An Appealing New Pilot Program

By Justice Margaret J. Mullen, Illinois Appellate Court, Second District

It's been said that "the function of the appellate court [is] to enter the battlefield after the battle has been fought and shoot the wounded." Symposium, The Jury Trial Right, 96 Or. L. Rev. 691, 701 (2018). But a new pilot program planned for the Illinois Appellate Court, Second District, hopes to inspire new thinking on the court's function. While appellate mediation programs are not new to courts of review (see S. Gale Dick, *The Surprising Success of Appellate Mediation*, 13 Alternatives to High Cost Litig. 41 (1995)), appellate mediation programs seeking to expand access to justice for self-represented litigants (SRLs) are less common.

In the Second District, about half of our civil appeals are now filed by SRLs. The Supreme Court has worked mightily on resources to help them. But consider the difficulty for an SRL performing a task that very few lawyers undertake. Attorneys know the weight of the appellate burden. There are the various steps toward preparation of the record; unforgiving jurisdictional requirements; the many rules of appellate procedure and briefing; and the complex task of crafting an argument for reversal supported by law and by citation to the record in the trial court. All of this is a minefield that SRLs must navigate to be heard on the merits, and very few are able to do so.

"When people really feel heard, it changes everything," said Justice Richard T. Fields of the California Court of Appeal. (Sarah Hazan, *Appellate mediation: Driving efficient, effective resolution* (Apr. 1, 2020), available at https://gould.usc.edu/news/appellate-mediation-driving-efficient-effective-resolution/ .) And allowing people to really feel heard might explain the surprising success rate of appellate mediation programs. See Colloquy, *50 Years of Building Bridges Through Appellate Mediation*, 27 Cardozo J. of Conflict Resolution 1, 2 (2024) (reporting 40% success rate for United States Court of Appeals, Second Circuit). Indeed, even after any settlement efforts at

trial have failed, and even after one side has already won a trial-court judgment, the fact that so many opt for a solution within their control that ends the controversy is truly remarkable.

The Second District's pilot program would require mediation (most likely via remote conferencing), at no cost to the parties, for a subset of our civil appeals filed by SRLs. An experienced mediator will help the parties problem-solve towards a voluntary settlement of the entire matter. Importantly, the program will also provide the SRL with the benefit of *pro bono* limited-scope representation (just for the mediation process). The lawyer and the mediator will assist the SRL with understanding not just the value of settlement, but also the rigors of the work that would otherwise lie ahead. For the court, the most valuable outcome will be providing the SRL with the belief that he or she was really heard.

Are you interested in appellate mediation? The court needs your help. The program will require both lawyer-mediators and *pro bono* mediation attorneys. Watch for announcements of our free CLE training [two hours] coming this fall. Questions? Email: AC2mediation@illinoiscourts.gov