

PLAN FOR PRO BONO COUNSEL FOR QUALIFIED UNREPRESENTED PARTIES IN CIVIL CASES

PREAMBLE

The judges of the United States District Court for the Northern District of Alabama, to facilitate greater access to justice and to encourage voluntary pro bono representation of qualified unrepresented parties in civil cases other than bankruptcy, hereby adopt this Plan, for all divisions within the district, to create a panel of volunteer pro bono counsel for qualified unrepresented parties in civil cases (the “Civil Pro Bono Panel” or, simply, the “Panel”), to govern the selection and assignment of volunteer counsel from the Panel, and to govern the administration of such cases. (Bankruptcy cases will be addressed by separate order and a specific plan for those cases.)

In adopting this Plan, the Court recognizes the great benefits to the administration of justice that occur when lawyers provide pro bono representation in civil actions to qualified unrepresented litigants who cannot otherwise afford counsel. The Plan will be administered by the Clerk of Court (the “Clerk”) with the assistance of the Birmingham Bar Volunteer Lawyers Program (“BBVLP”) with regard to qualification of unrepresented parties. The BBVLP has also agreed to assist qualified parties and their pro bono volunteer attorneys in a manner consistent with the BBVLP’s usual practices in limited-scope or extended-service representations as may be appropriate in a particular case.

The adoption of this Plan, however, does not create a substantive or procedural right for either attorneys or litigants appearing before this Court. Every qualified unrepresented party must follow all prescribed steps in this Plan, including providing any required information regarding financial eligibility, for the duration of the case in this Court to obtain the assistance of a pro bono lawyer from the Civil Pro Bono Panel.

I. CONSTITUTION OF THE VOLUNTEER CIVIL PRO BONO PANEL

The Court welcomes *all* attorneys who are members in good standing of the Bar of this Court to volunteer for the Civil Pro Bono Panel. This welcome includes not only experienced lawyers at law firms of all sizes, but also newly admitted attorneys, retirees, part-time practitioners, corporate or in-house counsel, those working in legal clinics, and solo practitioners.

Law firms and individual attorneys who are members of the Bar of this Court and who are willing to represent qualified unrepresented parties in civil actions may volunteer for the Civil Pro Bono Panel by completing a Volunteer Form available from the Clerk’s Office or the Court’s website, www.alnd.uscourts.gov. Volunteer firms and individual attorneys may indicate a preference for certain types of cases and cases within specific

divisions and may also specify the number of cases per calendar year the firm or attorney is willing to accept

If a law firm joins the Panel, the firm should designate one attorney's name for inclusion on the Panel. The firm may assign cases that it accepts to any attorney or attorneys, as appropriate, within that firm as it may choose provided that each attorney is a member in good standing of the Bar of this Court. The membership of a law firm on the Panel will not exclude individual lawyers at that firm from membership on the Panel.

An attorney or firm may withdraw from the Panel at any time by giving written notification to the Clerk. The Clerk may remove attorneys from the Panel upon a majority vote of the judges of this Court, upon removal from the Bar of this Court, or for failure to comply with the requirements of this Plan.

II. APPLICATION FOR A VOLUNTEER CIVIL PRO BONO LAWYER

A. General

A party, including a business entity that cannot proceed pro se, appearing in litigation without counsel may apply for volunteer counsel at any appropriate time during the course of the litigation. Information regarding the requirements and process for such application, as well as the necessary forms, shall be made available in paper form in the Clerk's Office and on the Court's website.

B. Clerk's Entry of Default

Upon the Clerk's Entry of Default in any civil case, within three (3) days of the Entry of Default, the Clerk will

(1) notify the defendant in default, at the address shown on the properly executed returned summons, of the ability to request pro bono counsel if the failure to appear is because of financial inability to pay counsel;

(2) include a copy of this Plan and a link to this Plan on the Court's website;
and

(3) advise the defendant in default that any request for appointment of counsel must comply with the requirements of this Plan and must be submitted for consideration by thirty days from the date of the Clerk's notice to the defendant.

If such application is received, the Clerk will so note on the docket sheet and no default judgment will be entered during the pendency of the application.

C. Verification of Financial Eligibility by BBVLP or the Court

If the Court approves in forma pauperis (IFP) status and waives the filing fee based on the applicant's affidavit of indigency, such approval shall provide verification of financial eligibility for volunteer counsel. If the court does not approve IFP status, applicants for pro bono counsel shall apply to BBVLP prior to, or simultaneously with, application for volunteer counsel being made to the Clerk's Office. Both financial eligibility forms are available from the Clerk's Office, can be printed from the Court's website, www.alnd.uscourts.gov, or can be obtained from the BBVLP.

D. Procedures for Selection of Counsel by the Clerk and Acceptance of Representation by Counsel

Upon receipt of a completed application from a "qualified" unrepresented party—that is, an unrepresented party who has satisfied the requirement of financial eligibility as determined by the BBVLP or the Court in accordance with II.B., above—the Clerk shall submit the application to the presiding judge. Selection of counsel shall be at the discretion of the presiding judge pursuant to 28 U.S.C. § 1915(e). A judge may decline an application for volunteer pro bono counsel with or without prejudice.

If the presiding judge concludes that volunteer counsel is warranted, the judge shall issue an appropriate order reflecting that determination and referring the case to the Clerk for selection of counsel from the Panel. The Clerk shall categorize cases in which appointment is requested as social security, employment discrimination, prisoner's civil rights, other civil rights, contract, torts, real property, labor, forfeiture/penalty, immigration, property rights, federal tax suits, and others as set forth on the Volunteer Form. The Clerk shall randomly select an attorney from the Panel having given due regard to the volunteer's preference, as stated on the Volunteer Form, for certain types of cases, specific divisions, and number of cases, and then send written notice of the selection to the attorney with the style of the case and contact information for the pro se party.

Within fourteen days of receipt of the assignment (unless some other time period is specified in the presiding judge's order), the attorney shall either (1) enter a written notice of appearance, or (2) notify the Clerk by letter that he or she is unwilling or unable to accept the representation and state generally the reason for the declination. The Clerk shall then select another attorney and repeat the procedure as often as necessary until the representation is accepted; however, if the declination by three attorneys is based on Rule 11 reasons, the Clerk will advise the presiding judge that no attorney was willing to accept the case, but without disclosing the reasons in such cases where such disclosure would prejudice the party or would otherwise contravene the Alabama Rules of Professional Conduct for declining or terminating representation. Once the

representation has been accepted by a member of the Civil Pro Bono Panel, the Clerk shall give notice of such acceptance to the BBVLP.

III. REPRESENTATION BY PANEL COUNSEL

A. Requirement of Admission to Practice in the Northern District of Alabama and Good Standing

Admission to the Bar of this Court and the standards for professional conduct required to maintain good standing are specified in Local Rule 83.1.

B. Duration of Representation

The representation by a volunteer attorney may be for the duration of the case in this Court—that is, an extended service representation—or only for a limited appearance as provided in Alabama Rule of Professional Conduct 1.2(c) and the Court’s Standing Order of November 18, 2016 regarding limited-scope representation—such as to attend a deposition or hearing, or to draft pleadings or a brief, etc.

If the party chooses to appeal a final judgment or an interlocutory order, or if such judgment or order is appealed by another party, or if the matter is remanded to an administrative forum, the volunteer attorney is not required to continue to represent the party on the appeal or in any proceeding, judicial or administrative, that may follow an order of remand. However, if the volunteer lawyer is representing a party in any capacity other than by a limited appearance, then the volunteer attorney must assist the party in filing a notice of appeal to preserve the party’s ability to appeal that judgment or order if the party desires to pursue such an appeal from that judgment or order.

C. Termination of Representation and Written Withdrawal

If, at any time, the volunteer attorney discovers that the party is or may have become able to pay for legal services, the attorney shall so notify the presiding judge, who may revoke the order allowing volunteer counsel if warranted and, upon request, permit the party to retain another attorney, to proceed pro se, or to continue with the Panel attorney subject to a written fee agreement. If the party retains another attorney or proceeds pro se in such a case, the Panel attorney may assert an attorney’s fee lien as provided by law. Nothing in this provision shall limit the volunteer lawyer’s right or duty to decline or terminate representation consistent with the Alabama Rules of Professional Conduct, nor shall the notification to the presiding judge mandated by this provision be deemed a violation of the lawyer’s duties of confidentiality to the client, but shall rather be a fulfillment of counsel’s duty of candor to the tribunal. By applying for volunteer counsel and participating in this pro bono program the client shall be deemed to specifically consent to such disclosure if pertinent. Any such disclosure shall be made

without notice to the opposing party or the opposing party's counsel to prevent prejudice to the party's position based on a change in the party's economic status.

D. Compensation for Services

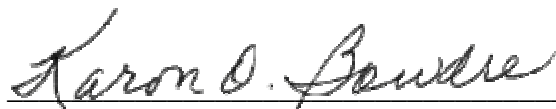
Nothing in this Plan shall preclude an award of attorney's fees to volunteer counsel by the Court pursuant to applicable statute, regulation, rule or other provision of law, including case law, in an extended services representation case. Volunteer counsel has the option of keeping applicable attorney's fees or donating them to the BBVLP, which will result in tax benefits to Volunteer Counsel as the organization is a 501(c)(3) and the fees will be a charitable donation.

E. Reimbursement of Expenses

Counsel selected pursuant to this Plan may apply to the Court for reimbursement of reasonable expenses as they are incurred in furtherance of the representation, or at the end of the representation.

Application for reimbursement of expenses should be made first to the presiding judge for determination of the reasonableness of the expenses claimed. The presiding judge may refer matters regarding appropriate expenses to a magistrate judge for oversight and review, if deemed appropriate. If the expenses are approved, the presiding judge will forward the application to the Chief Judge for review and approval of payment from the Court's Non-appropriated Fund.

Adopted by the Court on November 18, 2016.



KARON OWEN BOWDRE
CHIEF UNITED STATES DISTRICT JUDGE