

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

RESOLUTION OF THE EN BANC COURT

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 in the Court (hereinafter “the Civil Pro Bono Counsel Panel” or “the Panel”), in the interest of furnishing (a) pro bono service to civil 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 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 March 13, 2015. The initial 1 year pilot program period will apply to pro se prisoners bringing civil actions.

(2) The Court has designated employees 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) verifying that volunteers are in good standing at the bar of this Court, 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.

(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 prisoner 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) 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. The Court will send a request for pro bono representation to all Middle District Civil Pro Bono 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. If, after review of the case filings, a panel member wishes to volunteer to represent the pro se litigant 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. The Magistrate Judge will then select a lawyer from among the panel members expressing a willingness and interest in accepting the pro bono engagement for specific assignment to the case and 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 Bench and Bar Fund described in Local Rule 83.2.3.1(A) for use in the Pilot Program as follows:

(a) pro bono counsel shall be eligible for payment of fees and reimbursement of costs in an amount not to exceed \$2,500 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.

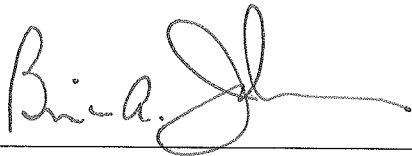
(d) upon prior approval of the Magistrate Judge, the reasonable fees of expert witnesses may be reimbursed upon motion and order of the Court.

(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 Bench and Bar Fund, the previously reimbursed costs must be refunded by counsel to the Court.

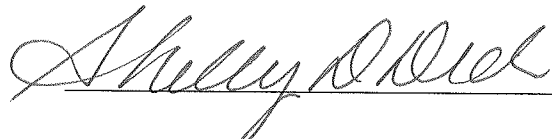
(7) At the conclusion of the one year operation of the Pilot Program, the Magistrate Judge appointed to oversee the Pilot Program, after consultation with all Judges and Magistrate Judges who have presided over civil cases during the year in which Panel members have been appointed, will present a report 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 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 83.2.12.

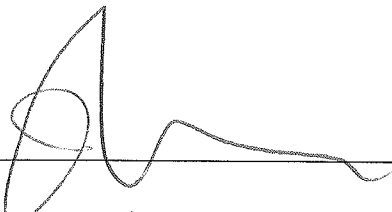
Baton Rouge, Louisiana, this 9th day of March, 2015.



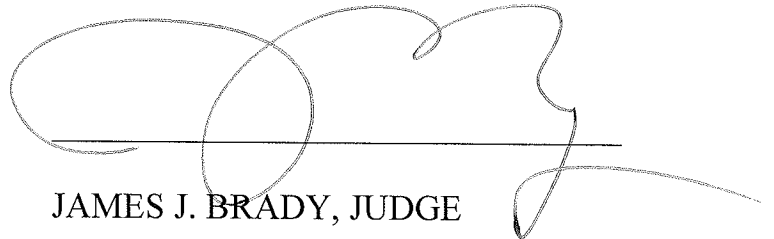
BRIAN A. JACKSON, CHIEF JUDGE



SHELLY D. DICK, JUDGE



JOHN W. deGRAVELLES, JUDGE



JAMES J. BRADY, JUDGE

cc: ALL DISTRICT JUDGES  
ALL MAGISTRATE JUDGES