

Arizona Court of Appeals Pro Bono Representation Program Manual

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PROGRAM OVERVIEW

The Arizona Court of Appeals Pro Bono Program (“Program”) provides pro bono counsel to pro se parties in selected civil and juvenile appeals and special actions (“Appeals”) in cases identified by the court to assist the court in resolving those Appeals more efficiently. [*See* Administrative Order No. 2014-1]

The goal of the Program is to provide pro bono counsel to pro se parties in civil and juvenile Appeals identified by the court in which briefing and argument by counsel would benefit the court’s consideration of the matter. Each Appeal selected for the Program has been screened by a staff attorney, a judge and/or a panel of judges. A party cannot apply to participate in the Program; only cases selected by the court are eligible to participate in the Program. Only cases presenting issues of first impression or some complexity, or cases otherwise warranting further briefing and oral argument, are selected for the Program. Selection of an Appeal for the Program does not constitute an opinion by the court about the merits of the Appeal. Moreover, no judge who has participated in the selection of an appeal for participation on the Program will be involved in resolving that Appeal, either individually or with the panel of judges that decides the Appeal.

The Program depends upon the volunteer efforts of attorneys. Pro Bono Attorney Coordinators in Division One and Division Two recruit and coordinate volunteer attorneys for the Program. Once the Court selects an appeal for the Program, the Pro Bono Attorney Coordinator for the Division locates counsel for the case. Except for appointments for purposes of settlement conferences, the court usually will hear oral argument in cases selected for the Program.

The Program enhances the court's review of cases selected and also offers attorneys a valuable learning experience while providing representation to pro se litigants in cases selected for the Program.

SELECTION OF APPEALS FOR THE PROGRAM

A significant percentage of non-criminal appeals filed in the Arizona Court of Appeals have at least one party who is proceeding pro se.

A pro se appeal may be selected for participation in the Program at any time. However, pro se appeals typically are identified as candidates for participation in the Program: (1) during the court's initial jurisdictional review; (2) during motion practice; or (3) after the matter has been assigned to a merits panel for resolution. A pro se Appeal may be identified as a candidate for the Program by a staff attorney, an individual judge or a panel of judges as part of the motions panel or an individual judge or a panel of judges as part of the merits panel.

Direct criminal and most post-conviction relief Appeals are not eligible for the Program because the appellants in those cases are entitled to appointed counsel and because any appellant proceeding pro se in such a case is typically doing so by choice. Similarly, juvenile Appeals in which the parties are entitled to appointed counsel are not included in the program.

Finally, cases selected for Division One's Appellate Pro Bono Pilot Program ("Pilot Program") are not eligible to participate in the Appeals Pro Bono Program. The Pilot Program is a cooperative venture between Division One, the Appellate Section of the Arizona Bar Association, Community Legal Services-Volunteer Lawyers Program of the Maricopa County Bar Association, the State Bar Modest Means Program and the Arizona Foundation for Legal Services and Education.

Additional information about the Pilot Program may be found at www.azcourts.gov/coa1/AppellateAssistanceProgram.aspx. The Pilot Program matches indigent persons involved in eligible cases from Maricopa County Superior Court with volunteer lawyers to receive legal assistance for free or at a reduced rate.

APPOINTMENT OF COUNSEL

Once an order has been issued placing an Appeal in the Program, the relevant Court Pro Bono Coordinator contacts the Pro Bono Attorney Coordinator for the Division in which pro bono counsel is to be appointed and makes available briefs and other case information, including, where possible, relevant portions of the record on Appeal. The Pro Bono Attorney Coordinator then checks for conflicts. If the Pro Bono Attorney Coordinator determines that he or she has a conflict, the Pro Bono Attorney Coordinator advises the Court Pro Bono Coordinator of the fact that a conflict exists and has no further involvement with the process of appointing pro bono counsel. If the Pro Bono Attorney Coordinator determines that no conflict exists, the Pro Bono Attorney Coordinator then contacts potential pro bono counsel. Potential pro bono counsel then checks for conflicts. If potential pro bono counsel determines that he or she has a conflict, potential pro bono counsel advises the Pro Bono Attorney Coordinator of the fact that a conflict exists and declines the potential appointment as pro bono counsel. If potential pro bono counsel determines that no conflict exists, potential pro bono counsel will then have the opportunity to familiarize themselves with the issues on Appeal, the history of the case and the parties involved.

If no pro bono counsel is available for a given Appeal in the relevant Division, the Pro Bono Attorney Coordinator will contact the Pro Bono Attorney

Coordinator from the other Division to locate available pro bono counsel to handle the Appeal. If pro bono counsel is required for more than one party to an Appeal, the Court Pro Bono Coordinator will endeavor to contact one Pro Bono Attorney Coordinator for the appointment of counsel for appellant and the other Pro Bono Attorney Coordinator for the appointment of counsel for appellee. Pro bono counsel must be authorized to undertake such legal representation in Arizona.

If willing and available pro bono counsel reviews the briefs and/or other materials and determines that no arguable basis exists for an appeal, pro bono counsel may decline the appointment and advise the relevant Pro Bono Attorney Coordinator of that declination. If a Pro Bono Attorney Coordinator has been unable to locate pro bono counsel who will accept the appointment within the time allocated in the Order Placing Case In Court's Pro Bono Program And Staying Appeal, the Pro Bono Attorney Coordinator must notify the Court Pro Bono Coordinator.

Once willing and available pro bono counsel has been located for an Appeal, after client consultation and consent to the representation, pro bono counsel will send a letter to the client outlining the terms of the representation agreement to obtain the client's written consent. Pro bono counsel will then file a notice of appearance that, in cases that already have been briefed, will address whether replacement briefing or supplemental briefing will be submitted. The court encourages the submission of replacement briefing rather than supplemental briefing. The Court Pro Bono Coordinator causes an order to issue appointing pro bono counsel and establishing a briefing schedule. [*See* Appendices 1, 2, 3, and 4 for examples of relevant forms of orders and a sample representation letter.] Where appropriate, pro bono counsel may request that the Appeal be included in the court's Mediation Program.

Pro bono counsel who has filed a notice of appearance may move to withdraw as counsel based on any of the established grounds for doing so. Such a motion will be freely granted. If leave to withdraw is granted, absent extraordinary circumstances, no other pro bono counsel will be appointed and the Order Placing Case In Court's Pro Bono Program And Staying Appeal will be vacated.

PRO BONO ATTORNEY COORDINATORS

Each of the Divisions has a Pro Bono Attorney Coordinator who recruits volunteer attorneys who are willing and available to serve as pro bono counsel in the Program, maintains the current list of volunteers and identifies individual attorneys willing to accept specific appointments. The Pro Bono Attorney Coordinators and their contact information is set forth below and, along with the attorney sign-up form, is available on the Court's website at <http://www.appeals2.az.gov>.

The Pro Bono Attorney Coordinators recruit volunteers to serve as potential pro bono counsel through a variety of methods, including word of mouth, advertisements or announcements in bar association newsletters or events and otherwise.

The limited scope of the representation of a litigant on Appeal is intended to be attractive as a manageable pro bono commitment. In addition, the Court's commitment to hearing oral argument in these cases and the prescreening of the Appeals selected for the Program are intended to provide strong incentives for participation.

SCOPE OF APPOINTMENT AND ORAL ARGUMENT

The order of appointment provides that pro bono counsel will be appointed to represent the appellant for purposes of this Appeal only. Accordingly, the appointment includes only the handling of the Appeal and the drafting of a motion to reconsider where requested by the client, but does not include the preparation and filing of a petition for review by the Arizona Supreme Court or any other proceedings in any other court or agency unless specifically ordered by this court or separately agreed upon between the pro bono counsel and the client.

In most cases, every attempt will be made to appoint pro bono counsel from the same Division in which the Appeal will be argued.

The Court of Appeals does not reimburse parties or pro bono counsel for attorneys' fees or any expenses incurred in participating in the Pro Bono Program. Shifting of attorneys' fees and taxable costs may be available to prevailing parties and pro bono counsel under applicable statutes and rules to the same extent as retained counsel, provided procedural requirements for such requests are met.

CONTACT INFORMATION

- **Division One Pro Bono Attorney Coordinator:**

Kimberly A. Demarchi, Esq.
Lewis Roca Rothgerber LLP
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004
(602) 262-5728
Email: KDemarchi@LRRLaw.com

- **Division Two Pro Bono Attorney Coordinator:**

Andrew M. Jacobs, Esq.
Snell & Wilmer, L.L.P.

One South Church Avenue, Suite 1500
Tucson, Arizona 85701-1630
(520) 882-1207
Email: ajacobs@swlaw.com

Appendix 1A – Placing Case In Pro Bono Program (Not Yet Briefed)

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION X

[plaintiff/appellant name],) Court of Appeals
) Division X
) No. X CA-CV XX-XXXX
Plaintiff/Appellant,) **PRO BONO**
) _____ County
v.) Superior Court
) No. XXXX
[defendant/appellee name],)
) **ORDER PLACING CASE IN**
) **COURT'S PRO BONO PROGRAM**
Defendant/Appellee.) **AND STAYING APPEAL**
_____)

Upon review of the record, the Court has determined that the appointment of pro bono counsel in this appeal would benefit the Court's review. The Court by this order expresses no opinion as to the merits of this appeal. Accordingly,

IT IS ORDERED appointing pro bono counsel to represent _____ for purposes of this appeal only. If an objection is made to the appointment of pro bono counsel in this appeal, such objection shall be filed in writing within 14 days after the filing date of this order.

IT IS FURTHER ORDERED that, within [45/___] days after the filing date of this order, pro bono counsel shall file a notice of appearance.

IT IS FURTHER ORDERED staying this appeal pending further order of the Court.

Appendix 1B – Placing Case In Pro Bono Program (Previously Briefed)

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION X

[plaintiff/appellant name],) Court of Appeals
) Division X
) No. X CA-CV XX-XXXX
Plaintiff/Appellant,) **PRO BONO**
) _____ County
v.) Superior Court
) No. XXXX
[defendant/appellee name],)
) **ORDER PLACING CASE IN**
) **COURT'S PRO BONO PROGRAM**
Defendant/Appellee.) **AND STAYING APPEAL**
_____)

Upon review of the record and briefing, the Court has determined that the appointment of pro bono counsel in this appeal would benefit the Court's review. The Court by this order expresses no opinion as to the merits of this appeal. Accordingly,

IT IS ORDERED appointing pro bono counsel to represent _____ for purposes of this appeal only. If an objection is made to the appointment of pro bono counsel in this appeal, such objection shall be filed in writing within 14 days after the filing date of this order.

IT IS FURTHER ORDERED that pro bono counsel shall consult with _____ to determine whether (1) replacement briefing or (2) supplemental briefing will be submitted in this appeal. The Court encourages the submission of replacement briefing rather than supplemental briefing. Within [45/___] days after the filing date of this order, pro bono counsel shall file a notice of appearance that also states whether replacement briefing or supplemental briefing will be submitted. If the

notice of appearance does not address the issue, replacement briefing will be ordered.

IT IS FURTHER ORDERED staying this appeal pending further order of the Court.

Appendix 2 – Appointing Specific Pro Bono Counsel

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION X

[plaintiff/appellant name],) Court of Appeals
) Division X
) No. X CA-CV XX-XXXX
Plaintiff/Appellant,) **PRO BONO**
) _____ County
v.) Superior Court
) No. XXXX
[defendant/appellee name],)
) **ORDER APPOINTING**
) **PRO BONO COUNSEL**
Defendant/Appellee.)
_____)

Pursuant to the Court's prior Order Placing Case In Court's Pro Bono Program And Staying Appeal, and given the notice of appearance filed _____, [which also states that replacement briefing will be submitted] [which also states that supplemental briefing will be submitted].

IT IS ORDERED [pro bono attorney], Esq., is hereby appointed to represent _____ for purposes of this appeal only.

IT IS FURTHER ORDERED that the Clerk of Court shall amend the record to reflect that [pro bono attorney], Esq. of [law firm name/address/phone], is pro bono counsel of record for _____.

[FOR CASES WHERE NO BRIEFING HAS OCCURRED: IT IS FURTHER ORDERED that briefing shall proceed as follows: the opening brief is due [date 1]; the answering brief is due within 40 days after service of the opening brief; and the optional reply brief is due within 20 days after service of the answering brief.]

[FOR CASES WHERE BRIEFING HAS OCCURRED BUT REPLACEMENT BRIEFING WILL BE SUBMITTED: IT IS FURTHER ORDERED striking the briefs previously filed.

IT IS FURTHER ORDERED that replacement briefing shall proceed as follows: the opening brief is due [date 1]; the answering brief is due within 40 days after service of the opening brief; and the optional reply brief is due within 20 days after service of the answering brief.]]

[FOR CASES WHERE BRIEFING HAS OCCURRED BUT SUPPLEMENTAL BRIEFING WILL BE SUBMITTED: IT IS FURTHER ORDERED that supplemental briefing shall proceed as follows: the supplemental opening brief is due [date 1]; the supplemental answering brief is due within 40 days after service of the opening brief; and the optional supplemental reply brief is due within 20 days after service of the answering brief.]¹

IT IS FURTHER ORDERED that the parties shall state on the cover pages of their briefs whether they are replacement briefs or supplemental briefs and that pro bono counsel shall appear at oral argument.

IT IS FURTHER ORDERED that, upon the completion of briefing, the court will issue a separate order lifting the stay previously issued by this court in the Order Placing Case In Court's Pro Bono Program And Staying Appeal and setting oral argument.

¹ Briefing schedule to be modified if pro bono counsel is appointed to represent the appellee, given that a new opening brief would not be required.

Appendix 3 – Lifting Stay and Setting Oral Argument

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION X

[plaintiff/appellant name],) Court of Appeals
) Division X
) No. X CA-CV XX-XXXX
 Plaintiff/Appellant,) **PRO BONO**
) _____ County
 v.) Superior Court
) No. XXXX
 [defendant/appellee name],)
) **ORDER LIFTING STAY AND**
) **SETTING ORAL ARGUMENT**
 Defendant/Appellee.)
 _____)

Pursuant to the Court's prior Order Placing Case In Court's Pro Bono Program And Staying Appeal, and Order Appointing Pro Bono Counsel, and as [supplemental] [replacement] briefing is complete,

IT IS ORDERED lifting the stay previously issued by this Court in the Order Placing Case in Court's Pro Bono Program and Staying Appeal.

IT IS FURTHER ORDERED that the clerk set this case on the next available calendar, with oral argument. Counsel will be notified of the date and time set for oral argument

Appendix 4: Sample Representation Letter

[DATE]

[VIA HAND DELIVERY/ELECTRONIC MAIL (if applicable)]

[NAME]

[ADDRESS]

Re: [case identifier/description]

Dear [NAME]:

We have agreed to provide limited representation to you in this appeal on a *pro bono* basis. This letter is to confirm the terms of our engagement in that regard. Please carefully review this letter and sign and return it to acknowledge your agreement with these terms.

The terms of our representation of you will be as follows:

Scope of Engagement

We will represent you in your appeal from [decision in case, with case number and date of decision]. We will prepare and submit briefs and argue your appeal in the Court of Appeals. We will not represent you in any further levels of appeal to higher courts or on remand to the Superior Court after the Court of Appeals has decided your case unless we separately agree to do so in the future, in writing.

General Terms of Representation

We will not charge you attorneys' fees for our representation. We also will not charge you for reasonable costs and expenses that we incur in connection with our representation of you, such as charges for telephone calls, postage, facsimile transmissions, messengers, overnight deliveries, photocopying, and computerized research. However, if we are able to recover attorneys' fees or costs related to this

representation, you agree that we may keep those amounts as reimbursement for our pro bono time or for costs incurred on your behalf.

Staffing

I will be the primary attorney handling this matter. I may use other attorneys and paralegals to assist in the matter as appropriate.

Initial Steps and Conduct of Representation.

I will meet with you to discuss the case and your potential arguments on appeal. I will review the records of the Superior Court and any briefing submitted to the Court of Appeals already and will, based on that information, write a brief arguing for reversal of the judgment. I will also file any other necessary paperwork, including a statement of items to be included in the record and a notice of appearance on your behalf.

We are happy to represent you in your appeal. Please sign the enclosed copy of this letter and return it to me to confirm your acceptance of the terms of our engagement. In addition, please let me know if you have any questions or if there is anything that you want to discuss.

Sincerely,

LAWYER NAME

TERMS OF ENGAGEMENT APPROVED AND AGREED TO BY:

By _____