

NORTH CAROLINA APPELLATE PRO BONO PROGRAM

Thank you for your interest in providing pro bono appellate services through the North Carolina Appellate Pro Bono Program. Your efforts provide an important service to *pro se* litigants and the North Carolina judicial system. This packet contains information about the Program, including:

- A ***Program Description***;
- ***Attorney Selection Procedures*** identifying requirements that volunteer attorneys and mentors must satisfy to participate in the Program, as well as the process by which volunteer attorneys are assigned cases in the Program; and
- An ***Attorney Application*** that must be completed to participate as a volunteer attorney or mentor in the Program.

Please direct questions about the Program to NCAppellateProBono@gmail.com.

NORTH CAROLINA APPELLATE PRO BONO PROGRAM: PROGRAM DESCRIPTION

Summary of Program

The North Carolina Appellate Pro Bono Program provides pro bono representation to *pro se* litigants in certain appeals that meet the following requirements:

- (1) The appeal involves one or more *pro se* litigants who would qualify for *in forma pauperis* status, as set out in N.C. Gen. Stat. § 1-288, regardless of whether the litigant has applied for *in forma pauperis* status;
- (2) The appeal presents at least one non-frivolous issue; and
- (3) The *pro se* litigant consents to be represented by a pro bono attorney and an attorney, chosen from a panel of volunteers administered by the NCBA's Appellate Practice Section, consents to represent the litigant free of charge.

The Program is coordinated by the Pro Bono Committee of the N.C. Court of Appeals, which consists of Court of Appeals judges selected by the Court, and by the NCBA's Appellate Practice Section and its Pro Bono Committee.

Program Operating Procedures

Program Eligibility. The Court of Appeals and Supreme Court will review *pro se* cases filed with their respective Courts to identify cases that may qualify for the program according to the criteria identified above. Not every case that meets the criteria will be selected. At the Court of Appeals, in addition to selection by the Court before briefing, any panel of the Court of Appeals assigned to hear an appeal may request that the case be included in the program, with corresponding extensions for briefing or supplemental briefing as may be appropriate.

Litigant Interest. After identifying a case as eligible for the program, the Clerk of Court at the court in which the appeal is pending will mail the *pro se* litigants an opt-in packet that includes an explanation of the pro bono program and a return form. Through the return form, litigants may consent to be represented in the appeal by a pro bono attorney, confirm they qualify for *in forma pauperis* status by demonstrating an ongoing financial need preventing the *pro se* litigant from retaining counsel, and provide contact information so that a pro bono attorney can contact them.

Pro Bono Attorney Selection and Engagement. Once an eligible litigant has returned the opt-in form and agreed to participate in the program, the Court will contact the designees at the Appellate Practice Section who administer the Appellate Pro Bono Panel. The Appellate Practice Section uses a selection method that ensures all attorneys on the Appellate Pro Bono Panel are given an equal opportunity to participate in the program over time.

The Appellate Pro Bono Panel will consist of licensed North Carolina attorneys who satisfy the program's mandatory training requirement and maintain malpractice insurance covering their pro bono representation, either under a privately held policy or through the North Carolina Bar Foundation, and Law School Clinics that agree to participate in the program under the supervision of a licensed North Carolina attorney who has completed the program's mandatory training requirement.

The training requirement will be developed and revised from time to time by the Appellate Practice Section with the assistance of the Court of Appeals Pro Bono Committee to ensure that program participants are prepared to handle all aspects of the state appellate process. To the extent possible, the training requirement will be submitted to and approved by the State Bar for CLE credit.

The Appellate Section will also make a mentor available to any volunteer attorney who requests a mentor. Mentors shall have considerable appellate experience. However, the mentors will not enter an appearance in the appeal.

Pro Bono Representation and Court Procedures. After a qualified volunteer attorney agrees to represent an eligible litigant, the Court will provide counsel with the client's contact information so that counsel can contact the prospective client to discuss the representation and confirm that the client accepts representation by the attorney. If the client agrees to the representation, counsel will inform the Court and the Court will enter an order appointing the volunteer attorney as counsel for the eligible litigant. Depending on the timing of the appointment, the Court may enter an order setting a briefing schedule, or request supplemental briefing from the volunteer attorney on particular issues. Oral argument is strongly favored in appeals under this program and the Court of Appeals will make every effort to calendar program cases for oral argument unless the circumstances of the case make oral argument inappropriate.

Fees and Costs. Attorneys participating in the program must agree to provide representation to the client on a pro bono basis (*i.e.*, without charging a fee). Parties appearing in the state appellate courts, even those qualifying for *in forma pauperis* status, likely will incur court costs (as distinguished from fees) during the appeal. The client is responsible for those costs, but participating attorneys and

their firms may undertake to pay those costs as part of their pro bono representation to the extent they are financially able.

Scope of Engagement. Attorneys who accept the representation in a pro bono appeal agree to handle the appeal through the appellate process for the appellate court that appoints the attorney.

However, a volunteer attorney is not required to handle an appeal beyond that appointing court. Therefore, if a volunteer attorney is appointed by the Court of Appeals, the attorney is not required to continue the engagement by making any filings in the North Carolina Supreme Court. Likewise, an attorney appointed by the North Carolina Supreme Court is not required to continue the engagement by making any filings in the United States Supreme Court, even if an appeal could lie with that court.

Furthermore, a volunteer attorney is not obligated to file a petition for rehearing or *en banc* rehearing.

Despite these default limitations, the scope of the engagement can be extended to make additional filings in any appellate court if the volunteer attorney and litigant consent to extend the engagement. If the litigant requests to extend the engagement, but the volunteer attorney declines, the volunteer attorney shall immediately notify the appointing court and the Appellate Practice Section. The Appellate Practice Section may then attempt to have a new attorney appointed to represent the litigant.

NORTH CAROLINA APPELLATE PRO BONO PROGRAM:
ATTORNEY SELECTION PROCEDURES

I. SECTION RESPONSIBILITY

The Pro Bono Committee of the Appellate Practice Section of the North Carolina Bar Association (the “Committee”), under the direction of the Section Chair, shall be responsible for maintaining and administering the Appellate Pro Bono Panel—a list of attorneys participating in the North Carolina Appellate Pro Bono Program—and ensuring adequate access to mentors for those on the list.

II. ATTORNEY ELIGIBILITY FOR PANEL MEMBERSHIP

- A. The attorney is currently licensed to practice law in North Carolina.
- B. The attorney has submitted the program application.
- C. At the time of signing the application, the attorney has spent at least 24 of the last 36 months engaged in the practice of law as defined in N.C. Gen. Stat. § 84-2.1. Without limitation, the following activities count toward the 24-month requirement:
 - 1. time spent engaged in the practice of law in North Carolina or in a jurisdiction outside of North Carolina;
 - 2. time spent engaged in the practice of law while working for a government entity; and
 - 3. time spent working as a law clerk for a judge after graduation from law school.
- D. The attorney has attended the mandatory training program.
- E. The attorney or the attorney’s law firm maintains malpractice insurance covering the attorney’s participation in the Appellate Pro Bono Program, or the attorney is eligible for coverage provided by the North Carolina Bar Foundation.

III. SELECTION OF ATTORNEYS FROM PANEL

- A. Attorneys shall submit program applications after they have completed the mandatory training.
- B. The initial panel membership shall consist of the list of eligible attorneys who have submitted applications by the end of the tenth day

after the inaugural training program. The attorneys shall appear on the panel list in numerical order using a randomized procedure.

- C. Attorneys who submit program applications after the end of the tenth day following the inaugural training program shall be added to the end of the panel list in the order in which their application is received.
- D. Cases will be assigned to attorneys in the order in which the attorneys appear on the panel list.
- E. Selected attorneys will have 48 hours, excluding holidays and weekends, to accept the assignment or else are deemed to have declined it. If the attorney declines an assignment, his or her name will be placed at the end of the panel list for future consideration.
- F. The ordering of attorneys in the panel list will not be made publicly available, but attorneys may inquire regarding their place on the panel list.

IV. MENTORS

- A. The Appellate Practice Section shall make available to the pro bono attorney a mentor in each appeal.
- B. Mentors must meet the eligibility criteria for pro bono attorneys in Part II above, except that
 - 1. the mentor must have practiced as an attorney for 84 of the last 96 months (*i.e.*, 7 of the last 8 years); and
 - 2. the mentor is not required to attend the training program.
- C. The role of the mentor will likely be different from case to case, but generally mentors should expect, and be prepared, to give substantive advice on legal strategy, review and edit briefs, and provide other guidance to the pro bono attorney. The mentor will not be appointed by the appellate court and is not expected to sign any filings.

NORTH CAROLINA APPELLATE PRO BONO PROGRAM:
VOLUNTEER ATTORNEY AND MENTOR APPLICATION

Thank you for volunteering to participate in the North Carolina Appellate Pro Bono Program. Before completing this application, please review the Appellate Pro Bono Program Description and Attorney Selection Procedures. Then, please complete this application and submit it in PDF format to NCAppellateProBono@gmail.com.

Application

Please indicate whether you are applying to be a volunteer attorney, a mentor, or both.

- Volunteer Attorney—Member of Appellate Pro Bono Panel**

- Mentor**

Personal Information

Please provide the following information:

- Full Name:
- N.C. Bar Number:
- Other Bar Numbers (*for every jurisdiction in which you maintain an active license*):
- Telephone Number:
- Mobile Number (optional):
- Email Address (*please submit the address that will best allow you to respond promptly*):
- Address for Service of Court Filings:

Legal Experience

If you are applying to be a volunteer attorney, have you spent 24 of the last 36 months engaged in the practice of law in any jurisdiction, as defined by section 84-2.1 of the North Carolina General Statutes?

- Yes**

- No**

If you are applying to be a mentor, have you spent 84 of the last 96 months engaged in the practice of law in any jurisdiction, as defined by section 84-2.1 of the North Carolina General Statutes?

- Yes
- No

The following experience counts toward the 24-month and 84-month requirements:

- time spent engaged in the practice of law in North Carolina or in a jurisdiction outside of North Carolina;
- time spent engaged in the practice of law while working for a government entity; and
- time spent working as a law clerk for a judge after graduation from law school.

Note: Time spent working on any matter while you were a student in law school (e.g., legal clinic work) does **not** count toward the 24-month or 84-month requirements.

Please identify on a separate sheet of paper, or through an attached résumé, your legal experience satisfying the 24-month or 84-month requirements. Include in your answer your employer, dates of employment, and a brief description of the work you performed.

Prior Disciplinary Proceedings

Have you ever been disciplined by any court or bar organization? If so, please describe, in detail, the circumstances giving rise to the disciplinary proceeding and the outcome of the proceeding. (*You may attach your response as a separate document, or you may include your response below this question.*)

Certification of Understanding for Volunteer Attorneys

Please check the box beside each of the following items to confirm your understanding of the Appellate Pro Bono Program.

- I have attended in person (or viewed online) the mandatory training program for the Appellate Pro Bono Program. I understand that I cannot submit my application until I have attended or viewed this program.
- I understand that I will be paired with a mentor if I am assigned to a case. However, I am the attorney ultimately responsible for the representation of the client to which I am assigned.

- I understand that I could be asked to represent a litigant in a civil case involving any area of law. If I undertake to represent a litigant in an unfamiliar area of the law, I understand that I have a duty to do so competently, as required by Rule 1.1 of the North Carolina Rules of Professional Conduct.
- I understand that the client to which I am assigned representation is ultimately responsible for the payment of all costs on appeal. However, I (or my law firm) may pay these costs for the client if desired.
- I or my law firm maintains malpractice insurance covering my participation in the Appellate Pro Bono Program, or I have confirmed that coverage will be made available to me by the North Carolina Bar Foundation.
- I have read and understood the Program Description and Attorney Selection Procedures for the Appellate Pro Bono Program.
- I have read and understood the scope of engagement section in the Program Description.

By my signature below, I certify that everything in this application is true and correct to the best of my knowledge.

Signature

Date