

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RESOLUTION OF THE EN BANC COURT

WHEREAS, the New Orleans Chapter of the Federal Bar Association (hereinafter “the FBA-NO”) has expressed to the Court its desire to form a panel of its member attorneys to serve pro bono as appointed counsel to represent pro se civil litigants in cases pending in the Court (hereinafter “the Civil Pro Bono Counsel Panel” or “the Panel”), in the interest of furnishing (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 younger lawyers who seek to increase their familiarity and involvement in federal litigation practice in this Court;

WHEREAS, the Court commends the FBA-NO for its efforts and goals and contemplates that it may have sufficient need for such a pro bono project, but 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 civil cases in 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 July 1, 2014.

(2) The current president of the FBA-NO has appointed a Committee of its members who will be responsible for (a) canvassing its membership, (b) identifying attorneys in good standing at the bar of this Court who have volunteered and are willing to serve on the Civil Pro Bono Counsel Panel, and (c) providing the Court as soon as possible with a list identifying those lawyers by name, firm affiliation (if any), mailing address, email address and telephone number who have volunteered to serve on the Panel. One member of this FBA-NO Committee must be designated as the Pilot Program Coordinator.

(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 litigants 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 litigant'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 litigants who have demonstrated to the Magistrate Judge financial inability to pay privately retained counsel. 28 U.S.C. § 1915(e)(1).

(d) In cases filed by prisoners, counsel may not be appointed from the Panel until the Magistrate Judge has determined that the case should proceed beyond the screening process required in 28 U.S.C. § 1915A.

(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; and

(ii) in Title VII cases, where “exceptional circumstances” are not required, “the merits of the plaintiff’s claims of discrimination; (2) the efforts taken by the plaintiff to obtain counsel; and (3) the plaintiff’s financial ability to retain counsel.” Gonzalez v. Carlin, 907 F.2d 573, 580 (5th cir. 1990).

(4) When the Magistrate Judge grants a motion for appointment of counsel, the order will designate that the appointment is of a lawyer from the Civil Pro Bono Counsel Panel and forward the order to the FBA-NO Pilot Program Coordinator, who will select a lawyer from the Panel for specific assignment to the case and provide the lawyer's name and contact information to the Magistrate Judge, who will then direct the Clerk to mark that lawyer on the docket sheet of the case as counsel of record for the party.

(5) The Court has approved the expenditure of no more than \$25,000.00 payable from the Court's Attorney Registration and Disciplinary Fund described in Local Rule 83.2.2(G) for use in the Pilot Program as follows:

(a) reimbursement of costs must not exceed \$2,500.00 per case, and will only be paid upon motion and order of a Magistrate Judge to the Clerk to make payment;

(b) ordinary reimbursable costs 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; and (iv) U.S. postage;

(c) upon prior approval of the Magistrate Judge, by motion and order, 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, may also be reimbursed.

(d) upon prior approval of the Magistrate Judge, the reasonable fees of expert witnesses may be reimbursed upon motion and order of the Court.

(6) Attorneys 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 Attorney Registration and Disciplinary Fund, the previously reimbursed costs must be refunded by counsel to the Attorney Registration and Disciplinary Fund.

(7) At the conclusion of the one year operation of the Pilot Program, the Chief Magistrate Judge, after consultation with the FBA-NO Pilot Program Coordinator and 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 project might continue in effect.

(8) 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.

New Orleans, Louisiana, this 22nd day of April, 2014.

FOR THE COURT:



SARAH S. VANCE
CHIEF JUDGE

cc: ALL DISTRICT JUDGES
ALL MAGISTRATE JUDGES