

NORTHERN DISTRICT OF NEW YORK - FEDERAL CIVIL LOCAL RULE

83.3 Pro Bono Service (Amended January 1, 2020).

(a) Pro Bono Appointment.

1. All attorneys admitted to practice within the Northern District of New York, except attorneys employed by the government, are required to accept no more than one pro bono assignment per year on a rotating basis.

2. Any request to be excused from accepting a pro bono case assignment must be directed to the Chief Judge. Lack of experience in a specific area of law is not an acceptable reason to be excused. The Court expects attorneys admitted to practice in the NDNY to participate in periodic CLE training that the Court offers.

3. Where a pro se party has one or more other cases pending before this Court in which the Court has appointed an attorney, the Court may determine it to be appropriate that the attorney appointed in the other case or cases be appointed to represent the pro se party in the case before the Court.

4. The attorney will be contacted via email by the Pro Bono Administrator giving the attorney ten (10) business days to review the potential case assignment for any conflict. Failure to respond within 10 business days will result in an order appointing the attorney as pro bono counsel to be filed, and a notice of appearance by the attorney will be due.

(b) Application for Appointment of Attorney

1. Any application that a party appearing pro se makes for the appointment of an attorney shall include a form of affidavit stating the party's efforts to obtain an attorney by means other than appointment and indicating any prior pro bono appointments of an attorney to represent the party in cases brought in this Court, including both pending and terminated actions.

2. Failure of a party to make a written application for an appointed attorney shall not preclude appointment.

3. Where a pro se litigant, who was ineligible for an appointed attorney at the time of initial or subsequent requests, later becomes eligible by reason of changed circumstances, the Court may entertain a subsequent application, using the procedures specified above, within a reasonable time after the change in circumstances has occurred, or the Court may, in its discretion, *sua sponte* appoint pro bono counsel.

(c) **Factors Used in Determining Whether to Appoint Counsel.** Upon receipt of an application for the appointment of an attorney, the Court shall determine whether to appoint an attorney to represent the *pro se* party. The Court shall make that determination within a reasonable time after the party makes the application. Factors that the Court will take into account in making the determination are as follows:

1. The potential merit of the claims as set forth in the pleading;
2. The nature and complexity of the action, both factual and legal, including the need for factual investigation;
3. The presence of conflicting testimony calling for an attorney's presentation of evidence and cross-examination;
4. The capability of the *pro se* party to present the case;
5. The inability of the *pro se* party to retain an attorney by other means;
6. The degree to which the interests of justice shall be served by appointment of an attorney, including the benefit that the Court shall derive from the assistance of an appointed attorney;
7. Any other factors the Court deems appropriate.

(d) **Order of Appointment.** Whenever the Court concludes that the appointment of an attorney is warranted, the Court shall issue an order directing the appointment of an attorney to represent the *pro se* party. The Court shall promptly transmit the order to the Clerk. If service of the summons and complaint has not yet been made, the Court shall accompany its appointment order with an order directing service by the United States Marshal or by other appropriate method of service.

(e) **Notification of Appointment.** After the Court has appointed pro bono counsel, the attorney will receive a copy of the appointment order via CM/ECF. Costs the attorney incurs in obtaining copies of materials filed prior to appointment are recoverable under [L.R. 83.3\(g\)](#).

(f) **Duties and Responsibilities of Appointed Counsel.** On receiving notice of the appointment, the attorney shall promptly file an appearance in the action to which the appointment applies unless precluded from acting in the action or appeal, in which event the attorney shall promptly notify the Court and the putative client. Promptly following the filing of an appearance, the attorney shall communicate with the newly-represented party concerning the action. In addition to a full discussion of the merits of the dispute, the attorney shall explore with the party any possibilities of resolving the dispute in other forums, including but not limited to administrative forums. If after consultation with the attorney the party decides to prosecute or defend the action, the attorney shall proceed to represent the party in the action unless or until the attorney-client relationship is terminated as these Rules or court order provide. If the

attorney is appointed as Special Mediation Counsel, the attorney-client relationship will be terminated by Court order at the end of the mediation process, as described in [L.R. 83.8\(d\)\(4\)](#).

In the Court's discretion, the Court may appoint stand-by counsel to act in an advisory capacity. "Stand-by counsel" is not the party's representative; rather, the role of stand-by counsel is to provide assistance to the litigant and the Court where appropriate. The Court may in its discretion appoint counsel for other purposes.

(g) Reimbursement for Expenses. *Pro Bono* attorneys whom the Court appoints pursuant to this Rule may seek reimbursement for expenses incident to representation of indigent clients by application to the Court. Reimbursement or advances shall be permitted to the extent possible in light of available resources and, absent extraordinary circumstances, shall not exceed **\$2,000.00**. Any expenses in excess of **\$500.00** should receive the Court's prior approval. If good cause is shown, the Court may approve additional expenses. Appointed counsel should seek reimbursement using the Pro Bono Fund Voucher and Request for Reimbursement Form and should accompany this form with detailed documentation. The Court advises counsel that if they submit a voucher seeking more than **\$2,000.00** without the Court's prior approval, the Court may reduce or deny the request. The Chief Judge or a judge whom the Chief Judge designates to authorize withdrawals must approve all reimbursements made by withdrawal from the District Fund. **To the extent that appointed counsel seeks reimbursement for expenses that are recoverable as costs to a prevailing party under Fed R. Civ. P. 54, the appointed attorney must submit a verified bill of costs on the form the Clerk provides for reimbursement of such expenses.**

(h) Attorney's Fees. Except as provided in this subsection, an appointed attorney cannot recover attorney's fees from the *Pro Bono* Fund. However, in its discretion, the Court may award an appointed attorney for a prevailing party attorney's fees from the judgment or settlement to the extent that the applicable law permits. See, e.g., 28 U.S.C. § 2678 (permitting the attorney for a prevailing party under the Federal Tort Claims Act to recover up to 25% of any judgment or settlement); 42 U.S.C. § 1988(b) (authorizing an additional award of attorney's fees to prevailing parties in civil rights actions).

(i) Grounds for Relief from Appointment. After appointment, an attorney may apply to be relieved from an order of appointment only on one or more of the following grounds, or on such other grounds as the appointing judge finds adequate for good cause shown:

1. some conflict of interest precludes the attorney from accepting the responsibilities of representing the party in the action;
2. the attorney does not feel competent to represent the party in the particular type of action assigned, after the attorney has completed a Court CLE in that area of law;
3. some personal incompatibility exists between the attorney and the party or a substantial disagreement exists between the attorney and the party concerning litigation strategy; or

4. in the attorney's opinion the party is proceeding for purposes of harassment or malicious injury or the party's claims or defenses are not warranted under existing law and cannot be supported by a good faith argument for extension, modification or reversal of existing law.

(j) Application for Relief from Appointment. An appointed attorney shall make any application for relief from an order of appointment on any of the grounds set forth in this Rule to the Court promptly after the attorney becomes aware of the existence of such grounds or within such additional period as the Court may permit for good cause shown.

(k) Order Granting Relief from Appointment. If the Court grants an application for relief from an order of appointment, the Court shall issue an order directing the appointment of another attorney to represent the party. Where the application for relief from appointment identifies an attorney affiliated with the moving attorney who is able to represent the party, the order shall direct appointment of the affiliated attorney with the consent of the affiliated attorney. Any other appointment shall be made in accordance with the procedures set forth in these Rules. Alternatively, the Court shall have the discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action *pro se*.