro Bono Committee is available at <http://fedcirbar.org/Committees/Committee-Information/ArticleID/40/Veterans-Pro-Bono>.)
- The PTO Pro Bono Committee serves as the national clearinghouse for the patent pro bono program established under the America Invents Act. Rarely, at the discretion of the FCBA's executive director, pro bono opportunities are available in matters that proceed from the PTO to the Federal Circuit. (More information on the PTO Pro Bono Committee is available at <http://fedcirbar.org/Committees/Committee-Information/ArticleID/35/PTO-Pro-Bono>.)

Each of the committees connects pro bono litigants within its subject matter with volunteer attorneys among the committee's own membership. The FCBA provides this pro bono outreach as an information service, and does not have continued involvement with the case after connecting the pro bono litigant with a volunteer attorney. Volunteer attorneys are not agents of the FCBA, and are responsible for their own professional liability insurance. Volunteer attorneys must be admitted to practice before the Federal Circuit.

Links for Additional Information:

Federal Circuit's Website: <http://www.cafc.uscourts.gov/>

Federal Circuit Bar Association: <http://www.fedcirbar.org>