

## Task Force Seeks Solutions to Courts' Pro Se Caseload

Through its Task Force on Self-Represented Litigants, the Ninth Circuit is helping federal courts find ways to contend with the growing number of *pro se* cases in which at least one of the parties is self-represented.

Self-represented litigants are generally less familiar with the law and legal procedures. Thus, *pro se* cases pose special challenges for judges and often demand more services from court staff. *Pro se* cases now constitute roughly one-third of all civil filings in the Ninth Circuit with the problem most acute in the district courts, where trials are conducted.

In 2002, the Task Force on Self-Represented Litigants was established to advise the Judicial Council of the Ninth Circuit, governing body for the federal courts in the West, on what courts might do or do better to deal with the situation. The task force represented a cross section of judges, lawyers, academics and court staff from throughout the circuit. Members were named by Chief Judge Mary M. Schroeder, who selected District Judge James K. Singleton of Anchorage to serve as chair.

In November 2004, the task force released an interim report and recommendations on how to improve administration of cases either filed or defended by unrepresented litigants. The report was announced publicly and published online. Public comment was received from individuals and groups.

Task force members were organized into subcommittees that focused on different areas of concern and issued recommendations in each. The subcommittee on case management, for example, looked into staffing and other case management proposals to reduce the amount of time a judge spent on *pro se* cases. The subcommittee sought to determine how courts staff screen *pro se* cases, and made recommendations and suggestions on these processes. While the effort focused on district courts, data was collected from the Court of Appeals and bankruptcy courts as well.

Working through the Office of the Circuit Executive, the case management subcommittee also surveyed some 78 *pro se* law clerks to gauge where most of their work time was spent. The survey found that, on average, *pro se* law clerks spent 91.2 percent of their time on prisoner cases.

Another subcommittee investigated the use of *pro bono* counsel to represent self-represented litigants in the district courts. The subcommittee reviewed current practices in the district courts and made recommendations regarding the minimum that should be done to ensure the availability of *pro bono* counsel

where appropriate, and certain additional approaches worthy of consideration. The subcommittee also commented on what might be done, at both the district and circuit levels, to ensure the effectiveness of existing *pro bono* appointment programs throughout the circuit.

Other subcommittees were assigned to:

- Investigate what efforts have been made to cooperate with prisons and prosecutors, leading to a survey of all prisons within the Ninth Circuit, and ad hoc contact with defendant agencies.
- Study and evaluate what self-help materials are now available to *pro se* litigants in general; whether such materials are accessible and being utilized; whether the use of such materials is helpful to the litigant or the court; and whether more or different materials would be beneficial.
- Provide additional educational resources for *habeas corpus* due to the complex substantive and procedural issues, the pace at which the law in this area changes, and the incarcerated status of *habeas* litigants, which poses unique challenges. The subcommittee was cognizant of a concern expressed by a majority of the task force members that any information coming from a court, or appearing to come from a court, should not cross the line between presenting information and giving legal advice.

## Task Force Seeks Solutions continued

- Organize future collection of data from each of the districts within the Ninth Circuit in order to better understand the issues posed by *pro se* litigation. The subcommittee noted that beyond basic statistical reports from the Federal Judicial Center, there has been very little research on *pro se* issues in the Ninth Circuit.

The subcommittee conducted interviews and surveys to assess (1) procedures for review of claims related to *in forma pauperis* applications, (2) district standards for appointment of counsel, and (3) *pro se* law clerk functions.

The task force received 23 responses from external organizations, government officials, *pro se* litigants and community members. Among them were individuals who had appeared in *propria persona* in the courts or who wrote on behalf of interest groups of *pro se* litigants. The comments pointed to a need for courts to improve the quality of and access to legal counsel and *pro se* services. Suggestions included self-help centers similar to those in the state courts; collaboration with community partners; making court materials more understandable to average citizens and translating them into foreign languages; and possible use of form pleadings for certain cases.

All public comments were considered by the task force and some specific revisions were made to the report based on the recommendations that were received. The task force is considering holding public hearings next year to review the report further and respond to comments. The report and recommendations may be considered by the Judicial Council of the Ninth Circuit in 2005.



## Court of Appeals Among First to Recognize *Pro Se* Trend

The Ninth Circuit Court of Appeals has a well established and successful *pro se* program that may serve as a model for trial courts of the circuit as they consider ways to better screen and process cases involving self-represented litigants.

One of the first circuit courts to recognize the *pro se* trend, the Ninth Circuit organized a *pro se* unit working within the Office of Staff Attorneys in 1992. In 2004, the unit included an attorney, a case administrator and three paralegals who:

- Conduct initial review and early disposition of deficient, vexatious or meritless *pro se* appeals, and the case management of other *pro se* appeals.
- Coordinate and manage the court's *pro bono* program in the review of meritorious or complex *pro se* appeals and the location and appointment of counsel to provide further briefing and argument.
- Provide general assistance to *pro se* litigants and to court staff dealing with unusual or particularly difficult litigants or cases.

*Pro se* appeals have traditionally constituted approximately one-third of the Ninth Circuit Court of Appeals docket. At least half of all *pro se* cases are disposed of prior to the completion of briefing, either through jurisdictional dismissals or dismissal for failure to prosecute. Most of the remaining appeals are presented on the merits to oral screening panels for disposition. Of those that go forward to be calendared before an argument panel for disposition, most have *pro bono* counsel appointed to represent the litigant, and to file supplemental briefs on their behalf and to appear at oral argument.

With these mechanisms firmly in place for the last dozen years, the Ninth Circuit Court of Appeals has been able to very effectively manage its growing *pro se* caseload while continuing to provide due process, assistance and justice for these litigants.