

**PLAN OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
FOR THE REPRESENTATION OF *PRO SE* LITIGANTS
IN CIVIL RIGHTS ACTIONS
(AS AMENDED, EFFECTIVE AUGUST 1, 2010)**

The United States District Court for the Western District of Washington adopts the following amended plan ("Plan") for furnishing representation to *pro se* litigants in civil rights actions where the Court exercises its discretion to provide such representation. See 42 U.S.C. § 2000e, *et seq.* and 28 U.S.C. § 1915. This Plan shall govern (i) the appointment of attorneys from the Western District Pro Bono Panel ("Panel") to represent *pro se* litigants in civil rights actions, and (ii) the appointment of attorneys from the CR 39.1 register of neutrals to serve as neutrals in cases where counsel has been appointed to provide limited representation for the limited purpose of conducting an early alternative dispute resolution (ADR) procedure under CR 39.1. For each civil action duly commenced in the Western District by such a litigant, the Judge to whom the action is assigned may issue an order of appointment and other orders relating to representation by the appointed attorney in accordance with this Plan and the accompanying Rules. For all purposes, the term Judge shall include Magistrate Judge. The Federal Bar Association of the Western District of Washington shall work in conjunction with the Court and the Clerk of the Court, who may act through a designated Pro Bono Coordinator, to administer this Plan.

Section 1. Pro Bono Panel

(a) Individual Application. Attorneys who are willing to accept appointment to represent *pro se* litigants in civil rights actions shall apply for designation to the Pro Bono Panel on appropriate forms, which are available on the website of the Federal Bar Association of the Western District of Washington (www.fba-wdwash.org) and from the Clerk of the Court. Each application shall set forth, among other things: (i) the attorney's prior civil trial experience, including the number and type of trials and areas of trial experience; (ii) the attorney's ability to consult and advise in languages other than English; (iii) the attorney's preferred practice area(s), if any, for appointment, and (iv) a statement describing any other experiences that qualify the attorney for appointment to the Pro Bono Panel.

(b) Law Firm Application. A law firm may apply as a firm for designation to the Panel by completing the appropriate form available on-line and from the Clerk of the Court. In its application, the law firm shall set forth, among other things: (i) the number of appointed cases per calendar year the firm is willing to accept; (ii) the ability of participating firm attorneys to consult and advise in languages other than English; (iii) the firm's preferred practice areas(s), if any, for appointment, and (iv) the name of the firm's managing partner or a senior member of the firm designated as the Panel Liaison. Where an action is assigned to a participating firm, the

order of appointment may be directed to the firm and the assignment of a firm attorney to the action may be made by the managing partner or the Panel Liaison.

(c) Amending/Withdrawing Information. Information on an application may be amended in writing at any time by letter to the Clerk of the Court. An attorney or firm may withdraw from the Panel at any time by written notice to the Clerk of the Court, except during appointment to an active case. No attorney will be required to handle more than one action at one time.

(d) Eligibility. An attorney must be admitted to practice in the United States District Court for the Western District of Washington to be eligible for designation as a member of the Pro Bono Panel.

Section 2. Nonprisoner Civil Rights Case Screening Committee

(a) Composition of the Screening Committee. The Nonprisoner Civil Rights Case Screening Committee shall be composed of no less than six members of the bar of this Court. The Screening Committee may be larger, however, as determined by need from time to time by the Court and/or the Federal Bar Association. An attorney who serves on the Screening Committee shall not simultaneously serve as a Panel member. Members of the Screening Committee may resign by sending written notice to the Pro Bono Committee of the Federal Bar Association. The Court or the Pro Bono Committee may also remove members from the Screening Committee at will.

(b) Selection of Screening Committee Members. Screening Committee members shall have experience in non-prisoner civil rights actions. The Chief Judge and the Federal Bar Association may consult with bar associations, not-for-profit legal aid organizations, or other groups to obtain the names of prospective Screening Committee members.

Section 3. Appointment Procedure in Nonprisoner Civil Rights Cases

(a) Application and Affidavit of *Pro Se* Party. Whenever a *pro se* litigant in a nonprisoner civil rights action files an appearance or first pleading, the Clerk of this Court shall make available to the party an information sheet and an application for the appointment of counsel.

The information sheet shall notify the *pro se* party of: (i) the possibility in any nonprisoner civil rights case, of obtaining appointed counsel to provide representation for the entire case, (ii) the possibility, in any employment nonprisoner civil rights case, of obtaining appointed counsel to provide limited representation (pursuant to Rule 1.2(c) of the Washington Rules of Professional Conduct), for the limited purpose of conducting an early ADR procedure under CR 39.1, (iii) the possibility, where counsel has been appointed to provide limited representation for the limited purpose of conducting an early ADR procedure under CR 39.1, of

obtaining appointment of a neutral ADR advisor, (iv) the steps needed to complete and file the application, (v) his or her responsibility to pay expenses to the extent reasonably feasible based on his or her financial condition, (vi) his or her responsibility to pay part or all of the attorney's fees to the extent reasonably feasible based on his or her financial condition, and (vii) the provisions of 42 U.S.C. §§ 1988 and 2000e-5(k) for the award of attorney's fees to prevailing parties in civil rights and Title VII employment discrimination actions.

Any application for the appointment of counsel by a party appearing *pro se* in a nonprisoner civil rights action shall include an affidavit/declaration stating the party's efforts 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 an affidavit of financial status shall be attached to the application.

The decision to apply for appointment of counsel rests with the *pro se* party. Failure of a party to make written application for appointed counsel, however, shall not preclude appointment if the assigned Judge determines that appointment of counsel is warranted.

(b) Change of Circumstances. A *pro se* litigant in a nonprisoner civil rights action 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, using the procedures specified in section (a) above, within a reasonable time after the change in circumstances has occurred. Likewise, if an applicant is found to be ineligible after counsel has been appointed, the *pro se* litigant may be asked to repay costs waived or paid by the court, and to retain the services of counsel through the litigant's own resources.

(c) Referral to the Screening Committee. Upon receiving an application for appointment of counsel from a *pro se* litigant in a nonprisoner civil rights action, and after having made a preliminary determination based on the face of the complaint and case records that the case is not frivolous, and the applicant's financial eligibility, the Judge to whom the case is assigned shall ask the Clerk of the Court to forward the application, copies of the pleadings and documents filed to date, and other relevant documents to the Screening Committee.

(d) Screening Committee Review. Upon receipt of an application from the Clerk of the Court, the Screening Committee shall, within a reasonable time, review the application, pleadings, and other relevant documents. The Screening Committee may in its discretion also contact and interview the nonprisoner *pro se* party. Confidential communications between the *pro se* party and the Screening Committee shall be protected from disclosure, pursuant to the attorney-client privilege and the attorney's ethical responsibilities.

Based upon its review of the case and the factors set forth in subsection (e) below, the Screening Committee shall determine whether counsel should be appointed to represent the *pro se* party. If the *pro se* litigant has not demonstrated that s/he has tried to find counsel before

applying for appointment of *pro bono* counsel, the Screening Committee may ask the *pro se* party to take specific steps to obtain private counsel before the Screening Committee determines whether counsel should be appointed.

(e) Factors to Determine Whether to Appoint Counsel. Factors the Screening Committee shall take into account in making its determination are:

- (i) the inability of the *pro se* party to retain counsel by other means;
- (ii) the potential merit of the claims as set forth in the pleadings;
- (iii) the nature and complexity of the action, both factual and legal, including the need for factual investigation;
- (iv) the presence of conflicting testimony calling for a lawyer's presentation of evidence and cross-examination;
- (v) the capability of the *pro se* party to present the case;
- (vi) 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;
- (vii) the degree to which it appears likely that an early ADR procedure under CR 39.1 may bring about an early, inexpensive and consensual resolution of the litigation by:
 - (A) facilitating or improving communications between the parties,
 - (B) providing the parties an opportunity to be heard regarding their respective grievances, positions, concerns, goals and interests,
 - (C) promoting the parties' understanding of the strengths and weaknesses of their respective cases,
 - (D) limiting, narrowing or simplifying the issues in dispute,
 - (E) restoring or preserving personal or business relations,
 - (F) otherwise creating an atmosphere conducive to settlement,
 - (G) achieving settlement on terms not available through litigation, or
 - (H) achieving settlement of some or all issues as between some or all parties; and
- (viii) any other factors deemed appropriate by the Screening Committee.

(f) Report to the Court. The Screening Committee's recommendation that counsel should or should not be appointed shall be forwarded promptly to the assigned Judge. If the Screening Committee determines that counsel should be appointed, the Committee shall specify the scope of representation which it believes is warranted (*i.e.*, representation for the entire case or limited representation for the limited purpose of conducting an early ADR procedure under CR 39.1).

(g) Order of Appointment and Notices to the Parties. When, after receiving the recommendation of the Screening Committee, the assigned Judge concludes that the appointment of counsel is warranted, the Judge shall direct the Clerk of the Court to identify an attorney(s) or law firm from the Pro Bono Panel for appointment. After the selected attorney has confirmed that s/he has no conflict of interest (*see* subsection 3(h) below), the Judge shall issue an order directing the appointment of the attorney selected by the Clerk of the Court to represent the *pro se* party. When counsel is appointed to provide limited representation for the limited purpose of conducting an early ADR procedure under CR 39.1, the order of appointment shall include a finding to the effect that, under the circumstances of the case and in the judgment of the Screening Committee and the Court, limited representation is reasonable and appears reasonably calculated to serve the interests of the parties and further the administration of justice. If the Screening Committee has not recommended the appointment of counsel and the Judge nonetheless believes that appointment is warranted, the Judge may ask the Clerk of the Court to select an attorney from the Panel to represent the *pro se* party. If the Court denies the *pro se* party's application for appointment of counsel, the assigned Judge shall issue an order so stating.

If an appointment is made, the Clerk of the Court shall immediately send written notice of the appointment to the selected attorney. A copy of the order of appointment shall accompany the notice. In addition to notifying the attorney, the Clerk shall notify all of the parties to the action of the appointment, and shall include in such notice the name, address, telephone number, fax number, and email address of the appointee. Where counsel has been appointed to provide limited representation for the limited purpose of conducting an early ADR procedure under CR 39.1, the written notice provided by the Clerk shall be entitled "Notice of Appointment and Interim Notice of Appearance" and shall include a statement that, pursuant to Rules 4.2(b) and 4.3(b) of Washington's Rules of Professional Conduct, counsel for the other parties are to communicate only with the appointed attorney, and not with the *pro se* party, as to the subject matter of the appointment. Upon receiving notice of appointment, the appointed attorney shall enter an appearance in the action. The complete case file shall be made available to the attorney by the Clerk of the Court for inspection and copying.

(h) Check for Conflicts of Interest. Before the name of an attorney(s) or law firm from the Pro Bono Panel is given to the assigned Judge for appointment, the Clerk shall forward the names of the parties in the case to the selected attorney. The selected attorney shall promptly notify the Clerk of the Court of the existence of an actual conflict of interest.

