

## Southern District programs for *pro se* parties help litigants, attorneys and the court

The verdict is in: Efforts in the Southern District of Indiana to help *pro se* litigants navigate their cases through federal court have been wildly successful. But litigants aren't the only beneficiaries. The lawyers who have participated report tremendous personal and professional satisfaction through their involvement and enthusiastically encourage others to become involved. Along the way, the court has benefited greatly as well.

The cornerstone of these efforts is the Mediation Assistance Program. MAP trains and appoints attorneys who volunteer to represent *pro se* litigants at settlement conferences. The attorneys typically enter limited appearances and help litigants prepare for a settlement conference, attend the conference with their client, and assist in drafting settlement documents if the case is resolved. The attorney receives no fee if the case settles as a result of the conference. If the case does not resolve at that juncture, the attorney may withdraw from the case, though some attorneys opt to continue their representation.<sup>1</sup>

Kristine L. Seufert, Southern District staff attorney, points out that 25 percent of the cases pending in that court have at least one *pro se* litigant. Seufert, who serves as the court's *pro bono* coordinator, observed, "Settlement is nearly impossible when a party does not have any sense of what their case is worth. MAP attorneys provide that service. They take the time to discuss the litigant's case, explaining both the strengths and weaknesses. They are then able to present the strengths of their client's case during the settlement conference. In many cases, this knowledge creates realistic expectations, which are enough to settle the

case and reach a fair result for both parties."

Judge Jane E. Magnus-Stinson proposed the program for the Southern District after hearing of its success in the Northern District of Illinois. With the help of some of her fellow judges, court staff and a few federal court practitioners, the Southern District sponsored a training session in 2009 for lawyers who wanted to become involved in the program. The free, half-day training, which provided continuing legal education credit, included substantive components such as employment law and prisoner civil rights, as well as a mock settlement conference.

Only two MAP appointments occurred in 2009. However, both of those cases settled. The seeds of success had been planted, and the program slowly began to flourish. Five MAP appointments occurred in 2010, and three of those cases settled. In 2011, four of seven MAP cases settled. Fourteen of 17 MAP cases settled in 2012, and the court sponsored a second free training session that year.<sup>2</sup> In 2013, court-appointed MAP attorneys participated in 43 cases, 28 of which settled. In seven of the 2013 cases that did not settle, the attorneys continued their representation beyond the settlement conference.<sup>3</sup>

In February of this year, the Southern District judges hosted a breakfast for lawyers who volunteered on MAP cases, as well as lawyers who volunteered to help *pro se* litigants by accepting cases through the Civil Trial Assistance Panel. CTAP attorneys agree to make reasonable efforts to accept a *pro bono* case when requested to do so by the court. CTAP attorneys, who are not asked to accept more than one case at a time, typically remain on the case until it is

resolved, which may include trial.<sup>4</sup> About 40 lawyers attended the breakfast at the Birch Bayh Federal Building and U.S. Courthouse in Indianapolis and received the judges' praise and encouragement, while exchanging compelling stories from the cases they volunteered to accept.

After thanking the lawyers gathered at the event, Chief Judge Richard L. Young remarked, "We don't try as many civil cases as we did years ago. It's hard for a lawyer to get into the courtroom. Hopefully, this gives lawyers an opportunity to do that." Attorneys Michele L. Richey and Julian E. Harrell of Taft Stettinius & Hollister echoed Judge Young's feelings.

The court appointed Richey and Harrell to represent a defendant in a complex case involving claims that included fraud, conversion and securities law violations arising out of a business deal that went south. "Trials are not as common as they once were, and it is very difficult for a young associate to get trial experience," said Richey, a 2009 law school graduate. The Taft lawyers – who succeeded in getting all claims against their client dismissed with prejudice – relished having this type of rich and rewarding experience so early in their legal careers.

Harrell said he enjoyed the trial-prep aspect of the case the most, including drafting a trial brief and proposed findings and conclusions. "As a young associate at a larger firm, such opportunities do not arise often," said Harrell, admitted to the bar in 2012. "Accordingly, I enjoyed

(continued on page 12)



Hon. Tim A. Baker  
U.S. Magistrate Judge  
Southern District of Indiana  
Indianapolis, Ind.  
Tim\_Baker@insd.uscourts.gov

**PRO SE PARTIES** *continued from page 11*

the heightened responsibility and autonomy that I exercised in serving our client's needs." Added Richey, "This is a great way to get the practical experience necessary to be a litigator."

Edward D. Thomas, an attorney at Lewis Wagner, likewise gained practical litigation experience in the two MAP cases he has handled. Although he is primarily a business litigator, the court appointed Thomas to represent plaintiffs in two employment discrimination cases. Thomas assisted in getting both cases resolved at settlement conferences. He encouraged all attorneys to participate in the program and called the experience immensely rewarding both personally and professionally, as well as educational. "It allowed me the opportunity to learn a new area of the law while simultaneously assisting a layperson through a

very difficult point in their life," Thomas said.

Jerry A. Garau, an experienced plaintiffs' medical malpractice attorney with Garau Germano Hanley & Pennington, opted to handle a case within his area of expertise. He helped his client – an inmate at the federal penitentiary in Terre Haute – negotiate a settlement in a medical malpractice lawsuit against prison officials. "What I enjoyed most about the experience was getting to know my client and being able to get a positive result for him in the end," said Garau, who also encouraged others to accept *pro se* appointments. "As a plaintiffs' attorney, I think I need to occasionally put my money and efforts where my mouth is," Garau said. "This is a way to do that."

This view is shared by Alan L. McLaughlin, managing partner at Littler Mendelson's Indianapolis

office. McLaughlin has handled eight MAP cases – six employment discrimination cases, one prisoner medical care case, and one case alleging false arrest. McLaughlin said he has personally benefited from being involved in these cases. "As an attorney who primarily represents employers, it is incredibly beneficial to experience life 'on the other side of the v.,'" McLaughlin said. "You better understand the challenges faced by opposing counsel, their need for certain information, the difficulty in obtaining information from certain clients, and how 'facts' may look from the other side."

In recognition of his outstanding work on MAP cases, the Seventh Circuit Bar Association awarded McLaughlin its Pro Bono Public Service Award at its annual meeting in May of 2013 in Indianapolis. "As a litigator, I believe each and every time I have the opportunity to appear with opposing counsel before a judge, I become a better attorney," McLaughlin said. "Each experience is unique and better prepares me for anything and everything to come."

Ogletree Deakins partner Jan Michelsen is another experienced litigator who had a positive experience with the program and encouraged others to take on *pro se* cases. She has handled five cases of various types. One of those cases involved an inmate on death row in Terre Haute, who alleged prison officials were deliberately indifferent to his serious eye infection. With help from students at Indiana University Maurer School of Law, Michelsen settled the case at a court-supervised settlement conference. Michelsen said the gratitude as well as cooperation of the clients in these cases is “extraordinary.” After the inmate case was resolved, the client wrote a note to Michelsen, stating in part, “Thank you so much for helping me with my medical issues. You are an awesome, kick-ass attorney. I am truly grateful. Most people would not care what happens to me on death row, but you do, and that means a lot to me. Please thank your staff for their help, too. I will never forget you all.”<sup>5</sup>

While Michelsen’s client expressed his appreciation in colorful terms, the heartfelt emotion and gratitude in his words are indicative of the type of feedback received by attorneys accepting *pro se* representation in the Southern District. Attorney Sarah E. Caldwell of DeLaney & DeLaney, who along with her colleague Christopher S. Stake helped settle a MAP case involving sexual harassment and other claims, summed up this sentiment as follows: “I think lawyers have had the experience of getting a win for a client who doesn’t recognize it as such or doesn’t appreciate what you were able to accomplish, and this was the exact opposite of that. She was so grateful to have been heard and to receive the settlement amount she did.”

Krieg DeVault partner Linda J. Cooley, who helped resolve an employment discrimination MAP case at a court-supervised settlement conference, simply stated, “Taking a day to help someone in need is one of the best days you will practice law.” Kightlinger & Gray partner Erin A. Clancy, who helped a prisoner civil rights plaintiff

resolve his case, said the experience prompted her to encourage her law firm to initiate a pro bono program.

Judge Sarah Evans Barker of the Southern District, addressing the volunteers at the February breakfast, aptly summed up the experience by remarking, “These

(continued on page 14)

## PRO SE PARTIES

*continued from page 13*

kinds of cases reflect why a lot of people went to law school. It's hugely real. It really matters to [the clients]. It takes you into a relationship that you wouldn't otherwise have. And it gives you stories to tell, which is why we all did go to law school."<sup>6</sup> ⚖️

1. If the attorney remains on the case beyond the unsuccessful settlement conference, the attorney may enter into a formal agreement with the client. If after that time the case settles or the client receives a favorable verdict, the attorney would be entitled to a fee.
2. About 80 attorneys completed the MAP training in 2009 and 2012. The court is planning another training on **June 27** focused on assisting lawyers in handling *pro se* prisoner cases alleging inadequate medical care. Additional details will be posted on the court's website at <http://www.insd.uscourts.gov>.
3. My experience with MAP reinforces its success. For example, in 2013 I appointed MAP counsel in five cases. All five cases settled as a result. *Pro se* parties are uniformly thrilled to have counsel appointed to represent them, if only for a settlement conference. Opposing counsel likewise appreciate the involvement of MAP counsel and the fact that the appointment improves the likelihood of settlement. Most often I have made these appointments early in the case, typically after discussing the MAP process with the parties at the initial pre-trial conference. MAP appointments are usually made by magistrate judges, who have primary responsibility for settlement in Indiana's Southern District.
4. S.D. Ind. L.R. 4-6(i) provides that the court will reimburse an attorney up to \$500 for costs for representing a litigant under this rule and up to \$1,000 at the court's discretion. In addition, Local Rule 4-6(j) permits the court to award attorney fees to a litigant "who is represented by an attorney under this rule as if the litigant had retained a private attorney."
5. The client, as well as Michelsen, expressly consented to allow this note to be published in this article.
6. Lawyers interested in accepting MAP or CTAP appointments can find additional information, including applications, on the court's website at [http://www.insd.uscourts.gov/forms/local-forms/pro\\_bono\\_forms](http://www.insd.uscourts.gov/forms/local-forms/pro_bono_forms). Lawyers seeking appointment in these cases must be members of the court in good standing. Lawyers who wish to accept a pro bono CTAP case for all purposes should also consult Local Rule 4-6.