

PRO BONO PROGRAM PAMPHLET

for

CIVIL APPEALS

IN

**THE COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS
AT FORT WORTH, TEXAS**

PREPARED BY

THE STATE BAR OF TEXAS APPELLATE SECTION

PRO BONO COMMITTEE

AND

THE TARRANT COUNTY BAR ASSOCIATION APPELLATE SECTION

APRIL 16, 2011

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I. INTRODUCTION

This pamphlet from the State Bar of Texas Appellate Section's Pro Bono Committee ("Committee") and the Appellate Section of the Tarrant County Bar Association is designed to explain the Pro Bono Program available in the Second District Court of Appeals at Fort Worth, Texas ("Second Court of Appeals" or "Court"). We have prepared this pamphlet to help laypersons and attorneys with little or no appellate experience. But it is not intended to replace the Texas Rules of Appellate Procedure and should not be cited as legal authority. Litigants are required to comply with the rules and the case law. Litigants should consult the Court's own rules and practices which can be found under the heading "Practice Before the Court," on the Court's own website at <http://www.2ndcoa.courts.state.tx.us/> ("Second Court Practice Guide").

This pamphlet reflects the rules and case law as they exist in January 1, 2010. The rules and case law are always subject to change and should be consulted for changes. This pamphlet is available in an alternative format, upon request.

All documents submitted to the court must be filed with:

In Person and By Mail:

Clerk, Second Court of Appeals

Tim Curry Criminal Justice Center

Second Court of Appeals

401 W. Belknap, Suite 9000

Fort Worth, Texas 76196

A copy of all documents filed with the court must be served (mailed or hand delivered) on all other parties to the appeal. Tex. R. App. P. 9.5.

II. PRO BONO PROGRAM

The State Bar of Texas Appellate Section Pro Bono Committee and the Appellate Section of the Tarrant County Bar Association ("Pro Bono Committee"), has established a Pro Bono Program ("Program") to place a limited number of civil appeals with appellate counsel who will represent the appellant before the Second Court of Appeals. The Program seeks to match clients who are financially unable to obtain legal representation with volunteer lawyers who agree to serve without expectation of compensation for their service.

If you lack the financial means to pay for an appellate attorney and indicate your desire to be included in the Pro Bono Program, as explained in this Pamphlet, you may be considered for participation in the program. Even if you had paid counsel in the trial court, you can indicate your interest in seeking a pro bono attorney through this Program if you can no longer afford an attorney to represent you on appeal. PLEASE NOTE: There is no guarantee that, if you submit this case for possible inclusion in the Pro Bono Program, the Pro Bono Committee will select your case and that pro bono counsel can be found to represent you. Accordingly, you should not forego timely filing your notice of appeal and seeking other counsel to represent you in this proceeding.

A. DISCUSSIONS ABOUT AN APPEAL.

The Court encourages litigants to

obtain counsel to represent them on appeal. Those desiring to pursue an appeal must file with the trial court clerk, and provide a copy to the Clerk of the Court of Appeals, a Notice of Appeal in a manner which satisfies the pertinent rules. A form for that Notice is available in the office of the Clerk of the Court of Appeals. The timely filing of a Notice of Appeal is essential for the Court to consider your appeal. For those who would like to read a further discussion concerning what is involved in an appeal, you may want to read pages 2-15 in a pamphlet you can find at the following address on the internet: <http://www.tex-app.org/pamphlet.pdf>. The Second Court of Appeals had no involvement in the creation of that pamphlet and therefore has no comment on that pamphlet. For forms of documents that might be of assistance to you in designating the clerk's record, ordering the reporters' record, and requesting extensions of time to file a brief, you may find forms of those documents linked to the following page on the internet:

<http://www.tex-app.org/probono-3rdcourt.php>
The Second Court of Appeals had no involvement in the creation of those forms and thus has no comment on those forms.

B. THE SELECTION PROCESS

The Docketing Statement is one of the first documents that you file in the court of appeals when you start an appeal. You may obtain a copy of the Docketing Statement from the Clerk of the Court of Appeals. The Second Court of Appeals' Docketing Statement has a brief description of the Pro Bono Program and a list of questions for you to answer if you would like for your case to be considered. If you so indicate your interest, a copy of your Docketing Statement will be forwarded to

the Pro Bono Committee for screening. As a result, it is very important that you fill out the Docketing Statement carefully and completely so that the Pro Bono Committee will have as much information as possible in considering your appeal.

By filling out the request for consideration, you are agreeing that members of the Pro Bono Committee can contact the counsel of record in the trial court, if any, to ask for clarification of questions or issues as to your case. These conversations will be kept confidential to the extent allowed by law and used solely for purposes of the Committee's selection process. In this regard, you should understand that the Committee and its members do not represent you on your appeal, that no attorney-client relationship exists between you and the Committee, and that your communications, and the communications between the Committee and you, or your prior attorney, may not be protected by the attorney-client privilege. You are also authorizing the Pro Bono Committee to transmit basic, publicly available, facts about your case via the Internet to its pool of volunteer lawyers in an attempt to find an appellate lawyer to take your case.

The Pro Bono Committee screens and selects civil cases for inclusion in the Program based upon a number of discretionary criteria, including the financial means of the appellant. Although the Committee may consider other circumstances, including financial factors other than income, the committee uses 200% of U.S. Poverty Guidelines as a benchmark for determining whether an appellant qualifies for free legal services. These guidelines are published by the U.S.

Department of Health and Human Services, and the chart at the end of this brochure sets forth the relevant numbers.

If you have not already submitted an affidavit of indigence in the trial court, you must submit such an affidavit and financial information as a condition of your participation in the Pro Bono Program. You may obtain a form of an affidavit of indigence from the office of the Court's Clerk. If you are uncomfortable with having your financial information in the Court's file, you can submit this information in a sealed envelope, marked "Confidential," to the Pro Bono Committee. Although your ability to pay for legal counsel is not the only factor the Committee considers as to your participation in the Program, it is nonetheless a significant factor in the committee's decision-making process.

There are a number of other factors that the Pro Bono Committee considers in deciding whether to place an appeal in the Program, including the number of appeals currently in the Program, the number of available volunteer lawyers, and the issues presented. Based upon a review of these and other factors, the Pro Bono Committee makes a recommendation for each case. If the Committee recommends that a case be included in the Program and a volunteer lawyer agrees to take the case, you will receive a letter from the Committee within approximately 30-40 days of submitting your Docketing Statement notifying you of the match.

The Second Court of Appeals has no involvement in the screening process.

C. THE ATTORNEYS

The Pro Bono Committee has undertaken a substantial recruiting effort to

enlist pro bono appellate lawyers willing to volunteer their time to take on cases selected for inclusion in the Program, as well as other specialty pro bono programs that the Committee sponsors. The Committee has used questionnaires for our volunteers to find out their particular areas of interest and expertise so that it can be in a position to make appropriate matches between cases and volunteer attorneys according to their areas of interest, experience, and availability.

D. PLACEMENT OF CASES IN THE PROGRAM

When an appeal is identified by the Pro Bono Committee as a candidate for the Program, the committee publishes limited information regarding the case, such as the nature of the case, issues on appeal, the status of appellate proceedings, and any impending deadlines, and solicits volunteers to take the case. Based upon the responses, the Committee will make an appropriate match.

If your case is chosen and counsel is located, the Committee will send you a letter advising you of the match, providing contact information for your pro bono attorney and advising you that you have 14 days to object if you do not want this attorney to represent you. If you do object, you need simply notify the Committee in writing. You need not indicate your reasons for objecting, but there is, of course, no guarantee that the Committee will be able to find replacement counsel.

Assuming you do not object to the volunteer attorney within 14 days of receiving the Committee's letter, that attorney will undertake further representation of you in the appeal without charging legal fees. Please be aware that,

bmaster@tex-app.org.

even if you should be assigned a pro bono attorney to represent you, you will still have the responsibility for paying all out of pocket costs involved in the appeal. Such costs include, but are not necessarily limited to, the cost of records (to the extent you are not entitled to a free record because of proven indigence), copying, binding, postage, shipping, and the like. The pro bono attorney assigned to handle your case would have no responsibility for paying for such out of pocket costs.

E. Representation in the Appeal

If a volunteer lawyer is matched with your case through the Program, that lawyer will be your lawyer in handling the appeal on your behalf in the Second Court of Appeals from that point forward. He or she will prepare the briefs and any necessary motions and present oral argument to the Court of Appeals if argument is ordered.

The scope of the representation is limited to the appeal in the Second Court of Appeals and terminates once those proceedings are concluded—typically after the opinion of the issues or the Court rules on any timely filed motions for rehearing. If you are unsuccessful in the Court and desire to go forward to the Texas Supreme Court, you will need to make other arrangements for representation in that court unless your appointed counsel agrees in writing to undertake the further representation. Please be advised that we are working with the Texas Supreme Court on a pro bono program with that court, although the procedures and requirements for that program will necessarily differ from this one.

For questions or comments about the Pro Bono Program, please contact

Poverty Guidelines

Persons in Family or Household	200% of Federal Poverty Guidelines
1	\$19,600.00
2	\$26,400.00
3	\$33,200.00
4	\$40,000.00
5	\$46,800.00
6	\$53,600.00
7	\$60,400.00
8	\$67,200.00
For each additional person add	\$ 6,800.00

SOURCE: The 2006 Federal Poverty Guidelines are taken from Federal Register, Vol. 71, No. 15, January 24, 2006, pp. 3848-3849. Further information can be found at <http://aspe.hhs.gov/poverty/06poverty.shtml>.

AFFIDAVIT OF INDIGENCE

AFFIDAVIT OF INDIGENCE

CASE NO. 02-_____

_____ v. _____

THE STATE OF TEXAS:

COUNTY OF _____:

The undersigned makes this affidavit in connection with the filing of the above-numbered and entitled case for consideration in the Pro Bono Program of the Pro Bono Committee of the Appellate Section of the State Bar of Texas, and the Appellate Section of the Tarrant County Bar Association. *(The items applicable to the undersigned and checked and the information called for is furnished under penalties of perjury.)*

1. Basis for indigence: I am unable to pay a court cost because:

I am presently receiving a government entitlement based on indigence as follows (describe nature and amount of government entitlement): _____

_____ and

I have no ability to pay court costs based on facts set out below.

2. Employment information:

I am not now employed; the last time I was employed was _____ at _____
_____.

I am employed: I work for _____
_____.

The nature of the job is_____. The income I receive from this job is \$_____ per _____.

3. Income from sources other than employment:

I have no income which is derived from sources other than employment, such as interest, dividends, annuities, etc.

I have income derived from sources other than employment as follows:

<u>Type of income</u>	<u>Amount per period</u>
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4. Spouse's Income

My spouse has no income.

My spouse has income as follows:

<u>Type of income</u>	<u>Amount per period</u>
_____	_____
_____	_____

5. Property:

I own no property and no interest in any property.

I own the following interests in property:

Real Estate: _____

_____.

Motor Vehicles: _____

_____.

Stock and/or bonds: _____

_____.

Cash: _____

_____.

Other: _____
_____.

6. Bank Accounts:

<u>Bank</u>	<u>Type of Account</u>	<u>Amount</u>
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7. Dependents:

I have no dependents.

I have the following dependents:

<u>Name</u>	<u>Age</u>	<u>Relationships</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
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8. Debts:

I have no debts.

I have the following debts:

<u>Creditor</u>	<u>Amount</u>

9. I have the following monthly expenses:

<u>Type of Expense:</u>	<u>Amount per month</u>

10. Loans:

I have attempted to obtain a loan for these costs from the following financial and/or lending institutions, but have been unable to secure such a loan.

Financial Institution/Lender:

Address:

_____	_____
_____	_____
_____	_____
_____	_____

11. Attorneys:

I was not represented by an attorney in this court.

I was represented by an attorney in this court, but my attorney did not charge me a legal fee for this representation.

I was represented by an attorney in this court under a contingent fee arrangement.

12. Costs:

No attorney has agreed to pay or advance my court costs.

An attorney has agreed to pay or advance my court costs under the following circumstances (explain here):

_____.

I am unable to pay the costs of court. I verify that the statements made in this affidavit are true and correct.

Signed this the _____ day of _____, 20__.

Affiant

Sworn and Subscribed to before me this the _____ day of _____, 20__.

Name Printed: _____

Notary Public, _____ County, Tex.

My commission expires: _____

ATTORNEY FOR THE AFFIANT SHALL CERTIFY THE CONDITIONS UNDER WHICH HE REPRESENTS THE AFFIANT.

_____.

Date: _____, 20__ _____

Signature of Attorney