

**Access to Justice Commission
First Judicial District Local Pro Bono Committee
2010 Annual Report for the Period
January – December 2009**

1. Provide a list of your committee members with phone numbers and e.mail addresses.

Chairperson: Judge Raymond Z. Ortiz; 455-8165; sfedrzo@nmcourts.com
Members: Celia A. Ludi, Esq.; 455-8147; sfedcal@nmcourts.com
Mary Marlowe Sommer, Esq.; 455-8140; sfedmms@nmcourts.com
Joanne Trujillo; 455-8145; sfedjxt@nmcourts.com
Candy Sisneros; 455-8146; sfedclp@nmcourts.com
Carol Herrera, 930-1151; carolherrera2008@gmail.com
Amy Propps, Esq.; 982-9836, ext 1006; amy_propps@yahoo.com
Barbara Kazen, Esq.; 466-3119; bkazen@comcast.net
Carter Clary, Esq.; 323-2870; jcclary@comcast.net
Gini Nelson, Esq.; 877/992-1900; gnelson@cybermesa.com
Janay Haas, Esq.; 982-9886; Janayh@nmlegalaid.org
Margret Carde, Esq.; 982-9886; margretc@nmlegalaid.org
Sylvia LaMar, Esq.; 988-1855; slamarz@aol.com
Matthew Wilson, Esq.; 827-1965; matt.wilson@state.nm.us
Nita Taylor; 797-6077; ntaylor@nmbar.org

2. Has your committee been successful in developing programs that enable attorneys to assist your low-income population? Please describe the program(s). If not, why not?

A. In an effort to assist low income litigants in settling their disputes, pairs of volunteer experienced family law attorneys meet with litigants prior to scheduled hearings on Motions for Order to Show Cause in family law matters. Order to Show Cause hearings were selected since these typically involve an inordinately high number of pro se litigants who do not have the funds to hire an attorney. There are usually 1-2 days per month allocated to such hearings. As part of the process on these days, the litigants are offered the opportunity for a discussion facilitated by the attorney pairs to resolve pending issues on their own. If resolution is achieved, the attorneys involved prepare a proposed Stipulated Order and, as appropriate, either accompany the litigants into the courtroom to read the proposed settlement into the record or present the Order for approval and/or modification by the Court. If resolution is not achieved, the litigants proceed with the hearing as scheduled.

This program has been quite successful. In a typical day it is not uncommon that between ten to fifteen cases are settled or partially settled. In some instances litigants have spoken directly to one another outside the

courtroom for the first time in several months or years, often resolving matters not only concerning the motion(s) at hand but other motions pending on the Court's docket. Even in those instances where cases are not settled, the issues are often clarified and narrowed such that the parties are better prepared for the scheduled hearing, thereby rendering court time more effective.

Particular praise is due to volunteer attorneys Sylvia LaMar and Barbara Kazen for developing the program, for recruiting, training, organizing as well as for scheduling the other attorneys necessary for effectively implementing this program.

B. All attorneys in the First Judicial District were previously contacted by Judge Ortiz (through email facilitated by the State Bar) to gauge their interest in and willingness to offer pro bono assistance with consumer and debt collection issues. Litigation in this area has been increasing as a result of the recession. The survey letter emphasized the Supreme Court's mandate that each attorney should aspire to render at least fifty hours of pro bono service per year pursuant to Rules 16-601 and 24-108. As further inducement for attorney participation, the letter offered free training to attorneys who would commit to assisting low-income litigants with debt management and collection issues, emphasizing that this represented an opportunity to expand an attorney's practice at no cost while providing pro bono services that would satisfy the Supreme Court's directives. A copy of the survey letter is attached. Of the attorneys who responded to this survey, twenty four indicated availability to receive referrals in the areas listed, but only three vouchers have been obtained only one was redeemed for actual services rendered.

C. The New Mexico Legal Aid (NMLA) office in Santa Fe arranged to provide free training to attorneys who will commit to assisting low-income clients with debt management and collection issues. The initial training was conducted January 30, 2009, at the First Judicial District Courthouse by Rob Treinen, an Albuquerque attorney who specializes in consumer law, at no charge to participating attorneys. Follow-up training to cover what might be done in some cases to pursue additional relief may also be offered. In a limited number of cases, follow-up work could provide some compensation to the attorney in the form of fees, albeit at below market rates. The NMLA is referring cases to the attending attorneys. A sample of the letter to volunteer attorneys is attached hereto.

Particular praise is due to Margret Carde, formerly with New Mexico Legal Aid in Santa Fe, for organizing the debt collection training session and offering to assist attorneys taking on pro bono cases in this area as well as to Rob Treinen for presenting the training.

D. A foreclosure mediation project has been established as part of the Court's existing ADR Program. An important feature of the foreclosure mediation

program is a Notice to Defendant Homeowners (attached) offering information on where to get help. The Notice is required to be served with the Complaint for Foreclosure. A separate foreclosure-prevention public education program, possibly in conjunction with other with other non-court agencies, is also under discussion.

Particular praise is due to Celia Ludi for conducting research on foreclosure mediation programs in other states, for organizing meetings necessary to discuss the feasibility of such a program in the First District, as well as for its development and implementation.

E. Volunteer private attorneys present free monthly Pro Se Family Law Clinics at which attendees may obtain general information regarding the law and procedures in divorce and parentage cases in New Mexico. In 2009, approximately 77 people attended the Clinics. Attendance has risen steadily. Beginning in 2009, the Court has partnered with the Santa Fe Community College Legal Studies Program to hold the monthly Family Law Clinic at SFCC and include assistance in forms completion offered by the paralegal students. Consideration is being given to expanding the clinics to include domestic violence matters as well as enforcement issues (typically failure to pay child support or failure to abide by a parenting plan).

Particular praise is due to Patricia Finn, Co-Chair of Business and Professional Studies at the Santa Fe Community College for working with the First Judicial District Court to provide a venue for and provide forms completion assistance at the Clinics.

F. Private attorneys offer free one-half hour consultations by vouchers obtained by pro se Family Law litigants who attend the Pro Se Family Law Clinics. In 2009, 62 vouchers were distributed and 15 were redeemed.

G. The Court's Alternative Dispute Resolution Program offers settlement facilitation in DM, CV, and PB cases at reduced or no fee when a party qualifies for free process. Qualified settlement facilitators are attorneys with training and experience in mediation techniques who apply for inclusion on the Program's list. The fee schedule established by the Court for settlement facilitation through the ADR Program is already very modest: \$500.00 for the first four hours, and \$125.00 per hour for the next four hours; if the case hasn't settled in that time and the parties want to continue, they and the settlement facilitator make their own fee arrangements. In most cases, the fee is split and paid equally by the parties. Almost all of the requests for free or reduced-cost settlement facilitation are in DM cases and these are typically granted for low income litigants.

H. The Court maintains a Self Help Center that serves all court constituents by providing individual forms and forms packets and procedural information but not legal advice. The Center also has two public access computers which have

Child Support Worksheet calculation software. Individual forms and forms packets are also available on the court's website.

I. The possibility of Legal Education seminars to offer training to volunteer attorneys is being investigated. These seminars would be on various topics and would be presented at the Court or through a bar association. The intent here is to make the recorded presentations available as an aid to attorneys who are contemplating some pro bono service and do not feel they are sufficiently experienced in a particular practice area. The first of these seminars was the Consumer Debt program described in 2C above.

J. The Legal Aid office in Santa Fe has also volunteered to train inexperienced attorneys in selected Family Law matters as a means of encouraging participation in the Committee's activities. However, due to severe limitations in funding, the Santa Fe Legal Aid Office is significantly understaffed and has extreme difficulty meeting the needs of those who qualify for its services. Thus, time devoted to training could detract from the time necessary to prepare and present cases of its clients.

K. An intern from UNM Law School was recently brought in to assist Judge Ortiz in Family Court, especially with the high number of pro se cases in that court. The intern assisted the Court by producing orders arising from hearings and conducting any necessary research in cases where there are pro se litigants on both sides. The experience proved so productive that another law student intern was brought in from the law school at UC Davis during the summer months of 2009. If any acceptable law student intern is located, the program in Family Court will be continued.

- 3. Have you formed a Volunteer Attorney Pool from a survey or other tool? Please list the names of the attorneys who have provided pro bono services through participation in one of your programs. If you have not formed a Volunteer Attorney Pool, why not?**

The volunteer attorney pool is as follows:

Family Law Attorneys

Catherine Aguilar
Julia Barnes
Caroline Bass
Sara Bennett
James Bristol
Patrick Brito
Shannon Bulman
Margret Carde

Janet Clow
Samantha Dunning
Gary Elion
Kathleen Ellsworth
Pamela Emsden
David Foster
Diane Garrity
Paul Gerber
Jerome Ginsberg
Reid Griffith
Michael R. Jones
Barbara Kazen
Sylvia LaMar
Susan McDevitt
Eileen Mandel
Lidia Garza Morales
Katherine Moss
Amy Propps
Richard Shapiro
Witter Tidmore
Amber Train
David Walther
Julie Wittenberger
Aaron Wolf

General Civil Attorneys

Paula Cook
Thomas Rushton
Tamara Safarick

4. Has your committee attempted to develop programs that have been unsuccessful in attracting assistance from pro bono attorneys? Please describe.

Most of the attorneys listed in the response to question three above practice primarily if not exclusively in the Family Law area. The participants in the programs outlined in subsections 2A, 2B, 2E and 2F primarily come from this group of attorneys. These attorneys represent a very substantial percentage of the Family Law bar in the First Judicial District and should be commended for their ongoing participation in First District programs. However, despite repeated efforts, members of the civil bar who do not practice in the Family Law area have been generally reluctant to participate in significant numbers in any of the programs established by the First District Committee. Additional efforts should be made to recruit general civil attorneys.

The Committee has considered asking volunteer attorneys to donate time to pro se litigants for one-on-one sessions at the courthouse. This has been tried previously with only extremely limited positive results. Generally, pro se litigants have in the past not

presented themselves during the scheduled pro se group times. This has resulted in significant frustration for the attorneys who had volunteered their time and cleared their schedules of paying clients, only to have unproductive time at the courthouse. Another major issue is lack of the ability to perform an effective conflict check for unscheduled litigants. A possible change could be establishing specific appointment times for each pro se litigant and pairing that litigant with a volunteer attorney at the courthouse for an appointment that has been scheduled and checked for conflicts in advance. This revised approach may be tried if the redemption of vouchers discussed in item 2F above materially increases, thereby suggesting an increasing need for such one-on-one consultation.

Previously, private non-attorney mediators in the Santa Fe area were part of a separate settlement conference panel. This panel was instituted partially out of concern that attorneys on the existing panel would not be able to address the volume of cases assigned, and partially from the idea that non-attorney mediators would provide a new perspective that might help resolve cases. However, difficulties arose with the non-attorney mediation panel in that both pro se litigants as well as those with attorneys were reluctant to participate in a settlement facilitation process conducted by non-attorney mediators. This aspect of the program was accordingly discontinued.

5. Please quantify the number of your low-income population who have benefited from your programs. Provide detail by program, if possible (i.e., clinic attendance, direct representation, etc.).

None of the programs offered in this district screen constituents for income. The Court has determined that it is important to offer assistance to any litigant who requests it, regardless of ability to pay. An attempt was made to discern income and other relevant household information from constituents of the Self Help Center by asking them to complete a very simple, confidential, anonymous form. However, very few forms were completed and returned and the practice was discontinued.

The data for 2009 is as follows:

Over 90 pro se cases were settled in whole or in part by the screening program outlined in Section 2A.

The Self Help Center provided assistance to court constituents in the following areas:

| | |
|------|--|
| 8614 | Requests for information were answered |
| 244 | Divorce Packets purchased |
| 95 | Parentage Packets purchased |
| 3449 | Free forms distributed |
| 758 | Review Forms & Set Hearing Dates |
| 1855 | Procedural Questions answered |
| 2213 | Miscellaneous Inquiries/Directions |

In addition, the following additional services were provided:

77 individuals attended the Pro Se Family Law Clinics referenced in Section 2E

62 vouchers for free legal service by volunteer family law attorneys were distributed and 15 were redeemed for the program outlined in Section 2F

76 cases involving self-represented litigants were referred to the Court's ADR program outlined in Section 2G.

68 attorneys attended the MCLE luncheon and awards presentation that was part of Pro Bono Week. Numerous attorneys were recognized for their pro bono work during this event. 72 individuals attended the informational program in connection with Pro Bono Week.

6. What do you see as the greatest impediment to securing pro bono assistance for your district's low income people? Please quantify the impediment, if possible.

There is more than a single impediment. The largest impediments are as follows:

- a. Lack of significant participation by members of the general civil bar in the First District as indicated by the list at Section 3.
- b. Lack of funding to support any of the programs listed in sections 2A through 2J.
- c. Limitations on the amount of additional time that family law bar members in the First Judicial District can realistically expend over and above the very substantial time they have already devoted to the District's programs.
- d. Many private attorneys in the First District are solo practitioners or are members of very small firms and cannot afford to take on complete representation of pro bono clients. Unbundling of legal services is thus key to increasing pro bono service by these attorneys. To the maximum extent permitted by the Supreme Court, the Committee will continue its efforts to identify ways for attorneys to provide limited services to pro bono clients.
- e. Another difficulty (less easily remedied than by the unbundling approach outlined above) is overcoming actual or perceived lack of familiarity in areas of law experiencing high numbers of pro se litigants (Family Law, Domestic Violence, Consumer Law and Debt Collection). This will be addressed by trainings that are focused, practical and accessible, to be provided for attorneys willing to commit to pro bono assistance. The consumer law and debt collection trainings outlined herein are part of this process.

- f. Finally, in the important area of consumer protection, the number of experienced attorneys who practice in this field is small. Since attorneys practicing in this area represent a very small percentage of the First District bar, the letter survey to all attorneys in the District (attached) was deemed the best way to increase the number of attorneys willing to engage in pro bono work in this area.

7. Do you anticipate your current pro bono program to maintain its current status and/or grow in subsequent years? Please explain.

The programs outlined in Section 2 will continue in their current status. The programs can grow in subsequent years to the extent that the impediments outlined above can be addressed, particularly those in subsections 6a, 6b, 6e and 6f. Renewed efforts should be made to recruit members of the general civil bar to participate in pro bono programs. The most active members of the Committee are court and NMLA staff as well as members of the family law bar. In addition, funding should be provided to support some of the efforts of the First District Committee. In light of substantial budget cuts, the First Judicial District Court has no funds available to support the Committee's efforts.

8. Did your committee participate in New Mexico Pro Bono Week and if so, were the public functions sponsored during that week successful? Please quantify public participation. If not, please describe why the public functions were not successful. Do you intend to include similar functions in your on-going future pro bono plans?

The Pro Bono Week included an awards luncheon at a local hotel at which a CLE on professionalism was presented which focused on various rules and precedent related to pro bono issues. A total of 68 attorneys attended. The CLE was presented on this topic in order to permit attorneys to complete the hard-to-obtain professionalism credit and to provide them with information on the programs available for addressing pro bono needs. Numerous attorneys were also recognized during this event for their pro bono work.

In addition, public legal information sessions were held at the Santa Fe Community College. Holly Hart and Lidia Garza Morales offered foreclosure information in English and Spanish respectively. Deborah DeMack offered consumer debt and bankruptcy information.

Particular praise is due to Mary Marlowe Sommer, Sylvia LaMar and Celia Ludi for planning events as well as to Sarah Singleton who presented the MCLE professionalism seminar shortly before she was appointed by Governor Richardson to the First District bench. In addition, Candy Sisneros and Joanne Trujillo should be commended for their efforts in assuring that the events were well-run.

9. New Mexico Pro Bono Week was initiated as part of the national 1st Annual Celebrate Pro Bono Week. Would you support participation in another New Mexico Pro Bono Week?

Yes.

However, a new mechanism that would permit Pro Bono Committees to directly collect fees and pay for expenses in connection with Pro Bono Week events should be investigated. For example, this could take the form of seeking to amend Section 34-6-37 or other appropriate statute in order to permit each district to collect fees and disburse payments in support of pro bono activities mandated by the New Mexico Supreme Court.

Even though the First District sponsored the awards and pro bono luncheon, the Court could not directly collect fees for the event from the 68 attorneys who attended or pay the hotel for the space, catering and other services. As such, the Committee had to investigate possible co-sponsors willing collect fees and pay expenses. Although some firms and individual attorneys were willing to collect fees and co-sponsor the programs, it was determined that the Court should maintain an appropriate distance in order to avoid the appearance of favoritism or other impropriety in connection with attorneys that regularly appear before the Court. After a significant period of inquiry, the First District Bar Association agreed to co-sponsor the event. Although this interim solution could be used in larger districts, in smaller districts where there may not be an established and well-functioning bar association, the collection and disbursement of fees may present a problem.

10. The ATJ Commission would like to use your work to build a resource guide for use by all committees. Please attach any forms, flyers, press releases, DVDs or other material you've used to implement your on-going programs or your participation in New Mexico Pro Bono Week.

Attachments are as follows:

Attorney survey letter

Letter to volunteer attorneys

Notice to Defendant Homeowners in foreclosure mediation program