

March 15, 2002

Hon. Norma Holloway Johnson
Chief Judge
United States District Court
for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Hon. Gladys Kessler
Judge
United States District Court
for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *Advisory Committee on Pro Se Litigation*

Dear Chief Judge Johnson and Judge Kessler:

I am pleased to transmit the Tenth Annual Report of the Advisory Committee on Pro Se Litigation on the Operation of the Civil Pro Bono Panel, 2000-2001.

The Panel was established in 1991 by what is now Local Civil Rule 83.11 (formerly Local Rule 702.1). That rule also established a committee of lawyers who practice before the Court, designated as the Advisory Committee on Pro Se Litigation, to oversee the Panel and to report annually on the Panel's operation.

The Committee's activities over the past year and plans for the coming year are set forth in the enclosed report. The Indigent Civil Litigation Fund, Inc., with which the Advisory Committee maintains close contact, submits its own annual report. A copy is enclosed for the Court's convenience.

It is my pleasure to recognize once again the "hard core" members of the Committee who have continued to take time from their busy schedules to attend our meetings and to plan and conduct our activities. We have had some retirements from the Committee and some new members have joined us. Of special note, Eric R. Lotke, who had been an active and thoughtful member, withdrew when he left the D.C. Prisoners' Legal Services Project to assume other responsibilities at the Research Policy Reform Center. I recommend that as new members are named to the Committee, they be advised in the letter of appointment that attendance and participation are conditions of the appointment.

Finally, I extend heartfelt thanks to the Court's dedicated Pro Se Staff Attorneys—Carol G. Freeman, Addie D. Hailstorks, Michelle L. Sedgewick and Michael J. Zoeller—for their commitment and help. They are a priceless asset for the Court and truly essential to the Committee's work. It has been my pleasure to work with them.

As my term on the Committee will expire later this year, this is the last (of three) annual reports for which I will have had responsibility. It has been an honor to serve on and to chair the Committee, and I look forward to being of assistance in effecting a smooth transition to my successor. As I prepare to turn the gavel over to that successor, I would like very much to express my personal appreciation to the Court for affording me the opportunity to serve, to Professor (as he now is) Myles Lynk, for drafting me in the first place, to Sally Gere for having provided such a fine role model as my immediate

Hon. Norma Holloway Johnson
Hon. Gladys Kessler
March 15, 2002
Page 2

predecessor in the chair, and to the friends with whom I have had the privilege and pleasure of serving.

Respectfully submitted,

Eugene R. Fidell
Chair

Enclosure

cc(w/encl):

The District Judges, Senior District Judges and Magistrate Judges
Nancy Mayer-Whittington, Clerk of the Court
Joseph Alexander, Administrative Assistant to the Chief Judge
Jill C. Sayenga, Circuit Executive
Nancy E. Stanley, Director, Alternative Dispute Resolution Programs
Members of the Advisory Committee on Pro Se Litigation
Mortimer M. Caplin, Esq., President, Indigent Civil Litigation Fund, Inc.
John W. Nields, Jr., Esq., President, The District of Columbia Bar
Stephen J. Pollak, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADVISORY COMMITTEE ON PRO SE LITIGATION
TENTH ANNUAL REPORT ON THE OPERATION
OF THE CIVIL PRO BONO PANEL

2000-2001

Avis E. Buchanan
Lovida H. Coleman, Jr.
Eugene R. Fidell, *Chair*
Sharon Cummings Giles
Karen T. Grisez
Christopher J. Herrling
Eric R. Lotke
Dwight D. Murray
W. Mark Nebeker
Robert D. Okun
Alan A. Pemberton
Anthony T. Pierce
John P. Relman

Michelle A. Roberts
Jeffrey D. Robinson
Sidney R. Smith, III
Maureen Thornton Syracuse
Donald A. Thigpen, Jr.
John C. Yang

Carol G. Freeman, *Ex Officio*
Addie D. Hailstorks, *Ex Officio*
Michelle L. Sedgewick, *Ex Officio*
Michael J. Zoeller, *Ex Officio*

Liaison Judge

Hon. Gladys Kessler

June 1, 2001

TABLE OF CONTENTS

	<i>Page</i>
Introduction	1
Civil Pro Bono Panel Membership and Appointments (April 1, 2000 to March 31, 2001)	2
Appointments of Pro Bono Panel Members for the Limited Purpose of Representing Indigent Pro Se Litigants in the Court’s Alternative Dispute Resolution Program.....	2
Revision of Local Civil Rule 83.11	3
Annual Reception.....	3
Advisory Committee Activities and Plans	4
A. Recruitment	4
B. Training	4
C. Mentoring	5
D. Information Packets for Pro Se Litigants	5
Indigent Civil Litigation Fund, Inc.....	5
Conclusion.....	6
Exhibits	
Minutes of Advisory Committee Meetings	
2001 Report of Indigent Civil Litigation Fund, Inc.	

Introduction

This is the Advisory Committee's tenth report. Meeting four times this year,¹ we monitored the flow of pro se filings and the operation of the Civil Pro Bono Panel as the primary source of appointed counsel;² co-sponsored a training program on *Representing Prisoners in the District of Columbia* and the annual reception to honor participating members of the Court's bar; and continued our efforts to recruit additional Panel members and to make mentors available for appointed counsel in the main pertinent practice areas. The Committee's outreach efforts included a positive article in the Bar's newsletter and posting of information on the Court's website.

The Committee has a hard core of regular attenders and active participants. In making future appointments, the Court may again wish to stress the importance of attendance at meetings, and meeting attendance should, in all fairness, be taken into account in making decisions concerning reappointment. The Committee's next meeting is scheduled for September 12, 2001.

Panel members who accept appointments, perform a vital role in the Court's efficient and effective administration of justice in cases filed by pro se litigants. Civil actions filed by pro se litigants regularly comprise about one-third of all civil actions docketed by the Clerk.

Between April 1, 2000 and March 31, 2001, the Clerk issued 77 letters of appointment under Local Civil Rule 83.11. Of that number, there were 33 appearances and 44 withdrawals. In many cases there was more than one appointment. Thus, the numbers reflect actual appointments and not the number of *cases* in which appointments were made.

Appointments continue to be made predominantly in cases filed by prisoners pursuant to 42 U.S.C. § 1983 (52 appointments) and in cases filed by non-prisoners asserting employment discrimination (17 appointments). There were also three appointments made in FOIA cases, two appointments in a case brought under the Federal Tort Claims Act, and one each in cases raising claims of medical malpractice, habeas corpus and a non-prisoner's suit under 42 U.S.C. § 1983.

Reappointments appear to have been made in more cases this past year than in previous years, particularly in prisoner filings. There were 19 appointments in 14 non-prisoner cases, in contrast to 58 appointments in 37 prisoner cases.

The Court's needs are being met, but not always in a timely manner. Because each appointment essentially stalls a case for 30 days, the increasing need for re-appointments, particularly in prisoner cases, may stall a case for much longer. The challenge continues to be one of broadening the base of the Panel so that the burden of accepting appointments may be spread more equitably. A larger Panel may also enable Panel members to accept the few cases they receive and better ensure that the Panel's ability to meet the Court's needs is not compromised if one or more of our most reliable traditional

¹ Meetings were held on September 20 and November 14, 2000, and February 20 and May 22, 2001. Copies of the minutes for the first three of these meetings are reproduced in the Appendix; minutes have not yet been approved for the fourth meeting.

² Judges of the Court occasionally appoint non-Panel attorneys under LCvR 83.11(a)(13). These appointments are not addressed in this report.

sources becomes unable to maintain its level of commitment. Despite the Court's and the Committee's efforts, a disproportionate burden is still being carried by a relatively small cohort of firms and practitioners.

***Civil Pro Bono Panel Membership and Appointments
(April 2000 to March 2001)***

The Court may appoint counsel from the Civil Pro Bono Panel when a pro se litigant has been granted leave to proceed *in forma pauperis*. Local Civil Rule 83.11 governs the establishment of the Panel and the appointment process. The Panel currently lists 137 members, consisting of large- and small-firm attorneys and sole practitioners. The breakdown of these by category of cases in which counsel expressed a willingness to accept appointment appears in the table immediately below.

Table 1. *Panel Member Preferences*

Case Type	Panel Members
Prisoner's Rights	38
42 U.S.C. § 1983	55
Employment Disputes	73
FOIA	48
Social Security	46
No Preference	13
Other	19

***Appointments of Pro Bono Panel Members for
the Limited Purpose of Representing Indigent
Pro Se Litigants in the Court's Alternative
Dispute Resolution Program***

The Court continues to have a pilot program for appointing Panel attorneys and other volunteers for the limited purpose of mediation through the Circuit Executive's ADR program. During this past year, the Court made 11 appointments in eight cases. Based on the information obtained to date, the pilot program appears to be functioning successfully. After the summer recess the Committee intends to consider whether the program should be made permanent.

Revision of Local Civil Rule 83.11

Local Rule 702.1 (now LCvR 83.11) was adopted on January 16, 1991. Based primarily on proposed revisions submitted by the Advisory Committee in 1995 and 1998, the Court adopted a

revised Local Civil Rule 83.11 in March 2001. These changes must be published for public comment before becoming effective. It is anticipated that the rule change will be published this summer. L. Graeme Bell, a former member of the Advisory Committee, was chair of the subcommittee that generated the initial draft of the revised rule.

Annual Reception

On December 5, 2000, the Court hosted a reception in the Judges' Dining Room for members of the Civil Pro Bono Panel, approximately 60 of whom were able to attend. As in the past, the date was selected to coincide with an Executive Session of the Court so that as many judges as possible would also be able to attend. Chief Judge Johnson presented Certificates of Appreciation to Panel members in attendance who had accepted an appointment within the preceding year. As Liaison Judge to the Advisory Committee, Judge Kessler also thanked Panel members in attendance for their service to otherwise unrepresented litigants. Panel members who were unable to be present received their certificates by mail.

The reception was again catered by Untouchable Taste Catering, an arm of the See Forever Foundation. See Forever is a nonprofit corporation dedicated to working with teens who have come into contact with the juvenile justice system and to helping them to complete their high school education, develop job skills and become productive members of society. This year's reception involved a very appetizing array of food and drink. Total food and floral costs, paid from the Court's budget, were \$1,147.50, substantially less than the \$1,932.80 in 1999.

The firm of Fried, Frank, Harris, Shriver & Jacobson generously defrayed the costs of beverages.

A good number of active and senior Judges were able to attend the reception this year. Panel members receive psychic and professional rewards for their efforts. The Committee hopes that Judges' schedules will again permit them to take time to come by next year's reception to thank appointed counsel personally.

Committee member Karen T. Grisez has this all down to a science. Thank you, Karen, for doing such an outstanding job organizing this successful event yet again.

Advisory Committee Activities and Plans

A. Recruitment

The Recruitment Subcommittee works to identify and engage new volunteers for the Panel. Additionally, the subcommittee works closely with the Training and Mentoring Subcommittees to strengthen retention of Panel members. Judges and Pro Se Unit staff attorneys provide valuable support for the recruitment effort.

A Pro Se Unit attorney attends the Court's monthly admission ceremony to disseminate information, answer questions, and encourage new admittees to register with the Panel. These efforts, together with promotional information in Bar publications and at Bar sponsored events have ensured an adequate complement of Panel members. Nonetheless, the Judges may wish to use the admission ceremony as an opportunity to emphasize, in their own words, the importance of Panel membership to the administration of justice. We believe this is potentially one of the Court's most powerful recruiting tools. In this regard, members of the Advisory Committee have expressed a willingness to enter brief cameo appearances at admission ceremonies to say a few words about the Panel.

Recognition of the efforts of current Panel members can serve as a catalyst for new members joining the Panel. The Annual Reception is quite beneficial from this perspective.

Information concerning the Panel is available on the Court's website. Unfortunately, security concerns preclude on-line registration for the Panel.

B. Training

The Training Subcommittee is continuing its efforts to identify additional training to assist the attorneys on the Pro Bono Panel. The Advisory Committee anticipates sponsoring a brown bag luncheon of approximately 1 to 1½ hours this fall, with a discussion that focuses on new issues of interest to Panel members, including a variety of issues relating to the increased supervision of District of Columbia prisoners by the Bureau of Prisons and the United States Parole Commission.

The Advisory Committee hopes that space can be made available at a convenient location in the Courthouse, such as the Judges' dining room, for as many as 25 interested attorneys. The Advisory Committee will also continue to consider the need for additional training on other topics as needs may arise, and will schedule other sessions, as appropriate.

C. Mentoring

The Committee continued its program of identifying experienced attorneys who are willing to serve as informal resources for Panel members who have received appointments outside their usual practice area. The Committee believes that these experienced attorneys will be invaluable resources for Panel members by helping brainstorm on potential causes of actions or defenses and giving practice pointers at key stages in the litigation. Over the past year, we brought the mentoring program to the attention of Panel members and received a handful of requests to link up mentors with mentees. We propose to continue the program for next year.

Further information is available from Mentoring Subcommittee Chair Anthony T. Pierce of Akin, Gump, Strauss, Hauer & Feld, LLP at (703) 891-7570.

D. Information Packets for Pro Se Litigants

Courts across the country are trying to make civil litigation more accessible to the growing number of litigants who are unrepresented by counsel. In this Court, pro se litigation accounts for roughly one-third of the civil caseload. Of these litigants, only about 4% had counsel appointed to represent them. For all the rest, chambers staff and Clerk's Office personnel are left to field questions from pro se litigants and walk the fine line between providing assistance on procedural matters and giving legal advice. The Committee's agenda for 2000-2001 included a project designed to create information packets for civil pro se litigants that can be distributed by court staff. We hope to move forward with this project in the coming year. The current plan is for the first packet to contain basic information on how to negotiate the court system, how to obtain counsel, and the like. The packets will be submitted to the Judges in draft for their approval. This project remains an open item and we will return to it after the summer recess.

Indigent Civil Litigation Fund

The Indigent Civil Litigation Fund, Inc., was created by the Court in 1991 to provide assistance with the expenses of litigation for attorneys providing legal services by appointment from the Civil Pro Bono Panel. From June 30, 2000 until the most recent meeting of the Fund's board of directors on May 24, 2001, the Fund had paid no claims. One claim for an advance of expenses was approved at the May 24, 2001 meeting in the amount of \$400.00. No other claims are pending at this time. As of the May 24, 2001 meeting, the Fund's bank balance was \$13,682.65. Requests for reimbursement continue to be infrequent. The Board of Directors remains ready to pay promptly all claims properly made, and to raise additional funds should that prove necessary.

The Fund's 2001 report to the Court is reproduced in the Appendix for convenience.

Conclusion

Readers who received the Committee's Ninth Report may recall the rather gloomy assessment it offered:

. . . The District of Columbia bar remains highly committed to public interest activities. But it must be acknowledged that the growing economic pressures associated with higher law firm salaries, competition for business, and, to an increasing degree, the shift of business from the District to Northern Virginia, may cumulatively erode that historic commitment.

Some who read these tea leaves may draw the conclusion that the golden age of pro bono work in the District of Columbia is drawing to a close, if, indeed, it has not already ended. It is probably premature to reach that conclusion, but the factors cited above strongly suggest that it will become increasingly difficult to meet the Court's needs with regard to assisting litigants who would otherwise appear pro se, much less to spread the burden of meeting those needs on a more equitable basis, as we have hoped to do. The Committee will continue to be alert to this sea change, and will advise the Court if a redirection of efforts is called for.

Events in the intervening year have done little to allay these concerns or to suggest that the Committee or the Court can relax their guard.