

**Southern District of California Pro Bono Panel:
A Great Opportunity to Do Good**

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Pro Bono Panel Speakers



Hon. Anthony J. Battaglia

Anthony J. Battaglia is a U.S. District Judge for the Southern District of California nominated by President Barack Obama and confirmed in March 2011. Judge Battaglia attained senior status in March 2021. Prior to confirmation, Judge Battaglia served as a U.S. Magistrate Judge in the Southern District starting in 1993.

A San Diego native, Judge Battaglia graduated from California Western School of Law in 1974 and was admitted to the State Bar of California that same year. He practiced law until 1993, specializing in Plaintiff's Personal Injury Litigation with emphasis on products liability and maritime injury claims.

He now serves as a member and Chairs the 9th Circuit Trial Improvement Committee (formerly the Jury Trial Improvement Committee), since 2012 and has been Chair since 2015; is a member of the Federal COVID-19 Task Force subgroups on Jury Trials and Video Use in the Future; Chairs the Southern District of California's Rules Committee and the Strategic Committee for Reopening; on the Advisory Board of the San Diego Chapter of the Federal Bar Association since 2013; and is Program Chair and Frequent speaker, in the Annual Judith N. Keep Federal Civil Practice Seminar, since it's inception in 2005. Judge Battaglia is a former member of the Ninth Circuits State-Federal Judicial Council , 2011-2017.

He has served as the U.S. Judicial Conference of the United States Magistrate Judge Observer 2009-2011, and has served on the U.S. Judicial Conference Advisory Committee on Rules of Criminal Procedure, 2003-2009; Member, Administrative Office Magistrate Judge Advisory Committee, 2008-2009; Member, Administrative Office Working Group on Pro Se Attorneys, 2009; Member, Ninth Circuit Magistrate Judge Executive Board 2005-2009, Chair 2006-2008; Observer Member, Ninth Circuit Judicial Council, 2006-2008; President, Federal Magistrate Judge Association 2008-2009; President San Diego County Judges Association, 1997-1998; President, San Diego County Bar Association 1992; President, San Diego Trial Lawyers Association, 1987. He is a former Senior Master in the Welsh Inn of Court, and the author of numerous articles and a frequent lecturer on federal practice.



Karen Beretsky, Esq.

Karen Beretsky is the Supervisory Pro Se Law Clerk and Pro Bono Panel Administrator for the United States District Court for the Southern District of California. Karen earned her JD from California Western School of Law in 1994, and is a member of both the California and U.S. Supreme Court bars. Karen is the longest-serving career Pro Se Law Clerk in the Southern District and has specialized in pro se prisoner civil rights litigation since 1996. She has also served as the Court's Pro Bono Panel Administrator since the

Plan's inception in 2011, and coordinates implementation of the Court's prisoner e-file and e-service pilot projects together with the Clerk of the Court, representatives of the California Attorney General's Office, and the California Department of Corrections and Rehabilitation.



Amber Eck, Esq.

Amber Eck, a partner and trial attorney at Haeggquist & Eck, is a tenacious advocate for employees, consumers and shareholders, and has been for the past 27 years. Amber has taken cases to trial in both state and federal court as lead trial attorney, and has recovered millions of dollars for her clients in settlements. Amber doesn't shy away from high-profile defendants — a fact well-illustrated by her role as co-lead counsel in the well-publicized class action against President Donald Trump and Trump University, which settled for \$25 million. For her work in the case, which spanned seven years, Amber and her

partners took no fees. In 2016, the Trump University settlement was deemed one of California's Top 50 Class Action Settlements.

Ms. Eck has been recognized by Super Lawyers as one of the top 25 women lawyers in San Diego and top 50 lawyers in San Diego for the past two years. She and her firm have also been selected by U.S. News & World Reports as "Best Lawyers in America" and "Best Law Firm" for 2022. She graduated from Boston University School of Law magna cum laude, and Pepperdine University magna cum laude.

Ms. Eck is dedicated to providing pro bono legal assistance to underserved populations. She is a current member of the Southern District of California's Pro Bono Panel, and has received the Distinguished Service Award and Wiley W. Manuel Pro Bono Service Award from the San Diego Volunteer Lawyers Program ("SDVLP"). Ms. Eck is also the author of numerous articles and frequent lecturer on employment law, class actions, and other legal issues.

She is a Master in the Welsh Inn of Court, a member of the California Employment Lawyers Association ("CELA"), Lawyers Club of San Diego, Federal Bar Association, and the American Association for Justice ("AAJ"). Outside the office, Amber enjoys going to the beach with her dog, hiking, skiing, scuba



Joe J. Villaseñor, Esq.

Joe is a consumer protection attorney who focuses his practice in consumer protection law in state and federal trial courts. In 2019 he was one of four select recipients of the National Consumer Law Center's Rising Star Award for his significant contributions to the field of economic justice and consumer rights. Joe has represented over 1,000 individual consumers so far in his career.

He has experience in both public service and private practice. He was the Lead Consumer Protection attorney for the Legal Aid Society of San Diego, Inc., a local legal services program. He has been the principal attorney of Joe J. Villaseñor, APC since 2020. Joe is also a Professor of Practice at the University of San Diego School of Law where he teaches upper division law students in clinical and practical courses including consumer law, civil litigation and veteran's law. He also serves as a member of the Dean's Diversity, Equity, and Inclusion Taskforce and is a University Racial Equity Advocate.

Joe has tried and litigated cases under numerous California and federal consumer protection statutes including cases involving auto lease and financing, lemon law, identity theft, credit reporting errors, abusive debt collection tactics, wrongful foreclosure, as well as other consumer rights matters and civil rights cases. As a clinical professor, Joe instructs law students on the art of litigation and the intricacies of trial practice. His experience and knowledge guide students not only in the substantive areas of law in which they represent their clinical clients, but in the nuances of procedural strategy and effective advocacy.

Joe is a frequent presenter and speaker for organizations and bar associations on consumer law and litigation topics. He's been a multiple-time presenter at the National Consumer Law Center's Annual Consumer Rights Litigation Conference, Earl B. Gilliam Law Association's Neighborhood Law School, USD's Center for Public Interest Law, USD's Student Chapter of Consumer Attorneys of San Diego, the National Association of Women Judges; and the U.S. Bankruptcy Court for the Southern District of California's C.A.R.E. (Credit Abuse Resistance and Education) Program. He is frequently interviewed by the media on various consumer rights issues, appearing in national and local media including the New York Times.

Joe is an active member of the U.S. District Court for the Southern District of California's Pro Bono panel.



Pro Bono Panel / Frequently Asked Questions

1. Are expenses are reimbursable?

Pursuant to Civil Local Rule 83.8.a.2 and the Pro Bono Plan, pro bono counsel may seek reimbursement for “out-of-pocket expenses, necessarily incurred by court-appointed attorneys representing indigents pro bono in civil cases not covered by the Criminal Justice Act.” Civ.L.R. 83.8.a sets out procedures governing those reimbursements.

a. What expenses can be reimbursed?

i. Any costs set forth in Civ.L.R. 54.1.b as items taxable as costs at the end of the case are appropriate if they are “necessarily incurred.” These include such items as transcripts, deposition costs, witness fees, and copies. Please see Civ.L.R. 54.1.b for detailed explanations.

ii. “Fees for expert witnesses are not taxable in a greater amount than that statutorily allowable for ordinary witnesses.” Civ.L.R. 54.1.b.4.d. However, upon an appropriately supported application submitted to the trial judge, the Court may authorize the payment of expert witness fees if they are determined to be “necessarily incurred” pursuant to Civ.L.R. 83.8.a.2, exceed \$1,000, and the district judge has provided prior approval.

b. When are expenses reimbursed?

i. As a matter of course, pro bono counsel will be reimbursed for necessarily incurred expenses at the end of the case. Upon an appropriately supported application submitted to the trial judge, however, the Court may authorize the interim payment of expenses.

ii. In the event the represented party recovers costs, any out-of-pocket expenses paid out of the Pro Bono Fund must be re-deposited into the fund.

Attorney’s and expert fees may also be awarded to a “prevailing party” “as part of the costs” pursuant to 42 U.S.C. § 1988(b) and (c). However, in civil actions brought by prisoners, 42 U.S.C. § 1997e(d) limits attorney’s fees awards otherwise authorized by 42 U.S.C. § 1988.

2. Can I associate co-counsel?

If an appointed pro bono attorney wishes to associate counsel to assist in the matter after he or she has been appointed, co-counsel seeking to associate must obtain permission of the judge and must also be a member of the Southern District’s Pro Bono Panel.

3. What types of cases are referred under the Court's Pro Bono Plan?

The Court may refer any type civil case to the Panel, so long the pro se party is indigent. However, the vast majority of cases referred are civil rights lawsuits filed by state prisoners pursuant to 42 U.S.C. § 1983, and alleging constitutional violations in the conditions of their confinement.

4. At what stage of the proceedings are cases referred to pro bono counsel?

The Court may refer a case to the Panel at any stage of the proceedings. However, in most cases, judges defer pro bono appointments until after summary judgment has been denied and the case is ready for trial.

5. How flexible is the Court with regard to previously-set deadlines?

Although it is within the discretion of the individual trial judge, the Court appreciates the commitment of pro bono counsel and where possible seeks to accommodate counsel's schedules even as to previously-set deadlines.

6. How long does the appointment last?

It is possible the Court could refer a matter for a particular and isolated proceeding, such as pretrial motions or settlement. Otherwise, the appointment is made through the conclusion of matters before the district court.

7. How often will an attorney or firm be appointed to a new pro bono matter?

The Pro Bono Plan provides that a law firm or attorney will not be appointed to a new matter if they have previously been appointed within the last two years.

8. What if a Panel attorney or firm cannot accept a case?

The Pro Bono Plan provides that once a law firm or attorney becomes a member of the panel, the firm or attorney is expected to accept appointment, absent a conflict, or the presence of exceptional circumstances. Because the Court has limited resources, it must be able to rely upon the attorneys and law firms who join the Panel to honor their commitment. Nonetheless, nothing in the Plan provides for the imposition of sanctions against any Panel member who must decline an appointment.



Pro Bono Panel – Attorney Registration

Name: _____

Phone: _____

Email: _____

Address: _____

Law School: _____ Year JD awarded: _____

Date admitted to CA bar: _____

Date admitted to Southern District: _____

List other federal district and appellate courts to which you are admitted (and dates of admission): _____

Please describe the nature of your present practice: _____

Please describe your civil or criminal litigation and trial experience. To the extent possible, include number of jury and bench trials (in federal and state court). _____

Experience litigating civil rights cases *is not necessary* to participate on the Panel. However, if you have experience with these types of cases, please describe your experience. _____

If you are fluent in any languages other than English, please list them:



Pro Bono Panel – Law Firm Registration

Firm Name: _____

Firm Contact: _____

Contact Phone: _____

Contact Email: _____

Firm Address: _____

Does your firm have an established pro bono program: _____yes _____no

If yes, please provide contact info for the firm's pro bono coordinator:

Name: _____ Phone: _____

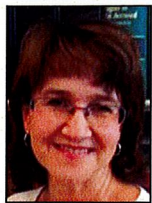
Email: _____

How many attorneys practice at your firm? _____

Please describe your firm's general practice areas:

How many pro bono cases is your firm willing to take in a given year? _____

If attorneys in your firm are fluent in any languages other than English, please list them:



THE PRO BONO PANEL – HAVE YOU VOLUNTEERED YET?

BY: KAREN BERETSKY

PRO BONO PANEL ADMINISTRATOR, UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

In August 2011, the U.S. District Court for the Southern District of California adopted General Order 596, a Plan for the Representation of Pro Se Litigants in Civil Cases. The Plan addresses a large and growing percentage of the District's civil docket comprised of cases filed by indigent prisoners without the assistance of counsel.¹ While there is no right to appointed counsel in these cases, the Court formed a committee to canvas other courts' pro bono programs and develop options to better serve pro se litigants in the Southern District.

In cooperation with the San Diego Chapter of the Federal Bar Association and other representatives from the local bar, the Court formed a Panel of law firms and attorneys qualified and willing to accept pro bono appointment in civil cases filed by indigent plaintiffs, whose cases were determined by a judge to be worthy of representation.

Appointments from the Panel are made pursuant to 42 U.S.C. § 2000e *et seq.* and 28 U.S.C. § 1915(e)(1), and not pursuant to the Criminal Justice Act. Pursuant to Civil Local Rule 83.8(a)(2) and 54.1(b), "out-of-pocket expenses, necessarily incurred" by Pro Bono Panel appointees are subject to reimbursement, upon a properly supported request, out of the Court's Pro Bono Fund, which "may be used to enhance the purpose and goal of creating and supporting, and maintaining a group of volunteers [to] assist the court in representing indigents pro bono in civil cases." In addition, prevailing parties may seek an award of attorney's fees under 42 U.S.C. § 1988.

During its first year, eight local law firms, the San Diego Volunteer Lawyer Program, and fourteen sole practitioners applied to serve on the Court's Pro Bono Panel. By September 2012, the Court had referred sixteen cases to the Panel's volunteers. Although the vast majority of the cases referred to the Pro Bono Panel have been civil rights cases filed by state prisoners challenging the conditions of their confinement pursuant to 42 U.S.C. § 1983, two were non-prisoner civil rights excessive force cases, and one involved a Social Security disability appeal. The prisoner cases have typically raised claims of inadequate medical care, retaliation, limitations on the right to religious exercise, and excessive force.

Appointments may be made at the early stages of litigation, but are typically deferred until after summary judgment has been denied and the case has been set for trial. Indeed, under the Plan, the Court may appoint counsel "for purposes of trial as a matter of course in each prisoner civil rights case where summary judgment has been denied."

In March 2013, the Court hosted a luncheon to honor the lawyers and firms on the Pro Bono Panel. More than twenty-five attorneys were welcomed by Chief District Judge Barry Ted Moskowitz, District Judges Irma E. Gonzalez (Ret.), Janis L. Sammartino, Cathy A. Bencivengo, and Magistrate Judges William V. Gallo and David H. Bartick. Judges

Bencivengo and Bartick both thanked Panel members for their dedication to pro bono work, shared some insight, and stressed the important difference appointed pro bono counsel made in two prisoner trials over which they had recently presided. Chief Judge Moskowitz then personally presented each of the Court's Pro Bono Panel attorneys with a certificate of appreciation in recognition of their service to the Court and commitment to ensuring equal access to justice under the law.

The Panel has been a great success from both the Court's and appointed counsels' perspectives. Magistrate Judge Bartick presided over one of the Court's first pro bono panel civil rights trials. Two panel members from Ballard Spahr LLP, Daniel Benjamin and Chrysta Elliott, were appointed to represent the plaintiff, who had suffered a stroke and was severely disabled with cognitive and speech impairments. According to Judge Bartick, "If not for the dedicated assistance provided by these two panel attorneys, I am convinced that justice would not have prevailed." Judge Bartick finds the cases referred through the Panel "important to our community because the causes of action are alleged violations of basic constitutional rights." "Without the assistance of the panel attorneys, many of these litigants' voices would be essentially silenced."

Judge Bartick also describes the Panel as a "unique and a tremendous opportunity for attorneys," because "they are provided a civil case that is essentially trial ready." "I can think of no better way for an attorney to serve our community while gaining valuable trial experience. I was a trial attorney for 26 years, and I know the rigors of pretrial litigation. I often dreamed of the opportunity to simply try a case without the burdensome responsibility of conducting pretrial discovery and motion practice. The Pro Bono Panel provides the volunteer attorney with this opportunity, a 'pre-packaged' case which is ready for trial."

Indeed, Thomas Robertson, a sole practitioner and Panel member, described his experience this way: "The Pro Bono Panel put me at the podium from voir dire until the final word of my rebuttal closing argument. Imagine being Keanu Reeves' character in *The Matrix* and downloading Trial Advocacy instead of Kung Fu. The learning process felt something like that."

As of July 2014, the Southern District has successfully appointed pro bono counsel in a total of thirty-one cases. However, it still has far more cases it wishes to refer than volunteer Panel attorneys available to take them. In response to this need, the Court again solicited new applications for Panel membership on its website in June 2014. In response, three additional firms have joined the Panel, as have fourteen additional sole practitioners.

The procedures for selection of law firms and attorneys to serve on the Panel, answers to frequently asked questions, as well as electronic form applications to become a member of the Panel can be found on the Court's website at www.casd.uscourts.gov/Attorneys/SitePages/ProBonoPanel.aspx.

Applications should be submitted no later than September 30, 2014. Questions regarding the Southern District of California's Pro Bono Panel may be directed to Karen Beretsky, Pro Bono Panel Administrator, by phone at (619) 557-5693, or by email at ProBonoAdministrator@casd.uscourts.gov.

¹ According to the Administrative Office of the U.S. Court's Federal Court Management Statistics, pro se prisoner petitions comprised almost one-third (1,003/3,386) of all the Southern District of California's civil case filings in 2012. See Administrative Office of the United States Courts, Statistical Tables for the Federal Judiciary: December 31, 2012 (available at: <http://www.uscourts.gov/Statistics/StatisticalTablesForTheFederalJudiciary/december-2012.aspx>).

FILED

AUG 03 2011

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

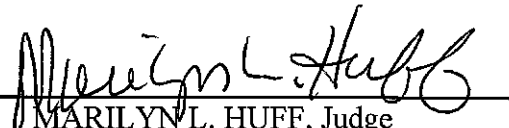
In the matter of
ADOPTING PRO BONO PLAN


GENERAL ORDER NO. 596


The Court hereby adopts the attached Plan for the Representation of *Pro se* Litigants in
Civil Cases.


Dated: 8/3/11


IRMA E. GONZALEZ, Chief Judge
United States District Court

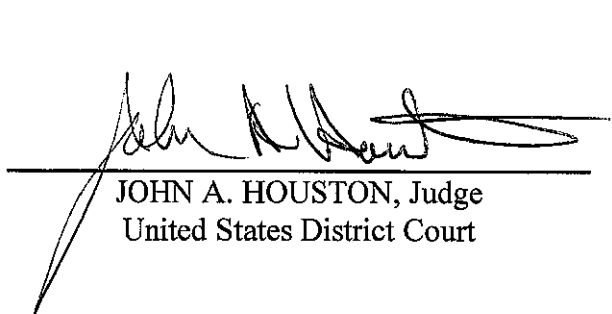

MARILYN L. HUFF, Judge
United States District Court


BARRY TED MOSKOWITZ, Judge
United States District Court

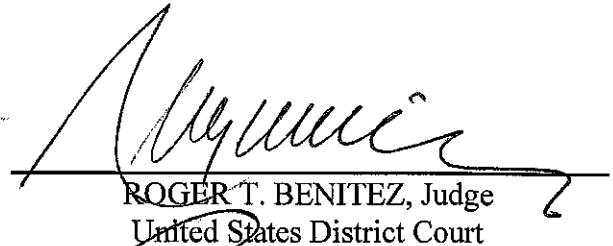

LARRY A. BURNS, Judge
United States District Court


DANA M. SABRAW, Judge
United States District Court

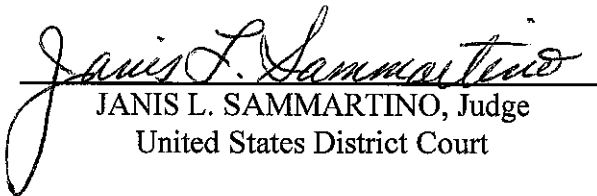

WILLIAM Q. HAYES, Judge
United States District Court



JOHN A. HOUSTON, Judge
United States District Court



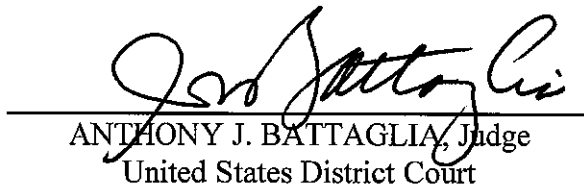
ROGER T. BENITEZ, Judge
United States District Court



JANIS L. SAMMARTINO, Judge
United States District Court



MICHAEL M. ANELLO, Judge
United States District Court



ANTHONY J. BATTAGLIA, Judge
United States District Court

**Plan of the United States District Court
for the Southern District of California
for the Representation of *Pro se* Litigants in
Civil Cases**

Selection of Attorneys to serve on Pro Bono Panel

The U.S. District Court for the Southern District of California will receive applications from law firms and attorneys willing to serve on a pro bono panel to provide representation to indigent civil plaintiffs. The Federal Bar Association - San Diego ("FBA-SD") and the Court will review the applications and compile a list of law firms and attorneys to participate on the pro bono panel. The factors to be considered in determining whether to include a law firm or attorney on the pro bono panel include the following:

1. for a law firm, the number of attorneys who are admitted to the bar of this Court and willing to serve as pro bono counsel;
2. for attorneys, the length time he or she has been a member of the bar of this Court;
3. the law firm or attorney's litigation and trial experience (civil or criminal);
4. the availability of personnel within a law firm or attorney's office, to consult and advise in languages other than English.

Once a law firm or attorney has been selected to serve on the pro bono panel, they will remain on the panel for a period of at least two years. The Court will solicit applications for new law firms and attorneys to serve on the panel on a rolling, as-needed basis. Any law firm or attorney who is placed on the pro bono panel should be willing to accept appointment, unless there exists a conflict, or unless the law firm or attorney has previously been appointed within the last two years.

Selection of cases appropriate for appointment of counsel

The assigned judge in a civil case filed by an indigent *pro se* litigant will determine whether such case is appropriate for the appointment of pro bono counsel, upon consideration of the following:

1. the inability of the *pro se* party to retain counsel by other means,
2. the potential merit of the claims as set forth in the pleadings,
3. the nature and complexity of the action, both factually and legally, including the need for factual investigation and evidentiary presentation at motions or trial,
4. whether the *pro se* party has another case pending before this Court and, if so, whether counsel has been appointed in such case;
5. the degree to which the ends of justice will be served by appointment of counsel, including the extent to which the Court may benefit from the appointment; and
6. any other factors deemed appropriate.

In addition, unless the Court determines based upon the above factors that counsel is not necessary, the Court may appoint counsel for purposes of trial as a matter of course in each prisoner civil rights case where summary judgment has been denied.

Nothing herein prevents the assigned judge from appointing counsel if it is apparent from the pleadings or other materials before the Court that the *pro se* civil plaintiff has mental or other disabilities substantially interfering with his or her ability to present the factual and legal claims and making an appropriate application for appointment of counsel.

Method of selection of counsel from the Pro Bono Panel

The Court will maintain a random-ordered list of law firms and attorneys who have been selected for the pro bono panel. When a judge determines appointment of pro bono counsel would be appropriate in a particular case, the judge's staff will prepare an historical memorandum, summarizing the procedural and factual history of the case as well as the nature of the legal claims asserted. The judge will forward this historical memorandum to the Court's pro bono administrator, who will transmit such memorandum along with a "Notice of Selection for Pro Bono Representation" to the next listed law firm or attorney on the random-ordered list.

Investigation of claim and acceptance of case

Within three weeks after receipt of the Notice, the selected Panel law firm or attorney will conduct a conflict check as well as an initial review and investigation of the civil plaintiff's claims. Thereafter, the panel law firm or attorney must return to the pro bono coordinator the "Pro Bono Panel Response Form," indicating (a) appointment is accepted, (b) appointment cannot be accepted due to a conflict, or (c) appointment cannot be accepted for another reason (such reason to be specified in the Response Form). Absent a conflict or the presence of exceptional circumstances, panel law firms and attorney are expected to accept appointment.

If the law firm or attorney cannot accept the appointment, the pro bono administrator will select the next listed law firm or attorney on the random-ordered list, and repeat the Notice process. Once a Panel law firm or attorney has accepted the appointment, the Court will notify the pro se litigant and enter an order of appointment.

Reimbursement of expenses

Local Civil Rule 83.8 (a)(2) provides that pro bono counsel may be reimbursed for their necessarily incurred out-of-pocket expenses. A sample form to claim such expenses can be found on the Court's website.

The provisions of this Plan are to be broadly interpreted in the interests of justice. Nothing herein is intended to limit (a) the ability of the Court to make alternative provisions for the appointment of counsel, (b) the ability of pro se litigants to represent themselves, or (c) the ability of counsel to request to be relieved if circumstances so require.

Pro Bono Panel – Additional Resources

Links to Law Firm and Individual Attorney Applications:

<https://www.casd.uscourts.gov/attorney/Probono-Attorney.aspx>

<https://www.casd.uscourts.gov/attorney/Probono-Firm.aspx>

Article Regarding Pro Bono Panel Opportunities:

<https://www.fbasd.org/post/an-opportunity-for-growth-call-for-applications-to-the-pro-bono-panel>