

# The Gideon

The Pro Se Litigation Committee Newsletter

Spring 2014

## Non-Lawyer Volunteers Bolster Arizona Prison Mediation Pilot Program

Courts with high caseloads understandably look to the legal profession for assistance. In Arizona, state trial courts appoint volunteer lawyers as judges pro tempore to conduct settlement conferences and trials. Almost 300 lawyers volunteer for this work in Phoenix alone.

The United States District Court for the District of Arizona recently started a pilot program in which volunteer attorneys are appointed to mediate pro se lawsuits brought by prison inmates against correctional officials. The court hopes to build on the success of similar efforts under way in Nevada and California.

Having served four years as a settlement judge pro tem in state courts and after mediating a dozen or so prisoner lawsuits in the federal court pilot program, I believe courts can improve their mediation programs by tapping the volunteerism of non-lawyers. Let me give you two examples.

After I was assigned to mediate two cases inside a super-maximum security facility in Florence, my court liaison, Senior Staff Attorney James McKay, and I realized there was a problem. The prisoner did not speak English and I did not speak Spanish. It was doubtful the court could afford a translator to go with us so I called Ramon Delgadillo, who had recently retired as an official interpreter for the state courts after 30-plus years of service. Ramon and I knew each other from many years of lunch-time YMCA basketball and our kids went to the same schools. He readily agreed to come along on my trek to Florence.



Ramon Delgadillo

Ramon's professionalism and easy manner during the mediation at the prison made my job so much

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Phoenix attorney John R. Dacey wrote this article. He is pictured here with Linda Krater, the 'nurse extraordinaire' who helped him decipher medical records.

## Western Washington's Civil Rights Clinic Builds on Success

In 2006, the Federal Bar Association for the Western District of Washington opened up a monthly clinic, staffed by volunteers, to provide pro bono legal assistance for federal pro se litigants. The clinic was initially patterned after pro bono neighborhood clinics sponsored by the King County Bar Association, which also provided screening and scheduling assistance for the federal clinic. Indeed, the initial home of the federal clinic was in the King County Law Library.



Committee Chair James P. Donohue is a magistrate judge in Seattle

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# Ninth Circuit Pro Bono Program

*This is the first in a series of articles about the Pro Bono Program at the Ninth Circuit Court of Appeals and the enormous contributions of private attorneys, who serve as volunteer district coordinators for the program. More information is available online at <http://www.ca9.uscourts.gov/probono/>.*



*Committee member Susan Gelmis directs the Ninth Circuit Pro Bono Program*

The Ninth Circuit Court of Appeals has operated an extremely successful and highly acclaimed Pro Bono Program for more than 20 years. It was started in 1993 and developed as a partnership between the court and the bar. While expanded significantly over the years, the program still operates much as it did at the beginning.

The court worked closely with the circuit's appellate lawyer representatives in establishing the program. Almost all of the original program parameters and guidelines are still in place today as a result of that collaboration. At the suggestions of lawyer representatives, the court set specific limits on the scope of pro bono appointments, permitted volunteer attorneys to withdraw upon a lesser showing of need, and allowed for greater flexibility in briefing schedules.

The court also agreed to screen cases for merit and complexity before placing them into the program, and established a practice of allowing litigants to object to the appointment of counsel so that volunteer attorneys would not be thrust upon unwilling clients. Most importantly, the court committed, as memorialized in its General Orders, to hold oral argument for pro bono cases. It was and continues to be an unprecedented commitment given that the court holds oral argument in less than 20 percent of the cases filed each year. The lawyers who serve as volunteer district coordinators recruit, assemble and maintain lists of volunteer attorneys, and distribute cases to them. This allows court staff to forward all cases from a given district to the district coordinator, who then locates willing counsel. This single component of the program is the key to its success and longevity in terms of logistics for the court.

As originally envisioned, the chair person of each district's appellate lawyer representatives would serve as the coordinator or designate someone else to serve in that capacity. In the larger districts, the chairs very quickly designated attorneys who were willing and able to make an extended commitment to the program. Over time, it became apparent that smaller districts could not practically maintain their own lists of volunteers because the court did not have enough cases to give them to sustain the effort. As a result, coordinators in the largest districts began serving all of the districts within the circuit on a broader, more regional basis.

Today, the program relies upon district coordinators in San Francisco, Seattle, Los Angeles, Phoenix and Sacramento, each of whom has been serving the court in this role for many years. These coordinators maintain lists of active volunteers and place numerous cases each year with volunteer attorneys. In some districts, there are long waiting lists for volunteers wanting pro bono cases. In addition to tracking case distribution to ensure fairness, the coordinators must juggle different kinds of case placements. Some cases are much harder to place (mediation only appointments in immigration cases, for instance) because they do not come with a guarantee of oral argument. The coordinators work very closely with court staff and are an integral and vital part of the success of the program. □

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## First District Coordinator Became Admired Role Model

The Northern District of California was the first to have a district coordinator. Sanford “Sandy” Svetcov, then a partner with Landels Ripley & Diamond LLP in San Francisco, was designated in 1993.



*Sanford “Sandy” Svetcov*

A former lawyer representative and chair of his district, Sandy worked very closely with the court to implement and fine tune the program. He developed and maintained an enormous volunteer panel of enthusiastic and committed attorneys from all over the country. In fact, the district now has a waiting list of about five years for a regular (argument) pro bono appointment.

In the rare instances when Sandy could not find counsel, often due to an unusual time sensitivity requiring that the case be argued immediately, he would take the case himself. He continued to serve as district coordinator until his tragic death from cancer in 2013. He worked tirelessly on behalf of the program even through his 16-month illness, ensuring a seamless transition to his colleague and law partner, Susan “Suzi” Alexander, who now serves as district coordinator for the Northern District and the District of Hawaii.

Sandy served the state and federal governments as an attorney in several different capacities before moving to private practice in 1989, when he joined Landels Ripley & Diamond LLP as a partner. He moved in 2000 to Robbins Geller Rudman & Dowd LLP, where he worked until his death.

In addition to being a district coordinator, Sandy served on the Federal Appellate Rules Advisory Committee and was a longtime ex officio member of the Ninth Circuit Advisory Committee on Rules and Internal Operating Procedures. He was active in numerous bar associations, served as an adjunct professor at Hastings College of the Law, and participated as faculty in numerous court-sponsored CLE events.

In 2012, Sandy was awarded the Ninth Circuit’s John Frank Award, which recognizes “a lawyer or judge whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standards of the legal profession and the rule of law.” Having worked closely with Sandy for 20 years, I can personally attest that he personified this award.

Suzi Alexander, the new district coordinator, has more than 26 years of appellate practice experience, including specialties in death penalty appeals, habeas corpus proceedings and securities fraud class action appeals. She brings her own extensive history of commitment to the federal courts and public service. She serves on the Ninth Circuit Advisory Committee on Rules and Internal Operating Procedures, and recently completed her service as an appellate lawyer representative.

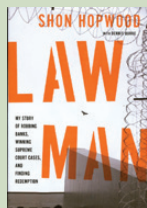


*Suzi Alexander*

Suzi also serves on the executive committees of both the American Bar Association’s Council of Appellate Lawyers and the Northern California Chapter of the Federal Bar Association. The court is extremely grateful that the torch has passed to such a dedicated and capable successor. □

## Not Your Typical Book Review

Shon Hopwood, the former bank robber turned celebrated prison lawyer turned critically acclaimed author, was the featured guest for a recent three-city video conference organized by Ninth Circuit judges and court staff.



The discussion focused on Hopwood’s autobiography, “Law Man,” and in particular his experiences as a self-taught lawyer who practiced before the U.S. Supreme Court.

Participating in the 90-minute program were Senior District Judge John Coughenour in Seattle, and Senior District Judge Richard Kopf in Omaha,

Nebraska. Magistrate Judge Charles Pyle and colleagues and court staff in Tucson posed questions to the group.

Judge Pyle, who is a member of the Ninth Circuit Pro Se Committee, arranged for the video conference to be recorded. It will be available online in the near future.





## CIVIL RIGHTS CLINIC *continued from page 1*

However, as news of the specialized clinic spread, the demand for its services grew. Tracy Morris, the former FBA president who served as clinic director, soon had larger dreams for the clinic. Working with Chief Judge Robert S. Lasnik and his successor, Chief Judge Marsha J. Pechman, Ms. Morris launched a project to relocate the clinic to the federal courthouse. With close and enthusiastic collaboration by William M. McCool, clerk of court and district executive, the move was made successfully and the clinic opened in its new home in Seattle in January of 2012.

The clinic maintains its affiliation with the King County Bar Association, which continues to provide malpractice coverage for the pro bono lawyers. Screening and scheduling functions are now provided directly by the clinic.

The court has provided the space, automation equipment, and supplies to the clinic. The costs were covered by a grant from the attorney admissions fund. The FBA relies upon attorney volunteers and legal assistants to staff the clinic. A paid independent contractor handles screening and scheduling.

Attorneys do not take on direct representation of pro se litigants. They provide legal advice, with particular assistance on jurisdiction and pleading issues. Such assistance sometimes helps to reduce the number of motions to dismiss for pleading errors. It also helps litigants to deal with jurisdictional issues before filing. In some cases, pro se litigants may not file at all, or may follow up in state court.

In the past year, the clinic has served approximately 100 clients. The number is expected to increase following the opening last December of a new federal civil rights clinic in the Tacoma federal courthouse.

Clients have sought advice on employment, disability and housing discrimination, excessive force, prison conditions, and a myriad of other federal issues. The mission of the clinics is to provide resources and assistance to this underserved population while making the courts more accessible. As Tracy Morris noted, "Clients arrive early and eagerly await their appointments, sometimes having to cross protest marches on the courthouse steps to do so."

If you would like more information on developing an in-court clinic for your district, feel free to contact Judge Donohue. □

## NON-LAWYER *continued from page 1*

easier. He helped me to be more effective in settling the case – at no extra cost to the court. His physical presence also helped to establish rapport with the inmate. Ramon and his wife, Kathy Hansen of Hansen Interpreting, have indicated an ongoing willingness to assist.

My second example involves research. At least half the prisoner cases assigned to me concerned medical care and involved review of voluminous medical records, which I was ill-equipped to understand without poring over them for hours and conducting medical research. After mediating a couple of these cases, I recruited Linda Krater, registered 'nurse extraordinaire,' to help me better understand the issues. I have known Linda for many years as a public-spirited, expert nurse consultant with whom I have worked extensively.

Linda graciously volunteered to review medical records and produce chart summaries. She also sat with me during two mediations, which allowed us to meaningfully probe what prisoners and prison officials were saying about medical circumstances. The resulting settlements were better-tailored from my perspective solely because I had my own expert. I believe many nurses can be enlisted to this cause, including some fluent in other languages.

Much of my private practice concerns health and disability law. I am used to regulatory proceedings that revolve around individual service plans that were produced by multi-disciplinary teams. Lawyers sometimes have roles in drafting such plans but most of the expertise comes from other disciplines. I think the federal courts would be well-served to consider a multi-disciplinary approach to mediating pro se prisoner litigation. □



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