

GENERAL ORDER No. 25
APPOINTMENT AND REIMBURSEMENT OF PRO BONO COUNSEL

In civil cases in which a party is not represented, the Court may appoint *pro bono* counsel. The Court's programs designed to secure *pro bono* counsel will be known collectively as "the Federal Pro Bono Project (Project)." The Court may enter into contracts with community legal services organizations to carry out the goals of the Project.

I. Eligibility and Order of Referral

A. Eligibility

To be eligible for appointment of *pro bono* counsel through the Project, a civil case must meet the following criteria:

1. The unrepresented litigant must be *in propria persona*;
2. The unrepresented litigant must not have the financial resources to retain counsel;
3. The unrepresented litigant must have used reasonable efforts to retain private counsel such as through a California State Bar-approved lawyer referral service or have demonstrated that such efforts would be futile; and
4. The referring judge must determine the case merits *pro bono* representation (this does not mean determining that the litigant is likely to prevail on the merits, but that the litigant's claims are cognizable and the factual and legal issues warrant proper presentation to the Court with the assistance of an attorney).

B. Referral for appointment of counsel; stay of proceedings

1. Referral to Legal Help Center

Before referring a case for *pro bono* placement, the referring judge should first direct any unrepresented non-prisoner civil litigant to visit a Court-sponsored Legal Help Center (located at the San Francisco, Oakland and San Jose courthouses). Staff at the Legal Help Center will assess whether (1) the case meets the eligibility criteria set forth in section I.A and (2) qualified counsel can be located. If appropriate, the Legal Help Center staff may assist a litigant in drafting a motion for appointment of counsel and may attach a letter in support of the motion.

2. Order referring case for appointment and stay of proceedings

The referring judge may determine that referral to the Project for appointment of *pro bono* counsel is warranted either *sua sponte* or upon motion by a litigant; the Court should then issue an order referring the case to the Project for appointment of *pro bono* counsel.

Initial four-week stay. The order referring a case for appointment of *pro bono* counsel should provide for a four-week stay to allow the Project time to place the case with *pro bono* counsel. A shorter stay may be provided for good cause, but the shorter stay period (or the lack of any stay period, if applicable) should be clearly specified in the order.

Post-appointment stay. Also, in the event the referring judge intends to provide less than the usual four weeks' further stay after the appointment of counsel (see section II.B, below), the order of referral should state this clearly as this can be an important factor affecting the willingness of counsel to accept the appointment.

Sending order to Project. After the order referring a case for appointment of counsel is filed, the Clerk immediately emails it to the Project (to the Legal Help Center attorney in

San Francisco for cases pending in the San Francisco/Oakland and Eureka Divisions and to the Legal Help Center attorney in San Jose for cases pending in the San Jose Division).

3. Scope of appointment

The order of referral may direct the appointment of counsel for full-scope representation or limited-scope representation, such as representation at a settlement conference, taking or defending a deposition, drafting an opposition to a dispositive motion, or for trial.

II. Identification and Appointment of Pro Bono Counsel

A. Identifying counsel

The Project will make best efforts to identify appropriate *pro bono* counsel within four weeks from the date it receives the order of referral. *Pro bono* counsel should have the requisite federal court experience to litigate the matter competently or be supervised by an attorney so qualified. Once counsel is identified, the Project so informs the Clerk and the referring judge via email. If the Project is unable to find counsel within four weeks, the Project so informs the referring judge, who may then either extend the time to find *pro bono* counsel or lift the stay and proceed with the case.

B. Appointment of counsel; further stay of proceedings

Upon receiving the name(s) of *pro bono* counsel, the referring judge should issue an order appointing counsel as soon as possible.

Further four-week stay. The order should provide for a further four-week stay to give appointed counsel sufficient time to review the case file, meet with the client and conduct any necessary factual investigation and legal research. A shorter stay may be provided for good cause, but the shorter stay period (or the lack of stay period, if applicable) should be clearly specified in the order.

Sending order to Project. After the order is filed, the Clerk will immediately email it to the Project.

C. End of limited scope representation

When *pro bono* counsel appointed for limited scope representation has completed its obligations, the referring judge should enter a further order terminating the representation. Counsel or the Project may request such an order.

III. Pro bono representation

A. Communication with litigant

Promptly after entry of the order appointing counsel, the appointed attorney shall contact the litigant and diligently and competently represent his or her interests, consistent with the scope of appointment.

B. Pro hac vice fees

An attorney appointed to provide legal representation without compensation through the Project is exempt from paying the *pro hac vice* filing fee. An attorney not a member of the bar of the Northern District must, however, meet all other requirements for *pro hac vice* admission.

C. Withdrawal of counsel

Pro bono counsel should move to withdraw from a case only in circumstances permitted by law (e.g. the representation is inconsistent with ethical rules). *Pro bono* counsel considering withdrawing from a case must consult with Project staff before filing a motion to withdraw.

D. Attorney fees

Nothing in this General Order should be construed to preclude an attorney from recovering attorney fees awarded to the plaintiff as the prevailing party or as part of a negotiated settlement of the case.

This General Order should not be construed to require a litigant represented by counsel appointed through the Project to waive an award of attorney fees as a condition of settlement. *Pro bono* counsel who negotiates a settlement that also resolves the question of attorney fees should be aware of the potential for conflict and make efforts to ensure that the litigant's interests are not unfairly compromised.

E. Litigant becomes financially ineligible

If at any time the referring judge determines that the litigant is able to afford private counsel, the judge should enter an order terminating the *pro bono* appointment either *sua sponte* or upon motion by the appointed attorney. Counsel and the litigant may then agree upon a fee arrangement for continued representation. If the litigant's financial condition makes him or her ineligible under the criteria set forth in section I.A, the litigant may be ordered to repay costs to the Court, if the judge deems just.

IV. Reimbursement of Costs

Pro bono counsel appointed by the Court may seek reimbursement for reasonable out of pocket costs as set forth below, or may choose to forego reimbursement.

A. Amount and scope of reimbursement

1. The referring judge determines whether the expenses claimed are reasonable and necessary and may authorize reimbursement of costs up to a maximum of \$15,000. Any single expense in excess of \$1,000 for which counsel will seek reimbursement must be approved by judge prior to its incurrence or expenditure.
2. If appropriate, *pro bono* counsel should seek reimbursement for deposition expenses from the State of California's Transcript Reimbursement Fund, Cal. Bus. & Prof. Code § 8030.2 *et seq.*, before applying for reimbursement of such expenses from court funds.
3. Reimbursable costs include, but are not limited to, amounts reasonably and necessarily spent on:
 - a) Deposition costs (excluding those reimbursed under the California State Transcript Reimbursement Fund);
 - b) Actual costs of copying;
 - c) Service of process and delivery service;
 - d) Filing fees;
 - e) Expert consultant and witness fees;
 - f) Reasonable travel expenses for attorney; and
 - g) Reasonable investigation expenses.

B. Process for reimbursement

To request cost reimbursement, *pro bono* counsel should submit a letter directly to the referring judge. The letter should explain why the reimbursable cost claimed is reasonable and necessary to the representation and should include copies of receipts and a Form W-9. Additional *ex parte* briefing may be required by the judge. Counsel should email a copy of the reimbursement request to the Project when submitting it to the judge, but *should not serve it on opposing parties*.

Time for requesting reimbursement. The reimbursement request should be submitted no later than 180 days after the case is closed or, in the case of limited-scope representation, the order terminating the representation is entered. The referring judge may extend this deadline for good cause shown.

Approval process. If the referring judge approves the reimbursement request, the judge forwards it to the Chair of the Non-Appropriated Fund Committee for approval to be paid from the Court's non-appropriated fund. *The judge should not enter an order on the docket and court staff should not docket the reimbursement request in the case file.* The Finance Unit of the Clerk's Office will retain the original in accordance with the document retention policies of the Clerk's Office.

C. Refund of reimbursement

Any expenses paid pursuant to this General Order shall be repaid to the Court upon recovery of judgment or monetary settlement, up to the amount of such recovery. *Pro bono* counsel may request an exemption from this provision if the refund of expenses would consume an unreasonable portion of the litigant's recovery. Such a request should be made *ex parte*, following the process set forth in section IV.B. Counsel may refund expenses to the Court as part of its *pro bono* practice. Counsel must follow the refund policies set forth in the State of California's Transcript Reimbursement Fund, Cal. Bus. & Prof. Code § 8030.2, *et seq.*

V. Fee Reimbursement

In compelling cases (for example, a case in which *pro bono* representation has caused a severe financial hardship for *pro bono* counsel), the referring judge may request that the Non-Appropriated Fund Committee authorize reimbursement of attorney's fees at rates commensurate with Criminal Justice Act rates up to a maximum amount of \$25,000.

Pro bono counsel may request fee reimbursement by submitting a letter directly to the referring judge. The letter should explain counsel's severe financial hardship. Additional *ex parte* briefing may be required by the judge. Counsel should email a copy of the fee reimbursement request to the Project when submitting it to the judge, but *should not serve it on opposing parties.*

If the referring judge approves the fee reimbursement request, the judge forwards it to the Chair of the Non-Appropriated Fund Committee for approval to be paid from the Court's non-appropriated fund. *The judge should not enter an order on the docket and court staff should not docket the reimbursement request in the case file.* The Finance Unit of the Clerk's Office will retain the original in accordance with the document retention policies of the Clerk's Office.

ADOPTED: October 13, 1982
AMENDED: November 28, 2007
AMENDED: September 15, 2009
AMENDED: January 17, 2012
AMENDED: October 21, 2016

FOR THE COURT:



PHYLLIS J. HAMILTON
CHIEF JUDGE