

PRO BONO NASCENT PROGRAM HELPS FEDERAL LITIGANTS IN NEED

Erik Cummins

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Tucked away in a quiet nook of the massive U.S. Courthouse in San Francisco's Civic Center is a small, unassuming office that provides what many believe is an indispensable service. Through the work of one staff attorney and volunteers, the Legal Help Center helps unrepresented litigants navigate the often confusing and sometimes frustrating maze of rules, procedures, motions, and deadlines they will encounter in federal court.

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From left, Jennifer Greengold Healey and Robert Esposito

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And it's relatively new. Located on the fifteenth floor of the Phillip Burton Federal Building on Golden Gate Avenue, it opened its doors just two years ago. It serves pro se litigants in the San Francisco and Oakland divisions of the

Northern District and there is no income threshold for assistance. Litigants can come to the center at any stage in litigation, from the time when they are merely anticipating filing a complaint up to and including trial.

With the support of the United States District Court for the Northern District of California, San Francisco's

Legal Help Center came on the heels of the first federal legal help center, which opened in Chicago in 2006. Last year, a sister service was founded in Los Angeles in close coordination with the San Francisco program. In addition to some self-help centers at selected bankruptcy courts in California and Arizona, those three remain the only self-help centers provided in federal courts to general civil litigants.

While many state courts house self-help centers, the need may never be greater than in federal courts, which are arguably more complicated and less user friendly than state courts.

According to court statistics, more than five hundred nonprisoner civil litigants file cases without an attorney each year in the Northern District alone. Regardless of their merits, cases filed without attorneys are often dismissed on procedural grounds or denied on summary judgment. Few if any ever make it to trial. Increasingly, the courts are also encountering defendants in federal

Healey and Robert Esposito, a fellow with the Volunteer Legal Services Program who works full-time with the Legal Help Center, have seen a wide range of cases from patent, copyright, and trademark disputes to admiralty and maritime claims.

Healey estimates that she sees an average of five clients each day for sessions lasting from forty-five minutes to more than an hour. Clients sign a limited scope retainer agreement, making it clear that they will continue to represent themselves and make appearances on their own behalf. Many, although not all, live below the poverty line.

“There is not really anywhere else for unrepresented litigants to go for assistance with their federal cases,” Healey said. “There is a pro se handbook and that is a good resource, but that can be intimidating. It’s helpful to have things explained rather than written out.”

Among the first questions she asks is whether the litigants should really be in federal court in the first place. “A lot

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cases who can’t find or afford attorneys to represent them.

Jennifer Greengold Healey has been the supervising attorney of VLSP’s Federal Pro Bono Project, which includes the Legal Help Center, since the center opened in August 2008. In that role, she has helped to develop—from scratch—many of its resources and services. “We’re the second [federal legal help center]. So there isn’t really any established training to do this,” Healey said.

The vast majority of the cases the center handles involve civil rights or employment discrimination claims. But

of them don’t belong here—whether they need to be in state court, or referred to an administrative agency or social services,” Healey said. “Often they are here based on what they heard from a friend or they are searching desperately for relief.”

Once litigants have decided they do belong in federal court, Healey can advise them, help them prepare pleadings, show them legal research tools like FindLaw, and introduce them to the federal court’s own electronic case management database, which can help them track deadlines and filings. She has also created about thirty forms,

samples, and templates that she can customize to handle many common situations.

“One of the criticisms of federal court is that there are a lot of procedural requirements but not a lot of forms,” Healey said. “We listen to people and their problems, and try to solve them.”

The Legal Help Center is just one service of VLSP’s Federal Pro Bono Project, which also arranges pro bono counsel for some unrepresented litigants. When the court refers a litigant to the Federal Pro Bono Project for appointment of pro bono counsel, Healey turns to a list of volunteer attorneys maintained by the program. She estimates that approximately twenty cases were referred out to pro bono counsel last year, and the number of cases referred each year is growing.

One such case was a civil rights case handled by Eric Casher, a fourth-year associate at Howrey. It involved an inmate at the Santa Rita jail whose early onset stroke symptoms went undiagnosed while he was in custody, which caused him to suffer severe injuries. During his representation, Casher conducted eight depositions and hired a neurologist as an expert witness. The case settled.

Casher said that a great deal of evidentiary development was necessary because plaintiffs must meet very high standards to succeed with federal civil rights cases under U.S.C. Section 1983. “Most [people] don’t have the resources to build the case that is required,” he said.

Although the Northern District judges were inspired to spearhead the Legal Help Center by their colleagues in Northern Illinois, they are entirely “hands-off” with the clinic. While the court provides space and reviews regular reports, the court does not direct or manage the center’s staff. “Obviously, it’s improper for them to be communicating with litigants *ex parte*,” Healey added.

Although she started her career at big firms, Healey said she was attracted to helping disadvantaged litigants while working on a major federal pro bono project at Bingham McCutchen. There she got a taste of the federal courts.

To supplement her knowledge of federal procedure and civil rights law, she often does legal research to get up to speed on quirky or unusual matters. She also turns to mentors in the community, like Robert Borton, a veteran employment attorney with the Legal Aid Society, and her many colleagues at The Bar Association of San Francisco.

“A lot of litigants feel better if they’ve got somebody they can talk to and somebody who can support them,” Healey said. “They appreciate that someone is there that can take the time to explain things to them.”

Esposito is one of many young attorneys who have had their fall start dates deferred as a result of the recession. When he joined the program last year, Esposito had originally intended to start at a Bay Area law firm that specializes in intellectual property, where he wants to practice patent litigation. He is one of seven young attorneys who are working at the Volunteer Legal Services Program and are paid a stipend while waiting to start at their firms.

“My goal was to do something federal and to do something that I might not get a chance to do at my firm,” Esposito said. “It’s definitely good to be working and getting experience. It’s also great to have access to all the people who work here as staff attorneys. They are very energetic and great people to learn from. They are the caliber of people you would find at any big firm.”

Like the San Francisco center, the Northern Illinois program was founded under the auspices of a local legal services provider, the Legal Assistance Foundation of Metropolitan Chicago, which is funded in part by a grant from the Chicago Bar Foundation.

Katherine Caparusso, the Chicago center’s staff attorney, agreed that federal court is a different animal. “It’s its own world with its own rules,” she said. “We explain procedures and the law and assist them in preparing documents, and we give them some direction in finding what they need.”

For many litigants, rules can be their biggest downfall. “We don’t want them to lose on procedural grounds just

because they don't know," she said. "We are also here to help the court with questions they can't answer. It's in everybody's best interest to help them."

The Chicago program averages about thirty-five appointments a week.

"Overwhelmingly, they want an attorney but they can't find anyone—they don't know what the heck to do," Caparusso said. "We talk to them and give them some direction on where to go. Many times they never come back."

Caparusso added that many cases are meritorious and worthy of representation. "These are not lunatics," she said. "These are people with good cases."

Meantime, she said, the center walks litigants through the process of filing motions, appearing in court, communicating with the court, and keeping track of deadlines. "We explain judges' decisions to them so they understand," Caparusso said. "Otherwise, it is just a recipe for frustration."

The Los Angeles Federal Pro Se Clinic opened in February 2009 and has three attorneys and several volunteers from area law schools. The program operates an appointment-based clinic that sees as many as fifteen to twenty litigants a week. The program also refers litigants to the nearby law library in downtown Los Angeles, which employs a librarian dedicated to pro se litigants. A Spanish-speaking law school graduate serves as an on-staff translator.

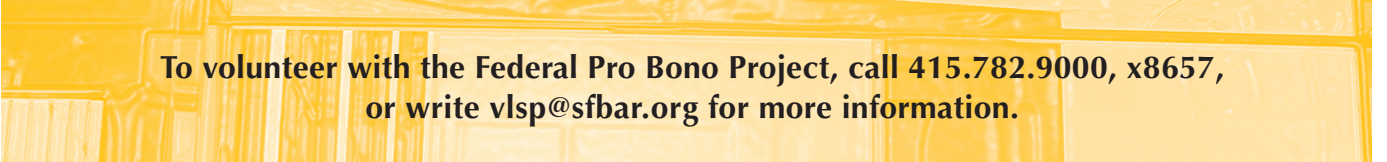
Naeun Rim, a Proskauer Rose Civil Justice Fellow who works as a staff attorney at the clinic, said civil rights cases predominate in Los Angeles and can include claims of police brutality and unreasonable search and seizure. There are also many employment discrimination suits as well as those relating to foreclosure and consumer debt. Many other litigants are sued for intellectual property claims, such as the sale of counterfeit goods. Interestingly, a number of defendants have been sued for illegally showing boxing matches on television in their restaurants.

"Federal court is really difficult even for attorneys and particularly for people with meritorious claims," Rim said. "Our goal is to improve court efficiency and help to facilitate those meritorious cases."

With so many litigants already needing help, Caparusso said, "I can't imagine a court not having this program. I hope other courts adopt it."

Here in the Northern District of California, perhaps U.S. District Court Magistrate Judge Joseph C. Spero said it best: "We believe our Legal Help Center can serve as a model for other courts facing a substantial pro se caseload, just as the Chicago program served as a model for ours."

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To volunteer with the Federal Pro Bono Project, call 415.782.9000, x8657, or write vlsp@sfbar.org for more information.