

U.S. District Court for the Northern District of Illinois' Settlement Assistance Program: A Follow-up

By James D. Wascher

A pioneering program in which volunteer attorneys represent pro se plaintiffs in settlement conferences before the U.S. District Court for the Northern District of Illinois helped the court to resolve an average of two employment discrimination cases each month during the program's first 16 months of operation. Chief District Judge James F. Holderman therefore believes that the court's Settlement Assistance Program—apparently the first of its kind at the district court level—has been a great success. “While it is always a goal of the court to resolve claims amicably between the parties,” Holderman says, “our judges are especially heartened when this result is reached through the efforts of attorneys volunteering their time and expertise to those who need it most.”

The District Court for the Northern District of Illinois formally established its Settlement Assistance Program by general order on Nov. 6, 2006. Chief Judge Holderman asked Laurie A. Wardell, director of the Employment Opportunity Project at the Chicago Lawyers Committee for Civil Rights Under Law (CLC), to administer this program for the court. Wardell has recruited and facilitated the ongoing training of more than 100 lawyers, primarily younger attorneys at some of the city's largest law firms, who are on call to volunteer for a limited appointment by the court solely to assist a pro se litigant in preparing for and participating in a settlement conference. The appointment expires after the settlement conference is completed, regardless of whether or not the case is resolved. Several of the program's volunteers are members of the Federal Bar Association.

As of Feb. 29, the Settlement Assistance Program had provided pro bono attorneys to assist 49 previously unrepresented parties in settlement conferences. Of these cases, 28 had settled and the parties were still trying to resolve another 14. In addition, three settlement assistance attorneys have volunteered to continue representing the plaintiff after the settlement conference concluded without a resolution. Settlements achieved through the program have ranged from \$5,000 to \$85,000, although many results are confidential.

The District Court for the Northern District of Illinois has been a national leader in providing services to pro se litigants. In 1982, the court established a trial bar of experienced attorneys who are required by local rule to accept “appointment by the court to represent or assist in the representation of those who cannot afford to hire a member of the trial bar.” Last year, the District Court appointed 207 members of its trial bar to provide pro bono representation to plaintiffs whose cases involved primarily employment discrimination and prisoners' rights.

In January 2005, in partnership with the private bar and

two legal aid providers, the district court established the Self-Help Assistance Program, under which unrepresented parties—both plaintiffs and defendants—can obtain an attorney's advice concerning whether they have a viable federal claim or defense as well as legal assistance in preparing pleadings and discovery. However, the Self-Help Assistance Program's attorneys do not file appearances on behalf of pro se litigants and do not accompany them to court.

Successful Pilot Program

Magistrate Judge Morton Denlow of the Northern District of Illinois says that he developed the idea for a settlement assistance program after he “attended a Federal Judicial Center program in New York on employment discrimination” in November 2004. There, Denlow learned that the District Courts for the Eastern and Southern Districts of New York each have a court-annexed mediation program in which volunteer attorneys who are certified by the court act as mediators in civil cases upon referral by the court. Denlow is a member of the board of directors of the FBA's Chicago Chapter,

In March 2005, Marc R. Kadish, director of pro bono activities and litigation training at the law firm of Mayer Brown in Chicago, approached Judge Denlow seeking opportunities for associates at his firm to handle arbitrations and mediations. Denlow suggested that, instead of attorneys serving as mediators, as they do in New York, they should “actually represent pro se plaintiffs, with the District Court's magistrate judges conducting mediations” in employment discrimination cases. After Kadish agreed to the idea, he and Denlow organized a training program for Mayer Brown's attorneys; the training included a session on mediation advocacy skills presented by Prof. Lynn Cohn of Northwestern University Law School.

Judge Denlow referred the pilot program's first employment discrimination case to Mayer Brown's Limited Appointment Settlement Project in May 2005. After an appropriate check to assure that the firm had no conflict of interests, a Mayer Brown associate volunteered to accept a limited appointment from Denlow to assist the pro se plaintiff by preparing a settlement demand letter and representing him at the settlement conference, over which Denlow presided. Along with Kadish, two attorneys from Mayer Brown—Danuta B. Panich, a partner, and James W. Gladden Jr., senior counsel at the firm—mentored the associates who participated in this project. Panich, who is now with Ogletree Deakins in Indianapolis, chairs the FBA Labor and Employment Law Section.

According to Kadish, attorneys participating in Mayer

Brown's Limited Appointment Settlement Project represented pro se plaintiffs in 10 employment discrimination cases and two prisoners' rights cases; Judge Denlow referred about half of the 12 cases, with the remainder coming from other magistrate judges in the Northern District of Illinois. Ten of these 12 cases were settled for amounts ranging between \$500 and \$30,000.

The success of the pilot program at Mayer Brown convinced Denlow to recommend to the district court that the project be expanded shortly after Holderman became chief judge. Denlow told Kadish that, "in order to expand the program, we needed to involve other lawyers," and that the Chicago Lawyers Committee for Civil Rights Under Law was the logical place to house the program. Mayer Brown, a member of CLC, cooperated fully in the transition of the program, "even though Mayer Brown's participation was diluted," Denlow says.

Under the new courtwide Settlement Assistance Program, attorneys from CLC member law firms volunteer to provide free legal assistance to pro se parties for settlement purposes only. The court has developed a form order by which the judge presiding over the case appoints a volunteer attorney "to represent the pro se party solely for the limited purpose of assisting the pro se party in connection with a settlement conference in this case. Appointed counsel shall not be obligated to conduct any discovery, to prepare or respond to any motions and shall not be responsible for the trial of the case."

The Chicago Bar Foundation, the Illinois Equal Justice Foundation and the Lawyers Trust Fund of Illinois have made grants to CLC, totaling \$55,000, to fund the program.

How the Program Works

Typically, if a district judge determines that a case involving a pro se plaintiff might benefit from an early settlement conference, the judge will contact Wardell at the CLC. Wardell will, in turn, send a broadcast e-mail message to all attorneys participating in the Settlement Assistance Program to notify them of the opportunity to volunteer. The e-mail will identify the district judge who has requested assistance and any magistrate judge who may have been assigned to conduct the settlement conference, and the message will provide a general description of the nature of the case without identifying either the plaintiff or the defendant.

If an attorney expresses interest in volunteering, Wardell will then disclose the names of both the plaintiff and all defendants, so that the volunteer's law firm can conduct an appropriate investigation of possible conflicts of interest. If there is no conflict and the volunteer lawyer wishes to proceed, he or she will then contact the pro se plaintiff in order to establish the terms and conditions of the volunteer's limited representation. CLC provides the volunteer with the court's form appointment order, on which the plaintiff acknowledges in writing his or her understanding and agreement "to the terms of this Limited Appointment of Settlement Assistance Program Counsel" as well as a "Notice and Consent to Limited Assistance."

After the plaintiff signs one or both of these forms or

another retainer agreement and the court enters an order of limited appointment, the volunteer attorney meets with his or her client to begin preparing for the settlement conference. Most district and magistrate judges in the Northern District of Illinois require the plaintiff's attorney to prepare a letter to opposing counsel stating the client's settlement proposal and the factual and legal bases for it. After interviewing the client and reviewing all relevant pleadings and court orders—as well as any Rule 26(a)(1) disclosures and discovery materials that have been exchanged—the volunteer attorney will assist the client in developing a settlement proposal.

In a letter to Settlement Assistance Program volunteers last year, Chief District Judge Holderman identified the benefits of attorneys' involvement at this stage, writing that, "[w]ithout legal assistance, pro se litigants are often unable to assess the value of their case and to present their best arguments to the other side, and they often expect judges to advise them on how to proceed. Experienced legal counsel can help pro se litigants to evaluate settlement offers and identify the appropriate means of achieving their litigation goals."

The volunteer attorney also accompanies the client to the settlement conference, acts as the client's advocate at the conference, and, if a settlement is reached, assists in the preparation of a settlement agreement and a dismissal order.

Benefits of the Program

Judges, volunteer attorneys, their clients, and defense counsel all recognize the benefits of the Settlement Assistance Program. Chief Judge Holderman notes that, in a substantial majority of the cases that the court has referred to the program, "the parties reached an early resolution that was satisfactory to both sides, saving resources of both the parties and the court." Magistrate Judge Denlow believes that the Settlement Assistance Program "allows judges to play their appropriate roles as neutrals, as opposed to feeling some obligation to give advice and assistance to unrepresented parties," and that the program often relieves the court of the burden of deciding a motion for summary judgment.

Denlow also notes that the program offers valuable "front-line experience" in negotiation and advocacy to volunteer attorneys, especially younger lawyers who "probably couldn't get similar first-chair experience" at their firms. R. Rene Friedman, a Settlement Assistance Program volunteer who is a partner at Sidley Austin LLP, describes her representation of the plaintiff at a settlement conference as "a very positive experience both for me and for the litigant," allowing "the litigant to articulate his position in a way that he would not have been able to do unrepresented. He found that very empowering." Another program volunteer Matthew W. Wolski, a sole practitioner, says that his participation "was rewarding both personally and professionally—personally because I had the opportunity to help someone who otherwise could not have helped himself, and professionally because, as a litigator, you can never have too much insight into how judges think."

Utah Chapter Pro Bono Project

In 2007, the FBA's Utah Chapter established a new program to provide its members with the opportunity to participate in an annual pro bono project related to the practice of federal law. The first pro bono project, designed by Pro Bono Director Jenifer Tomchak, was aimed at ensuring that immigrant victims of domestic violence are afforded the protections that the federal Violence Against Women Act (VAWA) provides.

When immigrant women and children suffer domestic abuse, they may face special hurdles when they try to escape the violence. Women who have lawfully immigrated to the United States based on their husbands' status as U.S. citizens or lawful permanent residents are often afraid to go to the police. Some abusers threaten their wives and children with deportation if they report the cruelty or attempt to leave the abusive environment. To combat this problem, the federal Violence Against Women Act allows immigrant women and children who are victims of domestic abuse to self-petition for legal residency as long as they can prove that they have been battered or subject to extreme cruelty.

Marlene Gonzalez, who is with the Multi-Cultural Legal Center in Salt Lake City, assists applicants in applying for this protection through a VAWA grant from the Office of Crime Victims Reparations. Last year, the Multi-Cultural Legal Center helped 150 battered women and children petition for legal residency. However, the amount of time it takes to instruct victims on how to fill out the application properly and to provide supporting documentation limits the number of applications that the center can process. If the victims' advocates at domestic violence shelters knew how to help victims complete their applications properly, it would save a tremendous amount of time and limited public resources.

Through the Utah Chapter's pro bono project, attorneys volunteered to train victims' advocates at domestic violence shelters on the protections afforded to battered immigrants under VAWA as well as the process for petitioning for legal residency. The Utah Chapter hosted a free 1.5-hour CLE luncheon on March 14, 2007, at which Marlene Gonzalez taught volunteer attorneys about the legal process and the information and documentation that victims must have to complete an application. Volunteer attorneys then signed up in teams to visit a domestic violence shelter in order to train shelter workers on how to help battered immigrants complete their applications and gather the supporting documentation before submitting the materials to the Multi-Cultural Legal Center for filing. TFL

After resolving her case through the Settlement Assistance Program, one litigant wrote to thank her volunteer attorney for his time, effort, and "the generous advice you gave. It was a great help for me and I truly appreciate it. I also felt so much better having someone 'in my corner' during a difficult time." Another litigant whose case was also settled wrote to his attorney, saying, "I know I could not have done any of this without you."

According to Denlow, defense attorneys also appreciate the availability of the Settlement Assistance Program. They are grateful, he says, "for the opportunity to deal with counsel instead of an unrepresented party." It has been Kadish's experience that "defense counsel are usually more reasonable in negotiating a settlement, since they are dealing with attorneys and not the sometimes unrealistic demands of the pro se client." Anna Wermuth, a partner at Chicago's Meckler, Bulger & Tilson, LLP, has represented defendants in settlement conferences in three different cases that included Settlement Assistance Program volunteers. She says that—

Litigating against pro se plaintiffs can present unique challenges for defense counsel, particularly in cases where early resolution presents the best option for both parties. In my experience, the District Court's Settlement Assistance Program has helped to ameliorate some of those challenges. During the course of the settlement negotiations in which I participated, it became evident to me that the appointed lawyers successfully educated the pro se litigants about the litigation process, the legal merit of the claims involved, and the appropriate valuation of the case for settlement purposes. On the whole, my clients have benefited greatly from the Program.

Future of the Program

The Settlement Assistance Program recently began accepting prisoners' rights cases on a pilot basis for one year. Judge Holderman says that this initiative presents "an excellent opportunity to assist both the court and a unique population in need of the volunteer lawyers' skills and training."

The success of the Settlement Assistance Program in the Northern District of Illinois has not gone unnoticed elsewhere. Recently, Magistrate Judge Kristen L. Mix of the U.S. District Court in Colorado contacted Wardell and Denlow about setting up a similar program in her district, perhaps recognizing that, as Wardell says, "the adversarial system functions more fairly when both parties are represented by counsel." TFL



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