

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS DEVELOPMENTS

A NEW PUBLIC-INTEREST APPELLATE MODEL:
PUBLIC COUNSEL'S COURT-BASED SELF-HELP
CLINIC AND PRO BONO "TRIAGE" FOR INDIGENT
PRO SE CIVIL LITIGANTS ON APPEAL

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INTRODUCTION

Many varieties of new "pro se" or "pro bono" appellate programs have been sprouting up around the country in recent years.¹ Courts, bar associations, and legal services and advocacy

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1. For a listing of pro bono civil appellate programs in state and federal courts of appeals compiled in 2005, see Thomas H. Boyd & Stephanie A. Bray, ABA Council App. Laws. Pro Se-Pro Bono Comm., *Report on Pro Bono Appellate Programs* Appendix (2005) (copy on file with Journal of Appellate Practice and Process). However, Boyd and Bray's excellent resource is no longer exhaustive or up to date; many appellate pro bono programs have been initiated or further developed since the publication of the ABA report, including Public Counsel's Appellate Law Program. For a more recent research paper on court support programs and best practices for assisting self-represented civil appellate litigants,

organizations are implementing these projects to grapple with the challenges raised by increasing numbers of pro se (self-represented) and indigent civil litigants in appellate courts.² The expansion of pro se litigation strains appellate court resources and staff, but because of the complex, technical nature of the appellate process, the pitfalls for pro se litigants in this area are numerous and substantial.³ Improper designation of the record, noncompliance with the rules of court, and a failure to provide coherent briefing of the relevant legal and factual issues on appeal are all issues that often impede low-income pro se litigants from obtaining equal access to justice in the appellate process.

Access to justice depends on access to the courts,⁴ and pro se civil litigants need adequate information and resources to better navigate state and federal appellate systems and perfect their cases. In many—if not most—cases, they also would

see generally Jacinda Haynes Suhr, Natl. Ctr. St. Cts. Inst. for Ct. Mgt. Ct. Exec. Dev. Program, *Ensuring Meaningful Access to Appellate Review in Non-Criminal Cases Involving Self-Represented Litigants* (May 2009) (available at http://www.ncsconline.org/D_ICM/programs/cedp/papers/Research_Papers_2009/Suhr_AccessToAppellateReview.pdf) (copy on file with Journal of Appellate Practice and Process).

2. See e.g. Jud. Council Cal., *Statewide Action Plan for Serving Self-Represented Litigants 2* (Feb. 2004) [hereinafter *Statewide Action Plan*] (“Court operational systems, in accord with traditional adversary jurisprudence, have been designed to manage a flow of cases in which the vast majority of litigants have attorneys to represent them.”) (available at <http://www.courtinfo.ca.gov/reference/documents/selfreplitsrept.pdf>) (copy on file with Journal of Appellate Practice and Process); see also Thomas A. Boyd, *Minnesota’s Pro Bono Appellate Program: A Simple Approach That Achieves Important Objectives*, 6 J. App. Prac. & Process 295, 296–97 (2004) (discussing the increase in pro se litigation in federal, state, and appellate courts and citing sources).

3. See e.g. Jud. Council Cal. Admin. Off. of Cts., *Innovations in the California Courts: Shaping the Future of Justice* 16 (2009) [hereinafter *Innovations*] (“For the typical unrepresented civil litigant, the appellate process can be daunting. Filing requirements are exacting. The procedure bears no resemblance to the more familiar trial court routine. The very language can baffle even the sophisticated layperson.”) (copy on file with Journal of Appellate Practice and Process).

4. See Margaret H. Marshall et al., Conf. C.Js. & Conf. St. Ct. Administr., *Final Report of the Joint Task Force on Pro Se Litigation* 1 (July 29, 2002) [hereinafter *Joint Task Force Report*] (“[T]he constitutional and historical framework of the American justice system recognizes that a fundamental requirement of access to justice is access to the courts and that this access must be afforded to all litigants—those with representation and those without.”) (available at http://www.ncsconline.org/WC/Publications/Res_ProSe_FinalReportProSeTaskForcePub.pdf) (copy on file with Journal of Appellate Practice and Process).

benefit from representation by counsel. For their part, appellate courts struggle to remain neutral and not give legal advice while providing enough guidance to ensure meaningful access for unrepresented litigants.⁵ Much of the focus of pro se/pro bono appellate programs has accordingly been on providing print or online resources to which appellate court staff may direct pro se litigants without having to do too much “hand-holding” throughout the process or on methods of screening pro se litigant cases for appointment of pro bono counsel. These are each necessary, but frequently insufficient, measures. Many pro se litigants require technical assistance at each stage of the appellate process, beyond an initial referral to written directions.⁶ This need for assistance places a serious burden on court clerks and staff attorneys, who must either spend inordinate amounts of time helping litigants unfamiliar with the court system or deal with noncompliant submissions and faulty briefing as a result of such litigants’ lack of guidance.⁷ Funding to establish and maintain more formalized assistance structures is not widely available within most courts of appeal. And mechanisms for placement of pro se appellate matters with pro

5. See e.g. Mark D. Killian, *Appellate Pro Se Handbook Intended as a Service to the Public as Well as the Bench*, Fla. B. News (Nov. 1, 2007) (“[T]he problem with pro se litigants is that most do not know how to proceed. ‘They often are unable to timely file their notice of appeal; they don’t know how to perfect their records of appeal, and this places a tremendous burden on the staff attorneys and the court system to give them some guidance without giving them inappropriate legal advice[.]’”) (quoting Dorothy Easley, *Florida Pro Se Appellate Handbook* Committee Chair) (available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/AB855EE683867E9585257380004F2FA5>) (copy on file with Journal of Appellate Practice and Process); see also *Joint Task Force Report*, *supra* n. 4, at 1–2 (“[R]ecent increases in the number of self-represented litigants . . . make significant demands on both court resources and on the ability of judicial officers and court staff to provide an opportunity for a fair hearing while maintaining ethical requirements of judicial neutrality and objectivity.”); Boyd, *supra* n. 2, at 298–300 (discussing the challenges posed by pro se appellate litigants).

6. Cf. *Joint Task Force Report*, *supra* n. 4, at 3 (discussing pro se litigation generally) (“Self-represented litigants often expect the filing clerk to provide them with the relevant forms necessary to file a case, which may or may not exist. They also assume that verbal or written instructions will accompany the forms to facilitate the process. Where forms and instructions do not exist, or are difficult for lay people to understand, litigants often turn to court clerks for suggestions on what and how to file.”).

7. Cf. *id.* at 3 (discussing pro se litigation generally) (“In some instances, court staff may reject filings by self-represented litigants, once or even several times, due to procedural requirements.”); see also *id.* at 4 (discussing the burden of administrative and procedural errors by self-represented litigants after initial pleadings are successfully filed).

bono counsel may depend on proactive litigant request or may be limited in scope to certain kinds of matters.⁸ These gaps in the availability of pro bono representation may allow meritorious appeals by pro se litigants to fall through the cracks.

In Los Angeles, a new model seeks to better meet the needs of both indigent pro se appellate litigants and the courts, by providing a staffed self-help clinic on site at a court of appeal. This successful program, now four years old, is a unique collaboration between pro bono public interest law firm Public Counsel,⁹ the California Court of Appeal (Second Appellate District),¹⁰ and the Appellate Courts Committee of the Los Angeles County Bar Association.¹¹ It is the first formal drop-in clinic for pro se appellate litigants housed in any state or federal court, and to our knowledge, no other public interest or legal aid organization in the country currently provides general in-person, self-help technical assistance to indigent pro se individuals

8. See e.g. *Appellate Division Pro Bono Civil Pilot Program*, <http://www.judiciary.state.nj.us/appdiv/probono.htm> (2001) (New Jersey program providing representation to self-represented low-income litigants in state's intermediate appellate court, limiting placement of pro bono counsel to domestic violence, child custody and visitation, and small claims cases) (copy on file with Journal of Appellate Practice and Process); Boyd, *supra* n. 2, at 305–19 (describing development of an appellate pro bono program at the Minnesota Court of Appeals, limited in scope to appeals from denials of unemployment compensation benefits).

9. Public Counsel is the public interest law office of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Established in 1970, Public Counsel is dedicated to advancing equal justice under law by delivering free legal and social services to indigent and underrepresented children, adults, and families throughout Los Angeles County, ensuring that other community-based organizations serving these populations have legal support, and mobilizing the pro bono resources of the community's attorneys and law students. Go to <http://publiccounsel.org/> for complete organizational and programmatic information, and see http://www.publiccounsel.org/practice_areas/appellate_law for an overview of the Public Counsel Appellate Law Program (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

10. The California Courts of Appeal are divided into six appellate districts. The Second Appellate District, which encompasses the City and County of Los Angeles as well as three other counties, is the state's largest. For general information about the Second District Court of Appeal, see <http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict/> (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process); see also Part I, *infra*. Aside from materials on their websites, none of the other California appellate districts have any dedicated self-help services available to indigent litigants.

11. See L.A. Co. B. Assn., *Appellate Courts Committee Page*, <http://www.lacba.org/showpage.cfm?pageid=2188> (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

involved in civil appeals. In tandem with managing the self-help clinic, which is staffed three days a week by an experienced appellate attorney,¹² the Public Counsel Appellate Law Program also identifies and evaluates cases for pro bono representation and works with the Appellate Courts Committee to refer appropriate cases to pro bono counsel.

Everyone involved has benefitted from the presence of a knowledgeable, trusted intermediary to both provide technical procedural assistance and facilitate pro bono placement for indigent pro se litigants on appeal. Having these functions handled by the same independent, neutral specialist, accessible at the courthouse yet not paid or supervised by the Court of Appeal, has been of immense value in managing, prioritizing, and streamlining both tasks. Public Counsel hence appropriately describes the program's role as one of "triage."¹³ The cost to the court system has been minimal, and the Public Counsel Appellate Law Program offers a model that, with the right local leadership and funding, has the potential to be transferable to courts of appeal nationwide.

Part I provides an overview of the needs addressed by the Public Counsel Appellate Law Program and the history of its formation. Part II gives a detailed description of the Appellate Law Program's model and operation and describes how the Program is meeting its twin goals of improving equal access to justice and increasing efficiencies of the appellate judicial system. Part III compares the Public Counsel model to other pro bono/pro se appellate projects. Part IV discusses the advantages and challenges of the Public Counsel model and its potential for replication by other courts of appeal, and the Article concludes with suggestions for courts, bar associations, and public interest organizations interested in creating similar programs.

12. The Appellate Law Program is directed by Lisa Jaskol, a certified appellate specialist. She graduated from Yale Law School and clerked for the Honorable Harry Pregerson of the U.S. Court of Appeals for the Ninth Circuit. See Part I-C, *infra*, for more on Ms. Jaskol's expertise.

13. "Triage," a familiar term in medicine, refers to the systematic sorting, assigning of priority order, and allocation of resources to those in need. See e.g. *Merriam-Webster Online Dictionary* (2011), <http://www.merriam-webster.com/dictionary/triage> (defining "triage") (copy on file with Journal of Appellate Practice and Process).

I. HISTORY, NEEDS, AND GOALS

A. Background

The Public Counsel Appellate Law Program emerged from a concerted, collaborative effort by judicial, bar, and public interest leaders in Los Angeles to respond to the needs of indigent pro se¹⁴ litigants involved in appellate matters in the state's Second Appellate District. The Second Appellate District of the California Court of Appeal is the largest and busiest of the state's six appellate districts. The Second Appellate District is made up of four counties—Los Angeles, Ventura, Santa Barbara, and San Luis Obispo—and has eight Divisions of four justices each. Seven of the eight Divisions of the Second Appellate District are located in Los Angeles; they handle all general jurisdiction matters arising from the Los Angeles County Superior Court.¹⁵ The Second Appellate District files over 5,000 appellate opinions and disposes of over 3,700 writ petitions per year.

Given this large volume of appeals, it is not surprising that the Second Appellate District receives a sizeable number of appeals involving indigent pro se litigants. About thirty percent of all civil cases involve one or more parties who are self-represented. (Statewide, over 4.3 million of all California court users are self-represented.¹⁶) Approximately fifty percent of the pro se appeals filed in the Second Appellate District are filed with fee waivers for indigency, and it is believed that a significant number of the remaining individuals who file pro se appeals are nevertheless indigent under existing Interest on Lawyers' Trust Accounts ("IOLTA") income eligibility standards.¹⁷

14. In California legal parlance, self-represented litigants are referred to as *in propria persona*, or "*pro per*." For consistency and to avoid confusion for readers outside of California, however, this Article refers to self-represented litigants as "pro se" throughout.

15. The Los Angeles emphasis of the Second Appellate District is for good reason: Los Angeles County is the largest and most populous of the state's fifty-eight counties, with approximately one third of the state's population.

16. *Statewide Action Plan*, *supra* n. 2, at 2.

17. Local IOLTA income eligibility limits for 2009–2010 equal seventy-five percent of the Los Angeles County "lower income" figure determined by the U.S. Department of

Luckily, important leaders were motivated to respond to the challenges posed for, and by, this population of litigants. The current Appellate Law Program is a direct result of the initiative taken by a handful of influential members of the Los Angeles legal community six years ago.

B. Collaborative Planning by the California Court of Appeal, Public Counsel, and the Los Angeles County Bar Association Appellate Courts Committee

In 2005, Second Appellate District Associate Justice Laurie Zelon convened a small group of key stakeholders—from the judiciary, court administration, and the local appellate bar—“to brainstorm how to deliver pro bono legal services to unrepresented appellate litigants.”¹⁸ In addition to Justice Zelon, the initial group included Joseph Lane, the Clerk of the Court of the Second Appellate District, the current and immediate past chairs of the Appellate Courts Committee of the Los Angeles County Bar Association, the President of Public Counsel, and a prominent Los Angeles appellate attorney who had served as Chair of the Board of Directors of Public Counsel, President of the Los Angeles County Bar Association, and President of the California Academy of Appellate Lawyers.¹⁹ The driving force behind this joint effort was the recognition that low-income pro se litigants face significant hurdles and could greatly benefit from technical assistance and pro bono representation. At the

Housing and Urban Development. Memo. from Cathy E. Cresswell, Dep. Dir., Cal. Dept. Hous. & Community Dev., *Official State Income Limits for 2010* (June 17, 2010) (available at <http://www.hcd.ca.gov/hpd/hrc/rep/state/inc2k10.pdf>) (copy on file with Journal of Appellate Practice and Process). All income figures are for gross income.

18. Robin Meadow, *A New Pro Bono Frontier: California's Court of Appeal*, App. Advoc. 9 (Dec. 2007) (available at <http://www.gmsr.com/article/A%20New%20Pro%20Bono%20Frontier.pdf>) (copy on file with Journal of Appellate Practice and Process); see also *Innovations*, *supra* n. 3, at 16; Laura Ernde, *Appellate Clinic Guides Hundreds*, L.A. Daily J., <http://www.publiccounsel.org/tools/assets/files/Unique-Clinic-Guides-Hundreds-Through-The-Appellate-Maze-Daily-Journal-2.8.10.pdf> (Feb. 8, 2010) (copy on file with Journal of Appellate Practice and Process) (profiling the clinic and Justice Zelon's encouragement of court officials to partner with Public Counsel to create the program).

19. Meadow, *supra* n. 18, at 9. As stated later by Justice Zelon, “We’re all here because we want to decide cases on their merits; it’s really nice to have that additional comfort level that something hasn’t fallen through the cracks because the party didn’t know how to bring it forward.” Ernde, *supra* n. 18.

same time, the Court of Appeal believed that providing assistance to indigent pro se appellate litigants would improve efficiencies in the court system and benefit all parties by reducing record preparation time, decreasing other administrative delays, and improving the quality of briefing.

The leaders agreed that the need to better serve and manage indigent pro se litigants was certainly there, but the structure of a suitable program was open to the imagination. As the group studied ways to provide assistance to pro se appellate litigants, certain limitations had to be recognized, including the fact that the Second Appellate District was uncomfortable with the court taking on any significant level of supervision and in any event lacked the funding and staffing to do so.²⁰ Various questions were raised: whether to limit cases only to certain matters; how or whether to screen litigants for indigency or cases for merit; whether the program would have paid staff or be run entirely by volunteers; how best to connect qualifying litigants with pro bono lawyers.²¹

At first, the group decided to restrict cases to those involving family law, housing, benefits, and consumer issues—programmatically mainstays of Public Counsel’s work—and to those matters involving only one pro se party, in order not to contribute to the dynamic of pitting pro se parties against parties with the benefit of counsel. The initial approach was also centered primarily on placement of cases with pro bono counsel, rather than on self-help assistance, and it required time-intensive, proactive outreach measures to individual litigants: “The Clerk of the Court would identify [self-represented] candidates via the Civil Case Information Statement that every California appellant must file, and forward the names to Public Counsel. Public Counsel would then call the parties to conduct an indigency screening and to learn basic information about the case.”²² “Once Public Counsel identified a potential client and

20. See Meadow, *supra* n. 18, at 9. For these reasons the nearby, well-established Ninth Circuit Pro Bono Program was a less useful model to emulate, as it involved levels of funding, staffing, and court supervision beyond that with which the Second Appellate District was capable or comfortable. *Id.*; see also *id.* at 11; Part III, *infra* (further comparing the Ninth Circuit and Public Counsel programs).

21. See *id.*

22. *Id.* at 10.

case, a member of the [Los Angeles County Bar Association Appellate Courts] Committee would conduct a preliminary review of the case to determine whether there were arguably meritorious issues. . . . Then, if the case passed this test, Public Counsel would seek a volunteer attorney through its usual channels[,]”²³ with a Committee member available as a mentor. Screening of cases began in 2006.

This limited and time-consuming initial approach was short-lived, and it was substantially modified in the implementation of the current Appellate Law Program. As described in Part II-A, *infra*, the Appellate Law Program is now open to all types of civil matters and it conducts indigency screenings *after* rather than *at* the first point of contact with a pro se litigant. The Program can also provide procedural information and technical assistance to either side (or both sides) of a matter in which both parties are pro se, although it still refrains from seeking pro bono counsel for any party in such situations.²⁴ The outreach to pro se litigants had to be rethought, too, as litigants “were turned off by getting cold calls from someone they didn’t know asking if they needed a lawyer.”²⁵ Plus, the initial version of the Program was dependent upon volunteer and voluntary efforts, and it lacked a central locus of coordination or the ability to provide in-person self-help assistance to indigent pro se litigants until sufficient funding was secured.

C. Initial Funding and Staffing

In 2006, Public Counsel obtained funding for a full-time staff attorney dedicated to the Appellate Law Program. This initial funding came from a State Bar of California Equal Access Fund Partnership Grant, administered by the California Legal Services Trust Fund Program of the State Bar of California.²⁶

23. *Id.* at 9–10.

24. *See* Part II-B, *infra*.

25. Meadow, *supra* n. 18, at 10.

26. The Legal Services Trust Fund Program “makes grants to nonprofit organizations that provide free civil legal services to low-income Californians.” *See* St. B. Cal., *Legal Aid Grants*, <http://calbar.ca.gov/AboutUs/LegalAidGrants.aspx> (accessed Mar. 24, 2011) (copy

This breakthrough allowed the formation of a first-of-its-kind self-help clinic on site at the Second Appellate District courthouse in downtown Los Angeles, using office space provided by the Court of Appeal. In addition to providing drop-in assistance to unrepresented civil appellate litigants, the staff attorney could do preliminary screenings of cases and facilitate the placement of appropriate cases with pro bono counsel.

The background, credentials, and public service involvement of the staff attorney hired to direct the Appellate Law Program facilitated the community support for and efficient implementation of the Program. Director Lisa Jaskol is a certified appellate specialist and a former partner at Los Angeles civil appellate law firm Horvitz & Levy LLP. In addition to her extensive appellate expertise, Ms. Jaskol was the Directing Attorney of Public Counsel's Homelessness Prevention Law Project from 2001 to 2004, and she has many years of experience in advocacy and volunteer recruitment. Her appellate bar involvement and connections are also substantial; she is currently Vice-Chair of the Appellate Courts Committee of the Los Angeles County Bar Association and a member of the Association's Amicus Briefs and Access to Justice Committees. Volunteer attorneys and law students assist with the work of the Appellate Law Program under Ms. Jaskol's supervision.²⁷

The appellate self-help clinic officially began operation on February 14, 2007.

Although Public Counsel has overall responsibility for the Appellate Law Program, the project remains collaborative, and the founding working group, chaired by Justice Zelon, continues to serve an oversight capacity. The planning and oversight collaborative group consults electronically and by phone to discuss progress and issues as they arise and to review the Program's goals and sustainability. In addition, the Clerk's Office of the Second Appellate District provides critical ongoing support for the clinic's work.

on file with Journal of Appellate Practice and Process). The Equal Access Fund provides financial support to programs improving services to low-income, self-represented individuals.

27. The author worked with the Public Counsel Appellate Law Program in 2009–2010 as a Pro Bono Fellow sponsored by the Los Angeles office of Sidley Austin LLP.

II. THE PUBLIC COUNSEL APPELLATE LAW PROGRAM MODEL: IMPROVING EQUAL ACCESS TO JUSTICE AND INCREASING JUDICIAL SYSTEM EFFICIENCY

The core functions of the Public Counsel Appellate Law Program are to provide assistance to pro se indigent litigants in navigating the civil appeals process, in tandem with coordination of pro bono referrals.²⁸ Through these activities, the Appellate Law Program seeks (1) to improve equal access to justice—by helping pro se indigent litigants effectively represent themselves; and (2) to increase the efficiencies of the judicial system—by reducing record preparation times, reducing administrative delays caused by pro se errors, and improving the quality and cogency of pro se appellate briefing. The primary entry point for these services is the Program’s staffed self-help clinic at the Second Appellate District of the California Court of Appeal.

A. Free Appellate Self-Help Clinic On Site at Court of Appeal

Public Counsel’s appellate self-help clinic is housed at the California Court of Appeal (Second Appellate District), in downtown Los Angeles. It is conveniently located inside the court’s Settlement and Mediation Center, down the hall from the Clerk’s Office. The clinic is staffed by Appellate Law Program Director Lisa Jaskol. This location on site at the Court of Appeal makes the clinic exceptionally accessible to pro se civil appellate litigants. The free clinic is open three days a week from 9:00 a.m. to 3:00 p.m., although in practice the clinic often remains open later if there are litigants waiting to be seen. A sign is posted outside the clinic listing its days and hours of operation. The Court of Appeal provides the use of an office, waiting room, telephone, copier, computer with internet access and printer, filing cabinet, and easy access to Clerk’s Office services. As such, “[s]tartup and upkeep costs to the court have

28. The Public Counsel Appellate Law Program also participates in activities such as submitting amicus curiae briefs and participating in moot courts or as counsel in cases that have not come to the Program’s attention through the appellate self-help clinic.

been minimal.”²⁹ The clinic’s supplies and email service are purchased and provided by Public Counsel.

The Appellate Law Program and the Court of Appeal work closely to ensure that eligible litigants are aware of the clinic’s services. When an appeal is filed, the Clerk’s Office of the Second Appellate District mails each unrepresented litigant a flier providing information about the appellate self-help clinic. The flier advises litigants of the clinic’s location and hours, and it explains how to contact the clinic by phone and email. The Second Appellate District’s website prominently mentions the clinic and provides this same contact information.³⁰ The Clerk’s Office keeps copies of the flier on hand for in-person distribution, and its staff regularly directs litigants to the clinic. Copies of the flier have also been distributed to Superior Courts in Los Angeles County and to the Los Angeles County Law Library.

Because an appointment system proved unworkable, individuals are now seen on a first-come, first-served basis during clinic hours. The staff attorney can review litigants’ paperwork, help them fill out court forms, guide them in the appeal process, and answer procedural questions. The clinic provides pro se litigants with appellate rules and forms, appellate exemplars (including publicly-filed sample briefs and other filings), simplified practice guides, and detailed explanations of the many rules and procedures they can expect to encounter in their civil appellate matters. The staff attorney can easily access these and other helpful materials on line, as well as search the Court of Appeal and Superior Court online dockets. Spanish-to-English interpretation services and other bilingual language services can be provided by the clinic when necessary and feasible.³¹

The self-help clinic is open to all pro se civil litigants with appellate matters, although the majority of users are indigent.

29. *Innovations*, *supra* n. 3, at 17.

30. See *Appellate Pro Bono Pilot Project*, <http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict/probono.htm> (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

31. Upon arrangement and appointment, and through its pro bono network, Public Counsel can provide language services in Korean, Mandarin, Chinese, Hindi, Hebrew, Farsi, French, and German.

Initially, indigency screenings were conducted before litigants could receive clinic assistance at all, but the screening added time to the drop-in process, and only a very small number of pro se litigants coming to the clinic turned out not to be indigent. Now, formal indigency screenings are conducted after the initial visit, as part of the screening process for placing eligible cases with pro bono counsel.³² There is no subject-matter limitation on the types of civil appellate matters for which litigants may receive assistance. Litigants who do not qualify for the clinic's services, such as criminal defendants³³ and those with trial court³⁴ or administrative matters, receive appropriate referrals.³⁵

Common topics on which the clinic gives information and technical assistance include the following: reviewing applicable deadlines; completing case information statements; filling out and filing fee waiver applications; designating the record on appeal, including procuring the clerk's and reporter's transcripts; and curing defaults. Other general advice concerns brief writing, citations (to facts and to the law), preparation of appendices; dealing with service requirements; information on motions, applications, and stipulations; and general advice on oral argument. The support provided to appellate litigants can be extremely time-consuming, and many litigants seek ongoing assistance, returning repeatedly for help as their appeals progress. Clinic staff also update and disseminate self-help materials created by the Court of Appeal, Public Counsel, the Appellate Courts Committee, and the Judicial Council of

32. See Part II-B, *infra*.

33. Indigent state criminal defendants have a right to appointed counsel, including on appeal, see *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Douglas v. California*, 372 U.S. 353 (1963), and in California generally qualify for representation by the office of the county public defender. In 2009, California enacted Assembly Bill 590, the Sargent Shriver Civil Counsel Act (signed by the governor on October 12, 2009), which provides funding for a two-year pilot project, slated to start in 2011, to appoint free counsel in certain serious civil cases for indigent litigants. It is unclear whether the pilot project will fund counsel at the appellate level.

34. The Los Angeles Superior Court's Appellate Division handles appellate matters involving less than \$25,000, and the Public Counsel Appellate Law Program sometimes provides limited assistance in such cases.

35. Where applicable, clinic attorneys also make referrals to various services for clients with specialized needs, such as veterans, or disabled or mentally ill clients.

California.³⁶ They coordinate with the Clerk's Office on administrative issues relating to the handling of pro se litigants. On days the self-help clinic is not open, the director continues to assist indigent unrepresented litigants in person, over the phone, and via email from Public Counsel's headquarters.

The assistance offered by the clinic demystifies the appellate process and enables indigent pro se litigants to better represent themselves in appellate court, while stopping short of proffering actual legal advice. No direct representation of clients occurs at the clinic, and no attorney-client relationship is formed there. The Court of Appeal and Public Counsel agree that it is critical that the clinic and its operation not affect—or be perceived as affecting—the court's impartiality and independence. To this end, the Court of Appeal established early on that Public Counsel may not represent clinic litigants. After the clinic opened, the Administrative Office of the Courts also issued rules that formalized the procedures for self-help clinics in California state courts, making clear that representation and legal advice were prohibited.³⁷ Through a written memorandum of understanding ("MOU") and ongoing review, procedures and practices have been established to ensure that the court's independence is not compromised.

The self-help clinic clearly conveys that it is operated and staffed by Public Counsel and that the Court of Appeal is not, in any manner, advising or representing pro se litigants regarding their appeal or other legal matter. Indigent litigants are told at the clinic that the clinic staff attorney is not their counsel of record, and prominent written disclaimers posted at the clinic inform all individuals seeking assistance that Public Counsel is not their attorney and that no confidential relationship is formed

36. The Judicial Council is the policymaking arm of the California Courts, and is "responsible for ensuring the consistent, independent, impartial, and accessible administration of justice." *Judicial Council of California*, <http://www.courtinfo.ca.gov/jc/> (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

37. A complete bar on staff attorneys' representation of clinic customers is not necessarily critical to the integrity of a self-help clinic, and other jurisdictions may observe different rules regarding the propriety of self-help clinic staff also handling cases. For instance, Public Counsel's Proskauer Rose Federal Pro Se Clinic, which assists indigent pro se civil litigants with matters in the federal District Court for the Central District of California, provides legal advice and representation in some cases, with no objection from the court.

when they visit the clinic.³⁸ Court personnel also notify the pro se litigants of the clinic's relationship to the court and that neither the Court of Appeal nor Public Counsel represents them. Public Counsel staff attorneys are prohibited from representing Second Appellate District litigants encountered through the Program; they exclusively serve a liaison or triage function with regard to representation: Cases may be farmed out to volunteer pro bono lawyers, but they are not handled "in-house" by staff attorneys.

This careful distinction between the Appellate Law Program's provision of information and technical assistance versus direct representation is a limitation in certain ways, but necessary under the rules of the Administrative Office of the Courts. It also offers certain benefits. For instance, because Public Counsel does not establish an attorney-client relationship with individuals using the clinic's services, the clinic can provide technical assistance to both sides of a matter if both sides are pro se. And qualifying litigants still may receive assistance with obtaining representation, due to the Program's functions of screening cases to determine if they are appropriate for pro bono counsel and communicating with pro bono counsel to place cases.

38. Large posters at the self-help clinic read:

Notice

The attorneys and staff at this Self-Help Clinic are available to help all indigent parties who have questions regarding a pending appeal.

The attorneys and staff can help you in preparing your own court filings and can give you general information about the appellate process.

The attorneys and staff cannot go with you to court.

**THE ATTORNEYS AT THIS CLINIC ARE NOT YOUR LAWYERS.
THERE IS NO ATTORNEY-CLIENT RELATIONSHIP BETWEEN YOU
AND THE ATTORNEYS AT THE CLINIC. COMMUNICATIONS
BETWEEN YOU AND THE ATTORNEYS AND STAFF AT THE
CLINIC ARE NOT CONFIDENTIAL.**

You should consult with your own attorney if you want personalized advice or strategy, to have a confidential conversation, or to be represented by an attorney in court.

The attorneys and staff of the Clinic are not responsible for the outcome of your case.

B. Identifying and Referring Matters for Pro Bono Representation

Through the clinic, the Appellate Law Program identifies qualifying indigent litigants with civil appellate matters that may be appropriate for pro bono representation. In order to have their matter placed with pro bono counsel, individuals seeking assistance must meet Public Counsel's standards of indigency,³⁹ and their appeal must be screened for merit. Because the majority of pro se litigants are eligible for fee waivers, most individuals seeking assistance are income-eligible. If litigants do not meet the guidelines, the clinic directs them to the Los Angeles County and Beverly Hills Bar Associations' lawyer referral services or similar services available in other counties. A qualifying matter exists where an income-eligible unrepresented individual has one or more arguably meritorious positions on appeal. Pro se indigent litigants who are respondents in their civil appellate matters are generally eligible for placement with pro bono counsel (because their success in the trial court already indicates an arguably meritorious position); appellants demand a closer inquiry.

To determine whether an indigent appellant in a civil matter can present one or more arguably meritorious issues to the appellate court, it is necessary to conduct a thorough

39. Litigants are screened for indigency under state law standards:

"Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project which provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

Cal. Bus. & Prof. Code Ann. § 6213(d) (West Supp. 2010). Public Counsel is fully knowledgeable and experienced in this form of income screening because it applies these standards for eligibility in its other program areas. Anyone eligible for Supplemental Security Income ("SSI"), Los Angeles County General Relief, or free services under the Older Americans Act or the Developmentally Disabled Assistance Act is eligible for Public Counsel services.

evaluation of the appeal. “Meritorious” does not mean the appellant will necessarily prevail but rather that the issue deserves serious consideration by the appellate court and may warrant a ruling in the appellant’s favor.⁴⁰ The staff attorney’s initial review of a matter at the clinic sometimes reveals quickly that there is no possible merit to a case. In other cases, the Appellate Law Program may need to request further information (although litigants do not always provide it) or conduct appropriate legal research. Indigent litigants who qualify for representation may be referred to Public Counsel for an interview at the Public Counsel office, or they may be referred to members of the Appellate Courts Committee of the Los Angeles County Bar Association, so that an appellate attorney may obtain more detailed information about their matter. The Appellate Law Program’s initial triage of matters in this way saves time and allows staff and volunteer attorneys to focus on those appeals of arguable merit.⁴¹

Attorneys evaluating an appeal will review the entire record on appeal, including trial court documents and, where relevant, hearing transcripts, conduct appropriate legal research, and inform the Appellate Law Program whether, in light of the applicable standard of appellate review, the appellant can present one or more arguably meritorious issues to the appellate court. In evaluating the appeal, an attorney is assisting the Appellate Law Program only. The attorney is not forming an attorney-client relationship with the litigant. In fact, the appellant will not know the identity or law firm of the attorney evaluating the appeal; the primary interface remains with the Appellate Law Program staff attorney until the matter is placed.⁴²

40. By contrast, an appellant’s argument lacks merit if it would be frivolous as that term has been interpreted under California Code of Civil Procedure section 907 (West 2009).

41. As noted by Robin Meadow, a member of the initial steering committee convened by Justice Zelon in 2005, “[s]elf-represented litigants . . . frequently file meritless appeals. It would be hard to generate enthusiasm if the pro bono lawyer were to open the file and immediately discover that there was no possible basis for the appeal.” Meadow, *supra* n. 18, at 9.

42. If a volunteer attorney evaluating an appeal determines that the appellant can present arguably meritorious issues to the appellate court, the attorney is welcome to handle the appeal as the appellant’s pro bono appellate counsel. Alternatively, the attorney

If, after screening, Public Counsel concludes an appeal is appropriate for pro bono representation and receives the litigant's permission, Public Counsel submits the matter to the Appellate Courts Committee for additional assistance or to lawyers recruited by Public Counsel who are willing to handle appeals pro bono. In cases that are deemed not suitable, Public Counsel sends a letter to the litigants informing them of the decision not to seek pro bono counsel on their behalf. Also, regardless of merit or respondent status, the Program will not seek pro bono counsel for a pro se litigant in any matter in which the other side is also unrepresented.

Both Public Counsel and the Appellate Courts Committee of the Los Angeles County Bar Association recruit and train pro bono attorneys and law student volunteers to provide assistance in reviewing and handling appeals. Taking on cases referred through the self-help clinic provides valuable opportunities for junior practitioners to gain experience under the guidance of veteran appellate attorneys.⁴³ Because in California oral argument is a matter of right rather than at the appellate courts' discretion, every pro bono attorney who takes on a case and completes briefing receives the opportunity to argue. The leadership of the Appellate Courts Committee is committed to recruiting and mentoring attorney volunteers for appeals referred through the Appellate Law Program, and it has created a special listserv of its non-court members that Public Counsel uses to seek pro bono appellate counsel.

The decision to take or reject a case referred by the Program is in the sole discretion of the potential volunteers. A conflict check is conducted with the potential volunteer attorney to ensure compliance with all applicable statutory and case law. If a check reveals a conflict with a particular attorney, Public Counsel attempts to place the appeal with another volunteer, or if none can be found, refers the litigant to a list of third-party

may return the appeal to the Appellate Law Program, which will place it with other pro bono counsel.

43. See also *Report on Pro Bono Appellate Programs*, *supra* n. 1, at 6–8 (discussing the practical benefits to volunteer attorneys of taking pro bono appeals, while emphasizing that “the fundamental reason to represent appellate clients on a pro bono basis . . . is the important objective of insuring that access to justice is available to all persons, regardless of wealth or influence”).

referral agencies and sources. When an individual retains counsel, Public Counsel provides no further assistance to the litigant in that matter.

The Public Counsel Appellate Law Program provides a notable increase in the level of access and quality of service provided to self-represented parties, and it relieves the pressure on Court of Appeal staff to facilitate pro se litigants' every interaction with the court. The coordination role played by the clinic serves litigants' needs and effectively relieves the Clerk's Office of being the "go-to" for every pro se litigant concern. The structure of the Program further comports with the Judicial Council of California Task Force on Self-Represented Litigants' recommendations that self-help centers should "conduct initial assessment of a litigant's needs (triage) to save time and money for the court and parties";⁴⁴ "serve as focal points for countywide or regional programs for assisting self-represented litigants in collaboration with qualified legal services, local bar associations, law libraries, and other community stakeholders";⁴⁵ and "provide ongoing assistance throughout the entire court process";⁴⁶ and that space in court facilities near the clerk's office should be made available to self-help centers for pro se litigants.⁴⁷

Having a competent appellate specialist on site to guide pro se litigants in negotiating the appellate system and coordinate pro bono placement has provided an accessible one-stop shop that addresses both litigants' needs and the court's desire for efficiency. Internal and external evaluation measures bear out this success, as detailed in Part IV, *infra*. These findings are consistent with the report of the Task Force on Self-Represented Litigants, which has recognized both fiscal benefits to the courts and benefits to the greater community produced by pro se assistance programs.⁴⁸ Although not without its challenges, the

44. *Statewide Action Plan*, *supra* n. 2, at 13.

45. *Id.* at 14.

46. *Id.* at 15.

47. *Id.* at 25–26.

48. Fiscal benefits recognized by the Task Force include time saved in courtrooms; reduction of inaccurate paperwork; increased ability to identify conflicting orders; fewer inappropriate filings and unproductive court appearances; lower continuance rates; expedited case management and dispositions; promotion of settlement of issues; and

Public Counsel Appellate Law Program's integrated model of technical assistance and pro bono triage has proven effective in the Second Appellate District and presents unique benefits compared with other pro bono/pro se appellate models.

III. COMPARISON WITH OTHER PRO BONO/PRO SE APPELLATE MODELS

The Public Counsel Appellate Law Program model of court-based assisted self-help for indigent pro se civil appellate litigants contrasts with other legal services and pro bono appellate project models. Self-help centers are one of the most popular forms of assistance for pro se litigants in trial courts,⁴⁹ and the Judicial Council of California Task Force on Self-Represented Litigants has found that “[c]ourt based self-help centers, supervised by attorneys, are the optimum way for courts to facilitate the timely and cost-effective processing of cases involving self-represented litigants, to increase access to the

increased ability of courts to handle their entire caseloads. *Id.* at 2. Benefits to the greater community recognized by the Task Force include improved climate for conducting business, minimized employee absences due to unsettled family conflicts or repeated court appearances; relieved court congestion allowing all cases to be resolved more expeditiously; more timely disposition of contract and collection matters; promotion of public safety through increased access to orders to prevent violence; support of law enforcement through clear written orders related to custody, visitation, and domestic violence; lessened trauma for children due to homelessness or family violence; and significant contribution to the public's trust and confidence in the court and in government as a whole. *Id.* at 3.

49. Public Counsel has a number of collaborative self-help clinics at the courts, including the Pro Per Litigants Legal Clinic Program to assist indigent pro se litigants with guardianship and conservatorship matters in state court, and the Proskauer Rose Federal Pro Se Clinic to assist indigent pro se litigants with matters in the United States District Court for the Central District of California. The Conference of Chief Justices and Conference of State Court Administrators Joint Task Force on Pro Se Litigation noted several models of assistance programs for self-represented litigants in state and local courts, including self-help centers, programs and court rules encouraging “unbundled” legal services, “technological improvements in the delivery of legal information,” and collaborative programs between the private bar, community organizations, and legal services agencies. *Joint Task Force Report, supra* n. 4, at 2; *see also* John A. Clarke, Bryan Borys & Joi Sorensen, *Doing Things without Bureaucracy*, 23 Ct. Manager 31, 32 (Winter 2008) (“There is a variation in services offered [by self-help programs] (from the simple provision of written materials to workshops that last the life of a case) and in the way the services are provided (from court staff attorneys to MOUs with community-based organizations).”).

courts and improve delivery of justice to the public.”⁵⁰ Despite the success of these models at the trial level, the Public Counsel clinic appears to be the first of its kind on site at any state or federal court of appeal. The combination of an on-site civil appellate clinic and pro bono “triage” bridges some significant gaps in the services offered by other appellate programs that depend solely on court staff to assist pro se litigants, primarily provide online or print self-help materials, or emphasize the placement of litigants with pro bono representation on appeal.⁵¹

In 2005, the Pro Se–Pro Bono Committee of the American Bar Association Council of Appellate Lawyers, co-chaired by Thomas H. Boyd and Stephanie A. Bray, surveyed appellate courts around the country on “programs they had developed to either address the increase of pro se litigation or promote the availability of pro bono appellate legal services.”⁵² Their report noted a variety of responses, “ranging from efforts to provide informal instruction and assistance to pro se parties, to self-help materials, to extensive studies and reports prepared by outside consultants on the issues, to elaborate and well-developed pro bono programs.”⁵³ The Pro Se–Pro Bono Committee declined to endorse any prototypical program, concluding that a “one size fits all” approach would not effectively address the challenges of pro se and pro bono appellate matters in different jurisdictions,⁵⁴ but it did characterize common types of programs within the spectrum of activity reported by courts and bar organizations. Although new pro se and pro bono appellate programs have

50. *Statewide Action Plan*, *supra* n. 2, at 1.

51. Other public interest appellate programs focus on advocacy to further important social objectives. See e.g. Pub. Just. Ctr., *Our Work/Current Focus Areas: Appellate Advocacy*, <http://www.publicjustice.org/our-work/index.cfm?pageid=69> (accessed Mar. 24, 2011) (“The PJC’s Appellate Advocacy Project seeks to influence the development of poverty and discrimination law before state and federal appellate courts. . . . We work to identify cases that have the potential for accomplishing systemic change of the legal and social systems that create or permit injustice for our clients.”) (copy on file with Journal of Appellate Practice and Process).

52. *Report on Pro Bono Appellate Programs*, *supra* n. 1, at 1. Portions of the discussion in the ABA report draw significantly from Thomas H. Boyd’s 2004 article, *Minnesota’s Pro Bono Appellate Program: A Simple Approach That Achieves Important Objectives*, *supra* n. 2.

53. *Report on Pro Bono Appellate Programs*, *supra* n. 1, at 1–2; see also *id.* Appendix at 1–22 (listing pro bono civil appellate programs in state and federal courts of appeals).

54. *Id.* at 2.

been developed since the ABA report, and others further developed or abandoned, the primary categories of programs noted remain relevant. The main types of programs highlighted in the ABA report were informal instruction by court staff, provision of written self-help materials, and formal pro bono appointment programs in some federal and state appellate courts.⁵⁵

As the “first point of contact between pro se parties and the justice system,”⁵⁶ the clerk’s office is often the primary interface for the questions of pro se appellate litigants. The ABA report indicated that a number of courts have educated their clerk’s office staff on providing procedural information, forms, and other relevant resources to pro se parties.⁵⁷ One court had “initiated a program where senior staff attorneys are ‘on call’ to take questions from pro se litigants.”⁵⁸ However, these informal instructional activities “are tempered by concerns that court employees should not provide legal advice,”⁵⁹ and the report found that some courts have expressly prohibited their clerk’s staff from advising pro se litigants or providing pro bono representation.⁶⁰ As described in Part II, *supra*, by providing an accessible third-party liaison at the court, the Public Counsel Appellate Law Program relieves court staff of the time and ethical concerns inherent in providing more comprehensive assistance to pro se litigants navigating the civil appeals process. Pro se litigants can receive help with deadlines, forms, and filings without unduly burdening court resources, and court staff enjoy the benefits of more comprehensible and timely submissions, as well as less contentious interactions with pro se litigants. Court personnel also need not worry as much about

55. *See id.* at 8–14.

56. *Id.* at 9.

57. *Id.*

58. *Id.* at 14 (describing program of the New Mexico Court of Appeals).

59. *Id.* at 9.

60. *Id.* at 9–10 (reporting that the clerk’s staff of the Texas Court of Appeals may not advise pro se litigants or provide pro bono representation, by order of the Council of Chief Justices for the State of Texas). *See also Joint Task Force Report, supra* n. 4, at 5 (discussing courts’ historical reluctance to provide assistance to self-represented litigants) (“Rather than take the risk that assistance might be construed as the unauthorized practice of law, many court policies advised staff to err on the side of caution and not provide any assistance at all.”).

crossing “the grey line between legal information and legal assistance.”⁶¹ These benefits are borne out in Public Counsel’s surveys and focus groups of both court personnel and pro se litigants, as summarized in Part IV, *infra*.

The Appellate Law Program also provides additional guidance beyond that offered merely by written materials developed for pro se litigants. The ABA report found that many courts and bar associations have developed written appellate guides and pamphlets, self-help handbooks, procedural descriptions, frequently asked questions and answers, sample forms, checklists, and other relevant materials for print distribution or online availability.⁶² For example, one court created an instructional CD about the appellate process, with interactive instructions for filling out appellate forms.⁶³ Clear guides written in accessible language (and accessible languages, for non-English speakers) are certainly a helpful minimum resource for appellate courts to provide. Such instructional materials also offer an initial way for court clerks to offset some of the burden of guiding pro se litigants; it is more efficient if court staff can direct litigants to straightforward written directions rather than explain everything anew for each pro se litigant. The Public Counsel Appellate Law Program itself depends on and distributes a host of useful written materials,⁶⁴ including an extensive self-help manual,⁶⁵ a simplified practice guide for both attorneys and pro se litigants,⁶⁶ and the online

61. *Joint Task Force Report*, *supra* n. 4, at 3.

62. *See Report on Pro Bono Appellate Programs*, *supra* n. 1, at 10 (giving examples).

63. *See id.* at 13 (describing CD being created by New Mexico Court of Appeals).

64. Many of the resources mentioned may be accessed through the Second Appellate District’s *Resources for Attorneys and Self-Represented Litigants* web page, at <http://www.courtinfo.ca.gov/courts/courts/appeal/2ndDistrict/selfhelp.htm> (accessed Mar. 24, 2011) (copy on file with *Journal of Appellate Practice and Process*).

65. Cal. 2d Dist. Ct. App., *Civil Appellate Practices and Procedures for the Self-Represented* (revised Jan. 1, 2008) (available at <http://www.courtinfo.ca.gov/courts/courts/appeal/2ndDistrict/proper/ProPerMan2008.pdf>) (copy on file with *Journal of Appellate Practice and Process*). The Second Appellate District’s self-help manual is based on the *Step-by-Step* self-help manual published by Division One of the Fourth Appellate District of the California Court of Appeal (last modified Mar. 3, 2011) (available at http://www.courtinfo.ca.gov/courts/courts/appeal/4thDistrictDiv1/4dca_stepbystep.htm) (copy on file with *Journal of Appellate Practice and Process*).

66. L.A. Co. B. Assn., App. Cts. Comm., *Basic Civil Appellate Practice in the Court of Appeal for the Second District* (2003) (available at <http://www.lacba.org/Files/Main%20>

resources of the California Courts Online Self-Help Center.⁶⁷

The appellate process is complicated, however, and many pro se litigants find it difficult to understand filing requirements and fill out forms despite having detailed written instructions.⁶⁸ Even sophisticated litigants can be baffled by the intricacies of the appellate process. Some litigants have the added barrier of limited literacy skills, or they are not native English speakers, and online or interactive computer resources are less accessible to low-income and homeless individuals without computers or computer skills. Court staff do not always have adequate time or patience to provide the level of technical assistance that such litigants need. The Public Counsel Appellate Law Program clinic can hence better meet the need for tangible step-by-step guidance through the appellate process. The on-site staff attorney may spend up to an hour or more with individual litigants and can help type up forms correctly, print out completed forms and make the proper number of copies, and advise litigants exactly how, when, and where to file their documents.

The ABA report also described a number of formal volunteer programs for the appointment of pro bono counsel in civil appeals, organized by federal and state appellate courts, bar associations, and community organizations. Some federal circuit courts have expanded their procedures for criminal appellate representation under the Criminal Justice Act to include selected civil appeals, or they have put panels of pro bono attorneys in place to appoint as counsel in complex pro se cases or cases that raise issues of first impression.⁶⁹ Administration of these programs often depends on court funding for dedicated court staff members, as well as volunteer attorneys who help

Folder /Areas%20of%20Practice /AppellateCourts/Files/070522_Appellate%20Courts%20Committeeprimer.pdf) (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process)).

67. See Cal. Jud. Council, *Self-Help Center*, <http://www.courtinfo.ca.gov/selfhelp/> (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

68. See e.g. Part IV-A-3, *infra* (quoting Court of Appeal staff member stating, “[R]eading the information is not enough . . . [T]he last thing they need is a form to tell them how to fill out this form.”)

69. See *Report on Pro Bono Appellate Programs*, *supra* n. 1, at 10–12 (discussing programs of the United States Courts of Appeals for the Seventh, Second, and Ninth Circuits).

coordinate appointments to the panel. State courts have enacted programs ranging from compiling lists of willing pro bono attorneys and court screening of pro se litigants who might benefit from counsel to collaborative bar/court development of “very effective pro bono programs through which the bar coordinates a pool of volunteer lawyers who will provide pro bono representation in appeals where the court has deemed pro se parties should have legal counsel.”⁷⁰

The Public Counsel Appellate Law Program has much in common with these collaborative pro bono programs, with the addition of a community organization, Public Counsel, to screen and coordinate pro bono cases in tandem with the court and bar. Compared with pro bono counsel appointment programs that depend on court staff to screen cases for placement, the Public Counsel Appellate Law Program’s pro bono placement process has the advantage of relieving the appellate court of the responsibility for case screening. This placement process has obvious financial, time, and neutrality benefits for the court. Court-based screening processes also tend to kick in after briefing, whereas Public Counsel is in a position to connect with litigants early on and to screen their cases based on a review of the record, getting pro bono counsel in place earlier in the briefing process. Additionally, many other programs lack the Appellate Law Program’s focus on indigency, instead basing their screening criteria solely on whether a pro se litigant’s case raises significant legal issues (in part to provide an incentive for volunteers).

A comparison of the Public Counsel Appellate Law Program with its neighbor the Ninth Circuit Pro Bono Program highlights some of these differences.⁷¹ As summarized by Robin Meadow,

The Ninth Circuit’s program is staffed and funded by the Court.

70. *Id.* at 14.

71. See U.S. 9th Cir. Ct. App., *Pro Bono Program Handbook* (revised Oct. 15, 2009) (available at <http://www.ca9.uscourts.gov/datastore/uploads/probono/Pro%20Bono%20Program%20Handbook.pdf>) (copy on file with Journal of Appellate Practice and Process).

The [Ninth Circuit Pro Bono Program] handbook does not identify any indigency requirements and there does not appear to be any financial screening process. Rather, the program focuses on “only cases presenting issues of first impression or some complexity, or cases otherwise warranting further briefing and oral argument.” Pro Bono Handbook, at 1. . . .

The Ninth Circuit program generally kicks in after briefing, when staff personnel review the case to determine whether further briefing or oral argument would be helpful.

Ninth Circuit pro bono counsel are appointed by order of the Court and can seek reimbursement of out-of-pocket costs from the court.⁷²

Another benefit is that litigants who do not receive pro bono counsel still have access to the procedural information and technical assistance offered through the self-help clinic at the Court of Appeal. The ABA report notes a program that does the same and even goes a step further: the Veterans Consortium Pro Bono Program, which provides assistance to pro se appellants in the U.S. Court of Appeals for Veterans Claims: “Even where appointment of counsel is not eventually made, veterans who request legal services will receive substantive legal advice and direction through the program.”⁷³ Public Counsel, as described in Part II-A, *infra*, is precluded by court rules from providing legal advice and strategy to pro se appellate litigants. On par, though, the Public Counsel Appellate Law Program model appears to provide a more comprehensive array of services, in a more efficient manner, than most programs in other jurisdictions.

IV. EVALUATION AND POTENTIAL FOR REPLICATION

In its four years of existence, the Public Counsel Appellate

72. Meadow, *supra* n. 18, at 11.

73. *Id.* at 12–13; see also *The Veterans Consortium Pro Bono Program* website at www.vetsprobono.org (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

Law Program has been well received by court employees, judges, litigants, and members of the bar. The Program's success is not just anecdotal. Ongoing recordkeeping and internal evaluation procedures, including eight formal focus groups conducted by Public Counsel, reveal tangible positive results for both litigants and court employees, as described below. In providing an on-site, neutral appellate specialist both to give self-help technical assistance and to coordinate pro bono placement, the Program has demonstrably reduced the burden on court staff, improved the quality of record preparation and briefing (at least when pro bono lawyers prepare the briefs), and improved meaningful access to the appellate judicial system. Other California appellate districts have contacted Public Counsel with interest in replicating the Appellate Law Program model, which should prove to be highly transferable to other jurisdictions in California and around the country.

A. Recordkeeping, Evaluation, and Focus Groups

Public Counsel keeps careful records of the work of the Appellate Law Program and analyzes the processes and procedures that are effective in appellate case triage. Regular recordkeeping tracks the number of people assisted, the number of self-help clinic sessions held, the number of appeals placed with pro bono counsel, the number of pro bono attorneys who have worked on those cases, and the outcomes of those cases. The Equal Access Fund Partnership grant that helps fund the clinic also requires Public Counsel to gather feedback from clinic customers and court personnel to help evaluate the clinic's effectiveness. The feedback is collected through annual focus groups and ongoing questionnaires.

1. Appellate Law Program Statistics to Date

As of December 31, 2010, the Public Counsel Appellate Law Program has held 523 sessions of the self-help clinic at the Court of Appeal. Procedural information and technical assistance has been provided to 1,104 litigants. Another approximately 250 individuals who did not qualify for the clinic's services were turned away or received referrals. Of the

1,104 litigants assisted, many have obtained ongoing assistance from the Program, returning multiple times to the clinic over the course of their appeals.

To date, the Program has placed thirty-six cases with pro bono counsel for representation on appeal, three cases with pro bono counsel for representation in appellate mediation, and thirty-two cases with pro bono counsel for evaluation only. A total of 117 pro bono attorneys have worked on these appeals in some capacity. In 2008, pro bono attorneys donated 2,833 hours to the Appellate Law Program, adding up to \$1,095,540 worth of free legal aid. Of the appeals that have gone on to decision, six appellants won an outright reversal of the judgment, ten appellants experienced affirmances, and three appellants obtained a partial reversal and partial affirmance. Each of the six respondents whose appeals were placed with pro bono counsel won an affirmance of the judgments in their favor. One of the cases placed with pro bono counsel was settled, and settlements were obtained in two other appeals without the use of mediation.

The specifics of two successful appellants' cases illustrate the issues that can be at stake for pro se litigants. In one case, a litigant became the owner of real property in 1995 when his elderly aunt transferred the title to him. However, in 2006, unbeknown to the litigant, someone forged the signatures of the aunt and a notary on a grant deed purporting to transfer the property to a third party. As a result, the litigant was rendered homeless and was forced to live out of his car for two years. Acting pro se, he filed a handwritten complaint in Los Angeles Superior Court against the purchaser, the purchaser's realty company, and the title company that searched the county recorder's records in advance of the purchase. The trial court sustained the defendants' demurrers without leave to amend and dismissed the lawsuit, saying the plaintiff did not adequately explain why he was entitled to relief. The litigant appealed and sought assistance from the Appellate Law Program, which evaluated the appeal and placed it with a pro bono appellate attorney, Sarvenaz Bahar.⁷⁴ Ms. Bahar argued that the trial court

74. Ms. Bahar was later awarded the 2010 Public Counsel Appellate Law Program Volunteer of the Year Award for most pro bono cases handled with the Program. To watch

erred in dismissing the action because the facts established that the defendants committed actionable wrongs that harmed the litigant. Subsequently, the defendants quitclaimed the title to the property back to the litigant, effectively conceding that he had been the property's true owner all along.

In another case, a disabled indigent individual representing himself filed a personal injury lawsuit in November 2005 against the other driver in an auto accident. In December 2006, the trial court dismissed the case under California Code of Civil Procedure § 583.410, which provides that a "court may in its discretion dismiss an action for delay in prosecution pursuant to this article on its own motion or on motion of the defendant if to do so appears to the court appropriate under the circumstances of the case."⁷⁵ However, this provision is limited by the subsequent section, which prohibits dismissal during the first two years that an action is pending.⁷⁶ The Public Counsel Appellate Law Program first helped the litigant reinstate his appeal, as the Court of Appeal had dismissed it for failure to comply with a court rule. The Appellate Law Program then arranged for pro bono counsel at Arnold & Porter LLP to evaluate the merits of the appeal. The Arnold & Porter lawyers determined that the litigant had a strong argument that the trial court erred in dismissing his case, and they agreed to represent him, pro bono. On August 1, 2008, the Second Appellate District reversed the judgment, agreeing that the trial court erred in dismissing the case under § 583.410 where only thirteen months had passed since the complaint was filed.

These case outcomes are an encouraging measure of the Public Counsel Appellate Law Program's value for litigants.

2. Surveys of Self-Help Clinic Customers and Court of Appeal Personnel

Public Counsel's comprehensive evaluation process gauges the effectiveness of the Appellate Law Program by surveying

a video interview with Ms. Bahar concerning this award, go to <http://www.publiccounsel.org/video?id=0037> (Jan. 6, 2011).

75. Cal. Civ. Proc. Code Ann. § 583.410 (West Supp. 2010).

76. Cal. Civ. Proc. Code Ann. § 583.420(a)(2)(B) (West Supp. 2010).

litigant perceptions regarding their experiences at the self-help clinic and determining how and to what extent the clinic benefits the court. Questionnaires have been a targeted way to collect this kind of feedback. Public Counsel distributes them in person at the Court of Appeal and via email, routinely evaluating the surveys and conducting comprehensive reviews of survey data as needed for internal reviews and external grant reports.

From pro se litigants, Public Counsel seeks to discover the following:

How did they learn about the self-help clinic?

Did the clinic make the appellate process easier?

Did litigants receive information and assistance that helped them understand their situation better?

Were litigants satisfied with the quality of service they received such as helpfulness of staff, accessibility, and responsiveness?

Would they recommend the clinic to others?

From the Court of Appeal, Public Counsel seeks to discover information such as whether administrative delays due to self-represented litigant error were reduced, and how the appellate administrative process may be made more accessible, equitable, and responsive.

The surveys of court personnel reveal that the clinic has been of tremendous assistance to Court of Appeal staff. In every evaluation conducted since the program began, court staff members have expressed their appreciation for the Appellate Law Program's services and have confirmed that the presence of the appellate self-help clinic has greatly reduced the burden on them. As one court staff member puts it, "After speaking with [the clinic attorney], litigants are more educated about the process, and they're more receptive to what we have to say."⁷⁷ Court personnel describe pro se litigants as "more informed" in their questions and better prepared in their paper filings as a result of the self-help clinic and increased access to pro bono counsel. One response stated that pro se litigants "may still have some challenges with some of the components of the filing but

77. This and the following several responses are from court personnel questionnaires on file with Public Counsel.

we are generally seeing a significant overall improvement for Self-Represented litigants who utilize the Clinic.”

Counter traffic at the Clerk’s Office has also been relieved, and having an office near the Court of Appeal is seen as an important benefit by court personnel. “It visibly cuts down on appellants’ frustrations” when they realize they can receive more detailed advice even though they are at a court, and court personnel spend “less time having to explain procedures to litigants.” “In short, [the clinic] provides a buffer and helps the parties have a better understanding of the appeal process/system.” Court staff members are grateful to be able to refer litigants to a “totally impartial” appellate specialist who “does not work for the courts and is not looking for clients”—she is just a “liaison between the appellant and the court.” The primary suggestion for improvement by court staff has been to continue and further expand the clinic to five days per week.

Litigant survey feedback has also been overwhelmingly positive. Self-help clinic customers routinely report that they would have been unable to proceed with their appeal (or defend against another party’s appeal) without the clinic’s assistance. Gratitude is a common theme of the evaluations (“This place is great a life saver . . . Thank you!!!”),⁷⁸ and the staff attorney is described as “a great asset to citizens working through the Appeal process.” Suggestions for improvement most frequently include provision of legal advice and guidance with substantive legal arguments—services, obviously, beyond the capacity of the clinic’s neutrality. One litigant acknowledged, “I don’t think they could do any more without actually representing the person looking for help. The service was most helpfully [sic] informative and outstanding. I COULD NOT HAVE COMPLETED IT without the Clinic.”

3. Annual Litigant and Court Personnel Focus Groups

Formal focus groups have furnished another useful way to capture information and suggestions for improvement. Public Counsel conducted the first round of in-person focus groups, one

78. This and the following several responses are from litigant questionnaires on file with Public Counsel.

each for small groups of clinic users and Court of Appeal personnel, in August 2007. Similar focus groups have been repeated annually.⁷⁹ Public Counsel uses a variety of methods to recruit focus group participants, including in-person requests at the clinic and telephone and email requests. There have been three to five participants in each focus group, which are confidential and facilitated by Public Counsel staff members unaffiliated with the Appellate Law Program. The Court of Appeal personnel focus groups have taken place at the courthouse, and the clinic-user focus groups have been held at Public Counsel headquarters. Indigent litigant participants have received incentives such as gift cards, metro tokens, and a meal during the focus group to encourage their participation. With participants' informed consent, the focus group discussions are audiotaped and later transcribed for Public Counsel's review.

Discussion topics for the litigant focus groups have included the following:

How did you find out about the Public Counsel appellate clinic?

Did the self-help clinic help you with your appeal, and if so, how?

If not, in what way did the clinic fail to help?

How can the self-help clinic be improved?

What would you have done if the clinic did not exist?

Discussion topics for the court personnel focus groups have asked these questions:

Is the self-help clinic making a difference in helping unrepresented litigants correctly fill out forms and comply with court rules?

What are the most and least helpful aspects of the self-help clinic?

What can Public Counsel do to improve the clinic?

79. Public Counsel conducted the second round of focus groups with clinic customers and court personnel in August 2008, the third litigant focus group in August 2009, and the third court personnel focus group in September 2009. Public Counsel conducted the fourth round of focus groups in October 2010.

In the first focus group, litigants reported hearing about the appellate self-help clinic primarily from the Clerk's Office at the Court of Appeal, with a few learning about the clinic from other sources such as the Los Angeles County Law Library or from Public Counsel fliers posted at the Los Angeles Superior Court.⁸⁰ In the 2009 focus group, litigants had generally learned about the clinic through the mailed flier from the Court of Appeal after their matter was filed pro se. They liked the in-person aspect of the self-help assistance offered (“[B]esides the internet, it helps to be able to speak to someone and visually see someone and get some kind of help through the process”). Most litigants had multiple interactions with the clinic and expressed appreciation for the directing attorney's communication style (“[S]o nice!”). “What a surprise” to come across a “very decent, very professional person,” said one litigant. Focus group litigants also liked the clinic attorney's responsiveness such as calling back right away when contacted by phone.

The litigants were aware that the help they were receiving was not legal advice. As one noted, the clinic attorney “can't help you with the case, but can guide you in the right direction and give you information to help you out.” This procedural assistance was still invaluable for many, though. A litigant stated that “without their help I doubt I can have pursued this appeal. And if I hadn't ran into the help of the Clinic I probably would have lost the appeal by one of the built-in defaults that the system unfortunately has.”

Focus group litigants suggested that the clinic be advertised more, including distribution in public libraries and churches. Litigants also complained about sometimes waiting long hours to see a clinic attorney, and they expressed disappointment that the clinic did not give out legal advice and could not provide pro bono counsel for everyone. The inability to give legal advice was an especially frustrating limitation for some: “I have asked questions and she would come out and say: I'm not your attorney, I'm not representing you. But she could—she has answers.” Another litigant who expected legal advice complained, “[W]hat I wound up doing is spending the money I

80. This and the following several responses are from transcriptions of litigant focus groups on file with Public Counsel.

didn't have because I couldn't get the resources that I thought I was gonna get. . . . [I]t was a little misleading."⁸¹ In general, though, the clinic's efforts were appreciated. As one litigant put it, "[I]ndigent litigants . . . don't really have the firepower to go up against judges and all these lawyers that are out there. But the one thing that we can get here through Public Counsel is an education to get back into that courtroom, and a lot of help, and a lot of moral support."

Participants in the court personnel focus groups have included intake clerks, handlers of predocket appeals (before the appeals are assigned to one of the eight Divisions of the Second Appellate District), settlement and mediation program coordinators, divisional support personnel, and other clerks and staff. Court personnel report fairly constant contact with the program director, and they give frequent in-person referrals to the clinic.⁸² Court staff find that the clinic services have soothed pro se litigant confusion, suspicion, and frustrations: "The skepticism and the conspiracy is kind of laid to rest when I let them know she's not with the court; she's a separate entity all her own, pro bono project, with Public Counsel and nothing to do with the Court of Appeals." "[O]nce they've had a chance to talk to her, I find that they stick with it and feel very at ease." "It helps them to have someone to vent their frustrations with the system," then "they'll come back [to the Clerk's Office] and they're more receptive to what we're saying." The on-site location is a bonus, and staff members say that litigants seem relieved "[w]hen you can give them another place to go, which is right down the hall, they don't have to repark their car, find Mapquest how to find it." Court personnel report virtually never hearing complaints about the clinic from litigants, saying that

81. Another issue that came up in the litigant focus groups was that the cost of reporter's transcripts on appeal was a big barrier for indigent appellate litigants, who have to pay for their transcripts out of pocket before their matter can go forward on appeal or be screened for pro bono placement in appeals where reporters' transcripts are required (for example, after trials). Although this is a matter outside of Public Counsel's control, it highlights one of the many financial barriers to appellate justice for low-income litigants.

82. This and the following several responses are from transcriptions of court personnel focus groups on file with Public Counsel.

the feedback they did receive indicated that “[e]verybody is getting equal treatment.”⁸³

The focus groups confirmed that the liaison function of the clinic is of great value to court personnel. They see the clinic as a useful coordinator for accommodating the special needs of pro se litigants, after which “they’re more receptive to what we have to say.” Court staff reported having quite a bit of communication with clinic attorneys, but did not see it as a burden, since it took the place of more time-consuming and frustrating direct interactions with litigants: “[I]t’s a cohesive triangle. Instead of me and him battling . . . [,] we have another person that’s kind of a coordinator.” “[J]ust having her there is a buffer.” “[H]aving someone to maybe explain the process [and] what’s going to happen down the road, probably helps a lot.” Court personnel acknowledge difficulty posed by the intricacies and length of the appellate process for pro se litigants (“[T]he appeals process is tough to navigate. It’s completely different.” “[R]eading the information is not enough [T]he last thing they need is a form to tell them how to fill out this form.”), and said that the accuracy of litigant filings and documents is improved by access to the clinic. One staff member said he found himself also having to write somewhat fewer explanatory letters to pro se litigants who submit incorrect filings (“probably 15 percent [fewer] at best”). Court personnel in the 2009 focus group stated that they had seen a noticeable improvement in filings and litigant attitude over the (then) three years of the program.

Court of Appeal personnel suggested that they would like to see the full range of clinic services open to a wider range of income levels—“in pro per, fee waiver or not. . . . [I]t would be nice if it were open to more people who can pay the \$655 to get in the door if they don’t qualify for a fee waiver but they just can’t afford the \$20,000 that it takes.” This recommendation was already somewhat implemented by the Appellate Law Program’s removing the indigency screening process for initial

83. Court staff members in one focus group elaborated: “I want to say on the record that I get the sense that everybody over there gets fair treatment regardless of what their social status is, what the hierarchy is, what their case is about, religion, race, gender.” “Crazy, not crazy.” “Homeless, showered, not showered. . . . [Director Lisa Jaskol] just sees everybody just like it’s not even you know [sic]—and that’s a great thing, I think.” “Her first reaction is always open, friendly, and the same, whoever you are.”

visitors to the clinic. Placing more cases with pro bono counsel was also recommended; court personnel noted that litigants often “come in with the expectation that [the staff attorney is] gonna represent them” but that the clinic “quells that belief right off.” Court staff members also advocated for increased hours of the clinic, since pro se litigants turn up at the Court of Appeal with needs every day and hour of the week and often take time off work and may travel great distances via public transportation to do so (“[T]he fact that it’s not open every day is to me the biggest drawback.” “[T]he only complaint, if there is a complaint[,] is that it would be nice if they were here five days a week.”).

Court personnel additionally remarked that some litigants who arrived less prepared took up lots of valuable consultation time with the clinic attorney. They suggested including more initial information on the referral flier so that litigants would know what to bring with them on their first visit, or creating an initial intake questionnaire to target the clinic’s services most effectively. Some staff members who had attended conferences on other self-help programs suggested the addition of a stand-alone computer for litigants to use when filling out forms with clinic assistance. Court staff members in the first focus group were sometimes unsure exactly what range of services the clinic offered, were unaware of changes such as dropping the indigency screen for initial visits, or thought that the clinic attorneys could offer legal advice and represent litigants. They agreed they would like to be better informed about developments (“As the project has grown, we’re a little unclear as to all the services that are available.”). Later focus groups showed more familiarity with the program.

Although time-consuming, these evaluation measures are critical to assessing and improving the Appellate Law Program, and they have assisted Public Counsel in securing and maintaining funding for the Program. Overall, careful recordkeeping and evaluation processes via survey and focus groups have indicated the success of the Public Counsel Appellate Law Program both for the Court of Appeal and for pro se indigent litigants.

B. Awards

In addition to these important internal measures of success, the Public Counsel Appellate Law Program has been publicly recognized for its innovation and leadership. In June 2008, Director Lisa Jaskol received an award from the Los Angeles Chapter of the National Lawyers Guild for her work with the Appellate Law Program, and in 2010 she was honored with the Los Angeles County Bar Association's Pamela E. Dunn Appellate Justice Award "to recognize significant contributions to public service and appellate practice."⁸⁴

In 2009, the Second Appellate District was awarded a Ralph N. Kleps Award for Improvement in Administration of the Courts for its implementation of the self-help clinic.⁸⁵ This biennial awards program, administered by the Judicial Council of California, recognizes programs in the state's courts that are innovative, replicable in other courts, and have demonstrated results.⁸⁶

The Judicial Council's decision to honor the Second Appellate District for its partnership with Public Counsel and the Appellate Courts Committee of the Los Angeles County Bar Association speaks to the success of the clinic's collaborative,

84. See Janet Shprintz, *National Lawyers Guild Honors Jaskol, Blasi*, Variety (June 19, 2008) (available at <http://www.variety.com/article/VR1117987806.html?categoryid=1985&cs=1>) (copy on file with Journal of Appellate Practice and Process)); see also Lisa Jaskol, <http://www.publiccounsel.org/pages/?id=0013> (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process); *General Information About the Los Angeles County Bar Association Appellate Courts Committee*, http://www.lacba.org/Files/Main%20Folder/Areas%20of%20Practice/AppellateCourts/Files/ACC%20Lacba%20faq%20_2_.pdf (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process). Ms. Jaskol has also been honored by the Impact Fund.

85. See *Innovations*, *supra* n. 3, at 16–17; Jud. Council Cal., *California Court Programs Win Top Awards*, News Release No. 21 (Apr. 24, 2009) (available at <http://www.courtinfo.ca.gov/presscenter/newsreleases/NR21-09.PDF>) (copy on file with Journal of Appellate Practice and Process)); see also *Kleps Award Recipient 2008–2009 Appellate Self-Help Clinic*, <http://www.courts.ca.gov/2195.htm>; select Appellate (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

86. The Kleps Award also evaluates programs on the extent to which they address or incorporate key elements of "procedural fairness" such as respect, voice, neutrality/impartiality, and trust. For history and complete description of the Kleps Award Program, see *Innovations*, *supra* n. 3, at 4–8; *Kleps Award Recipient*, *supra* n. 85.

on-site program model and its potential to be transferable to other courts of appeal.

C. Advantages and Challenges of Replicating the Appellate Law Program Model

Public Counsel welcomes the opportunity to share its experience in creating the Appellate Law Program with courts and organizations in other jurisdictions. Public Counsel has consulted on creating similar programs in other districts of the California Court of Appeal, but as of early 2011, no others yet exist.⁸⁷ Now that the Appellate Law Program has demonstrated its own success and sustainability over a four-year span, it is a useful model for other pro se/pro bono appellate programs. In addition to the substantive benefits discussed above, the Public Counsel model has certain characteristics that give it an advantage as a replicable program, along with certain challenges for replication.

Among the advantages of the Public Counsel Appellate Law Program are its simplicity and its neutrality. At its core, the Program's success consists of placing one neutral appellate specialist in person at the court, to provide technical assistance to pro se litigants and help them connect with and navigate a web of volunteer and judicial resources. Assuming a functional and supportive local appellate bar and court of appeals, the straightforward act of getting an attorney in place to fill such a triage role provides almost instantaneous relief for litigants and court staff. Pro se litigants have a friendly helper to go to for tangible procedural assistance, who can additionally mobilize, connect, and coordinate community resources and service networks as needed.

87. In April 2007, the First Appellate District of the California Court of Appeal, based in San Francisco, launched a more limited pilot program, in partnership with Bay Area Legal Aid, to match indigent pro se appellate litigants with pro bono counsel. *See Meadow, supra* n. 18, at 11. This program did not include a clinic or self-help component; it was discontinued in 2008. According to Tiela Chalmers, executive director of the San Francisco Bar Association's Volunteer Legal Services Program, the First District program's failure to thrive was due to the way it was structured as well as reluctant justices who worried that litigants might get unfair advantage from the program's services. *See Ernde, supra* n. 18.

Even a part-time person can add a great deal of value, in a way that is easy to explain, understand, and quantify for courts and funders. Funding, of course, is another story, as discussed below; although theoretically the staff attorney role could be filled by a volunteer appellate attorney or team of volunteers, the benefits and stability are greatest with a dedicated staff member in place. Although the strict walling off of the Appellate Law Program from representation of clinic litigants is in large part a function of the policies of the jurisdiction, the Program's neutrality and limitation on representation and direct legal advice certainly provide an advantage for court buy-in for similar programs, as well as a possible advantage in securing funding from state or bar funds in place for court partnership programs.

Primary challenges for replicating the Public Counsel Appellate Law Program model in other jurisdictions include funding, court support and leadership, collaborative planning, and institutional and staff capacity. Funding is always a key issue for the founding and longevity of any public service project, especially in leaner economic times when many court systems and nonprofit community organizations are struggling financially. The Judicial Council of California's Task Force on Self-Represented Litigants has proclaimed that "[i]t is imperative for the efficient operation of today's courts that well-designed strategies to serve self-represented litigants, and to effectively manage their cases as all stages, are incorporated and budgeted as core court functions"⁸⁸ The Task Force points out that "[t]he same economic trends currently creating adverse fiscal conditions for courts are also working to increase the population of self-represented litigants,"⁸⁹ but all budgetary bets are off in the current era of furloughs and court closures. The Appellate Law Program's founding collaborative had the good fortune of securing a State Bar of California Equal Access Fund Partnership Grant to staff the Program,⁹⁰ but that grant itself is time-limited and unable to ensure program continuity beyond the start-up years. Public Counsel must seek support from

88. *Statewide Action Plan*, *supra* n. 2, at 1.

89. *Id.* at 10.

90. See Part I-C, *supra*.

foundations, corporations, and individual donors to fund the Appellate Law Program's ongoing operations, and any similar program will need to anticipate the same.

However, as the largest pro bono public interest law firm in the country, Public Counsel also commands resources beyond those of many public interest legal organizations. In Public Counsel's forty-year history, no program has been discontinued for lack of funding, and the organization has substantial unrestricted funds available to support its work.⁹¹ Public Counsel's institutional capacity includes community networks and organizational reputation as well as financial resources. As a well-respected organization with connections to major Los Angeles law firms, public and business leaders, and the larger public interest community, Public Counsel's involvement brings legitimacy and security to a new public interest legal project in a way that may be difficult for smaller organizations to replicate.

Judicial initiative and leadership are also key challenges for replicating the Appellate Law Program. In the Second Appellate District, the Program owes its existence to the foresight of Justice Zelon, who has a "career-long commitment to equal access to justice," and has served as chair of the California Commission on Access to Justice.⁹² In other jurisdictions, the

91. Unrestricted funds are generated from Public Counsel's annual William O. Douglas Award Dinner (raising approximately \$2 million each year or roughly thirty-two percent of Public Counsel's operating budget), an annual fund drive (raising approximately \$300,000 or five percent of Public Counsel's operating budget), and other fundraising campaigns throughout the year.

92. See Meadow, *supra* n. 18, at 9. Among other career honors, Justice Zelon received the 2010 Benjamin Aranda Access to Justice Award, sponsored by the State Bar of California, California Commission on Access to Justice, Judicial Council and California Judges Association. See *Justice Laurie Zelon Honored with Benjamin Aranda Award*, Cal. Bar J. (Nov. 2010), available at <http://www.calbarjournal.com/November2010/TopHeadlines/TH2.aspx> (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process). "The award, named for the founding chair of the Judicial Council's Access and Fairness Advisory Committee, honors a trial judge or an appellate justice whose activities demonstrate a long-term commitment to improving access to justice." *Id.* In 2000, the Pro Bono Institute in Washington, D.C., named the Laurie D. Zelon Pro Bono Award in Justice Zelon's honor and made her its first recipient, and in 2009, the Los Angeles County Bar Association awarded her the organization's highest honor, the Shattuck-Price Outstanding Attorney Award for "outstanding dedication to the high principles of the legal profession and the administration of justice." See Sherri M. Okamoto, *LACBA Selects Justice Zelon for Shattuck-Price Award*, Metro. News-Enterprise

judiciary may view pro se litigants as an annoyance and be resistant to the idea of assisting them on appeal, or may be unwilling to commit to any allocation of facilities and staff assistance to support such a program. The Public Counsel Appellate Law Project also was founded in California, a state with a demonstrable commitment to addressing the issues of pro se and indigent litigants through statewide bar and judicial initiatives and task forces. The Appellate Law Program's founding and success is also due to years of dedication and coordination by Public Counsel, the Court of Appeal, and the Appellate Courts Committee of the Los Angeles County Bar Association.⁹³ Without bench and bar buy-in and the right community organization to administer the program and provide a staff attorney, effective collaborative planning cannot occur.

Finally, staff capacity is important. Recruiting the right directing attorney for the Public Counsel Appellate Law Program was a breakthrough for the project. Director Lisa Jaskol has years of civil appellate expertise, a long commitment to doing work on behalf of low-income and underrepresented individuals, and she is a well-known and respected leader in the Los Angeles appellate bar and public interest community.⁹⁴ Finding a staff attorney of appropriate appellate experience and commitment—and one willing to accept the modest salary concomitant with public interest work—could be a challenge for other programs.

CONCLUSION

Unrepresented indigent litigants constitute a large number of court users, and their numbers are growing.⁹⁵ Pro se litigants

(Los Angeles, Cal.) (Mar. 27, 2009) (available at <http://www.metnews.com/articles/2009/zelo032709.htm>).

93. See Part I-B, *supra*.

94. See *supra* n. 12 and Part I-C.

95. "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." *Joint Task Force Report, supra* n. 4, at 3. See also *Statewide Action Plan, supra* n. 2, at 9–

often approach the court system with distrust, which may stem in part from courts' inability to give legal advice and the limited time that court staff members generally have to guide unrepresented litigants through the appellate process.⁹⁶ The Public Counsel Appellate Law Program significantly enhances equal access to the judicial, service, and quality of justice for this population, by providing pro se litigants with the tools and technical assistance they need to represent themselves more effectively in the appellate process, and by coordinating the placement of appropriate cases with pro bono appellate counsel. These services also help reduce delays in the Court of Appeal administrative system caused by improper or inaccurate filings, thereby improving the quality and efficiency of the judicial services that can be provided to the public.

The Judicial Council of California, in honoring the Second Appellate District with a Kleps Award for instituting the appellate self-help clinic, made the following helpful suggestions for replicating the program in other courts of appeal:

- Develop a local working group of individuals from the bar and community to brainstorm a list of resources that can be tapped.
- Obtain funding to staff the clinic with an attorney who is not paid by or answerable to the court.
- Find space in or near the courthouse to make the clinic as accessible as possible to litigants.⁹⁷

To this list, we would also add:

- Solicit judicial support for the program and ensure that the working group includes at least one

10, 11–12 (discussing the growth in numbers of pro per litigants and those unable to afford private representation in California and elsewhere).

96. See e.g. Clarke et al., *supra* n. 49, at 33 (“The standard response of self-help staff [is] that, although it is clear to the litigants that we know something they don’t, we won’t tell them[.]”).

97. *Innovations*, *supra* n. 3, at 17.

appellate justice and key court personnel such as the Clerk of Court.

- Contact Public Counsel for resources and consultation on establishing a similar program in your jurisdiction.⁹⁸
- Build in recordkeeping and evaluation measures from day one, in order to gauge the success of the program and demonstrate the program's impacts to the court and to funders.

The Public Counsel Appellate Law Program meets an important community need and has been a boon to the Court. A neutral coordinator on site at the Court of Appeal puts indigent pro se litigants more at ease with appellate practices and procedures, provides an efficient way to triage and trouble-shoot litigant issues, and eases the burden on court staff of dealing with pro se litigants. As the Judicial Council of California's Task Force on Self-Represented Litigants has noted, there is "a unity of interest between the courts and the public with respect to assistance for self-represented litigants."⁹⁹ With the growing national awareness of the need to provide additional service to self-represented civil appellate litigants by the courts and bar, collaborations to install similar programs can expect to meet with interest and success.



98. Public Counsel Appellate Law Program Director Lisa Jaskol may be reached at ljaskol@publiccounsel.org for further information about the Appellate Law Program.

99. *Statewide Action Plan supra* n. 2, at 1.

