

**United States District Court  
District of Massachusetts**

**Plan for the Appointment of Counsel for Indigent Parties  
in Certain Civil Cases**

May 1, 2009

The objective of this *Plan for the Appointment of Counsel for Indigent Parties in Certain Civil Cases* (Plan) is to facilitate the appointment of pro bono counsel for indigent pro se parties in civil cases when such appointment has been authorized by a judicial officer. This Plan does not apply to the appointment of counsel for pro se plaintiffs who assert employment-related claims against current or former employers. A principal objective of the Plan is to maximize each participating law firm's ability voluntarily to choose cases appropriate for that firm and to minimize the assignment of cases only by rotation among participating firms.

**I. Responsibilities of Pro Bono Coordinator**

The Lead Pro Se Staff Attorney shall be the Court's Pro Bono Coordinator and shall administer the Plan in the manner set forth below.

**II. Responsibilities of Participating Law Firms**

All participating law firms shall be placed on a list, or order of rotation, in alphabetical order by firm name. All firms will designate a contact person for the program and will communicate the identity of that contact person to the Pro Bono Coordinator.

Each participating firm pledges to assume responsibility for at least one pro bono appointment at a time, if one is available. When a participating firm concludes a case, the firm shall advise the Pro Bono Coordinator that the matter has been concluded and that the firm is available to accept an appointment in a new case. The firm shall also submit a statement that describes the manner in which the matter was resolved.

A firm's participation in this Plan is a commitment that an appointment made as set forth in Section III will not be declined except on the following grounds:

1. A conflict of interest precludes counsel from accepting the responsibilities of representing the party in the case.
2. The law firm believes that it lacks sufficient experience to represent the party in the case.

3. Some personal incompatibility exists between counsel and the party, or a substantial disagreement exists between counsel and the party on litigation strategy.

4. In counsel's opinion, the party is proceeding for the purpose of harassment or malicious injury.

5. After investigation, counsel determines that the party's claims or defenses are not warranted under existing law and cannot be supported by good faith argument for extension, modification or reversal of existing law.

### III. Designation of Cases for Pro Bono Representation and Selection of Counsel

A. Whenever a judicial officer determines that there is sufficient cause to exercise the discretionary power of the Court to appoint counsel for an unrepresented indigent party in a civil case, the judicial officer shall issue an order granting the indigent party's request for the pro bono appointment of an attorney. The order shall be transmitted forthwith to the Pro Bono Coordinator. The Pro Bono Coordinator will circulate to participating law firms a description of the case for which appointment of counsel has been approved. A firm may volunteer to accept appointment in the described case.

B. If representation is not promptly secured in this manner, the Pro Bono Coordinator will contact participating firms that are not currently handling a case to give them the opportunity to fulfill their pledge to assume responsibility for a case.

C. If representation is not secured promptly using the measures set forth in the preceding paragraph, the case will be tendered to the first participating firm on the rotation list that is not currently handling a case. The firm to which the case has been tendered may either accept the representation itself or may find other counsel to accept the case.

D. If an appointment is declined in accordance with Section II, the Pro Bono Coordinator shall tender the case to another law firm in the manner set forth above. Alternatively, the Pro Bono Coordinator may recommend that the judicial officer vacate the order of appointment.

E. It is possible that an order of appointment may be issued at a time when all participating firms are already handling a case. In such a situation, the Pro Bono Coordinator shall follow the steps set forth in Sections III.A - III.B to secure representation. If the Pro Bono Coordinator cannot secure representation for the pro se party through these measures, the Pro Bono Coordinator shall tender the case to the first law firm on the rotation list after the one that has most recently accepted, or found other counsel to accept, a case tendered by the Pro Bono Coordinator.

#### **IV. Notification of Appointment**

After representation has been secured in the case in accordance with Sections III.A or III.B, or after a case has been accepted in accordance with Sections III.C or III.E, the Pro Bono Coordinator shall immediately send to counsel a copy of the party's pro se pleadings, a copy of the docket sheet, and any additional materials that the Court believes might be of assistance to counsel in handling the matter. An order of appointment of counsel shall enter within twenty-one days of the sending of these materials unless counsel declines the appointment for one of the reasons set forth above in Section II by so informing the Pro Bono Coordinator in writing.

When a law firm is appointed under this Plan, the appointment shall be made in the name of a partner designated by the firm with the understanding that responsibility for the case may be delegated, at the discretion of the partner, to other attorneys who are partners, associates, or employees of the firm.

#### **V. Scope and Duration of Representation**

Any appointment for representation shall be limited solely to those matters at issue before the Court and may be limited to an issue or issues designated by the judicial officer. Appointed counsel shall represent the party in the action until final judgment is entered in the action, or the issue or issues designated by the judicial officer have been resolved, unless a judicial officer grants a motion to withdraw.

If the party desires to take an appeal from a final judgment, appointed counsel may assist the party in filing a notice of appeal without being bound to handle the appeal.

#### **VI. Expenses and Compensation for Services**

Appointed counsel may apply for reimbursement of expenses from the Court in accordance with the Court's *Guidelines Governing the Reimbursement of Expenses in Pro Bono Cases*. Insofar as expenses are not reimbursed by the Court, it is generally anticipated that appointed counsel shall bear the cost of any expenses.

The acceptance of an appointment on a pro bono basis shall be without prejudice to the assertion of interim or final claims for attorneys' fees and costs under 42 U.S.C. § 1988 or otherwise as provided by law.

If after appointment, appointed counsel discovers that the party is able to pay for legal services in whole or in part, the attorney may bring that information to the attention of the judicial officer. Thereupon the judicial officer may (1) approve the entry into a fee agreement between the party and the attorney or (2) relieve the attorney from the responsibilities of the order of appointment and permit the party to retain another attorney or proceed pro se.