

The Montana Appellate Pro Bono Program

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1. Overview

By Order dated May 22, 2012, the Montana Supreme Court established an Appellate Pro Bono Program (APBP or Program), which became effective July 1, 2012. The APBP is coordinated by the Montana Supreme Court's Pro Bono Coordinator (Coordinator) and the Court's Pro Se Law Clerk (PSLC).

The Program is designed to offer the assistance of appellate counsel to "qualified litigants." A "qualified litigant" is a self-represented litigant: (1) who meets the financial criteria established by the Montana Legal Services Association (MLSA)¹, and (2) whose case, while under review by the Supreme Court, requires supplemental briefing or oral argument.

Once the Court requests supplemental briefing or oral argument, the PSLC and the Coordinator begin the process of matching a qualified pro bono attorney with a participating self-represented litigant. The parties to the appeal are notified of the Court's request and if the self-represented party wishes to participate in the Program, the MLSA determines if he or she meets the necessary financial criteria. Upon satisfaction of the financial criteria, the qualified litigant is provided a volunteer attorney to assist him or her in continuing the appeal before the Supreme Court.

If there are multiple parties to the appeal that are qualified litigants, the Coordinator will offer each of them an opportunity to participate in the Program and be assigned pro bono counsel. Additionally, except for court fees waived in accordance with existing rules, transcripts and other costs associated with the appeal will continue to be the responsibility of the parties.

2. Recruiting Volunteer Attorneys

¹ Montana Legal Services Association or MLSA is a 501(c)(3) nonprofit organization providing legal information, advice and other services free of charge to low-income Montanans.

The Coordinator will engage in on-going recruitment efforts to enlist pro bono appellate lawyers who are willing to take on the cases that have been selected for participation in the APBP. When an attorney accepts a case through the Program, the attorney is eligible to receive primary or secondary malpractice insurance for the duration and scope of the pro bono appellate representation. The Coordinator will make every effort to recruit attorneys from varied and wide-ranging areas of the law as well as seasoned attorneys to mentor younger lawyers and law students to assist the volunteer attorneys who are participating in the Program.

Recruited volunteer attorneys must complete and submit the APBP Attorney Registration Form, attached as **Exhibit A**. The detailed information derived from the registration and application forms allows matching attorney with appropriate cases.

3. Placing the Case with Pro Bono Counsel

a. Case Qualifications for Participation in Program

The criteria for participation in the APBP are: (1) after initial briefing, the Court determines there are one or more issues in which the Court could benefit from additional briefing and possibly oral argument; and (2) the self-represented litigant is financially eligible. Financial eligibility occurs when the MLSA confirms that the self-represented party would qualify, or be eligible, for use of MLSA's services.

b. Case Selection and Referral Process

i. Referral of individual cases

Once the Court has identified a case for participation in the Program, the Court will direct the PSLC to notify the self-represented party in writing, **Exhibit B**. The following information should be provided:

- The case has been initially selected for participation in the Program.

- Participation in the APBP is purely voluntary and is contingent upon financial eligibility, which requires the litigant to submit a MLSA application and obtain a Certificate of Eligibility. The letter shall include specific instructions for submitting and returning the MLSA application.
- It is possible that placement of the case with a volunteer lawyer will include posting minimal, publicly available facts about the case through the Internet, exclusively for the purpose of placing the case.
- The self-represented litigant may decline to participate in the APBP by indicating so on the Application and returning the completed Request to Decide the Appeal form to the PSLC.

The PSLC will include with the notification letter: (1) an APBP “Application for Appointment of Pro Bono Counsel,” **Exhibit C**, (2) a MLSA Application for Assistance, **Exhibit D**, and (3) a “Request to Decide the Appeal,” **Exhibit E**. As indicated above, the “Request to Decide the Appeal” is for the litigant’s use when declining participation.

ii. Self-represented party acceptance or rejection

If the self-represented litigant is interested in participating in the Program, the litigant must complete and return the APBP litigant application and the MLSA Application for Assistance within fourteen (14) of the date of the letter. The PSLC will notify them of acceptance into the Program.

The self-represented litigant may decline to participate in the APBP by indicating so on the Application and returning the completed Application and Request to Decide the Appeal forms to the PSLC.

iii. Determination of financial eligibility

The self-represented litigant must complete the MLSA Application for Assistance, **Exhibit D**. This form may be completed and submitted electronically. Alternatively, the self-represented litigant may complete the hard copy of the form included in his or her information packet from the PSLC and return it to MLSA by mail. Boxes 3 and 7 of the Application need

not be completed by the self-represented litigant. In Box 8, the litigant need only request that MLSA determine financial eligibility for the APBP. After MLSA determines financial eligibility, MLSA will notify the PSLC who will, in turn, notify the self-represented litigant and the Coordinator. If the litigant meets the financial qualification requirements, the Coordinator will begin selection of counsel.

iv. Putting pro bono counsel in place

The Coordinator will review the applications and select an attorney for placement of the case. A mentor or law student may also be selected. To facilitate efficient case and client control, the mentor shall not be included in any formal appointment papers. When a self-represented party becomes a qualified litigant, the Coordinator will disseminate a “Request for APBP Attorney Volunteer,” **Exhibit F**, to the existing pool of volunteer attorneys. Limited case-specific information, prepared by the PSLC, including party names, issues presented, urgency of proceedings, and other information the Court determines necessary to appropriately place the case will be provided to the attorney pool.

Attorneys interested in pursuing placement on the case will respond by completing a brief online or hard copy form entitled “APBP Volunteer Attorney Notice of Case Interest,” **Exhibit G**. The Notice will confirm the lack of conflicts and will indicate the desired role in the appeal, i.e., lead attorney, mentor, etc. A law student wishing to participate in the case as well may complete the form.

When a volunteer attorney has been selected, the Coordinator will notify the attorney in writing using the Attorney Referral Letter at **Exhibit H**, instructing the selected attorney to contact the self-represented litigant. The letter to counsel will include contact information for

the new client as well as a copy of the client’s Application for Appointment of Pro Bono Counsel and a sample Engagement Letter, attached as **Exhibit I**.

After the selected attorney has had the opportunity to meet with the litigant and/or file a notice of appearance in the case, counsel shall return an “Attorney Confirmation of Acceptance of APBP case,” **Exhibit J**, to the Coordinator. The Coordinator will provide a copy to MLSA, which triggers provision of malpractice insurance through MLSA.

If an objection is made to the selection of a volunteer attorney, if financial eligibility cannot be confirmed, or if a volunteer match cannot be made for any reason, the Coordinator will notify the PSLC, who will in turn notify the Court. The PSLC will also notify the self-represented litigant by letter that placement of the case was unsuccessful. This allows the case to continue from that point forward as a self-represented litigant case.

4. Post-Placement Procedures

a. Notice of Appearance

After consulting with the client and obtaining necessary documentation relating to the representation, the selected attorney should file a Notice of Appearance, **Exhibit K**, with the Court. The Notice should indicate the appointment is under the APBP.

b. Obtaining the Record

To expedite access to the District Court record, and avoid costs associated with printing and postage, the Coordinator will facilitate volunteer attorney’s access to the record directly from the District Court, electronically when possible.

c. Extensions of Time

The Court will Issue a Scheduling Order setting forth the dates when supplemental briefs are due. Any requests for extension of time must be submitted to the Clerk of the Supreme Court via motion in substantial compliance with the Montana Rules of Appellate Procedure.

d. Oral Arguments

There is no guarantee that any participating case will be invited to present an oral argument to the Court; however, should volunteer counsel request oral argument, the Court will consider the preferences of counsel as well as the nature of the case to determine whether oral argument is necessary or appropriate. If the Court chooses to hear oral argument, it will issue an Order scheduling the argument and specifying the time allowed to each party in accordance with its Internal Operating Rules.

5. Continuing Role of Coordinator and Pro Se Law Clerk

The Coordinator will maintain contact with the volunteer attorneys for administrative purposes. The Coordinator will assist in directing the volunteer attorney to practice resources and information to facilitate a positive pro bono experience and serve as the point of contact between the volunteer attorneys and the Court.

The PSLC will serve as contact for the litigant should an issue arise with the volunteer attorney. The PSLC will monitor the case progress via C-Track, or other similar Court-sanctioned program. The PSLC and Coordinator will confer as necessary.

6. Substitution of Pro Bono Counsel

Although it is anticipated that an APBP-selected attorney will handle accepted pro bono appeal cases until completion, it is recognized there are times when an attorney who accepts representation must withdraw due to circumstances beyond the attorney's control. In these situations, the Engagement Letter will govern this process and the volunteer attorney shall advise

the Coordinator. If the Court deems it appropriate to permit withdrawal, the Coordinator will attempt to place the client with a new volunteer attorney. Placement is not guaranteed and the circumstances necessitating the withdrawal of previously assigned volunteer counsel may be considered by the Coordinator and the PSLC when determining reassignment.