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Pro Se Pro Bono ADR Program pairs plaintiffs with pro bono attorneys for ADR process

By Shelly Anderson

When a pro se litigant comes up against the local mandatory ADR program in the U.S. District Court for the Western District of Pennsylvania, essentially requiring mediation, arbitration or early neutral evaluation within 60 days of the initial case management conference, it can be an uh-oh moment.

However, that critical juncture in a case for those who for whatever reason don't have legal representation doesn't have to be so daunting, thanks to the Court's Pro Se Pro Bono ADR Program.

Launched in 2006-07 and expanded in 2013 to include incarcerated pro se litigants who have filed civil cases, the program pairs plaintiffs with pro bono attorneys for the ADR process.

The court administers the program, with judges holding sole discretion over which cases to recommend to the program. Members of Jones Day Law – specifically Kelly Locher and Joe Parsons, with an assist from pro bono partner Matt Divelbiss as well as others – coordinate the process by managing a pool of volunteer attorneys.

"It's a program that we are very passionate about," Locher said. "One of the notable parts about the program is the breadth of cases and subject matter that we see."

Those can be prisoners' rights cases, labor and employment cases, employment discrimination cases, defamation cases and many others.

"For some of those more specialized cases, we work really hard to find a volunteer in the Pittsburgh area," Locher said. "For example, employment law is a specialized area, or health care – we'll try to find someone that that's their forte."

Parsons calls it "sort of a referral service."

Divelbiss has observed several of the program's mediations and has been impressed.

"They're just like they are when you have a non-pro bono (attorney)," Divelbiss said. "For any number of these litigants, it makes a real difference in their lives."

"For a lot of the litigants we represent, the pro se mediation process is really the first time they've had an opportunity to speak with a lawyer and get a realistic assessment of the value of their case. We frequently have litigants who have very high expectations for their case and when you have an opportunity to understand the pitfalls with an attorney helping them, and then to hear ... the mediator's concerns, that can really affect how the litigant perceives his or her case and can ultimately help push the case toward successful resolution."

According to Locher and Parsons, statistics through early May of this year (yes, the program proceeded virtually through the COVID-19 pandemic) show that there had been nearly 130 referrals since the program's inception, perhaps 12 to 15 per year, although that can fluctuate. Nearly 50 percent of the cases that go through the Pro Se Pro Bono ADR Program get resolved.

"It's a pretty effective little process," Parsons said.

U.S. District Court for the Western District of Pennsylvania Magistrate Judge Lisa Pupo Lenihan agrees.

"It's been excellent," she said. "It's good to have an attorney advise (litigants) so that the unrepresented person doesn't take perhaps less than they should in a settlement because they're unable to advocate for themselves."

Lenihan noted that while this is the court's program, "Jones Day really has done 90 percent of the work. They have been a tremendous help to us."

One other benefit is experience for the pro bono lawyers.

"Typically, but not always, it's a younger attorney who's looking for some experience, some on-your-feet type of experience, working to resolve a case, getting to interact with the court, being counsel of record for a litigant," Parsons said.

Lenihan said she has even occasionally seen a lawyer in the program whose case isn't resolved during ADR agree to continue to represent the client pro bono at trial outside of the program because they believe strongly in the merits of the case.

Parsons, Locher and others at Jones Day at times have served as pro bono lawyers in the program, but they are happy to include many others.

"We've had participation from nearly 30 law firms, solo practitioners, local law school students who are supervised ... but we are always looking to get more folks involved and appreciative of interest in the program," Locher said.

Attorneys interested in joining the volunteer pool or learning more about the program can contact Locher at klocher@jonesday.com or Parsons at jparsons@jonesday.com. ■