

# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## DEVELOPMENTS AND PRACTICE NOTES

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### MINNESOTA'S PRO BONO APPELLATE PROGRAM: A SIMPLE APPROACH THAT ACHIEVES IMPORTANT OBJECTIVES

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The proliferation of pro se litigation strains both the resources and the operation of the nation's state and federal judicial systems. At the same time, the increasing number of unrepresented litigants offers a wealth of opportunities for lawyers to satisfy their professional and ethical obligations to render pro bono legal services. A prime example of this dynamic can be found in the development of pro bono appellate programs that provide needed legal services to pro se appellants, assist the appellate courts, satisfy ethical obligations, and advance professional development.

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The Appellate Practice Section of the Minnesota State Bar Association (“MSBA”) recently developed an appellate pro bono program in cooperation with the Minnesota Court of Appeals. The program is aimed at developing, implementing, and analyzing procedures and materials utilized in providing pro bono appellate legal services to pro se parties in unemployment compensation appeals.<sup>1</sup> While neither perfect nor comprehensive, the program illustrates a fairly simple yet effective method for introducing volunteer lawyers to pro se parties who seek legal representation in their appeals. This Article describes the development and implementation of this appellate pro bono program to provide courts and bar associations a prototype for developing or improving their own appellate pro bono programs.

The Article is organized into five sections. First, it outlines the dynamics injected by pro se parties in civil litigation and the manner in which effective pro bono programs can simultaneously assist litigants as well as improve the administration of justice. Second, the Article describes how the MSBA’s Appellate Practice Section went about developing a pro bono appellate program to provide representation in pro se appeals filed in the Minnesota Court of Appeals. Third, the Article explains how Minnesota’s program was actually implemented and operated. Fourth, it briefly reports on the cases in which pro bono counsel were introduced to, and agreed to appear on behalf of, pro se appellants as part of the pilot program phase of this program. Finally, the Article addresses the future direction and development of this program.

## I. THE DYNAMICS OF PRO SE LITIGATION AND POTENTIAL FOR PRO BONO OPPORTUNITIES

Federal and state courts throughout the country have experienced dramatic increases in pro se litigation.<sup>2</sup> The

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1. Barbara L. Jones, *Pilot Program Helps Workers Get Unemployment Benefits*, 7 Minn. Law. 1, 19 (Aug. 11, 2003).

2. See generally *Final Report of the Joint Task Force on Pro Se Litigation*, submitted to Conference of Chief Justices and Conference of State Court Administrators (July 29, 2002) [hereinafter *Joint Task Force on Pro Se Litigation*] (copy on file with Journal of Appellate Practice and Process); *A National Conference on Pro Se Litigation: A Report*

challenge posed by the swelling ranks of self-represented litigants is now recognized as one of the highest priorities for the courts.<sup>3</sup> The increase in pro se litigants in the American justice system shows no signs of subsiding, and appellate courts have not been spared from this growing trend.<sup>4</sup>

The increase in pro se litigation offers a complementary increase in opportunities for lawyers to render pro bono legal services. The American Bar Association has formally encouraged lawyers to provide legal services to those who cannot afford it since adopting the original Canons of Ethics nearly a century ago,<sup>5</sup> and it continues to promote pro bono work in the provisions of the Rules of Professional Conduct.<sup>6</sup> In Minnesota, for example, the Supreme Court imposes an aspirational goal for each lawyer “to render at least 50 hours of pro bono publico legal services per year.”<sup>7</sup>

The substantial increase of pro se litigation, particularly in appellate proceedings, presents a prime opportunity for attorneys to provide significant assistance to parties and courts alike, while meeting their professional and ethical obligations, by providing much needed pro bono legal services.

*and Update* (Am. Judicature Socy. 2001); Conference of State Court Administrators, *Position Paper on Self-Represented Litigation* (Aug. 2000) (copy on file with Journal of Appellate Practice and Process); Jona Goldschmidt et al., *Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers* (Am. Judicature Socy. 1998).

3. *Joint Task Force on Pro Se Litigation*, *supra* n. 2, at 3.

4. *See e.g. Courts of Appeals Facilitate Handling of Pro Se Cases*, Third Branch (July 1995) (available at <http://www.uscourts.gov/ttb/julttb/prose.htm>); 2002 Annual Report of Administrative Office of the U.S. Courts 115-118, tbl. B-9, *U.S. Courts of Appeals—Pro Se Appeals Commenced and Terminated, by Circuit During the 12-Month Period Ending September 30, 2002*.

5. *See* Patrick R. Burns, *Pro Bono: It's Good and It's Good For You!* <http://www.courts.state.mn.us/lprb/fc041999> (originally published in *Minnesota Lawyer*, Apr. 19, 1999) (accessed Sept. 19, 2003). Canon 12 provided in part:

A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration . . . . In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

*Id.* (quoting Canons of Ethics canon 12 (American Bar Assn. 1908)).

6. *Id.*

7. Minn. R. Prof. Conduct 6.1.

### *A. Challenges Posed by Pro Se Parties in the Appellate Process*

Parties engage in pro se litigation for a variety of reasons. Some individuals simply prefer to represent themselves without assistance of counsel. Perhaps they do not like lawyers, or they believe they can represent themselves as well as or better than an attorney could. However, many parties wish to have an attorney but are unable to afford counsel. Regardless of their motivation, pro se litigants inject a host of serious issues and challenges for both the courts and other parties who are represented by counsel.<sup>8</sup>

First, self-represented litigants impose additional burdens and demands on court staff and resources compared to attorney-represented litigants.<sup>9</sup> Specifically, they require assistance in understanding and following appropriate procedures,<sup>10</sup> and they need greater assistance in correcting mistakes caused by their lack of legal training and experience.<sup>11</sup> Moreover, interaction and communication between court staff and pro se litigants may also raise ethical and legal concerns because “[a]t times their requests for assistance [from court staff] may cross the gray line between legal information and legal advice.”<sup>12</sup>

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8. The Conference of Chief Justices and the Conference of State Court Administrators recently addressed the dramatic and serious impact that growing pro se litigation has on the justice system:

A number of social, economic and political factors—especially the rising cost of legal representation relative to inflation, decreases in funding for legal services for low-income people, and increased desire on the part of litigants to understand and to actively participate in their personal legal affairs—are believed to be at the root of the increase. Regardless of the underlying causes, however, *the trend toward self-representation reflects a significant deviation from a fundamental assumption by the courts—namely, that litigants are represented by licensed attorneys who are trained in applicable law and court rules.* The influx of large numbers of litigants who may not be informed about law and court procedures poses significant implications for the administration of justice—especially, demands on court staff and resources and ethical dilemmas about how to compensate for self-represented litigants’ lack of knowledge without jeopardizing judicial requirements of neutrality and objectivity.

*Joint Task Force on Pro Se Litigation, supra* n. 2, at 3 (footnote omitted) (emphasis added).

9. *Id.* at 3-4.

10. *Id.* at 3.

11. *Id.*

12. *Id.* at 3 & n. 5 (noting concerns about the unauthorized practice of law and citing John M. Greacen, *Legal Information vs. Legal Advice: Developments During the Last Five*

Second, counsel face challenges when dealing with pro se litigants whose interests are adverse to their own clients. Of course, express professional rules of conduct set out the manner in which an attorney shall deal with unrepresented parties.<sup>13</sup> However, these rules only curtail the manner in which an attorney may communicate with an unrepresented party; they do not explicitly address how an attorney should proceed so as not to take undue or unfair advantage of a pro se litigant. The Joint Task Force on Pro Se Litigation (“Task Force”) observes that

[m]any lawyers dislike participating in court proceedings when the opposing party is self-represented, as they often find it awkward to represent their client’s interests without appearing to take unfair advantage of the self-represented litigant’s relative lack of knowledge and experience and risking the animosity of the trial judge.<sup>14</sup>

Third, pro se litigation “challenge[s] the neutral role of judges,”<sup>15</sup> given that the judicial canons impose competing and sometimes conflicting obligations on courts vis-à-vis pro se litigants. On one hand, judges must maintain impartiality toward all parties.<sup>16</sup> On the other hand, judges must “accord to every person who has a legal interest in a proceeding, or person’s lawyer, the right to be heard according to law.”<sup>17</sup> When confronted with pro se litigation, says the Task Force, “[m]any judges find it difficult to reconcile the requirement to provide self-represented litigants with an opportunity for a fair hearing with the requirement to remain impartial”<sup>18</sup> due to the need to lead pro se parties through the necessary procedures. Thus, “[a]n uninformed or unprepared pro se litigant can place an

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*Years*, 84 *Judicature* 198 (Jan.-Feb. 2001); John M. Greacen, *No Legal Advice from Court Personnel! What Does That Mean?* 34 *Judges’ J.* 10 (Winter 1995)).

13. See Minn. R. Prof. Conduct 4.3.

14. *Joint Task Force on Pro Se Litigation*, *supra* n. 2, at 4.

15. *Report of the Minnesota Conference of Chief Judges, Committee on the Treatment of Litigants and Pro Se Litigation*, at 7 (Apr. 1996) (copy on file with Journal of Appellate Practice and Process).

16. Minn. Code of Judicial Conduct canon 3(A)(5).

17. *Id.* at 3(A)(7).

18. *Joint Task Force on Pro Se Litigation*, *supra* n. 2, at 4 (citing Jona Goldschmidt, *The Pro Se Litigant’s Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance*, 40 *Family Ct. Rev.* 36, 40 (2000)).

uncomfortable tension on the judicial search for impartial justice.”<sup>19</sup>

Finally, the presence of pro se litigants presents practical challenges for counsel and judges alike in terms of effective communications and other logistical considerations, particularly where the self-represented are viewed as annoyances “that clog court dockets and consume unnecessary amounts of court time and attention.”<sup>20</sup> For example, due to their lack of a legal education and experience, pro se litigants may focus on facts and issues that, while important to them personally, are not relevant or that interfere with or compromise the development of the evidentiary record and the resolution of the true factual and legal issues. Due to their lack of legal education, training, and experience, pro se litigants may have difficulty in effectively communicating through written submissions. In those circumstances, judges and court staff must expend greater resources in researching and deciding pro se cases due to the limited assistance that the pro se parties themselves can provide.

In summary, while individuals have the right to represent themselves in legal proceedings, the nation’s laws and justice system are based on an adversarial system in which all parties are assumed to be represented by competent counsel. When parties appear pro se, this assumption and the corresponding balance of procedures and rules are thrown off, jeopardizing fairness and equity in the final result.

### *B. Programs Developed in Response to Pro Se Parties in Appellate Proceedings*

Among the responses of the bench and bar to the increase in self-represented litigants are the developments of self-help centers, one-on-one assistance programs, promotion of unbundled legal services, technological innovations, and collaborative programs.<sup>21</sup> While these programs primarily focus on pro se litigation at the trial court level, many methods and programs have been developed to address the increase of pro se

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19. *Report of the Minnesota Conference of Chief Judges*, *supra* n. 15, at 7.

20. *Joint Task Force on Pro Se Litigation*, *supra* n. 2, at 4.

21. *Id.* at 5-9.

litigants in appellate proceedings, varying in terms of their focus and their complexity.

The first point of contact between pro se parties and the justice system is the clerk's office. Many appellate courts have endeavored to sensitize the clerk of court's staff to the needs of pro se litigants. For example, the Missouri Court of Appeals, Western District, provides pro se appellants with detailed procedural information.<sup>22</sup> The attorneys and administrative personnel who staff the clerk's offices for the New York Court of Appeals also provide extensive assistance to pro se litigants and direct those parties to relevant resources, including outlines of the court's civil and criminal jurisdiction and information on the court's website.<sup>23</sup>

While staff personnel endeavor to be helpful to pro se appellants, these activities are tempered by concerns that court employees should not provide legal advice. For example, while the Ohio First District Court of Appeals assists pro se litigants by providing them with various forms, many of the pro se litigants have problems completing the forms and making other submissions, consequently seeking assistance from the clerk's office.<sup>24</sup> Indeed, as a result of these types of concerns, the Council of Chief Justices for the State of Texas has expressly barred the clerks' staffs of the Texas Court of Appeals from advising pro se litigants or providing pro bono representation, even if their cases are pending in courts outside of their jurisdiction.<sup>25</sup>

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22. E-mail from Terence Lord, Clerk of the Court, to Thomas H. Boyd (Nov. 15, 2002) (on file with Journal of Appellate Practice and Process).

23. Ltr. from Marjorie S. McCoy, Deputy Clerk, N.Y., to Thomas H. Boyd (Nov. 20, 2000) (on file with Journal of Appellate Practice and Process). The Clerk's Office for the New York Supreme Court, Appellate Divisions, provides similar assistance to pro se appellate litigants. *See e.g.* ltr. from Catherine O'Hagan Wolfe, Clerk of the Court, N.Y. App. Div. 1st Dept., to Thomas H. Boyd (Jan. 22, 2003) (on file with Journal of Appellate Practice and Process); ltr. from James Edward Pelzer, Clerk of the Court, N.Y. App. Div. 2d Dept., to Thomas H. Boyd (Nov. 19, 2002) (on file with Journal of Appellate Practice and Process).

24. E-mail from Tom Rottinghaus, Administrator, Ohio App. 1st Dist., to Thomas H. Boyd (Nov. 20, 2002) (on file with Journal of Appellate Practice and Process) ("Dealing with the pro se litigant is a major concern since the employees of the Court can not provide legal advice. We try to assist the litigants in any way we can by explaining the rules; however, when it comes to preparing a brief, there is little we can do.").

25. Ltr. from Linda Rogers, Clerk of the Court, Tex. App. 6th Dist., to Thomas H. Boyd (Nov. 13, 2002) (on file with Journal of Appellate Practice and Process).

Recognizing the limits on staff time as well as these ethical concerns, several courts and bar organizations have prepared written materials to assist pro se parties. For example, the Supreme Court of Delaware, the Wisconsin Supreme Court, and the Georgia Court of Appeals have developed "Citizen Guides" that describe the judicial system and the court's procedures, answer frequently asked questions, and provide forms and checklists for use by pro se parties.<sup>26</sup> Other courts place responses to frequently asked questions on their websites.<sup>27</sup>

Some bar associations and appellate courts have developed fairly extensive written materials to assist pro se litigants, such as the Illinois Appellate Lawyers Association's extensive and updated *Guide to Civil Appellate Procedure for Pro Se Litigant*;<sup>28</sup> the Missouri Court of Appeals, Eastern District's *The ABC's of Appellate Practice*;<sup>29</sup> and, most recently, the Appellate Practice Section of the Florida Bar's *The Pro Se Appellate Handbook*.<sup>30</sup>

The federal judiciary's traditional practice of appointing counsel to represent indigent criminal defendants on appeal has resulted in the development of some pro bono programs for civil appellants. Specifically, while the federal courts of appeal have procedures for facilitating representation through the Criminal Justice Act ("CJA"), some of these courts have gone a step further to develop programs to provide pro bono representation

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26. See e.g. ltr. from Cathy L. Howard, Clerk of the Court, Del., to Thomas H. Boyd (Nov. 14, 2002) (on file with Journal of Appellate Practice and Process); ltr. from William L. Martin, III, Administrator/Clerk, Ga. App., to Thomas H. Boyd (Nov. 12, 2002) (on file with Journal of Appellate Practice and Process); ltr. from Cornelia G. Clark, Clerk of Supreme Court, Wis., to Thomas H. Boyd (Nov. 15, 2002) (on file with Journal of Appellate Practice and Process).

27. E-mail by Marcia Mangel, Clerk of Court, Ohio, to Thomas H. Boyd (Nov. 13, 2002) (on file with Journal of Appellate Practice and Process); ltr. from Kenneth A. Richstad, Clerk, S.C. App., to Thomas H. Boyd (Nov. 13, 2002) (on file with Journal of Appellate Practice and Process).

28. Ltr. from Steven M. Ravid, Clerk, Ill. App. 1st Dist., to Thomas H. Boyd (Nov. 19, 2002) (on file with Journal of Appellate Practice and Process); ltr. from Robert J. Mangan, Clerk of the Court, Ill. App. 2d Dist., to Thomas H. Boyd (Nov. 14, 2002) (on file with Journal of Appellate Practice and Process).

29. Ravid, *supra* n. 28.

30. Dorothy F. Easley, *The Appellate Practice Section Moves to Alleviate Explosive Appellate Nightmare; Publishing the Pro Se Appellate Handbook*, 11 Record (newsletter of Fla. Bar App. Prac. Sec.) 1 (Spring 2003) (available at <http://www.flabarappellate.org/pdf/app-0403.pdf>).



to pro se litigants in civil appellate proceedings. The United States Court of Appeals for the Seventh Circuit operates an appointed counsel program that is coordinated through the Counsel to the Circuit Executive.<sup>31</sup> While this program focuses primarily on the representation of indigent litigants in criminal appeals under the CJA, the program is also used when the court determines that assistance of pro bono counsel would aid the court in prisoner civil rights cases or other civil appeals.<sup>32</sup>

The longest standing and most developed approach to pro se litigation in federal civil appellate proceedings is the Ninth Circuit's Pro Bono Program, established by judicial conference resolution in 1993.<sup>33</sup> The Ninth Circuit concluded that "complex non-frivolous pro se appeals would be greatly assisted in many cases by the appointment of pro bono counsel for the litigant" and the court therefore undertook to establish "a comprehensive Pro Se Project to provide for the appointment of pro bono counsel in complex civil appeals while a party is proceeding pro se."<sup>34</sup> Under this program, pro se appeals are reviewed by the court's pro bono coordinator, under the supervision of a staff attorney, to determine whether counsel should be appointed.<sup>35</sup> An attorney in each district of the circuit coordinates and maintains panels of private volunteer attorneys for the program.<sup>36</sup> The court's pro bono coordinator uses these district coordinators to recruit volunteers for the program and locate counsel for appointment in eligible cases.<sup>37</sup> Cooperating with law school clinics located within the Ninth Circuit, the program also facilitates participation by qualified law students.<sup>38</sup>

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31. *Seventh Circuit Court of Appeals' Appointed Counsel Program*, De Novo (newsletter of Wis. Bar App. Prac. Sec.) at 3 (Spring 2003) (available at <http://www.wisbar.org/sections/appelprac/news/2003sprapp.pdf>).

32. *Id.*

33. See 9th Cir., *Pro Bono Program* 1 (on file with Journal of Appellate Practice and Process); 1993 9th Cir. Jud. Conf. Resolution No. 3, *Encourage Ninth Circuit Attorneys to Participate in the Pro Se Representation Project* (submitted by Ninth Circuit Lawyer Representatives Coordinating Committee and Ninth Circuit Senior Advisory Board) (on file with Journal of Appellate Practice and Process).

34. 1993 9th Cir. Jud. Conf. Resolution No. 3, *supra* n. 33.

35. 9th Cir., *Pro Bono Program*, *supra* n. 33, at 2.

36. *Id.* at 1.

37. *Id.*

38. *Id.* at 6.

Some state appellate courts, like the federal appellate courts, have also developed formal pro bono programs. The New Mexico Court of Appeals has one of the most highly developed programs among state appellate courts, one which came about as a result of an extensive study focusing on how that court was dealing with pro se appellants.<sup>39</sup> Staff attorneys and judges drafted forms for docketing statements for criminal cases, general civil cases, and domestic relations cases; a certiorari petition form for administrative appeals; notice of appeal forms; applications for free process and service of process; and a pamphlet responding to frequently asked questions, available in all of the district court clerks' offices.<sup>40</sup> The court commissioned an instructional CD to explain how appeals proceed in the court of appeals and to provide interactive instructions for filling out the forms.<sup>41</sup> In addition, the court compiled a list of attorneys agreeable to representing pro se litigants for free or for a reduced fee where the court has determined those litigants would benefit from and welcome such assistance.<sup>42</sup> Finally, the court initiated a program where senior staff attorneys are "on call" to take questions from pro se litigants.<sup>43</sup>

In some states, the courts and state bar associations have collaborated in very effective pro bono appellate programs through which the bar coordinates a pool of volunteer lawyers to provide pro bono representation where the court has deemed pro se parties need legal counsel. The New Hampshire Supreme Court and the New Hampshire Bar Association have two pro bono programs, each of which refers income-eligible parties to volunteer lawyers.<sup>44</sup> The Appellate Practice Section of the Wisconsin State Bar enlists volunteer attorneys who regularly accept appointments to represent pro se litigants in cases

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39. Ltr. from Bridget Gavahan, N.M. App. Senior Staff Attorney and Chair, N.M. Appellate Courts' Pro Se Committee, to Thomas H. Boyd (Nov. 13, 2002) (on file with Journal of Appellate Practice and Process).

40. *Id.*

41. *Id.* at 2.

42. *Id.*

43. *Id.*

44. Ltr. from Stephanie A. Bray, Wiggin & Nourie, P.A., to Thomas H. Boyd (Dec. 8, 2003) (on file with Journal of Appellate Practice and Process).

identified by the state's appellate courts as raising significant legal issues.<sup>45</sup>

## II. DEVELOPMENT OF MINNESOTA'S PRO BONO APPELLATE PROGRAM

The Minnesota courts have spent considerable time examining the challenges posed by the increase in pro se litigation and developing constructive methods for addressing this emerging trend.<sup>46</sup> Recognizing that “[p]ro se litigation is on the rise in Minnesota,” the court leadership has concluded that “[t]he need to deal more effectively with this increase is one of the top leadership goals of the Conference of Chief Judges.”<sup>47</sup> Declaring that “[f]ull legal representation for all litigants should be encouraged wherever possible,” the Minnesota judiciary determined that the “Minnesota state court system should join in a partnership with bar associations and the legal profession to increase the number of attorneys providing pro bono representation.”<sup>48</sup> As a result, considerable progress has been made in assisting pro se litigants at the trial court level.<sup>49</sup> However, until recently, no formalized approach made pro bono legal services available to pro se litigants in state civil appellate proceedings.<sup>50</sup>

Shortly after its formation in 2001, the Appellate Practice Section of the Minnesota State Bar Association determined that one of its objectives was to promote pro bono appellate legal services. As a starting point, the Appellate Practice Section developed a list of attorneys willing to provide pro bono legal

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45. Robert R. Henak, “Do Good”: *APS Pro Bono Appeals Program*, De Novo (newsletter of Wis. Bar App. Prac. Sec.) 6 (Summer 2004) (available at <http://www.wisbar.org/sections/appelprac/news/2004summer.pdf>).

46. See generally *Report of the Minnesota Conference of Chief Judges*, *supra* n. 15; *Report of the Committee on the Role of Judges in Pro Bono Activity* (Dec. 1994).

47. *Report of the Minnesota Conference of Chief Judges*, *supra* n. 15, at 4.

48. Hon. John M. Stanoch, *Working with Pro Se Litigants: The Minnesota Experience*, 24 Wm. Mitchell L. Rev. 297, 299 (1998) (citations omitted).

49. See *e.g. id.* at 307-312.

50. It should be noted that pro bono assistance has been provided by volunteer attorneys through the Appellate Office of the State Public Defender in criminal appeals on an ad hoc basis. Interview with Teddie Gaitis and Larry Hammerling (Nov. 6, 2003).

services in civil appeals.<sup>51</sup> The Section then began to identify potential sources of pro bono appellate opportunities.

Upon developing a list of approximately thirty interested attorneys, the Section's representatives met with the Chief Judge of the Minnesota Court of Appeals, the Honorable Edward Toussaint, Jr. The Minnesota Court of Appeals disposes of more than 2,000 cases per year,<sup>52</sup> and it must issue an opinion within ninety days of hearing oral argument in a given case.<sup>53</sup> Accordingly, the court moves a lot of cases along at a fairly brisk pace and only rarely interrupts the processing of any particular case. The Section sought to explore whether Minnesota's intermediate appellate court had any interest in developing a pro bono program to assist parties who would otherwise be proceeding pro se in civil appeals.

Following a general discussion on the subject and a positive reaction from Chief Judge Toussaint, the Section put together a "brainstorming" meeting of interested parties that included Chief Judge Toussaint, representatives of the Section, representatives of the clerk's office, court library, public defender's offices, staff attorneys, and other interested individuals.<sup>54</sup> This meeting was highly productive in identifying and addressing several threshold issues (discussed below) as well as developing the concept of a pilot program to evaluate procedures, develop materials, and otherwise gather information regarding the operation of a pro bono appellate program.

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51. The Appellate Practice Section developed the list by seeking volunteers through communications with its members on its listserv, as well as through announcements at section meetings and programs. Interested attorneys were directed to contact the chair of the pro bono subcommittee who, in turn, was responsible for compiling a list of names and contact information of the individual volunteers.

52. Minnesota State Courts 2002-2003 Annual Report at 15 (available at [http://www.courts.state.mn.us/documents/CIO/annualreports/2003/mjb\\_annual\\_report\\_2003.pdf](http://www.courts.state.mn.us/documents/CIO/annualreports/2003/mjb_annual_report_2003.pdf)).

53. Minn. Stat. § 480A.08, subdiv. 3(a) (Westlaw current through 2004 Reg. Sess.).

54. In addition to Chief Judge Toussaint, the meeting was also attended by Frederick K. Gritner, Clerk of Appellate Courts; Anne L. Wyneken, Staff Attorney with the Minnesota Court of Appeals; Barbara Golden, with the Minnesota Law Library; Jill Frieders, a family law attorney from Rochester; Mary Drummer, Chair of the MSBA's Family Law Section; Larry Hammerling, of the Minnesota Public Defender's Office; Michael Schechter, Chair of the MSBA's Appellate Practice Section ("Section" or "Appellate Practice Section"); Patrick Burns, who is on the board of Volunteer Lawyers Network ("VLN"); and Thomas H. Boyd, Chair of the Section's Pro Bono Subcommittee.

*A. Determining Sponsorship of and Responsibility  
for the Pro Bono Program*

Among the most significant and defining of the threshold issues in developing a pro bono appellate program was the extent to which the Minnesota Court of Appeals would be involved in the program. The court's commitment to the prompt processing of all cases, as well as its limitations on staff resources, posed practical restrictions on the extent to which it could participate in arranging for counsel to represent pro se litigants.<sup>55</sup> Even if these practical obstacles did not exist, administering a program to appoint pro bono counsel would require the development of criteria to identify appropriate cases and procedures for introducing volunteer lawyers into those cases.<sup>56</sup>

Given these challenges, it became apparent that, at least initially, Minnesota's program would have to be operated by an outside sponsor who could identify volunteer lawyers and introduce them to pro se litigants. Under such an arrangement, the court would be advised and updated as to the activities of the sponsoring organization, and it could draw upon the panel of volunteer lawyers developed by that organization in the event it chose to appoint counsel in any given case. Ultimate responsibility for operating the program, however, would reside outside the court system.

The Appellate Practice Section was the obvious choice to serve as the sponsoring organization because it had already assembled a list of lawyers willing to take on pro bono appellate matters and had already put together a subcommittee of volunteer attorneys to assist in the development and operation of a pro bono appellate program.

*B. Developing a Method for Identifying and Screening Cases*

As the sponsoring organization, the Appellate Practice Section had to develop appropriate methods and procedures for

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55. The group's discussions on this and other issues are summarized in a July 2, 2002, memorandum by Thomas H. Boyd, "Minnesota Court of Appeal [sic] Pro Bono Panel/July 1, 2002 Meeting" (on file with Journal of Appellate Practice and Process).

56. *Id.*

identifying appropriate cases and eligible pro se litigants. While one option would have been for the Section to review and screen all cases filed with the Minnesota Court of Appeals by pro se litigants, requiring the development of screening criteria and procedures, such an approach would also require substantial time and resources. A less demanding and more realistic alternative for the busy volunteer members of the Section, however, was a program in which the pro se litigants would “self select.” After being informed of the availability of pro bono assistance, interested pro se litigants could apply to the Section for assistance. This approach avoids the need for an ongoing review of all pro se appellate matters, and the self-selection procedure automatically excludes those pro se litigants who simply do not wish to have professional legal representation.<sup>57</sup>

*C. Considerations in Determining Eligibility for  
Pro Bono Appellate Services*

Having opted for the self-selection approach, the Appellate Practice Section then had to determine who would be eligible to receive information concerning this program. There were legitimate concerns that volunteer legal services be made available only to pro se litigants of limited financial means who could not hire counsel on a traditional pay-as-you-go basis.<sup>58</sup> The Section had to either develop a process for evaluating financial need or identify categories of cases where the financial need of a party is already established or can reasonably be presumed.

Furthermore, the program was not intended to put pro bono legal services in competition with the private bar, where representation might be available through the private bar on a contingent fee basis. Instead, the pro bono program would be aimed at making voluntary legal services available to individuals who were not able to afford such services *and* to whom such services were not otherwise available.<sup>59</sup> At the same time, the

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57. *Id.*

58. *Id.*

59. *Id.*

Section felt that the pro bono program should not exclude individuals who, due to their limited financial means, are eligible to receive representation through existing public law or legal services organizations. On the contrary, it was felt that the pro bono program could provide supplemental resources for the representation of a greater number of underprivileged or impoverished litigants.

An additional concern involved the extent to which the subject matter of the case or type of cases might involve highly charged social and political issues. There were legitimate concerns that providing pro bono legal services to litigants in controversial cases might create dissent among the supporters and members of the bar, the public, or the court.

Finally, it was important to offer voluntary legal services in areas of the law or types of cases where pro se parties regularly appear and in which representation by counsel would be welcomed and prove beneficial to the parties and the court alike.

#### *D. Selecting Unemployment Compensation Cases for the Pilot Program*

Eventually, the Appellate Practice Section developed a plan to conduct a pilot program involving appeals from denials of unemployment compensation benefits. Unemployment cases had been on the rise as a result of the difficult economy.<sup>60</sup> In the past five years, the Minnesota Court of Appeals has averaged approximately 127 unemployment cases per year, or 5.9 percent of its docket,<sup>61</sup> and in all likelihood, the number of appeals from unemployment compensation cases will increase as the number of unemployment compensation claims increases.<sup>62</sup>

The Court of Appeals had previously identified this category of cases as involving a significant number of pro se

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60. Jones, *supra* n. 1, at 19.

61. *Id.*

62. The number of claims filed by Minnesotans has substantially increased during each of the past three years. See the statistics at the Minnesota Department of Employment and Economic Development's website at <http://www.deed.state.mn.us/lmi/> (accessed Nov. 14, 2004). See also Marshall H. Tanick & Brian R. Dockendorf, *Is There Gold in Those Hills? Shifting Contours of Unemployment Compensation Law*, 60 *Bench & Bar* 17, 18 (Nov. 2003) (discussion of increase in unemployment compensation claims and corresponding appeals).

appellants<sup>63</sup> who could benefit from attorney assistance in the appellate process<sup>64</sup> and in framing and briefing the relevant issues on appeal.<sup>65</sup> In fact, the clerk's office had already prepared a packet of written materials aimed at assisting pro se litigants in conducting appeals from the denial of unemployment compensation benefits.<sup>66</sup> These packets provided a natural vehicle for communicating the program to interested pro se litigants through the "self-select" approach, and the clerk's office was willing to place a written description of the pro bono appellate program in the existing packets.

In addition, this was an area in which the pro se parties were assumed to be in financial need, as evidenced by Minnesota law waiving filing fees,<sup>67</sup> transcript costs,<sup>68</sup> and cost bonds<sup>69</sup> in unemployment compensation appeals. Thus, the Section could assume that these pro se litigants were in financial need; it would not have to conduct independent evaluations of individual situations in order to determine eligibility.

Nor was this area of law one in which the volunteer attorneys would be competing with the private bar. These cases involve the payment of relatively modest benefits. While these benefits are essential to the welfare of the applicants, they do not typically justify the engagement of counsel at a standard hourly rate or under a contingent fee arrangement. Further, there is no statutory right to recover attorneys' fees under Minnesota's unemployment compensation laws. Thus, pro bono legal services are the only realistic prospect of securing representation for those pro se litigants who have appealed the denial of unemployment compensation benefits.

Moreover, Minnesota's unemployment compensation laws present a fairly straightforward area of the law that can be mastered without a great deal of difficulty. The unemployment

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63. Under Minnesota law, parties who seek appellate review of the final administrative denial of unemployment compensation benefits are actually referred to as "relators." However, they will be referred to as "appellants" for purposes of this Article.

64. Boyd Memorandum, *supra* n. 55.

65. Jones, *supra* n. 1, at 19.

66. Facsimile transmittal from Frederick K. Grittner to Thomas H. Boyd (Oct. 3, 2002) (enclosing pro se packet materials) (on file with Journal of Appellate Practice and Process).

67. Minn. Civ. App. P. R. 103.01, subd. 3(g).

68. Minn. Stat. § 268.105, subd. 7(c) (Westlaw current through 2004 Reg. Sess.).

69. Minn. Civ. App. P. R. 107.02(g).



compensation laws are fully codified in a single chapter of the Minnesota Statutes, and the case law focuses on the application of a few basic principles. In short, attorneys could pick up and handle these types of cases effectively even if they had no prior experience with unemployment compensation benefits law.<sup>70</sup>

It should be noted that the unemployment compensation benefit program is administered by the Minnesota Department of Employment and Economic Development (“Department”), which has its own attorneys who litigate these benefit claims through appeal. Early on in the development of the pilot program, the Section contacted counsel for the Department to make them aware of the program and reassure the Department that neither MSBA nor the Minnesota Court of Appeals intended to “target” the Department or pursue some type of controversial agenda by implementing this program. The Department’s counsel were actually quite appreciative to have pro bono counsel involved and were extremely helpful with and supportive of the program.<sup>71</sup>

Finally, Chief Judge Toussaint indicated that the Court of Appeals would agree to hear oral argument in these cases where a volunteer attorney had agreed to represent the pro se appellant.<sup>72</sup> Typically, pro se appeals are submitted on the briefs without oral argument. Thus, the fact that the court was willing to provide oral argument made these cases much more appealing from the standpoint of professional development and personal satisfaction.

### III. MINNESOTA'S UNEMPLOYMENT COMPENSATION APPEALS PILOT PROGRAM

#### *A. Communicating the Program to Pro Se Parties*

The clerk’s office agreed to include a written description of the pilot program, along with sponsor and contact information,

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70. Boyd Memorandum, *supra* n. 55.

71. The Department’s counsel has included Lee B. Nelson and his colleagues, Philip B. Bryne, M. Kate Chaffee, Linda Holmes, and Katrina I. Smith.

72. Boyd Memorandum, *supra* n. 55.

in the packets of information that it otherwise made available to pro se parties appealing adverse unemployment compensation determinations. Communicating the program in this way offered a much simpler, more efficient, and less expensive means than if the Appellate Practice Section had had to comb through the new case filings to identify and then communicate the program to eligible pro se parties.

The Section developed three descriptions of the program, each aimed at a different audience in order to achieve specific objectives:

- a master description to clarify for the court and the bar this program's objectives, sponsor, and practical details.<sup>73</sup>
- a narrative flow chart for volunteer lawyers describing, step by step, the program's mechanical workings.<sup>74</sup>
- a more general description of the program for pro se parties, intended to communicate information to lay people.<sup>75</sup>

The information provided to pro se litigants had to accurately summarize the program and procedures, yet be understandable to a non-lawyer. It had to provide interested pro se parties with contact information in order to obtain clarification or further information concerning the program.

### *B. Introducing Volunteer Attorneys to Interested Pro Se Parties*

Included with the description of the pilot program in the clerk's office packet was an application form. It was then up to the individual party, should he or she desire pro bono legal representation, to promptly fill out and submit the application form to the Program Coordinator.<sup>76</sup> Once the appeal had been commenced and a request was received, the Appellate Practice Section then became responsible for finding a volunteer attorney to meet and confer with the pro se appellant.

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73. See *infra* app. A.

74. See *infra* app. B.

75. See *infra* app. C.

76. See *infra* app. D.

The Section concluded that, for a number of reasons, volunteer attorneys should not be expected to provide pro se litigants with meaningful consultation and opinions as to whether or not to file an appeal. First, the timeframes for initiating an appeal are more compressed in these types of cases. In contrast to a sixty-day time period that generally applies to most civil appeals under Minnesota law, an appeal from a decision by the Representative of the Commissioner must be commenced within thirty days. The Section did not want to discourage volunteer participation by presenting them with short-term deadlines and prospects for tardy filings of petitions for writ of certiorari or faulty service of such writs.

Second, an attorney who was not involved in the administrative proceedings would need some time to review the record in order to conduct a reasonable analysis and provide meaningful opinions and recommendations. In many cases, it is essential to review the hearing transcript in order to get a full understanding of the record. However, in most cases, the transcript is not prepared and available for review until after an appeal has been commenced.

Third, the Section did not want to create a situation in which the availability of volunteer lawyers would have the effect of increasing the number of appeals. The Section did not see its role as increasing the Court of Appeals' caseload, but instead sought to facilitate the more effective and efficient submission of cases that would otherwise be filed.

Finally, the Section determined that pro se parties who receive a meaningful review of their cases *after* their appeals have been filed are no worse off for having filed the appeals in order to have been eligible to confer with a volunteer lawyer about the merits. There are no out-of-pocket costs, as pro se parties are not required to pay a court filing fee or post a cost bond. Further, if pro se parties ultimately decide to withdraw their appeals, they are neither taxed any costs nor otherwise out of pocket for any amount, nor are they likely to suffer any other type of sanction.

### *C. Form Engagement and Declination Letters*

The Appellate Practice Section was particularly concerned about documenting the status and scope of any engagement by the volunteer attorneys. Accordingly, the Section developed form letters for attorneys to use in either accepting or declining pro bono engagements once they had met with the clients and reviewed the cases. These letters, like the program description included in the pro se packet of materials, were written with the aim of communicating with a layperson.

The engagement letter is intended to confirm that the legal services will be provided free of charge.<sup>77</sup> It is further intended to explicitly limit the scope of the engagement to include only the unemployment compensation matter. This limitation is important because the client's termination from his or her employment may have resulted in other potential claims, such as wrongful termination, discrimination, defamation, and, in the case of union employees, violation of labor agreements. The letter is intended to clarify that, by accepting the representation in the unemployment compensation appeal, the volunteer attorney has not agreed to take on representation of other matters as well.

The Section also prepared a standard Notice of Appearance for use by attorneys who decided to take the case.<sup>78</sup> This form contains an express request for oral argument.

In contrast to situations in which the Court screens a case and determines that it has merit and would benefit from the appointment of counsel, pro se litigants in the pilot program are given the opportunity to meet with a volunteer lawyer before that lawyer evaluates the merits of the case. The Section therefore designed the program's procedures to avoid situations in which attorneys might agree to take a case and put in an appearance before actually having the opportunity to evaluate the merits of that case.

Toward this end, the Section incorporates a two-step process for responding to requests for pro bono assistance. Upon

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77. See *infra* app. E.

78. See *infra* app. H.

receiving a request, the Section identifies a volunteer lawyer willing to meet with the pro se party and review the case. After this initial meeting and review take place, the volunteer attorney and prospective client decide whether it will be appropriate to establish a professional engagement and for the attorney to enter a formal appearance in the proceedings.

The Section developed two types of letters for use in declining an engagement. Neither letter expresses any opinion concerning the merits of a party's particular case. However, they offer the volunteer lawyer the option of simply declining to take the case<sup>79</sup> or, alternatively, recommending that another attorney review the case.<sup>80</sup>

#### *D. Substantive Legal Aids and Primers on Unemployment Compensation Law*

The Appellate Practice Section recognized that many of the program's volunteers had little or no prior experience with unemployment compensation cases. Accordingly, the Section undertook to prepare outlines and assemble written materials on this topic to assist lawyers who agreed to take these cases. These materials include two outlines: "Unemployment Compensation in Minnesota," providing a general overview of the law; and "Unemployment Compensation before the Minnesota Court of Appeals," focusing specifically on the Minnesota Court of Appeals's review of agency decisions to either grant or deny unemployment compensation benefits.<sup>81</sup>

By coincidence, the Minnesota Legal Services Coalition was planning a continuing legal education program on unemployment compensation law at approximately the same time the Section was developing the pilot program, and the Section participated in planning this program. As a result, this training was made available free of charge to attorneys who had volunteered for the pro bono volunteer list. Likewise, these attorneys had access to the written materials developed for this

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79. See *infra* app. F.

80. See *infra* app. G.

81. Both outlines were authored by Anton J. Moch of Winthrop & Weinstine, P.A., and are on file with the author.

program, including several primers on unemployment compensation law and appellate practice and procedure.

#### IV. RESULTS OF MINNESOTA'S PILOT PROGRAM

The Appellate Practice Section's pro bono appellate pilot program officially commenced in November 2002, when the clerk's office included a description of the program in the packets of materials distributed to twenty-five consecutive pro se litigants. Of the twenty-five individuals who received these packets, eight contacted the Program Coordinator to request a volunteer attorney. All eight pro se litigants met with volunteer attorneys to review and consult on their respective cases. From this group, five eventually engaged counsel and were represented through the remainder of their appeal by an attorney.

The court affirmed the Commissioner's Representative in one of these cases.<sup>82</sup> Another of these initial cases was settled and, therefore, required no decision by the court.<sup>83</sup> In three cases, the court reversed the decision by the Representative of the Commissioner and either awarded or reinstated benefits to the relator.<sup>84</sup>

In *Judeh v. Lexmark International Inc.*, the former employee challenged the administrative finding that he had intentionally submitted false claims for commission payments.<sup>85</sup> With the assistance of counsel, the relator was able to secure a reversal of the agency determination by demonstrating that the evidence of the record "fail[ed] to show that relator engaged in conduct that evinced intent to defraud or to ignore his employer's interests."<sup>86</sup>

In *Thompson v. Dolphin Clerical Group*, the relator had been denied unemployment compensation benefits because she had allegedly failed without good cause to accept an offer of

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82. *Zivalich v. Unique Concepts Promotions, Inc.*, 2003 WL 21961391 (Minn. App. Aug. 19, 2003).

83. *Bertram v. Sheriffs Youth Program*, No. C1-02-2087.

84. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550 (Minn. App. 2003), *review denied* (Sept. 24, 2003); *Judeh v. Lexmark Intl. Inc.*, 2003 WL 21961379 (Minn. App. Aug. 19, 2003); *Thompson v. Dolphin Clerical Group*, 2003 WL 21500175 (Minn. App. July 1, 2003).

85. *Judeh*, 2003 WL 21961379 at \*1-2.

86. *Id.* at \*3.

suitable employment.<sup>87</sup> However, with the assistance of counsel, the relator was able to obtain a reversal and reinstatement of her right to receive benefits by demonstrating that the offer she received, when “[v]iewed in its totality, . . . did not constitute suitable employment and, therefore, [her] rejection d[id] not disqualify her from benefits.”<sup>88</sup>

In *Hayes v. K-Mart Corp.*, the Minnesota Court of Appeals actually addressed what it characterized as “a matter of first impression in Minnesota,” involving the question of “[w]hether a breach of promise to grant a raise gives an employee good cause to quit” so as to retain eligibility to receive unemployment compensation benefits.<sup>89</sup> With the assistance of counsel, the relator was able to obtain a reversal and reinstatement of her right to receive benefits by establishing that her employer’s failure to grant a promised pay raise “violated her employment agreement and gave her good cause to quit.”<sup>90</sup>

#### V. FUTURE OF MINNESOTA’S PRO BONO APPELLATE PROGRAM

With the commencement of the pilot program, awareness of the Appellate Practice Section’s pro bono appellate program began to spread informally by word-of-mouth. As a result, the Program Coordinator has received a steady number of requests from other pro se parties seeking pro bono representation in their unemployment compensation appeals. Interest in the bar has likewise grown steadily, as the panel of volunteers has now increased to more than fifty lawyers. To date, the Section has succeeded in finding a volunteer attorney for nearly every pro se party requesting representation on appeal.

Based on this success, the Section has decided to continue and expand its pro bono program. In doing so, the Section has been able to build on the lessons learned through the pilot program and focus these pro bono appellate resources in even more positive and constructive ways.

In the future, the Section plans to work to coordinate partnerships with local legal services organizations such as

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87. *Thompson*, 2003 WL 21500175 at \*1.

88. *Id.* at \*2.

89. *Hayes*, 665 N.W.2d at 553.

90. *Id.* at 553-54.

Southern Minnesota Regional Legal Services (“SMRLS”)<sup>91</sup> and Volunteer Lawyers Network (“VLN”).<sup>92</sup> As in most states, these legal services organizations have experienced severe funding cuts which, in turn, have resulted in the reduction of their staffs and other resources. The Section hopes to alleviate some of the strain by providing volunteer lawyers to VLN and SMRLS to take on unemployment compensation appeals as well as other types of civil appeals that these organizations may determine to be suitable for pro bono assistance.

Additionally, the Section is seeking to develop a similar relationship with the Appellate Office of the State Public Defender for handling criminal appeals. The Public Defender has coordinated some pro bono work in the past on an ad hoc basis.<sup>93</sup> Like VLN and SMRLS, the Public Defender has recently suffered substantial decreases in funding. The Section proposes to work with the Public Defender to budget a quota of cases that can be handled by volunteer lawyers on a pro bono basis so as to alleviate at least some of the workload of the staff attorneys.

Finally, the Section will continue to maintain its list of volunteer attorneys and its methods for facilitating the introduction of those attorneys to pro se appellants so as to respond to any particular cases that either the Minnesota Court of Appeals or the Minnesota Supreme Court may identify as

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91. Originally founded in 1909 as the Free Legal Aid Bureau of Associated Charities of St. Paul, SMRLS is the oldest legal aid program in the state and provides free legal representation and advice to low-income residents of thirty-three counties in Southern Minnesota and to migrant farmworkers throughout Minnesota and North Dakota. SMRLS has offices in St. Paul, Mankato, Winona, Albert Lea, Worthington, Prior Lake, Rochester and Fargo, North Dakota. It also has outreach offices at the American Indian/Eastside Office in St. Paul at the United Cambodian Association. SMRLS serves an estimated 260,000 low-income persons in its service area who experience an estimated 100,000 legal problems each year.

92. VLN was established as the Legal Advice Clinics in 1966 with the mission of advising and representing economically disadvantaged people with legal problems, through volunteer attorneys and without charge to the clients. Today, VLN is the primary pro bono legal service provider in Hennepin County, serving the largest poverty population in Minnesota. Over time, VLN has expanded beyond its original core of legal advice clinics to provide legal services through a variety of programs, including telephone advice panels, outreach programs at homeless shelters, schools and community centers, statewide programs such as the bankruptcy screening and federal pro se projects, and Legal Access Point—a joint effort with the Hennepin County Bar Association and the District Court to provide legal assistance to pro se clients at the court.

93. See *supra* n. 50.



suitable for appointment of qualified and experienced appellate counsel to represent the pro se appellant.

#### CONCLUSION

The pro bono pilot program, while quite limited in scope, has been extremely successful from a number of different standpoints. First, the pilot program has allowed the Appellate Practice Section and the Minnesota Court of Appeals to develop a set of guidelines and procedures to operate a program through which pro bono appellate legal services may be offered to needy pro se appellants. Second, this pilot program has allowed the Section and the court to test these guidelines and procedures so as to evaluate how well they operate and identify ways to improve this type of program. Finally, the results on the merits in the cases where pro bono counsel were involved demonstrate the substantive benefit that can be derived from introducing volunteer attorneys to pro se appellants.

## APPENDIX A—DESCRIPTION OF PRO BONO PILOT PROGRAM

APPELLATE PRACTICE SECTION  
PRO BONO PILOT PROGRAM

**Program Sponsor** • The Appellate Practice Section of the Minnesota State Bar Association is sponsoring a pilot program through which volunteer attorneys may provide pro bono assistance to appellants in unemployment compensation appeals that are filed with the Minnesota Court of Appeals. The pilot program is organized through the MSBA the Appellate Practice Section, and is *not* operated or sponsored by the Minnesota Court of Appeals and *does not* involve the appointment of counsel by the Court.

**Program Objectives** • Toward this end, the pilot program is intended to (1) create opportunities for attorneys to render pro bono appellate legal services, (2) gather useful information and data, and (3) develop practices and procedures that may eventually be expanded to include pro bono opportunities with other types of appeals. Based upon the experiences and data collected from these cases, the Appellate Practice Section will develop proposals to expand the program into other areas of the law and/or address other needs. The ultimate goal of the pilot program is to enhance the Court's ability to dispense justice, promote the development of the law, and help individuals present their cases effectively for review.

**Scope of Program** • The pilot program has been limited to appeals relating to unemployment compensation benefits for several reasons. First, these types of cases typically involve a high number of pro se appellants. Second, there is a critical mass of such appeals sufficient to supply potential pro bono opportunities without overwhelming the currently available resources. Third, these cases involve a fairly straight-forward area of the law with the application of a statutory framework and developed case law. Fourth, these appeals generally involve a single appellant and the respondent's interests are represented by an attorney from the Minnesota Department of Economic Security.

**Eligibility** • All appellants who appeal from the denial of unemployment compensation benefits to the Minnesota Court of Appeals are eligible to participate in the pilot program. It is assumed that appellants in these types of appeals are of limited financial means. Indeed, the filing fee is waived under the appellate rules. Minn. Civ. App. R. 103.01, subdiv. 3(g). Accordingly, participants in this pilot program will not be required to establish financial eligibility. However, such eligibility requirements will

likely have to be considered and implemented as part of future pro bono programs involving other types of appeals.

***Volunteer Panel*** • The Appellate Practice Section has undertaken to develop and maintain a panel of volunteer attorneys who are willing to represent parties in appellate proceedings on a pro bono basis.

***Notification of Program*** • Appellants who initiate appeals from decisions by the Commissioner of Economic Security denying their unemployment compensation benefits are provided a standardized packet of materials by the Clerk of the Appellate Courts. The Clerk will insert among these materials a written description of the pilot program along with an application form. If any of these individuals wishes to participate in the program, he or she will be advised by the written materials to fill out the form and submit both the form and a copy of their petition for writ of certiorari within five (5) business days of initiating their appeal to the Program Coordinator.

***Program Coordinator*** • The Program Coordinator will be responsible for facilitating and monitoring the assignment of volunteer attorneys to interested appellants.

***Assignment Process*** • Upon receiving an appellant's submission, the Program Coordinator will notify the members of the volunteer attorney panel of the appellant's case by e-mail and request prompt response by any panel members who are interested and able to assist with the applicant's case. The information contained in the e-mail will include the identities of appellant and respondent to facilitate conflict checks, as well as the appellant's descriptions of the Commissioner's decision and the issues in the appeal. The case will be assigned to the first panel member who can take the case.

***Initial Review and Consultation*** • The volunteer attorney assigned to the case will contact the appellant and arrange to promptly meet with the appellant to review the appellant's case. If possible, this meeting should take place within five (5) business days after the attorney receives the assignment. The volunteer attorney should request the appellant to bring all of the documentation relating to the appeal and any of the underlying proceedings to this initial meeting.

***Post-Consultation and Review Procedures*** • Upon meeting with the appellant, the matter may proceed in one of the following three ways:

(1) If, after consultation, the attorney does not believe the appellant has a meritorious appeal, then the attorney should so advise the appellant and decline to represent the appellant in the appellate proceedings. The attorney should promptly confirm the decision to decline representation by letter to the

appellant immediately following the meeting, and this letter should be copied to the Program Coordinator.

(2) If, after consultation, the attorney determines the appeal is meritorious and the appellant and the attorney mutually agree on the engagement of that attorney, then the attorney will undertake to represent the appellant in the appellate proceedings. The volunteer attorney should promptly confirm the engagement by letter to the appellant immediately following the meeting, and this letter should be copied to the Program Coordinator. Additionally, the attorney should immediately file a Notice of Appearance with the Clerk of the Appellate Courts.

(3) If, after consultation, the volunteer attorney determines the appeal has merit but, for whatever reason, the appellant and the volunteer attorney who reviewed the case do not agree on the engagement of that attorney, then the attorney shall immediately confirm this by letter to the appellant, and the letter should be copied to the Program Coordinator. The Program Coordinator will then notify the other members of the volunteer attorneys panel of the case by e-mail and request a volunteer to represent the appellant in the appellate proceedings. The case will be assigned to the first panel member to respond to the e-mail. The attorney who is then assigned to handle the appeal will be expected to transmit a formal engagement letter to the appellant with a copy to the Program Coordinator, and file a Notice of Appearance with the Clerk of Appellate Courts.

**Oral Argument** • The Court has agreed to grant oral argument in all cases in which pro bono counsel has been engaged.

**Post-Assignment Feedback** • Once the appeal is completed, the attorney assigned to the appeal will notify the appellant by letter that the engagement has been completed, and a copy of the letter should be sent to the Program Coordinator. The Program Coordinator will then request both the appellant and the volunteer attorney assigned to the case to complete a written questionnaire to obtain their respective feedback concerning the pilot program. The Program Coordinator will retain these questionnaires for review and future use.

**APPENDIX B—PROCEDURES FOR ASSIGNING VOLUNTEER  
ATTORNEYS IN PRO BONO PILOT PROGRAM**

**STEP NO. 1:** Pro se Appellant files Notice of Appeal to initiate appellate proceedings.

**STEP NO. 2:** Clerk's Office provides Appellant with packet of information that includes a description of the pilot program and an application form.

**STEP NO. 3a:** Appellant decides not to participate in the pilot program. PROCESS ENDS.

**STEP NO. 3b:** Appellant decides to participate in the pilot program and transmits a completed application form and the Notice of Appeal to the Program Coordinator.

NOTE: The Appellate Practice Section requests the Clerk's Office to provide the Program Coordinator with a complete list of all the cases in which pro se appellants are provided with the materials describing the pilot program to compare the number and percent of appellants who opt to participate in the pilot program with the overall number of appellants who are provided with the information regarding the pilot program.

**STEP NO. 4:** Program Coordinator puts information from the Appellant's application form in an e-mail that is transmitted via LISTSERV® to all panel members.

**STEP NO. 5:** Interested panel members run conflict checks to determine whether they are in a position to volunteer for possible assignment.

**STEP NO. 6:** All interested attorneys e-mail their response to the Program Coordinator.

**STEP NO. 7:** Program Coordinator assigns the case to the Attorney and confirms assignment with that Attorney by e-mail.

**STEP NO. 8:** Program Coordinator faxes the Appellant's form and Notice of Appeal to the Attorney assigned to the case.

**STEP NO. 9:** Attorney contacts the Appellant within five (5) business days and schedules a meeting to review the case with the Appellant.

**STEP NO. 10:** Attorney meets with Appellant, reviews the matter, and provides Appellant with an assessment of the merits.

**STEP NO. 11a:** Attorney declines the engagement and confirms this decision in a letter to the Appellant (with a copy to the Program Coordinator). PROCESS ENDS.

**STEP NO. 11b:** Attorney concludes that the appeal is meritorious, but is not in a position to take the case, and therefore transmits a letter advising

the Program Coordinator to reassign the case (with a copy to the Appellant).  
REPEAT STEPS 4 THROUGH 11.

**STEP NO. 11c:** Attorney accepts the case and transmits an engagement letter to the Appellant with a copy of the engagement to the Program Coordinator.

**STEP NO. 12:** Attorney files a Notice of Appearance with a copy to Program Coordinator.

**STEP NO. 13:** Attorney notifies Program Coordinator by letter when the appeal has been concluded.

**STEP NO. 14:** Program Coordinator transmits questionnaire to Appellant and Attorney to obtain feedback regarding the pro bono assignment.

APPENDIX C—NOTICE OF UNEMPLOYMENT COMPENSATION  
APPEAL PROGRAM

NOTICE OF UNEMPLOYMENT COMPENSATION APPEAL  
PROGRAM SPONSORED BY MSBA'S APPELLATE PRACTICE  
SECTION

The Appellate Practice Section of the Minnesota State Bar Association has started a program for appellants in unemployment compensation appeals filed with the Minnesota Court of Appeals.

A panel of lawyers is offering free help to individuals without lawyers who have appealed from unemployment compensation determinations made by the Commissioner of Economic Security. Lawyers from this panel will meet with you *after* you filed your Petition for Writ of Certiorari with the Minnesota Court of Appeals. At that point, the lawyer will discuss the merits of your appeal and the possibility of free legal help.

If you would like to have your case reviewed, please send a completed copy of the attached form along with a copy of your Petition for Writ of Certiorari to *Program Coordinator, Unemployment Compensation Appeal Program, 3200 Minnesota World Trade Center, 30 East Seventh Street, St. Paul, Minnesota 55101* no later than three (3) business days from the date of filing your Petition for Writ of Certiorari.

Once you send in this form and a copy of your Petition, your case will be reviewed by a lawyer who will give you a general opinion on the merits of your claim and offer advice on how to proceed. A lawyer may be assigned to represent you, but there is no guarantee. If a lawyer does represent you, it might not be the same lawyer who reviewed your case.

You are responsible for serving the conformed Writ of Certiorari issued by the Clerk, and the deadlines for getting a transcript, filing briefs and appendices, and performing all other obligations *will not* be suspended or changed if you participate in this program.

This program is *not* sponsored by the Court. Please *do not* contact the Minnesota Court of Appeals about this program. Call or e-mail the Program Coordinator listed above with any questions at 651-290-8505 or *tboyd@winthrop.com*.

APPENDIX D—APPLICATION FORM FOR PRO BONO PILOT PROGRAM

MSBA APPELLATE PRACTICE SECTION PRO BONO PILOT PROGRAM

Information About Employee Who Has Appealed:

Employee's Name: \_\_\_\_\_

Employee's Address: \_\_\_\_\_

Employee's Telephone Number: \_\_\_\_\_

Employee's Fax Number: \_\_\_\_\_

Employee's E-mail Address: \_\_\_\_\_

Short Description of Commissioner of Economic Security's Decision:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Information About Former Employer:

Employer's Name: \_\_\_\_\_

Employer's Address: \_\_\_\_\_

Employer's Attorney: \_\_\_\_\_

Short Description of the Claims and Issues Raised in Notice of Appeal:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



APPENDIX E—ENGAGEMENT LETTER [FORM]

[Date]

[Name]

[Address]

[City/State/Zip]

Re:[Case Name and Docket Number]

Dear [Name]:

I have agreed to represent you in your unemployment appeal as part of the pro bono pilot program organized by the Appellate Practice Section of the Minnesota State Bar Association. My help is free, but you will need to pay for any other costs in your case, such as the cost of getting a court transcript.

I may stop representing you if I decide that your case does not have a reasonable chance of success or if you do not cooperate with me in working on the case.

If you agree to these terms, please sign and return a copy of this letter.

I look forward to working with you in this matter.

Sincerely,

[Attorney Name]

## APPENDIX F—DECLINING ENGAGEMENT LETTER [FORM]

[Date]

[Name]

[Address]

[City/State/Zip]

Re:[Case Name and Docket Number]

Dear [Name]:

I am sorry to say that, for the reasons I discussed in our meeting, I have decided not to represent you in your unemployment compensation appeal.

Please remember that the deadlines and requirements in your appeal have not changed and you need to comply with these requirements.

I wish you the best of luck with your case.

Sincerely,

[Attorney Name]

APPENDIX G—REFERRAL LETTER [FORM]

[Date]

[Name]

[Address]

[City/State/Zip]

Re:[Case Name and Docket Number]

Dear [Name]:

For the reasons I discussed in our meeting, I have decided not to represent you in your unemployment compensation appeal.

Although I and my firm cannot represent you, I think it is still worth you trying to get a lawyer. I encourage you to contact the Program Coordinator, at 651-290-8505 or [tboyd@winthrop.com](mailto:tboyd@winthrop.com) if you are still interested in free legal help.

In the meantime, please remember that the deadlines and requirements in your appeal have not changed and you need to comply with these requirements.

I wish you the best of luck with your case.

Sincerely,

[Attorney Name]

APPENDIX H—NOTICE OF APPEARANCE [FORM]

STATE OF MINNESOTA  
IN COURT OF APPEALS

	)	
_____,	)	<b>NOTICE OF APPEARANCE</b>
Employee/Relator,	)	
	)	
v.	)	Department of Employment and
	)	Economic Development
_____,	)	No.
Employer/Respondent,	)	
and Department of Employment	)	
and Economic Development,	)	
Respondent.	)	

PLEASE TAKE NOTICE that \_\_\_\_\_, Esq. of \_\_\_\_\_ hereby appears as attorney for \_\_\_\_\_, Employee/Relator in the above-captioned matter. This appearance is entered under the MSBA Appellate Practice Section’s Pro bono Pilot Program.

Employee/Relator requests Oral Argument at the location provided for in Rule 134.09, subd. 2, and further requests to submit formal briefs under Rule 128.02.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
[Attorney]  
[Address]  
[City/State/Zip]  
Attorney for Employee/Relator