

The Seattle Times

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Politics & Government

Originally published Tuesday, September 25, 2012 at 1:16 PM

Court grants appeals from 2 people without lawyers

Well-heeled clients pay tens of thousands of dollars to hit the legal jackpot - Supreme Court review of their appeals. But on Tuesday, the court decided to hear cases filed by two people who couldn't afford or didn't bother to hire an attorney.

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WASHINGTON —

Well-heeled clients pay tens of thousands of dollars to hit the legal jackpot - Supreme Court review of their appeals. But on Tuesday, the court decided to hear cases filed by two people who couldn't afford or didn't bother to hire an attorney.

One was written in pencil and submitted by an inmate at a federal prison in Pennsylvania. The other was filed by a man with no telephone living on Guam.

Neither case seems destined to join the ranks of *Gideon v. Wainwright*, the landmark 1960s case filed by a prisoner with no lawyer that established a criminal defendant's right to a lawyer. Both show, however, that when the court is looking to resolve finicky legal issues and the right case shows up, it doesn't matter whether the author of the appeal wears a natty suit or prison garb.

Longtime Supreme Court practitioner Tom Goldstein called the granting of two such lawyerless cases at the same time "unheard of." But both cases chosen by the justices will help resolve the ability of civilians to sue the government over claims of improper actions of federal and military employees on the job.

Kim Lee Millbrook, a prisoner at the federal prison in Lewisburg, Pa., sued the government after accusing prison guards at the Special Management Unit of sexually assaulting him in May 2010. Prison officials said Millbrook's claim was unsubstantiated.

The lower courts threw out Millbrook's lawsuit, but justices said they would use his appeal - carefully written in longhand - to decide the narrow issue of when the government can be sued for claims of abuses by federal prison guards. Millbrook wrote on a form that can be printed off the Supreme Court website that he was proceeding without a lawyer because he couldn't afford to pay one. He is not scheduled to be released from prison until 2033.

Steven Alan Levin, the petitioner on Guam in the other case granted by the Supreme Court, did not say whether he couldn't afford a lawyer or just wanted to proceed on his own. Levin did not file as a pauper; he paid the \$300 fee required to file a petition.

Levin sued over a Navy surgeon's performance of unsuccessful cataract surgery on him. He was operated on in March 2003 at the United States Naval Hospital in Guam. Levin said he withdrew his consent for the surgery before the operation began but doctors proceeded anyway. Levin suffered complications, which require ongoing treatment.

Levin sued the U.S. government for medical malpractice and battery. The courts threw out the

medical malpractice complaint and kept the battery charge. But the 9th U.S. Circuit Court of Appeals said the government is also immune from being sued for battery. The high court will now decide whether the government can be sued for improper actions committed by military medical personnel while on the job.

The court almost always assigns a lawyer to assist in the extremely rare instances in which justices accept cases in which the petitioner represents himself, which are known as "pro se" cases. The most famous is Gideon v. Wainwright, in which the high court said states have to provide lawyers to defendants who can't afford a lawyer in state courts, just as the federal courts do. Lawyer Abe Fortas, who would later become a Supreme Court justice, was appointed by the court to argue for Clarence Earl Gideon, and won a unanimous decision.

The Supreme Court does not track the number of pro se cases granted but more than half of the appeals filed at the federal appeals court level are without a lawyer. In 2010, 28,931 pro se appeals were filed in the federal appeals courts in 2010.

It's not certain whether either man yet knows that the Supreme Court has taken his case. It was midnight in Guam when Levin's case was granted, and he listed no telephone number on his Supreme Court brief. Millbrook is currently being held in a high security federal prison designated as a Special Management Unit for violent and disruptive inmates, and does not have email or phone privileges. The only way to contact him, a prison spokesman, was through postal mail.

The court also:

- Agreed to decide when law enforcement officers must get a warrant before ordering a blood test on an unwilling drunken-driving suspect. The Missouri Supreme Court said police need a warrant to take a suspect's blood except in special circumstances when a delay could threaten a life or destroy potential evidence. Other courts have ruled that dissipation of alcohol in the blood is reason enough for police to call for a blood test without first getting a warrant.

- Upheld West Virginia's congressional redistricting plan against a challenge that small population variations among its three congressional districts violate the Constitution. The justices, in an unsigned opinion, reversed a lower federal court ruling that struck down the plan because of the population differences.

- Will rule on whether lawyers can obtain personal information from driver license records to recruit clients for lawsuits, despite a federal privacy law intended to shield motor vehicle records. The justices will hear an appeal from three South Carolinians who objected to solicitations from lawyers to join a lawsuit against car dealers.

The court's new term begins on Monday. These cases probably will be argued in January.

Pro se cases filed with the U.S. Court of Appeals:

<http://www.uscourts.gov/uscourts/Statistics/JudicialFactsAndFigures/2010/Table204.pdf>

Associated Press writer Mark Sherman contributed to this report.