

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

RESOLUTION FORMING A CIVIL PRO BONO PANEL

WHEREAS, the Court desires to form a panel of attorneys to serve pro bono as appointed counsel to represent pro se civil litigants in cases pending before the Court (hereinafter "the Civil Pro Bono Counsel Panel" or "the Panel") in the interest of providing: (a) pro bono service to litigants who request counsel but lack the financial resources to hire a lawyer; (b) pro bono service to the Court in furtherance of the just and efficient administration of its civil docket; and (c) litigation experience to attorneys who seek to increase their familiarity and involvement in federal litigation practice in this Court;

WHEREAS, the Court seeks to acquire additional data and experience concerning how, pursuant to what guidelines, at what monetary cost, and to what extent such a program might operate;

IT IS HEREBY RESOLVED, upon unanimous vote of the judges of the Court, that a Pilot Program concerning the proposed Civil Pro Bono Counsel Panel is instituted to be operated in certain civil cases pending before the Court pursuant to the following protocol:

(1) The Pilot Program will be conducted by the Magistrate Judges of the Court for one year, commencing on January 1, 2019. The initial one year Pilot Program will apply only to pro se prisoners bringing civil actions.

(2) The Court has designated an employee of the Court ("Program Coordinators") who will be responsible for:

(a) providing and managing automated mechanisms for interested attorneys to volunteer to serve on the Civil Pro Bono Counsel Panel;

(b) receiving, reviewing, and approving applications from attorneys who wish to be appointed to the Panel, including verifying that applicants are in good standing at the bar of this Court with current and adequate malpractice insurance coverage in place;

(c) maintaining and making available to the Court a list identifying those attorneys who have volunteered to serve on the Panel by name, firm affiliation (if any), mailing address, email address, and telephone number;

(d) providing instructions and assistance in the appointment of attorneys and the operation of the Pilot Program when needed;

(e) tracking appointments, reimbursements, and other anecdotal or case details for future reporting purposes;

(f) conducting and coordinating public outreach to encourage lawyers and law firms to volunteer for the Panel, and to recognize those who have volunteered; and

(g) exploring possible training and educational programs for volunteers and prospective applicants.

(3) During the one-year operation of the Pilot Program, the Magistrate Judges of this Court may appoint counsel who are listed as Panel members to represent pro se prisoners in civil cases, but only pursuant to the following standards:

(a) Before determining whether counsel should be appointed from the Panel, the Magistrate Judge assigned to the case must await the pro se prisoner's (i) filing of a written motion for appointment of counsel, or (ii) making of an oral motion on the record during a hearing.

(b) Appointments of counsel from the Panel may only be made in: (i) cases of the type that are automatically referred to Magistrate Judges under Local Rule 73.2; (ii) other civil cases in which a Judge of the Court has issued a specific referral order as contemplated by Local Rule 73.3; and (iii) any other civil case in which the Judge refers a motion for appointment of counsel to the assigned Magistrate Judge.

(c) Appointment of counsel from the Panel must be limited only to those pro se prisoners who have demonstrated to the Magistrate Judge financial inability to pay privately retained counsel. 28 U.S.C. § 1915(e)(1).

(d) Counsel may not be appointed from the Panel until (i) the Magistrate Judge has determined that the case should proceed beyond the screening process required in 28 U.S.C. § 1915A, and (ii) the assigned Judge has denied any motion for summary judgment or other dispositive motion, and the deadline for filing dispositive motions has passed.

(e) Counsel from the Panel must not be appointed as a matter of course or ordinary practice, since there is no automatic right to appointment of counsel in civil cases, especially in civil rights cases. *Hadd v. LSG-Sky Chefs*, 272 F.3d 298, 301 (5th Cir. 2001); *Castro v. Becken*, 256 F.3d 349, 353-54 (5th Cir. 2001). Instead, in considering motions for appointment of counsel, the Magistrate Judges must apply and briefly address in their appointment orders the appropriate applicable legal standards; including, for example:

(i) in civil rights cases, the requirement that “[a] district court should appoint counsel in a civil rights cases only if presented with exceptional circumstances,” *Norton v. DiMazana*, 122 F.3d 286, 293 (5th Cir. 1997); *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982); based upon consideration of “the type and complexity of the case, the litigant’s ability to investigate and present the case, and the level of skill required to present the evidence,” *Romero v. Becken*, 256 F.3d 349, 355 (5th Cir. 2001), and whether appointment would be a service to the Court and all parties in the case by “sharpening the issues . . . , shaping the examination of witnesses, and thus shortening the trial and assisting in a just determination.” *Ulmer*, 691 F.2d at 213.

(4) When the Magistrate Judge grants a motion for appointment of counsel, the order will designate that the appointment is of an attorney from the Civil Pro Bono Counsel Panel. The order will contain a statement describing the parameters of the attorney’s representation. The Program Coordinator will direct the Clerk of Court to send a request for pro bono representation to all Panel members. Panel members will be provided PACER access at no cost for a period of 30 days to review the pleadings in the subject case.

(a) If, after review, a Panel member wishes to volunteer to represent the pro se prisoner in the subject case, the Panel member will indicate his/her willingness to accept a pro bono assignment by replying to the Court via the link provided in the request for pro bono representation notification.

(b) The assigned Magistrate Judge will then select a volunteer from among the volunteering Panel members, and will issue an order (i) appointing the Panel member to represent the pro se prisoner, (ii) directing the Clerk to mark that volunteer on the docket sheet of the case as appointed counsel of record for the pro se prisoner, and (iii) clarifying the scope of the Panel member’s representation of the pro se prisoner, including any limitations upon that scope.

(c) If no Panel member volunteers to represent the pro se prisoner, the assigned Magistrate Judge may select and notify a Panel member of a potential appointment to the case. Upon notification of a potential appointment, the Panel member may decline to accept the appointment for reasonable cause, including, but not limited to, a conflict of interest, a recent appointment in another case, or a prohibitive work schedule.

(d) Any volunteer or appointed Panel member may move to withdraw from the case at any time for good cause, including, but not limited to, inability to communicate effectively with the client.

(e) For good cause shown, a Panel member may move the Court for a limited amount of further discovery.

(5) The Court has approved the expenditure of no more than \$25,000.00 payable from the Court's funds for use in the Pilot Program as follows:

(a) Pro bono counsel shall be eligible for payment of fees and reimbursement of costs as specified below, which will only be paid upon motion and order of the assigned Magistrate Judge to the Clerk of Court to make payment.

(b) Ordinary reimbursable costs, up to \$2,500, are limited to the actual documented cost of case-related (i) long distance telephone and facsimile costs; (ii) photocopying, not to exceed \$.10 per page; (iii) deposition transcripts; (iv) U.S. postage; (v) fees for service of papers and the appearance of witnesses not otherwise voided, waived, or recovered; and (vi) costs of interpreter services not otherwise voided, waived, or recovered.

(c) Upon prior approval of the assigned Magistrate Judge, by motion and order, pro bono counsel may be reimbursed for case-related travel (i) by private automobile at the per mile rate then in effect for federal judiciary employees, and (ii) by other means on an actual documented cost basis at the lowest possible fare.

(d) Upon prior approval of the assigned Magistrate Judge, by motion and order, pro bono counsel may be reimbursed for the reasonable fees of expert witnesses or investigators at rates deemed appropriate by the assigned Magistrate Judge.

(e) Pro bono counsel shall be eligible for payment of a flat attorney's fee in an amount not to exceed \$2,500 per case, which will only be paid upon motion and order of the assigned Magistrate Judge to the Clerk of Court to make payment.

(f) Prop bono counsel may only recover expenses and fees associated with the preparation and presentation of a civil action in the United States District Court for the Western District of Louisiana. No fees or expenses associated with the preparation or presentation of an appeal to the United States Court of Appeals for the Fifth Circuit, or the United States Supreme Court, will be awarded by this Court.

(g) Attorney's fees and taxable costs may be recovered by counsel appointed from the Panel if allowed under the law applicable to the case to the same extent and in the same manner as applicable to retained counsel in the

same kind of case. To the extent that recovered taxable costs are the same as costs already reimbursed to counsel from the Court's funds, the previously reimbursed costs must be refunded by counsel to the Court.

(h) Pro bono counsel may not recover (i) general office expenses such as office overhead, payroll, equipment, basic telephone service, and similar expenses; (ii) any expense not properly documented with receipts or other proof found adequate by the assigned Magistrate Judge; (iii) fees for computerized legal research; (iv) in-town travel or meals; and (v) expenses that may be statutorily recovered or costs or fees taxed against a party or appointed counsel.

(6) At the conclusion of the one year operation of the Pilot Program, the Program Coordinator, after consultation with all Judges and Magistrate Judges who have presided over civil cases during the year in which Panel members have been appointed, will present a report to the En Banc Court concerning operation of the project. The report will include (i) the number and type of cases in which appointments have been made; (ii) the reasons for the appointments as expressed in the appointment orders; (iii) the then-current status of each case; (iv) the approximate amount of time spent by appointed lawyers on each case; (v) the types of and amounts incurred in litigation costs, including any part of those costs for which reimbursement from Court funds has been sought and rejected or approved for payment by the Clerk; (vi) anecdotal evidence from the appointed lawyers concerning their experiences; and (vii) any other matters that might be relevant to the Court's evaluation of the Pilot Program. Thereafter, the En Banc Court will determine whether and, if so, how the Pilot Program might continue in effect.

(7) Nothing in this Resolution affects the ability of any Judge of the Court to appoint law students and supervising attorneys of a law school clinic as counsel in any case as provided in Local Rule 83.2.13.

Shreveport, Louisiana, this 3d day of January, 2019.


S. MAURICE HICKS
CHIEF JUDGE

cc: ALL DISTRICT JUDGES
ALL MAGISTRATE JUDGES