

Colorado's Federal Pro Se Clinic – First Steps

by Sabra Janko



Sabra Janko is the project attorney for the Colorado Bar Association's Federal Pro Se Project and an attorney at JLaw, where she specializes in divorce and family law and mediation practice that includes military and veterans' legal issues.

Colorado's first Federal Pro Se Clinic is off to a strong start assisting pro se litigants who would be on their own otherwise. The Clinic is funded by the United States District Court for the District of Colorado and operated by the Colorado Bar Association. The Clinic operates on the "give a man a fish" approach, empowering pro se litigants to represent themselves by "teaching them to fish," to the extent possible, while recognizing their unique limitations in the complex federal court system. Our goal is to equip pro se litigants with the tools to navigate the court system.

Through the Eyes of a Litigant

"Toto, I've a feeling we're not in Kansas anymore."

Many litigants come to the Clinic after having received an order or a motion, not understanding what it says or what to do. They may feel like they have stepped into the Land of Oz, with everything uncertain. The Judge seems like "the Wizard" - mysterious and unknowable. Opposing counsel seems like the "Wicked Witch of the West." They search for "Glinda the Good Witch" —pro bono counsel—but for many, she never appears.

The Clinic assists litigants in unraveling the mystery, helping them understand pleadings, motions, and orders. We also assist litigants in formulating claims. It is not unusual for litigants, without assistance, to submit their complaints in a long narrative about a series of events that have happened in their lives - "the Tornado." This is because they are expressing their problems in the way that they understand them - as they would explain the problems to a friend. These life problems are immensely important to them, whether they have legal merit or not.

There is no life experience that prepares those without legal training to think of their problems in terms of "elements" and to express them that way. Consequently, judges often have difficulty understanding whether the narratives represent viable claims. However, with the assistance of a claim sheet setting forth the elements of individual claims, a clinical attorney can talk a litigant through the elements in a conversational manner to assist litigants in exploring their relevant facts. The litigants can take the claim sheets with them to use when drafting their

complaints. This allows litigants to better understand how to frame their life problems in terms of violations of federal law or constitutional provisions, and to separate the legal "wheat" from the "chaff."

Litigants rarely realize the complexity of the federal court system upon initial entry. They may tend to think of the court system in the simpler sense of a parent trying to resolve a dispute between two children by listening to each child's story and then deciding how best to resolve the dispute. Yet, the law is much more complicated than that. No common life experience prepares a person without legal training to procure, produce, and authenticate evidence using formal rules to articulate and prove his or her case.

Our goal is to empower the Pro Se "Tinman" to have a "legal" heart, the Pro Se "Scarecrow" to have a "legal" mind, and the Pro Se "Lion" to have the courage to proceed pro se in the adversarial system, if that is what he or she chooses to do.

Through the Eyes of the Court

"Yes, sir. Yes, your honor. You see,... a while back, we were walking down the yellow brick road. And..."

Judges want to be as fair as possible, but cannot provide legal advice to litigants or act as their advocates. Additionally, as judges operate under heavy caseloads, their time is a valuable commodity, and they are limited in how much of it they can spend explaining procedures to pro se parties. The Clinic continues to try to improve the ways that we can take some of the burden of explaining the process off of the judges so that they can spend their time doing what only they can do - evaluating the parties' submissions and evidence and issuing opinions and orders.

The Benefit to Litigants and the Court

"I could while away the hours conferrin' with the flowers, consultin' with the rain. And my head I'd be scratchin' . . ."

Sometimes when pro se parties and courts interact, both the litigants and the Court end up "scratchin'

their heads.” Assistance with better claim articulation benefits both litigants and courts. Litigants can move further in the litigation process and judges can spend less time sifting through long narratives digging for claims. Also, help through an explanation of motions and orders alleviates some of judges’ burden of having to articulate basic civil procedure to litigants. Assistance in identifying claims that are not appropriate for federal court points litigants in the right direction to find a solution and reduces the number of actions filed that are outside of federal court jurisdiction.

Magistrate Judge Gordon P. Gallagher, who oversees the District’s Pro Se Intake Division, led the charge for the clinic, together with Magistrate Judge Kristen L. Mix. Judge Gallagher observes:

The Pro Se Intake Division reviews more than three hundred cases per year from non-prisoner pro se filers. It is of significant aid to the Court to have the ability to recommend that pro se litigants contact the Federal Pro Se Clinic for assistance with their cases. The Clinic has the capability to help those with cognizable claims to better state their cases, thus avoiding dismissal. Conversely, the Clinic can provide appropriate direction to litigants who may not have a valid action, or who may be proceeding in the wrong court or prior to exhaustion of a necessary administrative proceeding. Justice is better served for all when litigants have the legal resources to make informed decisions about their cases.

Clinic Services

The Clinic offers limited-scope advice and counsel services in 45-minute appointment settings. Between June and November of 2018, the Clinic assisted 127 litigants and had 223 consultations. Twenty-eight percent of litigants returned for subsequent appointments; one litigant came back nine times. The more times that a litigant returns, the more familiar we can become with the case and the more in-depth assistance we can provide. The Clinic assists litigants across the state of Colorado. Those who live in the Denver metropolitan area are asked to meet in person for the first appointment. Those who live farther away can schedule telephone consultations.

Assisting litigants is a clinical team comprised of one Project Attorney/Administrator and one part-time paralegal student Intake and Office Coordinator. As Project Attorney, I knew that the Clinic was making a difference when one litigant said to me: “With some people I feel like a name, and with some people I feel like a number - and with you, I feel like a name.” Jessica Harner, the Clinic’s Intake Coordinator, says: “From their intake through the moment when they are sitting with Sabra discussing their cases, we are fulfilling a very basic need - listening to those who don’t feel heard.”

Magistrate Judge Mix observes:

It is clear that the pro se litigants who have been seen at the Clinic have received legal advice that would otherwise be unavailable to them. Judges have noted increased efficiency in cases involving these litigants, which of course means improved access to justice for them and other court users as well.

Preliminary Statistics of Note

The top three types of cases seen in the Clinic so far are employment discrimination, civil rights, and Social Security final agency



Jessica Harner

decision appeals. Initial demographics show that 22% of pro se litigants have an undergraduate degree and some have a graduate degree. Forty-five percent are unemployed. About ten percent are advised that they do not have a matter appropriate for federal court filing and are referred elsewhere.

Sample Clinic Cases

Title VII Discrimination Claim Assistance

“Calpurnia” (not her actual name), a female, came to us after being terminated from her employment. She had already submitted a complaint in the form of a long narrative letter explaining a number of matters that dissatisfied her about how her employer had treated her throughout the course of her employment. She had filed a complaint with the U.S. Equal Employment Opportunity Commission and brought her right to sue letter with her. Calpurnia had received an order to amend her complaint to more clearly state her claims and requiring her to use the Court’s standard complaint form. Calpurnia said that her employer told her that she had been terminated for breaking a backhoe. However, Calpurnia believed that the termination was because of her gender. She said that men had broken equipment and were not terminated. The Project Attorney provided her with a copy of our Title VII claim sheet and walked her through the elements to help her think through and better formulate her claim. We also went over the Court’s employment discrimination complaint form with her to help her understand how to complete it.

Deferral To Administrative Remedy

“Atticus” (again, not his actual name) came to the Clinic to file a case for denial of a naturalization request. Upon reviewing his paperwork, we learned that he had not provided the agency administrative review board information that it had requested about his criminal record. The Project Attorney called Catholic Charities, a non-profit association that provides free assistance in immigration matters, and determined that Atticus could reapply at the administrative level, allowing him to submit the missing

and critical information in his possession that had not yet been considered. Therefore, this case was addressed more appropriately to additional administrative action rather than a federal court proceeding. We assisted Atticus in setting up an appointment with Catholic Charities, and this case was not filed.

Advisory Committee

The inaugural Advisory Committee for the Clinic has met three times and is comprised of members from the District, the Colorado Lawyers Committee, Colorado Legal Services, and the Colorado Bar Association. Members are: Magistrate Judge Mix; Edward Butler, the District's Legal Services Officer; Connie Talmage, Colorado Lawyers Committee; attorneys Mark Schwane (Committee Chair), Kenneth Rossman, and Cheyenne Moore; and Maureen "Reenie" Terjak, Colorado Legal Services.

Deserving of a very special mention is Committee Member Kenneth Rossman's firm, Lewis Roca Rothgerber Christie LLP, which obtained, adapted into our District's format and rules, and donated to the Clinic a number of litigant assistance materials that were generously shared by the Federal Pro Se Clinic of the Western Division of the District Court for the Central District of California. These materials are of tremendous assistance to pro se litigants.

Moving Full Speed Ahead

The Advisory Board has formed a "Plain Language" Subcommittee, with Cheyenne Moore as Subcommittee Chair and Edward Butler as District representative, to examine parallel processes for translation of District forms and instructions and litigant assistance materials into language easier for the self-represented litigant to understand. The plain language process is a fine art, as materials translat-

ed from legalese to plain language must be easy to understand, yet retain sufficient legal meaning.

The Clinic has other plans on the horizon as well, such as finalizing a start-to-finish PowerPoint overview of the federal court process to present to pro se litigants informing them of the "big picture" view, as the 45-minute appointment sessions allow for only a much narrower focus. Also ahead is the creation and presentation of a federal court "Unbundled Roadshow" to take limited scope assistance "on the road." The "show" will be presented by District and Clinic personnel to educate attorneys and judges about federal court limited scope assistance and representation, and to identify volunteer opportunities with the District's Civil Pro Bono Panel and the Clinic.

We are also in the process of launching a volunteer pilot project offering limited scope clinical advice and assistance opportunities, as well as other opportunities such as intake, research, adapting litigant assistance materials to our District, translating litigant assistance materials into "plain language," "help desk" staffing, or pretty much any assistance or skill that a volunteer has to offer. Opportunities are available not only for attorneys, but also for paralegals and others interested in assisting pro se litigants in the federal courts. Don't forget that Colorado-licensed attorneys can receive CLE credit for pro bono service.

Reprinted by permission of the Faculty of Federal Advocates.*

**This article first appeared in the Fall 2018 newsletter of the Faculty of Federal Advocates (FFA), an organization of Colorado attorneys dedicated to improving the quality of legal practice in federal court by enhancing advocacy skills, professionalism, and the integrity of practice. For more information, please see the FFA's website, <http://www.facultyfederaladvocates.org/>.*

**Missing
Your Target
Market?
Hit the
Bullseye
with Our
Reach**



***Partner with the Federal Bar Association today—
contact Jordan Weiss, at jweiss@fedbar.org to hit your target!***