

Program a 'critical way' to level playing field

D.C. Superior Court program gives temporary aid to pro se litigants.

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Legal Counsel for the Elderly supervising attorney Amy Mix

Photo: Diego M. Radzinski / NLJ



Attorney Herbert Rosenthal

Photo: Diego M. Radzinski / NLJ



D.C. Superior Court judge Melvin Wright

Photo: Diego M. Radzinski / NLJ

In two high-volume branches of the District of Columbia Superior Court, civil legal services groups hope to prove that when it comes to pro bono representation, a little is a lot better than none.

A policy recently adopted by the court gives the green light for pro bono lawyers to enter temporary appearances for low-income litigants in small claims and debt collections cases. Legal services lawyers say the change means they can provide much needed representation using minimal resources.

"We can go into these courts where it's a high volume of cases, where the majority of defendants are pro se, and what we see is that there are a lot of defenses that should be raised and would be if someone was represented by an attorney," said Amy Mix, supervising attorney for the consumer fraud and financial abuse unit of the AARP Legal Counsel for the Elderly.

Under the new policy, which takes effect July 30, lawyers can file a notice with the court that they'll be representing a client for a single day of proceedings. Once proceedings are over for the day, the attorney-client relationship ends.

There is precedent at the court for limited-scope representation. Beginning in 2007, the court began allowing temporary pro bono representation in the landlord and tenant branch. Last June, a similar policy was put in place for the paternity and child support branch.

Presiding civil division Judge Melvin Wright said that the court is open to "attorney for a day" programs because the growing number of pro se litigants puts judges in a difficult position. Judges try to make sure litigants understand what's going on, he said, but they can't give legal advice. "We're here to be impartial, and on a lot of occasions, parties on the other side are resentful of the court giving a pro se person some direction. We think this can help us in filling that void," he said.

The number of defendants with a lawyer in collections and small claims cases is low. According to the last study of pro se litigants by the court in 2009, more than 96 percent of defendants in small claims cases were pro se. In the civil actions division, where collections cases make up about a quarter of the docket, more than half of defendants were pro se. By comparison, just 21 percent of plaintiffs in those divisions didn't have a lawyer.

"We see this as a critical way to level the playing field," said Heather Latino, supervising attorney in the consumer law unit of the Legal Aid Society of the District of Columbia.

Herbert Rosenthal, a D.C. attorney at a small practice who has represented plaintiffs in collection cases since 1972, agreed that it's rare for defendants to have an attorney, but disputed that having more lawyers will change case outcomes. "Most people know they owe the money and they want to work out a payment plan," he said. "That's what happens in most mediations." He said he is concerned that same-day lawyers would need to prove that they've "done something," resulting in more trials and lengthier proceedings on already jammed dockets.

CREDIT ISSUES

Legal services lawyers say more representation will help address what they see as systemic problems with how these cases proceed. A common complaint is that plaintiffs don't provide enough documentation to prove their claim. Lawyers who work with defendants say this is

especially a problem with debt buyers, companies that purchase debts en masse from the original debt holders, such as credit card companies or banks.

Peter Holland, a professor at the University of Maryland Francis King Carey School of Law, said plaintiffs may file a document stating that they bought a debt, but it won't include details regarding the chain of ownership or the debt itself — the terms of an original contract or charges on a credit card, for instance. "Shoddy" paperwork means defendants can be sued twice on the same debt, or face a fraudulent claim, he said.

Defendants don't always know that they can challenge documentation, Latino said, so having a lawyer, even on a temporary basis, will help. In cases where defendants don't show up, she said, requiring more documentation would ensure that judges have enough information before issuing a default judgment. A number of lawyers point to Maryland's court system, which adopted stricter rules on documentation in January, as a model.

Rosenthal said that debt buyers and other plaintiffs in collection cases get an unfair rap, and do provide documentation to prove their cases in accordance with court rules. "The consumer attorneys believe that all purchased debt is zombie debt, it's all corrupt, it's all illegal, it's all out of statute, and most of it isn't," he said.

Mark Schiffman, a spokesman for ACA International, a trade group for collection professionals, said that companies would welcome more documentation when buying a debt, but it's often not available. "We don't necessarily have that original contract, but we have other documentation that proves that you are the person responsible," he said. "It's our opinion, as long as we're meeting the rules, that those cases should continue ahead."

Wright, the Superior Court judge, said the court does require proof of the debt record, but he's aware of the complaints. Before issuing a default judgment, he said, "our judges have been instructed to look at [the record] to make sure the debt is valid."

MUCH NEEDED STEP

Mix said that while legal services groups would like a rules change, providing more representation is a much needed step. The Legal Aid Society, the Legal Counsel for the Elderly and the D.C. Bar Pro Bono Program are collaborating on an "attorney-for-the-day" program for the small claims and collections calendars. Mix said that they're hoping to launch in the fall.

Mark Herzog, associate director of the D.C. Bar Pro Bono Program, said same-day representation has run smoothly in landlord and tenant cases, a model they expect to apply to the collections and small claims cases. "I do think that we have confidence that our clients understand...that it's an attorney who will be representing them on that day and after that appearance, the representation ends," he said.

Wright said that the court hasn't encountered problems with limited-scope representation. He said plaintiffs lawyers were worried that the change would lead to more jury demands and trials, but that hasn't happened. "It has assisted the court in having the pro se person's case brought

more clearly into focus to the court and also helps them understand to some degree what they will be facing when they come to court," he said.

Peter Edelman, chairman of the D.C. Access to Justice Commission, said Washington is one of a growing number of jurisdictions that allow same-day representation. At a time when the number of pro se litigants in civil cases is going up, legal services groups are facing tougher financial circumstances and can't meet that demand, said Edelman, a professor at Georgetown University Law Center.

"The best thing is to have everybody have a lawyer, but we know that we're not going to be in a position to make legal services [available] to all low-income people on the civil side any time soon," he said. "We have to find ways to stretch our lawyer resources in useful and constructive ways."

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