

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

JUL 10 2024

RD

By Ronald E. Dowling
Deputy Clerk

IN RE: THE CIVIL PRO BONO APPOINTMENT PLAN

GENERAL ORDER NO. 2024-03

I. Plan Necessity

A high percentage of the *pro se* civil actions filed in this District are filed by indigent parties who cannot obtain representation without Court appointment of counsel under 28 U.S.C. § 1915. This District currently has no formal panel of attorneys willing to represent indigent parties in civil cases. Attorneys willing to represent indigent parties preserve access to justice for those unable to afford an attorney and greatly assist this Court in the performance of its mission.

II. General Provisions of the Plan

A. Creation of the Panel

The Plan authorizes the creation of a panel of attorneys who indicate a willingness to accept appointment to represent indigent parties in civil cases. An attorney indicating willingness to participate will not be asked to accept appointment in more than one case per year.

B. Designation of a Plan Administrator

The Plan designates members of the Pro Se Staff to act as the Plan Administrator, maintain the list of attorneys willing to serve, and at the request of a Judge, seek an attorney willing to serve as appointed counsel in a specific case. The Plan Administrator will also prepare a draft Order of Appointment for the assigned Judge.

C. Scope and Duration of the Appointment

Representation shall be limited solely to matters in the appointed case. The appointment may be to handle the case until final judgment or for limited purposes as specified by the Judge. The appointment does not extend to appeal from a final judgment. However, the attorney may assist the party with filing a notice of appeal.

D. Expense Reimbursement and Fee Arrangements

Consistent with Rule 83.6 of the Local Rules for the Eastern and Western Districts of Arkansas the appointed attorney may seek reimbursement of out-of-pocket expenses.

III. Record of Appointments

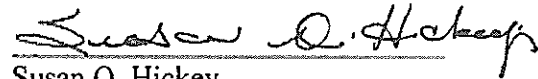
The Plan Administrator will be responsible for keeping an accurate record of all appointments of *pro bono* counsel. An annual report will be submitted to the Chief Magistrate Judge and Chief District Judge one-year from adoption of the Plan and each year thereafter.

IV. Waiver of Fees and Provision of Copies

The Clerk of Court will waive any fees associated with the use by an appointed attorney of the Court's electronic filing system in connection to the case on which he/she is appointed. The Clerk of Court will upon request by appointed counsel furnish him/her with copies of any documents filed in the appointed case including copies of any digital or video exhibits.

IT IS THEREFORE ORDERED that the Civil Pro Bono Attorney Appointment Plan, attached hereto, is adopted.

Dated this 10th day of July 2024.



Susan O. Hickey
Chief United States District Judge

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS**

THE CIVIL PRO BONO APPOINTMENT PLAN

Effective July 10, 2024

The objective of the Pro Bono Appointment Plan (the “Plan”) is to facilitate the recruitment of attorneys willing to accept appointments to represent indigent *pro se* parties in civil cases. Recruited or volunteer attorneys will become members of the Civil Pro Bono Appointment Panel (the “Panel”).

I. Responsibilities of Plan Administrator

Members of the Pro Se Staff will act as the Plan Administrator for this program and shall administer the Plan in the manner set forth below.

II. Responsibilities of Participating Attorneys

Any attorney admitted to practice in the Western District of Arkansas and in good standing may volunteer for the Panel by completing a volunteer application form which is available on the Court’s website (www.arwd.uscourts.gov). Each participating attorney pledges to assume responsibility for up to one appointment per year, if needed.

Participating in this Plan is a commitment and Panel attorneys agree that a case will not be declined, and they will not withdraw except on the following grounds:

- A conflict of interest precludes the attorney from representing the party in the case;
- The attorney believes he/she lacks sufficient experience to represent the party in the case;
- Extreme personal incompatibility or disagreement between the attorney and the party material to the litigation strategy that the parties have been unable to resolve through good faith efforts;
- Because of the temporary burden of other commitments, the attorney lacks the time necessary to adequately represent the party;
- In the attorney’s opinion, the party is proceeding solely for the purpose of harassment or to inflict malicious injury; or
- The attorney accepted an employment position which no longer allows the attorney to engage in the private practice of law. In such an instance, in addition to filing a motion to withdraw from the appointed case, the attorney should promptly inform

the Plan Administrator and his/her name will be removed from the list of volunteer attorneys.

III. Appointment of Counsel

Appointment of counsel shall be at the discretion of the Judges of this Court pursuant to 28 U.S.C. § 1915 and may be made *sua sponte* or upon the application of the party. **Appointment of counsel is not a remark on the merits of the case.**

The decision is discretionary and based on several factors including:

- The inability of the *pro se* party to retain counsel by other means;
- The stage of the proceedings;
- The nature and complexity of the claims as set forth in the pleadings;
- The presence of conflicting testimony calling for an attorney's presentation of evidence and cross-examination;
- The capability of the *pro se* party to litigate the case;
- The degree to which the interests of justice will be served by the appointment of counsel;
- Whether reasonable costs and attorneys' fees may be recoverable by the prevailing party;
- The degree to which the case and Court would benefit from the assistance of counsel prior to any settlement conference;
- The degree of complexity of necessary discovery; and
- Any other factors deemed appropriate by the Judge.

IV. Responsibilities of the Party Seeking Appointment of Counsel

A. The Filing of a Motion

A party appearing *pro se* may file a motion for appointment of counsel at any time during the litigation. Unless the *pro se* party has already been granted the right to proceed as an indigent (*in forma pauperis* ("IFP")), the motion should be accompanied by an affidavit to proceed IFP, detailing the financial resources of the applicant. Applications to proceed IFP are available in the Clerk's Office and on the Court's website.

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A form Motion for Appointment of Counsel may be requested from the Clerk's Office and is available on the Court's website.

The motion should contain:

- A statement informing the Court of any efforts the party made to obtain counsel on a contingency fee basis (for a percentage of any recovery);
- A description of any special circumstances that exist to justify the appointment of counsel;
- A description of the factual or legal issues that cannot be adequately addressed without the appointment of counsel; and
- Any other information the *pro se* party would like the Court to consider.

B. Agreement to Reimburse the Fund in the Event of an Award of Costs

In addition, when requesting appointment of counsel, a *pro se* party must agree to reimburse the Pro Bono Expense Fund (the "Fund") for any expenses paid by the Fund related to the party's case. The obligation to reimburse is limited to a specific statutory award of costs or the portion of any settlement specifically designated as reimbursement of costs.

To the extent that the Fund has incurred any expenses in the case, the agreement to reimburse the Fund shall remain binding on the party even if the party has retained a different attorney or later decides to return to *pro se* status.

C. Request for Waiver of Expense Reimbursement

A party or his/her attorney may request that the reimbursement of expenses to the Fund be waived by the Court.

V. Selection of an Attorney

A. Pursuant to this Plan—Method One

Whenever a Judge determines that there is sufficient cause to exercise the discretionary power of the Court to appoint an attorney for a *pro se* party in a civil case, the Judge shall advise the Plan Administrator. The Plan Administrator will then contact those attorneys on the Panel who are not currently assigned to a case and give them the opportunity to fulfill their pledge to assume responsibility for a case.

B. Pursuant to Local Rules 83.7—Method Two

In addition, the Judge has the discretion to make a directed appointment of attorneys, pursuant to Local Rule 83.7. The Plan Administrator will contact attorneys to give them the opportunity to fulfill their obligation to provide pro bono legal services.

C. Withdrawal from Appointment Under Rule 83.7

When the appointment is made under Local Rule 83.7 rather than this Plan, the attorney may decline appointment pursuant to local rule 83.7.

D. Order of Appointment

Once an attorney agrees to accept appointment, the Plan Administrator will draft an Order of Appointment and forward it to the Judge.

VI. Notification of Appointment

An Order of Appointment will be entered. Once entered, the Order advises the attorney that he/she has been officially appointed by the Court to represent a party in a case and informs the party of the name, address, and phone number of the attorney appointed.

The attorney should enter his/her appearance within **seven (7) days** of appointment.

VII. Scope and Duration of Representation

Representation shall be limited solely to those matters at issue before the Court. The Order of Appointment may further limit the scope of a court-appointed attorney's representation to specific issues or stages of litigation. The court-appointed attorney shall represent the party in the action until final judgment is entered or until the issue or issues identified in the Order of Appointment have been resolved, unless a Judge grants a motion to withdraw filed pursuant to this Plan and Rule 83.5(f) of the Local Rules for the Eastern and Western Districts of Arkansas.

If Plaintiff desires to take an appeal from a final judgment, the appointed attorney may assist the party in filing a notice of appeal, but the attorney has no obligation to continue to represent the party on appeal. No expenses associated with an appeal shall be reimbursed.

If, at any time during the appointed-attorney's representation, the attorney discovers that the party is or has become capable of paying for legal services, the attorney shall immediately bring this information to the attention of the presiding Judge. The Judge has the discretion to revoke the appointment and, upon request, permit the party to retain another attorney, or allow the party to proceed *pro se*, or to permit the court-appointed attorney to continue his/her representation.

Nothing in this section is designed to abrogate the Arkansas Rules of Professional Conduct or the Local Rules of this Court.

VIII. The Pro Bono Expense Fund

Consistent with the Judicial Conference policy articulated in Vol. 4, § 670.20 of the Guide to Judiciary Policy, the United States District Court for the Western District of Arkansas maintains an Attorney Admission Fund.

A. Creation of the Fund

The Court hereby creates the Pro Bono Expense Fund (the “Fund”), which will be subsidiary to and funded by the Attorney Admission Fund. Deposits and withdrawals to and from the Fund shall be made in accordance with this Plan or as directed by the Chief Judge of this Court. The sole purpose of the Fund shall be to reimburse expenses pursuant to the guidelines herein.

B. Deposits Into the Fund

(1). The Clerk of Court as custodian of the Attorney Admission Fund shall make an initial transfer to the Fund on or around August 30, 2024. Additional transfers shall be made on a quarterly basis as necessary to maintain the solvency of the Fund.

(2). The Chief Judge also has the discretion to make transfers from the Fund to the Attorney Admission Fund if the Fund is sufficiently solvent and the Attorney Admission Fund needs additional funding.

(3). Any expenditures recovered pursuant to § IV(B) of this Plan, shall be deposited into the Fund.

C. Administration of the Fund

(1). The Trustee

The Clerk of Court is designated as the Trustee of the Fund. In the event of the death, retirement or resignation of the Clerk, the chief deputy clerk, or such other persons as the Chief Judge designates, shall become the Trustee until the new clerk assumes office.

(2). Responsibilities of the Trustee

The responsibilities of the Trustee are as follows:

- (a). To establish an account in a federally insured bank or savings institution.
- (b). To receive, safeguard, deposit, disburse, and account for all funds in accordance with the law, this Plan, and the policies established by the Court.
- (c). To establish an accounting system for the Fund.

- (d). To ensure that annual financial statements and annual operating reports are prepared in a timely fashion and to periodically submit them to the Court, thereby certifying that they accurately represent the financial condition of the Fund.
- (e). To disperse funds for reimbursement of expenses as determined by the presiding Magistrate or District Judge.
- (f). To sign checks drawn on the Fund.
- (g). To invest funds in accordance with the provisions of this Plan.
- (h). To prepare all necessary reports for the Internal Revenue Service.
- (i). To perform such other functions as may be required by the Court.

D. Disbursements from the Fund

Disbursements from the Fund shall be made in accordance with § IX of this Plan.

IX. Expense Reimbursement

Under Local Rule 83.6 Exhibit A, attorneys may seek reimbursement of reasonable expenses incurred while representing an indigent party as court-appointed counsel. Only out-of-pocket expenses may be reimbursed. When deemed necessary by the Court and with preapproval, funds are also available to pay for investigative expenses and for experts.

A. Authorized Out-of-Pocket Expenses.

Out-of-pocket expenses that an attorney may seek reimbursement for include:

- Deposition and transcript costs.¹

¹ The costs of transcripts or depositions shall not exceed the regular copy rate as established by the Judicial Conference of the United States and in effect at the time any transcript or deposition was taken unless some rate was previously provided for by order of Court. The rates may be found [here](#). Except as otherwise ordered by the Court, only the cost of the original of any transcript shall be allowed. In a deposition noticed by an appointed attorney, only the cost of an original will be allowed. In a deposition noticed by another party, only the cost of one copy will be allowed. In the interest of efficiency and recognizing the availability of audio recordings, appointed attorneys are encouraged to use audio recording for depositions. If audio depositions are used and a transcription of those recordings is performed by the appointed attorney's office staff, the Court may reimburse the appointed attorney at a rate not to exceed one-half the regular copy rate per page as established by the Judicial Conference of the United States and in effect at the time the deposition taken.

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- The reasonable cost of necessary travel for the attorney, as guided by the prevailing limitations placed upon travel expenses of federal judicial employees in accordance with existing government travel regulations. The rate for lodging may be found here. The rate for mileage may be found here.
- Service of papers and witness fees as guided by Judiciary Policy and Procedure. Request may be made for the U.S. Marshal or Clerk to serve summons or subpoenas. The rates for witness fees may be found here.
- The reasonable cost of necessary interpreter services. The fees/rates are subject to a reasonableness standard and may not exceed the hourly rate established by the Criminal Justice Act. The hourly rate may be found here.
- Investigative, expert, or other services as approved or appointed by a Judge.
- The cost of copies and postage and other minor expenses that would not be incurred except for the appointment.
- Any other reasonable expense authorized by a Judge of this Court.

B. Non-authorized Out of Pocket Expenses

Out-of-pocket expenses that an attorney may **not** seek reimbursement for include:

- General office expenses including personnel costs, rent, telephone, and Internet.
- Any cost in conducting computer-assisted legal research.

C. Pre-Authorization Requirements and Limitation on Expenses

Before an attorney expends an amount above \$500, for which that attorney intends to seek reimbursement, written approval must be obtained from an assigned Judge.

Without prior written approval, no disbursements from the Fund shall exceed \$3,000 per case. The Magistrate Judge and/or District Judge may authorize an additional \$2,000 per case. Reimbursements of more than \$5,000 per case must be authorized by the Chief Judge. The limits established in this Plan shall apply to the expenses incurred in a case regardless of the number of appointed attorneys or parties.

D. Motion for Reimbursement

At the conclusion of the representation, the attorney must make a written motion for reimbursement of out-of-pocket expenses. Interim motion(s) for reimbursement may be requested as needed. A sample motion for disbursement of funds is contained on the website

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(www.arwd.uscourts.gov). The final application must be made no later than **thirty (30) days** after representation of the indigent party ends.

E. Payment from the Fund

The Magistrate Judge or District Judge will review the motion for reimbursement and determine whether the itemized out-of-pocket expenses shall be paid from the Fund. The reviewing Judge will then enter an Order approving reimbursement of funds. Upon entry of the Order, the Trustee shall disburse the approved amount from the Fund.

F. Statutory Expense Award

If the court-appointed attorney is entitled to a statutory award of expenses, the attorney shall, from the expenses awarded and collected, repay the Fund any expenses previously advanced by the Fund.

The appointed attorney shall be responsible for ensuring that the Fund is properly reimbursed, and the Clerk of Court, serving as the Fund's Trustee, shall have oversight responsibilities regarding such reimbursements.

X. Waiver of CM/ECF Fees

Attorneys who are appointed under this Plan shall not be charged fees for the use of the Court's electronic filing system in the case on which they are serving as a *pro bono* attorney.

XI. Continuing Legal Education (CLE) Credits

An appointed attorney may request approval from the Plan Administrator for up to 3 hours in CLE credit for work in representing the indigent party. The Plan Administrator will authorize CLE credit only after consultation with a Judge assigned to the case.

XII. Compensation for Services

The goal of this Plan is to obtain representation for indigent parties. The Court will not be involved in any contractual fee arrangement between the attorney and the Plaintiff. **The Court encourages Plan attorneys to consider not accepting any amount in attorney's fees if no statutory provision for the award of fees exists or no amount of fees is specifically made part of a settlement agreement.**

If the party represented prevails in the case, the attorney may ask the Judge to award attorney's fees for services rendered in the action as authorized by law. Please note that in connection with cases brought pursuant to 42 U.S.C. § 1983, even if fee shifting is available under 42 U.S.C. § 1988, the Prison Litigation Reform Act, 42 U.S.C. § 1997e(d), sets limits on attorney's fees.

Whether there is the potential for compensation for services is not a basis to decline appointment in *pro se* civil cases under this Plan.

XIII. Record of Attorney Appointments

The Plan Administrator will maintain a record of appointments and provide an annual written report to the Chief Magistrate Judge and the Chief District Judge.

XIV. Provision of Legal Education

To the extent authorized by Judges of this Court, the Court may offer CLE or make available educational information and/or links on its public website.