

# Missouri Lawyers

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## WEEKLY

## Federal court establishes pro bono pool

*Court clerk calls current system 'a nightmare'*



**Armstrong Teasdale attorneys Zach Howenstine, left, and Patrick Kenny have spearheaded the firm's participation in pro bono work. Kenny is the co-chair of the pro bono committee, and Howenstine is working pro bono on a case assigned to him last spring.** Photo by Karen Elshout

**BY HEATHER COLE**

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A federal judge found it tough to get a lawyer to represent inmate Fredrick Davis pro bono.

The 8th U.S. Circuit Court of Appeals said in 2010 that Davis' claims over a jail's denial of vegetarian meals deserved a trial. But three successive attorneys appointed by U.S. Magistrate Judge Thomas C.

Mummert III begged off, citing conflicts. The fourth, Thomas Berry Jr. of Sandberg Phoenix & von Gontard, agreed to represent Davis.

The U.S. District Court of the Eastern District of Missouri hopes to avoid those kinds of case assignment hassles with a new method of appointing pro bono attorneys.

Under a program set to launch in January, the court is asking for volunteers

for a panel of 50 to 75 lawyers and firms that would take on most pro bono assignments to represent indigent clients in civil cases. That would give the court a "manageable pool of lawyers genuinely interested in pro bono services," said Clerk of Court Jim Woodward.

Currently, judges try to find an attorney from the pool of about 5,700 who must agree to take on pro bono appointments as part of their admission to practice in

the court. Beyond conflicts, it can be difficult to find someone with enough time and the right expertise.

“It’s a nightmare, to be perfectly honest with you,” Woodward said.

Since 2008, judges have appointed counsel on average in about 15 civil cases per year. Judges might be inclined to grant more requests for attorney appointments with the roster of pro bono attorneys available, he said.

Panel volunteers are asked to provide types of cases and practices in which they have a particular interest or expertise. They will get email notices about cases where judges are seeking pro bono attorneys including case summaries, numbers and parties. If no attorney volunteers to take on the case within three business days, the judge will appoint someone from the panel. Each lawyer or firm would commit to taking on one pro bono appointment per year, or as needed depending on the volume of eligible cases.

Since Woodward announced the new program Oct. 1, about 16 individual lawyers and two large law firms — Armstrong Teasdale and Bryan Cave — have agreed to be on the panel. Husch Blackwell and Brown & James attorneys volunteered individually.

The new system won’t let all the other attorneys off the hook; judges still may go to the 5,700-attorney database to appoint counsel, but most will be from the roster of volunteers, Woodward said.

The fact that the program would match up expertise is one reason it sounds like a good idea to Ferne Wolf, an employment attorney with Sowers & Wolf.

Wolf now is handling a pro bono as-

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*Armstrong Teasdale’s Patrick Kenny, on the volunteer panel idea*

signment from the court, representing Anita Driver, a former line cook at Big Daddy’s restaurant on Laclede’s Landing in downtown St. Louis. Driver claims she was fired in retaliation for complaining about sexual harassment she said she suffered at the hands of a co-worker. (Frank J. Schmidt, a Waltrip & Schmidt attorney representing Big Daddy’s, said through an assistant that he had no comment.)

“I was grateful that it was in an area where I practiced already, that it was an employment discrimination case, because that’s what I do,” Wolf said.

Patrick Kenny, co-chair of Armstrong Teasdale’s pro bono committee, gave the court his name as the contact person for the firm as a member of the volunteer panel. Younger associates may take some of the cases on, but the firm staffs pro bono cases as it does its others, with a partner supervising, he said.

Kenny said the volunteer panel idea is innovative at the district court level.

“Now they’re doing it, it’s one of those things where you think, ‘Gosh, why didn’t they do it sooner?’” Kenny said. “Appellate courts have a list [of volunteers]. But I have to tell you this never

crossed my mind.”

The U.S. District Court for the Western District of Washington has had a similar program in place since about 2002, said Sharon Haas, judicial services administrator and pro bono coordinator.

Before that, attorneys would be assigned a case before they had a chance to check for conflicts and frequently asked to be dropped off the panel of volunteers, Haas said.

“One case went through three attorneys — order of appointment, motion to withdraw,” three times, Haas said.

Now a screening panel often makes a recommendation as to whether a case should have a pro bono appointment. The court then emails a volunteer panel of 70 attorneys and law firms when a pro bono opportunity arises, including a case summary, Haas said. If there are no takers, a pro bono chair for the court — often a Federal Bar Association officer — will send it out to a broader base of attorneys for the opportunity to take it on a “one-time” basis, without signing up for the volunteer panel. If there’s no response, the judge decides what to do. Attorneys are not forced to take cases, so the result sometimes is that the litigant must represent himself, she said.

So far this year, 10 cases have had motions to appoint counsel. Out of those, five were assigned, Haas said.

“It’s 50/50 whether we get a case appointed,” Haas said. “Unfortunately with pro bono, sometimes there’s a reason why the case hasn’t gotten an attorney in the first place: It’s just difficult or they’re [the litigants] difficult.” **MO**