

Appellate Pro Bono Program

The Appellate Pro Bono Program of the Colorado Bar Association (CBA) is a pilot program that provides pro bono attorneys to represent indigent pro se litigants in civil cases pending before the Colorado Court of Appeals and the Colorado Supreme Court. The program was approved by the CBA's Executive Council, the CBA's Litigation Council, the Appellate Practice Subcommittee, the Governing Board of Metro Volunteer Lawyers (MVL), the Colorado Court of Appeals, and the Colorado Supreme Court.

A five-person task force consisting of Judge Daniel Taubman and Judge David Richman of the Colorado Court of Appeals, and attorneys Christina Gomez, Jane Ebisch, and Tony Viorst developed the program. Judge Gale Miller of the Court of Appeals also assisted in developing the program. When creating the program, the task force gathered information from similar pro bono programs in Austin and Houston, Texas, and worked in close cooperation with the Appellate Practice Subcommittee and the MVL. This document discusses the contours of the program.

I. Substantive Criteria for Case Selection

Pro se litigants with civil cases pending in the Colorado Court of Appeals are eligible for representation through the program; however, unemployment compensation and prison inmate disciplinary appeals are excluded.

At the supreme court level, pro bono representation is available in civil matters for the filing of petitions for certiorari and responses to petitions for certiorari, and if a certiorari petition is granted, for review on the merits. With regard to a matter before the Colorado Supreme Court, a civil matter for the purposes of this program does not include criminal cases or cases involving post criminal conviction relief, prison discipline, habeas corpus appeals, ballot title appeals or election appeals.

Pro se litigants are encouraged to submit applications for representation, which are reviewed by the screening committee. When reviewing applications, the screening committee considers the following substantive criteria to determine whether a particular case is appropriate for inclusion within the Appellate Pro Bono Program:

- A. Indigency (125% of the federal poverty guidelines, the same criterion used by the MVL);
- B. Issues of first impression;
- C. Complex issues;
- D. Potentially meritorious claims;
- E. Recurring issues that may otherwise evade review;
- F. Issues that have already been briefed pro se and for which the court requests briefing by a pro bono attorney;
- G. Cases concerning the vindication of significant constitutional or statutory rights;
- H. The number of appeals currently in the program; and
- I. The number of available volunteer lawyers.

Although the factor of indigency is a requirement, the remaining factors are discretionary. Also, the program will not accept fee-generating cases, unless the applicant has unsuccessfully made reasonable good faith efforts to obtain contingent fee counsel; but this rule does not preclude acceptance of a case where an attorney fee may be available pursuant to statute, rule, or contract.

II. Initial Procedures

To inform pro se litigants of the opportunity for pro bono representation, the program employs a variety of approaches. The Court of Appeals now includes a paragraph in the notice sent to litigants after a notice of appeal has been filed, informing them of the program. The Supreme Court will send a similar notice to potentially eligible pro se litigants after they file petitions for certiorari.

This information will advise pro se litigants that they can access the application form via a link on the CBA website. The notice will advise pro se litigants that they may obtain a copy of the application at the clerk's office of either court.

Additionally, these notices caution pro se litigants that if they apply for pro bono representation, they must still adhere to all applicable deadlines for pursuing their appeal, including the filing of appellate briefs.

Finally, the notices strongly recommend that pro se litigants request a pro bono attorney within fourteen days of receiving the notice from the court.

Currently, the Appellate Practice Subcommittee is also exploring other methods to advise pro se litigants of the program before they file a notice of appeal. The Subcommittee believes that the earlier pro se litigants learn of the possibility of obtaining a pro bono attorney, the more time the attorney will have to prepare the opening brief or answer brief, and perhaps be involved with the filing of the notice of appeal or petition for writ of certiorari.

The program will also disseminate information at the district court level. District court chief judges have agreed to post information about the program on judicial district websites. In addition, judges may verbally advise pro se litigants about the program following a trial and attach written information about the program to the final judgment sent to pro se litigants. Finally, in some districts, clerks may distribute a handout about the program to pro se litigants.

In addition, the Court of Appeals provides notice of the program to all pro se litigants to advise them that they may seek to obtain a pro bono lawyer for assistance in filing or responding to a petition for certiorari.

Finally, the program allows judges and justices to refer cases to the program which they feel would benefit from pro bono representation. Chief Judge Davidson of the Court of Appeals has already referred a Court of Appeals case to the program.

III. Review by the Screening Committee

When a litigant decides to apply for representation, he or she submits an application and affidavit of financial need to the program's screening committee. (See exhibit A.) Once an application is submitted, the five-person pro bono screening committee will review it. Any litigant who seeks a pro bono attorney to help with filing a petition for certiorari in the Colorado Supreme Court must file a Motion for Continuance (see Exhibit B) to obtain automatically an extra 60 days to file the petition.

The screening committee members are elected annually by a meeting of the Subcommittee and may serve multiple terms. Each year, one member of the committee serves as chair, and is responsible for performing the administrative functions of the committee including maintaining a list of volunteers and assigning initial review of applications to individual committee members.

Additionally, the committee chair is responsible for ensuring the recusal of any committee members in the event of a conflict of interest.

The committee member assigned to an initial review of an application shall review the application form, the court docket, any briefs or motions filed to date, and selected pleadings from the trial court or the Court of Appeals. The committee member may call the applicant and, if applicable, the applicant's prior counsel, to obtain additional information about the potential representation. Based upon this initial review, the assigned committee member will recommend whether to accept or reject a case, or seek further information relating to the application.

When an application is accepted, the committee then reviews the list of volunteer attorneys and selects potential volunteers for the case based upon attorneys' stated areas of expertise, prior selection for other pro bono cases, and conflicts of interest.

Volunteer attorneys may be members of the Appellate Practice Subcommittee, other attorneys with significant appellate experience, or attorneys without significant appellate experience

who work with an experienced mentor. The Volunteer Attorney Sign-up Form is attached as Exhibit C.

Once a volunteer attorney agrees to accept the representation, the committee sends a Notice of Acceptance informing the applicant about his or her selection for participation in the program. The applicant then has fourteen days to accept or decline the representation. For additional information regarding the screening committee, see Exhibit D.

In addition, a voluntary program administrator will be responsible for processing cases and transmitting the information to the screening committee for review. The administrator will manage finances related to the preparation of transcripts, attorney fees, and other financial matters. Finally, the administrator will maintain statistics about the pro bono cases, including hours spent on the cases, the types of cases, results in the cases, and feedback from attorneys.

IV. Alliance with MVL

The appellate pro bono program will maintain a strong alliance with MVL. This alliance results in several advantages, particularly

the availability of malpractice insurance for participating attorneys. In addition, because MVL is a recognized pro bono program, participating attorneys may have their time spent on appellate pro bono cases counted toward satisfaction of the Colorado Supreme Court's Pro Bono Recognition Program and considered for continuing legal education credit pursuant to C.R.C.P. 260.8.

V. Collaboration with Trial Lawyers and Law Students

Lawyers with little or no appellate experience, as well as law students at the University of Colorado and the University of Denver Sturm College of Law, may participate in the program. In particular, the University of Colorado has indicated that students can participate through the school's externship and public service programs, and the Sturm College of Law allows students to participate through its required Useful Public Service program.

In such circumstances, lawyers and law students will work under the mentorship of an experienced appellate practitioner, thereby gaining valuable practical experience. Mentors may be Subcommittee members or other experienced appellate attorneys who wish to participate in a mentor capacity. The Subcommittee

believes that such collaboration will provide valuable practical experience to trial lawyers and law students while facilitating the availability of pro bono appellate representation. Experienced appellate practitioners may participate in the program directly or as mentors even if they do not belong to the Subcommittee.

VI. Funding and Attorney Fees

Participating attorneys may seek reimbursement for costs incurred during their participation. Funding for reimbursement is derived from funding provided by the Litigation Council, as well as from other funds received by the program.

While C.A.R. 10 provides a mechanism for pursuing appeals in civil cases without trial transcripts, the Subcommittee believes that preparation of appellate briefs may be easier when trial transcripts are obtained. This is particularly so because appellate pro bono lawyers often will not be familiar with the trial proceedings. Regardless, costs incurred by participating attorneys are often minimal, since litigants will be able to proceed *in forma pauperis* in the Court of Appeals and the Supreme Court, and thus, do not have to pay filing fees.

Finally, the Subcommittee recommends that, where available, appellate program attorneys seek and obtain attorney fees, and that attorneys receiving such fees donate them to the Appellate Pro Bono Program.¹ Any attorney fees obtained by the program will be used to defray costs incurred by participating attorneys, including costs for preparation of transcripts, which are not provided free to indigent litigants in civil cases. Similarly, when costs are advanced by the program, a successful applicant should seek costs on appeal and then reimburse the program.

¹ It is permissible for a pro bono attorney to receive an award of attorney fees. *See In re Marriage of Swink*, 807 P.2d 1245 (Colo. App. 1991).

**APPELLATE PRO BONO PROGRAM
INFORMATION AND APPLICATION FORM
AND AFFIDAVIT OF FINANCIAL NEED**

The Colorado Bar Association's (CBA) Appellate Pro Bono Program may help you obtain a lawyer to assist with your appeal in the Colorado Court of Appeals and the Colorado Supreme Court. If you cannot afford a lawyer you may qualify for this program.

The program applies only to civil cases. In the Court of Appeals, it does **not** apply to unemployment, prison discipline, or criminal cases. In the Colorado Supreme Court, a civil matter for the purposes of this program does not include criminal cases or cases involving post criminal conviction relief, prison discipline, habeas corpus appeals, ballot title appeals or election appeals.

Please complete this application as soon as possible. If you are in the Court of Appeals, you must submit this application no later than 14 days after the appeal information sheet is sent to you by the Court of Appeals (sent after you or the other side has filed a Notice of Appeal). If you are in the Supreme Court, you must submit this application no later than 14 days after the date the Court of Appeals renders its decision. You must also complete and file with the Supreme Court a Motion for Extension of Time using the attached form, which will automatically give you an additional 60 days to file a petition for certiorari. Return the completed application to:

Colorado Bar Association
Appellate Pro Bono Program
1900 Grant Street, 9th Floor
Denver, CO 80203

The program committee may contact you, and any lawyers who may have worked on your case. These conversations are confidential and will be used only for the selection process. The committee may also discuss your case with its volunteer lawyers.

The committee chooses cases based on your income and the importance of your legal issues. To qualify for the program, your income must be below 125% of federal poverty guidelines.

If the program accepts your case, we will contact you within 45 days. We will then provide you with the name and telephone number of the lawyer who is willing to take your case.

For more information about the program, please visit the CBA website: www.cobar.org.

NOTE: Your case may not be accepted by the Committee. All court deadlines still apply and must be followed. This includes the deadlines for filing a Notice of Appeal and submitting briefs. If your case involves a petition to the Supreme Court for writ of certiorari, you must file a motion for an extension of time with the Supreme Court using the attached form.

APPELLATE PRO BONO PROGRAM APPLICATION

Applicant information

Name _____

Address _____

Phone _____

Fax _____

E-mail _____

Are you listed as an individual in the case? If not, name the business or organization that is listed in the case and briefly describe your relationship with that business or organization.

Did a lawyer represent you in the trial court? If so, provide the lawyer's name and contact information.

Case information

Case number _____

Name of trial court _____

Trial court case number _____

Are you the party who filed the appeal?

What party or parties are adverse to you (on the other side) in the case? Are those parties represented by an attorney? If so, who is their attorney?

Type of case (domestic matter, employment discrimination, personal injury, etc.)

Briefly describe your case.

Briefly describe the issues you want to raise in your appeal. Did you raise these issues in the trial court or in the administrative agency?

Please attach a copy of the decision in your case from the district court, the Court of Appeals, or from an administrative agency.

Financial information

Were you granted *in forma pauperis* status or had your filing fees waived in the trial court?

Please submit this form, along with a completed copy of the attached Affidavit of Financial Need and copies of the Notice of Appeal (if available) and the district court's final judgment, to:

Colorado Bar Association
Appellate Pro Bono Program
1900 Grant Street, 9th Floor
Denver, CO 80203

Supreme Court Court of Appeals Denver Juvenile Court Denver Probate Court
 County Court District Court _____ County, Colorado
 Court Address: _____
 Plaintiff/Petitioner: _____
 v.
 Defendant/Respondent: _____

▲ COURT USE ONLY ▲
Case Number: _____
Courtroom: _____

MOTION TO: FILE WITHOUT PAYMENT OF FILING FEE APPOINT AND PAY INTERPRETER COSTS AND SUPPORTING FINANCIAL AFFIDAVIT

I, _____ respectfully move the Court for an order to waive the following filing fee(s):
 complaint petition answer response motion to modify other: _____ and/or to appoint and pay for an interpreter for the following language _____ pursuant to CJD 06-03 and as grounds state that I am without funds, have no adequate funds available, and have a meritorious claim.

All items must be fully completed. Print or type neatly. If an item does not apply, please write "N/A"

Name of Applicant			Other Responsible Party (Spouse, Parent, Other Persons in Household)		
Last Name	First Name	MI	Last Name	First Name	MI
Street Address (Include Apt. # if applicable) _____			Street Address (Include Apt. # if applicable) _____		
City _____ State _____ Zip Code _____			City _____ State _____ Zip Code _____		
<input type="checkbox"/> Own <input type="checkbox"/> Rent Home Phone #: _____			<input type="checkbox"/> Own <input type="checkbox"/> Rent Home Phone #: _____		
Social Security #	Driver's Lic. # & State	Date of Birth	Social Security #	Driver's Lic. # & State	Date of Birth
Most Recent Employer: _____			Most Recent Employer: _____		
Work Address: _____			Work Address: _____		
Work Phone #: () _____			Work Phone #: () _____		
Dates Employed: _____			Dates Employed: _____		
Hours/Week: _____ Pay Rate: \$ _____			Hours/Week: _____ Pay Rate: \$ _____		
<input type="checkbox"/> Monthly <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly <input type="checkbox"/> other: _____			<input type="checkbox"/> Monthly <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly <input type="checkbox"/> other: _____		

Marital Status: Single Married Divorced Separated Widowed **Number in Household:** (including yourself) _____
 _____ Identify Name, Age, and Relationship:

Gross Monthly Income (See Information on page 2)		Monthly Expenses (See Information on Page 2)	
Self (wages, salary, commission)	\$	Rent or Mortgage	\$
Spouse/Other Household Members	\$	Groceries	\$
Parents (if same household)	\$	Utilities	\$
Unemployment Benefits	\$	Clothing	\$
Social Security/Retirement Funds	\$	Maintenance/Alimony and/or Child Support	\$
Maintenance/Alimony	\$	Medical/Dental	\$
Other Income (identify)	\$	Other Expenses (identify)	\$
Other Income (identify)	\$	Other Expenses (identify)	\$
Total Income	\$	Total Expenses	\$
Cash on Hand (Cash you are carrying or which is stored at home, etc.)	\$	Credit Cards: (Show type and balance owed)	
Checking Account Balance	\$	Name/Address of Bank	
Savings Account Balance	\$	Name/Address of Bank:	
Stocks, Bonds, or other Investments Held Balance	\$	Type of Investment, Name/Location of Company/Corporation	
Vehicles Owned (Autos, boats, recreational vehicles, etc.) - Estimate Value	\$	Identify Year _____ Model _____ License Plate _____ Identify Year _____ Model _____ License Plate _____	
House(s) or other Property - Estimate Value	\$	Amount owed, Year Purchased	

IF ADDITIONAL SPACE IS NEEDED TO PROVIDE COMPLETE INFORMATION, ATTACH A SEPARATE PAGE.

I swear under penalty of perjury that all information provided is true and complete. In addition, I authorize the Court to make any necessary contacts to verify the information.

Signature: _____ Date: _____

MOTION TO FILE WITHOUT PAYMENT AND SUPPORTING FINANCIAL AFFIDAVIT

General Information

It is important that you accurately complete all sections of this form as appropriate based on your personal circumstances. If a section does not apply, please write N/A.

A. Gross Monthly Income. Includes income from all members of the household who contribute monetarily to the common support of the household.

♦ **Income categories to include:**

Wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, unemployment benefits, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workman's Compensation Benefits, and alimony.


Note: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the applicant's income in a fashion which would allow the applicant proprietary rights to the roommate's income.

♦ **Income categories do not include:**

TANF payments, food stamps, subsidized housing assistance, veteran's benefits earned from a disability, child support payments, or other public assistance programs.

B. Liquid Assets. Includes cash on hand or in accounts, stocks bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant's ability to maintain home and employment.

C. Expenses. Nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., **shall not** be included. Allowable expense categories are listed on JDF 205.

Supreme Court 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 <hr/> _____ (Name of Court) Judge _____ Case number(s) _____ <hr/> Petitioner(s): v. (Substitute appropriate party designations and names) Respondent(s):	 COURT USE ONLY
Party Without Attorney (Name and Address): <hr/> Phone Number: E-mail:	Supreme Court Case Number:
MOTION FOR EXTENSION OF TIME	

_____, the Petitioner herein, respectfully requests this Court to grant an extension of time from _____ (due date of Petition for Writ of Certiorari) to _____ (date that is 60 days from the due date of the Petition for Writ of Certiorari) to file the Petition for Writ of Certiorari.

As grounds for this Motion, the Petitioner states as follows:

1. A complete application with the Colorado Appellate Pro Bono Program has been filed requesting a free attorney to represent me in my case to the Colorado Supreme Court.
2. The decision of the Colorado Bar Association (CBA) to obtain a lawyer to assist with my case may not be available by the date that the Petition for Writ of Certiorari is otherwise due.
3. No previous extensions of time for filing the Petition for Writ of Certiorari have been requested.

WHEREFORE, I respectfully request this Court to grant an extension of time to _____ (date) within which to file the Petition for Writ of Certiorari).

Date: _____

Signature of Petitioner

Address

City, State, Zip Code

(Area Code) Telephone Number (home)

(Area Code) Telephone Number (work)

CERTIFICATE OF MAILING

(You must complete this Certificate of Mailing as proof that you have mailed a copy of this document to counsel for the opposing party or pro se opposing party in the case.)

I certify that on _____(date) a true and accurate copy of this ***Motion for Extension of Time*** was served on the other party(ies) by placing it in the United States mail, postage pre-paid and properly addressed to the following:

To:

Signature of Petitioner

**CBA APPELLATE PRO BONO PROGRAM
ATTORNEY SIGN-UP FORM**

If you are an attorney licensed in the State of Colorado and are interested in signing up to participate as a pro bono attorney in the CBA Appellate Pro Bono Program, please complete this form and submit it to:

Colorado Bar Association
Appellate Pro Bono Program
1900 Grant Street, 9th Floor
Denver, CO 80203

You can learn more about the Pro Bono Program by reviewing the program information on the CBA website at www.cobar.org.

Name: _____

Firm/Employer: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

List any areas of practice in which you would be willing to take a pro bono case:

Approximate number of appeals you would be willing to accept per year: _____

The Pro Bono Committee may in some cases pair inexperienced attorneys with experienced appellate practitioners to serve as mentors on a pro bono appeal. To help facilitate this mentoring program, please check the appropriate box.

- I am interested in being paired with a mentor on a pro bono appeal.
- I have a mentor who can assist me within my own firm.
- I am interested in serving as a mentor to less experienced attorneys at other firms in handling pro bono appeals.
- I am not interested in participating in the mentoring program. I would prefer to handle pro bono appeals on my own or to mentor attorneys within my own firm.

Briefly describe your previous experience in handling appeals, within Colorado and in any other jurisdictions.

Please provide any additional information you believe may be helpful to the Pro Bono Committee in matching you with a pro bono appeal and/or mentor.

CBA APPELLATE PRO BONO PROGRAM SCREENING COMMITTEE PROCEDURES

Committee make-up

The Pro Bono Committee is comprised of five persons serving one-year terms. Members are selected annually by a meeting of the Appellate Subcommittee of the Colorado Bar Association (CBA), and members can serve multiple terms.

Each year, one committee member shall serve as the committee chair. The chair is responsible for (1) coordinating with the Clerk of the Court of Appeals, the CBA, and Metro Volunteer Lawyers to receive applications for participation in the program, (2) ensuring that each application is assigned to a committee member for an initial review, (3) maintaining a list of volunteers, and (4) performing other functions as needed to administer the program.

Creation of volunteer list

The Pro Bono Committee shall create a form for attorney volunteers, including contact information, areas of interest/expertise, the number of cases the attorney is willing to take per year, and any other pertinent information. Blank forms will be circulated to all members of the Appellate Subcommittee of the CBA. They will also be made available on the Court of Appeals and Supreme Court websites (along with information about the program) and any other outlets the committee deems appropriate.

Committee procedures

The committee may assign the review of applications by whatever manner it chooses (*e.g.*, rotating for each application, rotating weeks, or assigning based on subject matter). However, the Chair must ensure that a committee member who has a potential conflict of interest on a case (*e.g.*, if the committee member's firm represents an adverse party) does not review that application for consideration in the program and does not vote on the consideration of that application.

The committee member assigned to an initial review of an application shall review the application form, the docket, any briefs or motions filed to date, and selected pleadings from the trial court. The committee member may call the applicant and, if applicable, the applicant's prior counsel, to obtain additional information about the potential representation. Based upon this initial review, the assigned committee member shall provide to the committee an initial recommendation as to whether to accept, reject, or seek further information relating to the application.

The committee members shall meet on a bi-monthly basis (or more frequently, if necessary) to discuss all pending applications.

Meetings may be conducted in person, by telephone, or by e-mail. The assigned committee member for each application shall provide a summary of the application and his or her initial recommendation. The committee members shall then discuss and vote on each pending application. Members may vote to (1) accept the application (pending the committee's ability to match the applicant with a volunteer attorney), (2) decline the application, (3) seek guidance from another attorney on the particular subject matter and issues involved in the appeal, or (4) seek additional information from the applicant or the applicant's prior counsel. A majority vote prevails.

If the committee votes to obtain additional guidance or information, the assigned committee member shall follow up on those items and bring the matter to a new vote on or before the next committee meeting.

If the committee elects to reject the application, it will send a letter to the applicant notifying the applicant of that determination.

If the committee accepts an application, the committee shall review the list of volunteer attorneys and select potential volunteers for the case, based upon attorneys' stated areas of expertise, prior selection for another pro bono case, and lack of any obvious conflicts of interest. The assigned committee member shall contact such potential volunteers in an attempt to match the application with a volunteer attorney. The committee member may provide potential

volunteers with any information obtained during the member's initial review of the matter. Potential volunteer attorneys shall be given at least 14 days (unless the matter must be assigned more quickly due to impending case deadlines) to review these materials, obtain and review any other relevant materials, conduct any further interviews or investigation, and decide whether to accept the representation.

Procedures for accepted applications

If the Pro Bono Committee accepts an application, and a volunteer attorney agrees to accept the representation, the committee will send a Notice of Acceptance informing the applicant about his, her or its selection for participation in the program. The letter will include the volunteer attorney's contact information and a notice that the applicant has 14 days to decline the representation. The volunteer attorney will be advised to follow up with a separate letter to the client outlining the terms of the representation. If the client does not decline the representation within 14 days following issuance of the Notice of Acceptance, the volunteer attorney shall file an entry of appearance in the Court of Appeals. The Pro Bono Committee and the assigned volunteer attorney shall also notify and coordinate with Metro Volunteer Lawyers when a case is accepted into the program.