

RULE 83L

PRO-BONO PROGRAM

(a) General.

Pursuant to 28 U.S.C. §1915 (e), this Rule and the American Bar Association Rules of Professional Conduct, each member of the trial bar has the responsibility to represent any person unable to afford counsel. The pro-se rules provide for the reimbursement of expenses of counsel appointed under this Rule. The admission fees collected when counsel join the trial bar form a major source of the funds used to pay the expenses. The procedures for appointment involve selecting from a current panel of members of the bar as set forth below.

(b) Definitions.

The following definitions shall apply to the pro-bono program:

- (1) ___ The term **“appointment of counsel”** shall mean the appointment of a member of the trial bar to represent a party who lacks the resources to retain counsel by any other means. The appointment shall only be in a civil action and shall not include any appointment made pursuant to the Criminal Justice Act of 1964, 18 U.S.C. §3006A.
- (2) ___ The term **“panel”** shall mean those members of the trial bar who have volunteered for appointment and those whose names were selected pursuant to section (c).
- (3) The terms **“pro-bono rules”** and **“pro-bono program”** shall refer to this Rule.

(c) Creating the Panel.

From time to time, the Clerk of the Court shall select names at random from the trial bar to create a panel to be used in assigning members of the bar to provide pro bono representation to indigent persons in civil cases. The panels are formed annually. The names are selected in such a manner that no member of the trial bar is selected for a subsequent panel until all other members of the bar have been selected.

(d) Notification to Panel.

Following the selection of a panel, the Clerk shall notify each member and obtain from each the following information to be used in assigning counsel from the panel:

- (1) counsel's prior civil trial experience, including a general indication of the number of trials and areas of trial experience;
- (2) counsel's ability to consult and advise in languages other than English;
- (3) counsel's preferences for appointment among the following types of matters:
 - (a) Social Security appeals;
 - (b) employment discrimination actions;
 - (c) civil rights actions filed by persons in custody; and
 - (d) other civil rights actions.
- (4) ___Information supplied by counsel may be amended at any time by letter.

(e) Exemptions.

A member of the trial bar—

- (1) whose principal place of business is outside of this District, or
- (2) who is employed full-time by an agency of the United States, a state, a county, a municipality or any of their sub-divisions, or
- (3) who is employed full-time by a not-for-profit legal aid organization,

shall, when selected for a panel, be removed from it and returned to the pool. That removal, however, shall not preclude counsel from being selected for a subsequent panel.

(f) Volunteers.

A member of the trial bar may volunteer to be included in a panel. Whenever a volunteer is appointed, the Clerk, as part of the notification process, will ask the volunteer to elect one of the following options:

- (1) the volunteer's name will be moved to the end of the list of names on the panel, or
- (2) the volunteer's name will be removed from the panel and either replaced after a specified time period or at the request of the volunteer.

The Clerk will make a similar request of any volunteer whose name has been on a panel for 12 months and who has not been appointed during that time.

The only exemption from being included on a panel is the limited one granted to members of the groups specified in section (e).

(g) Application.

Any application for the appointment of counsel by a party appearing pro-se shall be made on a form approved by the Court. The application shall include a form of affidavit stating the party's efforts, if any, to obtain counsel by means other than appointment and indicating any prior pro-bono appointments of counsel to represent the party in cases brought in this Court, including both pending and previously terminated actions. A completed copy of the affidavit of financial status shall be attached to the application. The Clerk shall provide the application forms and financial status affidavits on request, together with a cover sheet informing the party of the following:

- (1) the steps needed to complete and file the application;
- (2) the party's responsibility under this Rule to pay expenses to the extent reasonably feasible based on the party's financial condition;
- (3) the party's responsibility under this Rule to pay part or all of counsel's fees to the extent reasonably feasible based on the party's financial condition;
- (4) the provisions of 42 U.S.C. §2000e-5(k) and 42 U.S.C. §1988(b) and (c) for the award of attorney's fees to prevailing parties in Title VII employment discrimination actions and civil rights actions; and
- (5) the provisions for awarding statutory attorney's fees from any award of retroactive disability benefits in social security appeals.

Failure of a party to make a written application for appointed counsel shall not preclude appointment.

(h) Reapplication.

A pro-se party who was ineligible for appointed counsel at the outset of the litigation who later becomes eligible by reason of changed circumstances may apply for appointment of counsel within a reasonable time after the change in circumstances has occurred. The procedures set out in section (g) shall be followed in making the reapplication.

(I) Factors Used in Determining Whether to Appoint.

Upon receipt of an application for the appointment of counsel, the judge shall determine whether counsel is to be appointed to represent the pro-se party pursuant to 28 U.S.C. §1915(e). That determination shall be made within a reasonable time after the application is filed.

The following factors will be taken into account in making the determination:

- (1) the potential merits of the claims as set forth in the pleadings;
- (2) the nature and complexity of the action, both factual and legal, including the need for factual investigation;
- (3) the presence of conflicting testimony calling for a lawyer's presentation of evidence and cross-examination;
- (4) the capability of the pro-se party to present the case;
- (5) the inability of the pro-se party to retain counsel by other means;
- (6) the degree to which the interests of justice will be served by appointment of counsel, including the benefit the court may derive from the assistance of appointed counsel; and
- (7) any other factor deemed appropriate by the Court .

(j) Order of Appointment.

Whenever the judge concludes that the appointment of counsel is warranted, the judge shall enter an order pursuant to 28 U.S.C. §1915(e) directing the appointment of counsel to represent the pro-se party. The judge may specify in the order of appointment an area of expertise or preference so that the Clerk may select a prospective appointee who indicated preference for that area, if one is available. The order shall be transmitted forthwith to the Clerk. If service of the summons and complaint has not yet been made, an order directing service by the marshal or by other appropriate method of service shall accompany the appointment order.

The selection of a member of the panel for appointment pursuant to the appointment order will normally be made in accordance with section (i). The Court may determine that an appointment be made, however, in any of the following manners:

- (1) Where the pro-se party has one or more other cases pending before this Court in which counsel has been appointed, the judge may determine it to be appropriate that counsel appointed in the other case or cases be appointed to represent the pro-se party in the case before the judge.

- (2) Where the judge finds that the nature of the case requires specific expertise and among the panel members available for appointment there are some with the required expertise, the judge may direct the Clerk to select counsel from among those included in the group or may designate a specific member of the group.
- (3) Where the judge finds that the nature of the case requires specific expertise and none of the panel members available for appointment has indicated that expertise, the judge may appoint counsel with the required expertise who is not on the panel.

In order to assist the judge in determining whether or not to make a direct appointment under subsection (1) of this section, the Clerk shall provide on request the case number, case title, judge to whom assigned, and name of counsel appointed of each case currently pending before the Court in which the pro-se party has had counsel appointed.

(k) Selection of Attorney to be Appointed.

Except where another method of appointment is ordered pursuant to section (h), the Clerk, on receipt of the order of appointment shall select a name from the panel in the following manner:

- (1) Where the order specifies a particular area of expertise or a preference, the Clerk shall select the first available panel member indicating the expertise or preference. If no person with the expertise or preference is found, the next available person listed on the panel shall be selected.
- (2) Where the order does not specify any area of expertise or preference, the Clerk shall select the first available person listed on the panel.

(l) Notice of Appointment.

After counsel has been selected, the Clerk shall file counsel's appearance through CM/ECF. The Clerk shall also immediately send written notice of the appointment.

(m) Stay of Proceedings.

The Court will stay all proceedings in the action for a period of thirty (30) days from the date the attorney is appointed by the Court to represent the litigation. The purpose of the stay is to permit the appointed counsel sufficient time to meet and interview the client, review the case file and conduct preliminary investigation and legal research.

(n) Making Private Counsel Court-Appointed.

Where a party is represented by counsel and because of the party's financial condition both the party and counsel wish to change the nature of the representation to court-appointed representation in order that counsel may be eligible for reimbursement of expenses from the Court's fund pursuant to this Rule, counsel may petition the court to be court-appointed counsel. The petition shall indicate that if the court grants the petition, existing fee agreements between the party and counsel shall no longer be enforceable and that subsequent fee agreements between the party and counsel may only be made in accordance with the provisions of this Rule. The judge shall grant the petition only if the judge would have granted an application filed under this Rule had the party not been represented by counsel. Where the party is represented by more than one counsel, any order of appointment under this section shall preclude prospective operation of fee agreements with all such counsel but shall appoint only those counsel wishing to be appointed.

(o) Duties and Responsibilities of Appointed Counsel.

Promptly following the Clerk's filing of counsel's appearance, counsel shall communicate with the newly-represented party concerning the action. In addition to a full discussion of the merits of the dispute, counsel shall explore with the party any possibilities of resolving the dispute in other forums, including, but not limited to, administrative forums. If after consultation with counsel the party decides to prosecute or defend the action, counsel shall proceed to represent the party in the action unless or until the attorney-client relationship is terminated.

Except where the appointment is terminated pursuant to this Rule, each appointed counsel shall represent the party in the action from the date the Clerk enters counsel's appearance until a final judgment is entered in the action. If the matter is remanded to an administrative forum, the appointed counsel shall, unless given leave to withdraw by the judge, continue to represent the party in any proceeding, judicial or administrative, that may ensue upon an order of remand. The appointed counsel is not required by these rules to continue to represent a party on appeal should the party represented wish to appeal from a final judgment.

(p) Grounds for Relief from Appointment Application.

After appointment, counsel may apply to be relieved of an order of appointment only on the following grounds or on such other grounds as the appointing judge finds adequate for good cause shown:

- (1) A conflict of interest precludes counsel from accepting the responsibilities of representing the party in the action.
- (2) In counsel's opinion, counsel is not competent to represent the party in the particular type of action assigned.

- (3) A personal incompatibility or a substantial disagreement on litigation strategy exists between counsel and the party.
- (4) Because of the temporary burden of other professional commitments involved in the practice of law, counsel lacks the time necessary to represent the party.
- (5) In counsel's opinion, the party is proceeding for purpose of harassment or malicious injury, or the party's claims or defenses are not warranted under existing law and cannot be supported by good faith arguments for extension, modification, or reversal of existing law.
- (6) For other good cause shown. Reasons which may constitute good cause for the striking of an attorney's name shall include, but are not limited to, infirmity, retirement, and prior recent appointment from the panel.

Any application by appointed counsel for relief from an order of appointment on any of the grounds set forth in this section shall be made to the judge promptly after the attorney becomes aware of the existence of the grounds, or within such additional period as may be permitted by the judge for good cause shown, not to exceed thirty (30) days after learning of the facts warranting such relief. The application shall be a privileged court document kept under seal and shall not be available in discovery or otherwise used in litigation. If the attorney's name is stricken for a specified period of time, then the attorney's name shall be reinstated at the expiration of that period unless the judge has ruled to the contrary.

(q) Order Granting Relief.

If an application for relief from an order of appointment is granted, the judge may issue an order directing the appointment of another counsel to represent the party. The appointment shall be made in accordance with the procedures set forth in this Rule. Alternatively, the judge shall have the discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action pro-se.

Where the judge enters an order granting relief from an order of appointment on the grounds that counsel lacks the time to represent the party due to a temporary burden of other professional commitments, the name of counsel so relieved shall, except as otherwise provided in the order, automatically be included among the names selected for the next panel.

(r) Discharge of Appointed Counsel on Request of Party.

Any party for whom counsel has been appointed shall be permitted to request the judge to discharge him or her from the representation and to appoint another. The request shall be made within thirty (30) days after the party's initial consultation with the appointed attorney, or within such additional period as permitted by the judge for good cause shown.

When the request is supported by good cause, such as personal incompatibility or a substantial disagreement on litigation strategy between the party and appointed counsel, the judge shall forthwith issue an order discharging and relieving appointed counsel from further representation of the party in the action or appeal. Following the entry of such an order of discharge, the judge may, in his or her discretion, enter another order directing the appointment of another counsel to represent the party. In any action where the judge discharges appointed counsel but does not issue another order of appointment, the party shall be permitted to proceed pro-se.

In any action where a second counsel is appointed and subsequently discharged upon request of a party, no additional appointment shall be made except on a strong showing of good cause. Any appointments made following the entry of an order of discharge shall be made in accordance with the procedures set forth in that Rule.

(s) Status Conference at Expiration of Stay.

As near a time as is practical after the expiration of the stay of proceedings in any referred case, the Court shall conduct a status conference with all parties represented. One purpose of the status conference shall be to consider whether expedited discovery and/or other proceedings are appropriate to facilitate efficient resolution of the case.

(t) Expenses.

The party shall bear the cost of any expenses of the litigation to the extent reasonably feasible in light of the party's financial condition. Expenses shall include, but not be limited to, discovery expenses, subpoena and witness fees, transcript expenses and translations. Appointed counsel or the firm with which counsel is affiliated may advance part or all of the payment of any such expenses without requiring that the party remain ultimately liable for such expenses, except out of the proceeds of any recovery. The attorney or firm shall not be required, however, to advance the payment of such expenses.

At the conclusion of the case, to the extent that appointed counsel seeks reimbursement for expenses that are recoverable as costs to a prevailing party under Fed. R. Civ. P. 54 or 28 U.S.C. §1920, the appointed attorney must submit a verified bill of costs and not attempt to recover those expenses from the Fund.

If the party is subsequently reimbursed for an expense that had been funded in whole or in part from the Fund, the party shall be required to reimburse the Fund. In addition, any expenses paid pursuant to this section must be repaid to the Court upon recovery of judgment or monetary settlement.

Expenses incurred by appointed counsel or the firm with which counsel is affiliated may be reimbursed from the Court's fund in accordance with the provisions of the Regulations Governing the Reimbursement of Expenses in Pro-Bono Cases. The Clerk will provide copies of the Regulations on request.

(u) Attorney's Fees; Party's Ability to Pay.

Where as part of the process of appointing counsel the judge finds that the party is able to pay for legal services in whole or in part but that appointment is justified, the judge shall include in the order of appointment provisions for any fee arrangement between the party and the appointed counsel.

If after appointment counsel discovers that the party is able to pay for legal services in whole or in part, counsel shall bring that information to the attention of the judge. The judge may then either (1) authorize the party and counsel to enter into a fee agreement subject to the judge's approval, or (2) relieve counsel from the responsibilities of the order of appointment and either permit the party to retain an attorney or to proceed pro-se.

(v) Fee Agreements Prohibited; Exceptions.

Because the representation of the party was not voluntary at its inception and because the party is unrepresented in dealing with appointed counsel, appointed counsel shall, except as otherwise provided in this rule, neither (1) enter into a binding fee arrangement of any type with the party, nor (2) make such an arrangement a condition to undertaking or continuing the representation.

Where it appears that a reasonable settlement is possible, appointed counsel may enter into a provisional fee agreement with the party counsel was appointed to represent. The provisional fee agreement shall be presented to the court for approval.

(w) Allowance of Fees.

Upon appropriate application by appointed counsel, the judge may award attorney's fees to appointed counsel for services rendered in the action as authorized by applicable statute, regulation, rule, or other provision of law, including case law.

Should the appointed counsel, however, recover attorney's fees by court award as provided by law or by settlement, any fee previously advanced by the Court shall be repaid out of such recovery.