



**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

**THE PLAN FOR APPOINTMENT OF COUNSEL
FOR PRO SE INDIGENT PARTIES IN CIVIL CASES
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**Effective June 23, 1998
Revised January 1, 1999
Revised August 1, 2016**

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IN CIVIL CASES OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

PREAMBLE

The judges of the United District Court for the Western District of Tennessee, in order to encourage greater representation of pro se indigent parties in civil cases, hereby adopt this plan, applicable to both the Western and Eastern divisions, to increase the number of attorneys on the Civil Pro Bono Panel, to govern the appointment of counsel from the Panel, to create a Pro Bono Fund for reimbursement of expenses, and to establish guidelines for such reimbursement.

I. APPOINTMENT OF COUNSEL

A. CIVIL PRO BONO PANEL

Attorneys who are members of the bar of this court and who are willing to accept appointments to represent pro se indigent parties in civil actions may volunteer for the Civil Pro Bono Panel by completing a volunteer form which is available on the Court's website (www.tnwd.uscourts.gov). The attorneys may indicate a preference for appointment to various types of cases as well as the number of cases per calendar year the attorney is willing to accept. The Clerk shall categorize cases in which appointment is requested such as social security, employment discrimination, prisoner's civil rights, other civil rights, or other actions.

The court welcomes all attorneys who are members in good standing of the bar of this court. This includes newly admitted attorneys, retirees, part-time practitioners, corporate or in-house counsel, those working in law firms as partners, associates or of counsel, those working in legal clinics and solo practitioners. (See, Administrative Order 1998-19.)

An attorney or firm may withdraw from the Panel at any time by giving written notification to the Clerk.

B. APPLICATION FOR APPOINTMENT

A party appearing pro se may make an application for appointment of counsel at any time during the course of the litigation. Form applications shall be accompanied by an affidavit to proceed in forma pauperis, detailing the financial resources of the applicant unless such affidavit has previously been submitted and in forma pauperis status granted. Forms are available in the Clerk's Office and/or the Court's website. An adverse party may object to the appointment of counsel by filing a written objection with the court. As a condition for requesting appointment of counsel, a pro se party must agree to enter into the Civil Pro Bono Panel Contract for Representation ("the Pro Bono Contract") with the appointed attorney permitting payment of a reasonable attorney's fee not to exceed the greater of 33-1/3% of the gross recovery or the amount of the court awarded attorney's fee. Gross recovery is the sum of all damages awarded or settlement proceeds plus the court awarded attorney fees. In addition, as a condition of requesting appointment of counsel, a pro se party must agree to reimburse the Pro Bono Expense Fund (Fund) for all expenses paid by said Fund on the following terms and conditions: when an

expense award is made to an appointed attorney, the attorney shall, from the expenses awarded and collected, repay the Fund any expenses previously advanced by the Fund and, notwithstanding the above, all expenses advanced by the Fund shall be reimbursed by the party from his share of any recovery by judgment or settlement, whether in the trial court or on appeal. However, in no event shall such reimbursement exceed 33-1/3% of the gross recovery.

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

C. APPOINTMENT PROCEDURES

Appointment of counsel shall be at the discretion of the presiding judge pursuant to 28 U.S.C. § 1915(d). A judge may decline an application for appointment of counsel with or without prejudice.

If the presiding judge concludes that appointment of counsel is warranted, the judge shall issue an appropriate order reflecting his or her determination and referring the case to the Clerk for selection of counsel from the Panel. The presiding judge also has the discretion to appoint non-Panel attorneys to represent pro se IFP parties on a case-by-case basis. The Clerk shall then randomly select an attorney from the Panel and send written notice of the selection to the attorney along with a copy of the clerk's file and the Pro Bono Contract. Within seven days of receipt of the file, the attorney shall either (1) obtain the signature of the pro se party on the Pro Bono Contract and enter a written notice of appearance, or (2) notify the Clerk in writing that he/she is unwilling or unable to accept the appointment, specifying the reason for the declination, and return the file to the Clerk. The Clerk shall then select another attorney and repeat the procedure as often as necessary until an appointment is made.

D. TERMINATION AND WITHDRAWAL

If, at any time, the appointed attorney discovers that the party is or has become able to pay for legal services, the attorney shall bring this information to the attention of the presiding judge, who shall revoke the appointment and, upon request, permit the party to retain another attorney, to proceed pro se, or to continue with the Panel attorney. In any event, those provisions of the Pro Bono Contract regarding reimbursement of expenses to the Pro Bono Fund shall remain binding on the party and his or her attorney to the extent that the Fund has incurred any expenses in the case. If the party retains another attorney or proceeds pro se, the Panel attorney may assert an attorney's fee lien as provided by law.

E. COMPENSATION FOR SERVICES

Nothing herein shall preclude an award of attorney's fees pursuant to applicable law.

F. DURATION OF REPRESENTATION

An appointed attorney will represent the party in the trial court from the date the attorney enters an appearance until the attorney is relieved from appointment or until a final judgment is entered and reasonable efforts are made to enforce the judgment. The attorney will, if it is appropriate in his or her judgment and requested by the litigant, file a notice of appeal

from a final judgment, or at the attorney's option, assist the party in filing a pro se notice of appeal. The attorney is required to represent the party in the trial court only. The attorney may assist the party in filing a notice of appeal but he or she may but is not required to represent the party on appeal.

If the party appeals a final judgment or appealable interlocutory order, or if such judgment or order is appealed by another party, or if the matter is remanded to an administrative forum, the appointed attorney is not required to represent the party on the appeal or in any proceeding, judicial or administrative, that may ensue upon an order of remand.

II. THE PRO BONO EXPENSE FUND

A. CREATION OF THE FUND

1. THE FUND

Consistent with Judicial Conference policy articulated in the "Guidelines for Non-Appropriated Funds Maintained by the Courts of the United States" issued by the Director of the Administrative Office of the United States on October 1, 1981, the United States District Court for the Western District of Tennessee by Administrative Order 93-1, established "The Court Improvement Fund." The Court hereby creates, pursuant to Administrative Order 98-17, the Pro Bono Expense Fund (the "Fund"), which will be subsidiary to and funded from the proceeds in the Court Improvement Fund. Deposits and withdrawals to and from the Fund shall be made in accordance with this Plan or as directed by the Court. The sole purpose of the Fund shall be to reimburse expenses pursuant to the guidelines herein.

2. DEPOSITS INTO THE FUND

The Custodian of the Court Improvement Fund shall make transfers from the Court Improvement Fund to the Pro Bono Expense Fund. The Pro Bono Expense Fund shall be financed initially by the following fees collected in conjunction with general and pro hac vice admissions of attorneys to the bar of this court and from interest accruing on Fund balances:

- (a) All attorney admission fees in excess of \$60 per attorney collected after 6/1/98;
- (b) All pro hac vice admission fees in excess of \$10 per application collected after 6/1/98; and
- (c) All annual enrollment fees required to remain in good standing and collected after 1/1/99.

The initial transfer from the Court Improvement Fund to the Pro Bono Expense Fund shall be made on or around July 1, 1998, and quarterly, thereafter, through December 1999 as provided for under Administrative Order 1998-20. The court will then review the Pro Bono Expense Fund to determine if any increase or reduction in attorney fees is needed to maintain Fund solvency. Thereafter, the Custodian of the Court Improvement Fund will transfer such funds as directed by the court from the Court Improvement Fund to the Pro Bono Expense Fund as necessary to achieve the goals of this Plan. The Court also has the discretion to transfer funds from the ProBono Expense Fund to the Court Improvement Fund if the Pro Bono

Expense Fund is sufficiently solvent and the Court Improvement Fund needs additional funding. (See, Administrative Order 2009-04.)

Funds held in the Pro Bono Expense Fund shall be separated from all other monies in the custody of the court, including all other non-appropriated funds.

B. ADMINISTRATION OF THE FUND

1. TRUSTEE OF THE FUND

The Clerk of the Court is designated as the Trustee. In the event of the death, retirement or resignation of the Clerk, the chief deputy clerk, or such other person as the chief judge designates, shall become the Trustee until such time as the next clerk assumes office.

2. RESPONSIBILITIES OF THE TRUSTEE

The responsibilities of the Trustee are as follows:

- (a) To establish an interest-bearing 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 insure 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 process and review applications for reimbursements of expenses pursuant to the guidelines established by this Plan.
- (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.

3. RESPONSIBILITIES UPON APPOINTMENT OF A SUCCESSOR TRUSTEE

When a Successor Trustee is appointed, the outgoing Trustee shall prepare and sign the following statements in conjunction with an exit audit or inspection conducted by an auditor or disinterested inspector designated by the chief judge:

- (a) A statement of assets and liabilities;
- (b) A statement of operations or of receipts and disbursements since the end of the period covered by the last such statement of operations; and
- (c) A statement of the balance in the Fund as of the date of transfer to the Successor Trustee.

The Successor Trustee will execute a receipt for all funds after being satisfied as to the accuracy of the statements and records provided by the outgoing Trustee. Acceptance may be conditioned upon an audit and verification where circumstances warrant.

4. AUDITS AND INSPECTIONS

The Fund is subject to audit by the Administrative Office of the United States Courts. The Trustee or chief judge acting independently, may appoint an auditor or disinterested inspector (who may be a government employee) to conduct such audits as the chief judge or trustee determines to be necessary. The written results of such audit or inspection will be provided to the court and upon request, to any member of the bar of this court. Reasonable compensation may be paid from Fund assets if the auditor or inspector is not a government employee acting in an official capacity.

5. COST OF PROVIDING MALPRACTICE INSURANCE¹

The Clerk of court is hereby authorized, empowered and directed to obtain group malpractice insurance coverage for all attorneys who accept case assignments under the Civil Pro Bono Plan (“Plan”). This insurance should provide coverage for both corporate attorneys participating in the Plan as well as attorneys working for law firms participating in the Plan. Any other attorneys appointed to and accepting cases under the Plan are also covered by this insurance. Malpractice coverage shall become effective on a case-by-case basis, and it shall commence at the time an attorney is appointed and terminate at the time of final disposition of the assigned case. This insurance shall apply to each case assigned to the same attorney including cases that might overlap as to timing. The Clerk of Court is authorized to negotiate with insurance carriers of his own choosing in order to obtain the most comprehensive coverage on the best terms at the most competitive price. Payment of the premium(s) for the selected policy or policies shall be made from the Plan’s account. This modification of the Plan is adopted pursuant to § IV.C. of the Plan.

C. DISBURSEMENTS FROM THE FUND

Appointed attorneys may request reimbursement for expenses in accordance with the Guidelines for Reimbursement herein. If the request is within a category of expenditure specifically approved by this Plan, the Clerk in his discretion may authorize reimbursement up to \$3,000 per case. If the total of reimbursements requested and those already allowed exceed \$3,000 in the case, the presiding judge may authorize reimbursement of an additional \$2,000 per

¹ Civil Pro Bono Plan revised October 2, 2007 to include provision on malpractice insurance. See Administrative Order No. 2007-21 filed October 2, 2007.

case. Reimbursements in excess of a total of \$5,000 per case must be authorized by the court sitting en banc.

D. DISSOLUTION OF THE FUND

Should the court decide to dissolve the Fund, the Trustee shall liquidate all outstanding obligations prior to the dissolution, including making provisions for the payment of any fees and expenses resulting from the required terminal audit or inspection. Any remaining monies shall be returned to the Court Improvement Fund.

III. GUIDELINES FOR REIMBURSEMENT

A. ELIGIBILITY FOR REIMBURSEMENT OF EXPENSES

An appointed attorney may apply for reimbursement of expenses incurred in the preparation and presentation of the case, subject to the restrictions set forth below.

B. LIMITATIONS OF ELIGIBILITY

1. USE OF AVAILABLE C.J.A. FUNDS

In any proceeding where expenses are covered by the Criminal Justice Act (Title 18 U.S.C. § 3006A), they shall be paid from funds available in accordance with the Amended Plan of the United States District Court for the Western District of Tennessee Providing Representation for Defendants Who Are Financially Unable to Obtain an Adequate Defense in Criminal Cases in the Courts of the United States, Adopted in Accordance with 18 U.S.C. § 3006A, As Amended, and not from the Pro Bono Fund.

2. CIVIL ACTIONS BEFORE THE DISTRICT COURT

Only those expenses associated with the preparation of a civil action by an appointed attorney in the United States District Court for the Western District of Tennessee shall be approved for reimbursement. No expenses which are associated with the preparation or presentation of an appeal to the United States Court of Appeals or the United States Supreme Court may be reimbursed from the Fund.

3. MAXIMUM EXPENSES PER CASE

The per case limits established by this Plan shall apply to the expenses incurred in a case regardless of the number of appointed attorneys or parties.

C. ALLOWABLE EXPENSES AND COSTS

1. C.J.A. LIMITS TO APPLY IN ABSENCE OF SPECIFIC LIMITS

Except as specified by this Plan, the amounts and types of expenses eligible for reimbursement under this Plan shall be governed by the guidelines for administering the Criminal Justice Act (18 U.S.C. § 3006A)(as Amended).

2. DEPOSITION AND TRANSCRIPTS

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. 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 noted by another party, only the cost of one copy will be allowed. In the interest of efficiency and recognizing the use of audio tapes, appointed attorneys are encouraged to use audio tape for depositions. If audio tape depositions are used and transcription of those tapes is performed by 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.

3. TRAVEL EXPENSES

Travel by privately owned automobile for trips in excess of 50 miles (each way) and parking fees, tolls, and similar expenses actually incurred at any time may be claimed by the appointed attorney. Transportation other than by privately owned automobile may be claimed on an actual expense basis. Actual expenses reasonably incurred shall be guided by the prevailing limitations placed upon travel expenses of federal judicial employees in accordance with existing government travel regulations. Travel expenses incurred by the appropriate attorney or other individuals in the case require prior approval of the Court pursuant to a motion submitted therefor.

4. SERVICE OF PAPERS; WITNESS FEES

Reasonable fees for service of papers and the appearance of witnesses may be reimbursed.

5. INTERPRETER SERVICES PURSUANT TO COURT ORDER

Reasonable costs of interpreter services may be reimbursed.

6. COSTS OF PHOTOCOPIES, PHOTOGRAPHS, TELEPHONE TOLL CALLS AND FACSIMILES

Actual reasonable out-of-pocket expenses incurred for items such as photocopying services (not to exceed 10¢/page), photographs, telephone toll calls, and facsimiles necessary for the preparation of a case may be reimbursed.

7. COMPUTER ASSISTED LEGAL RESEARCH

Reasonable expenses of computer-assisted legal research may be reimbursed, not to exceed \$500 per case.

8. INVESTIGATIVE, EXPERT, OR OTHER SERVICES

Reasonable fees for investigative, expert or other services necessary for the adequate preparation of a case may be reimbursed pursuant to court order.

9. GUARDIAN AD LITEM FEES

Reasonable compensation of court-appointed guardians *ad litem* for indigent minors and legally incompetent individuals, including expenses consistent with the provisions of this Plan.²

10. MEDIATION FEES³

A pro se party who has applied to the Court and has been relieved of the obligation to pay his, her or their *pro rata* share of the Mediator's fee in court-ordered mediation may have their share of mediation fees paid from the Pro Bono Expense Fund. Payment of mediation fees from the Pro Bono Expense Fund shall be in accordance with the provisions as set forth in the Court's *Mediation Plan for Pro Se Civil Cases with Parties Granted In Forma Pauperis Status* ("Mediation Plan"). Under the Mediation Plan, mediators shall be compensated at the rate of \$250.00 per hour and mediation compensation is "capped" at four (4) hours of compensated time, including both the time needed for preparing as well as the time needed for conducting mediation. (See *Mediation Plan for Pro Se Civil Cases with Parties Granted In Forma Pauperis Status* available on the Court's web site.)

11. PAYMENT OF EXPENSES IN PRO SE CASES

(a) **INDIGENT AND PRISONER PRO SE CASES.** If the Court determines upon motions or *sua sponte* that the ends of justice warrant the payment of reasonable, approved expenses in indigent or prisoner *pro se* cases, the Clerk of Court shall, upon the docketing of an appropriate court order, pay such expenses in accordance with this Plan. Examples of such expenditures might include, without limitation, witness fees and expenses, the cost of service, photocopy charges and the like.

(b) **PRO SE CASES (IN GENERAL).** In order to enhance the efficiency and effectiveness of mediations involving *pro se* parties, the Court may appoint legal counsel to serve as an advisory counsel only to *pro se* parties participating in mediations. Counsel appointed in this capacity shall be compensated at the rate of \$150.00 per hour for up to four (4) hours of mediation assistance. Counsel so appointed shall render no other legal services to the *pro se* party in regard to the case being mediated, and counsel shall receive no direct compensation from the *pro se* party being assisted with respect to the case being mediated. Fees payable under this appointment shall be processed as provided for under the terms and provision of this Plan.

² Payment of Guardian Ad Litem fees from the Pro Bono Expense Fund was adopted by the Court on March 20, 2007. See Administrative Order No. 2007-06.

³ Payment of mediation fees from the Pro Bono Expense Fund was adopted by the Court May 2015. See Administrative Order No. 2015-07.

12. OTHER EXPENSES

Approval of expenses other than those described in this section is not automatic and is within the discretion of the Clerk, presiding judge, and/or court.

D. NON-ALLOWABLE EXPENSES

1. GENERAL

General office expenses, including personnel costs, rent, telephone services, secretarial help, office photocopying equipment and any general expense that would not normally be reflected in the fee charged to a client are not reimbursable from the Fund. The expense of printing briefs, regardless of the printing method utilized, is not reimbursable. Any expense not properly documented with receipts or other proof may be disallowed.

2. COSTS AWARDED AGAINST PARTY

Under no circumstances shall any payments be authorized from the Fund to pay for costs or fees taxed as part of a judgment obtained by an adverse party against a party for whom counsel was appointed under this Plan.

3. SANCTIONS

Under no circumstances shall any payment be authorized from the Fund to pay for sanctions against a party or an appointed attorney.

E. PROCEDURES FOR OBTAINING REIMBURSEMENT

1. REQUEST FOR REIMBURSEMENT OF EXPENSES

Application for the reimbursement of expenses shall be on a form which will be available in the Clerk's Office. The form shall be accompanied by sufficient documentation to permit the court to determine that the application is appropriate and reasonable, and, that the expenses have actually been incurred. The application shall be filed in the Clerk's Office. Applications shall be submitted no sooner than six months following the entry of appearance, and no sooner than six months thereafter, except an interim application may be filed for a single expense exceeding \$1,000.

In the event of settlement, judgment, or withdrawal of the appointment of attorney, an application for reimbursement shall be made within thirty (30) days thereafter.

2. PROCESSING OF APPLICATIONS FOR REIMBURSEMENT

On receipt of the application from the appointed attorney, the Clerk shall determine whether the amount requested is within the limits set by this Plan and shall indicate amounts approved for reimbursement. The Clerk will also determine whether the amount requested requires additional approval by the presiding judge or court. Where such approval is required, the application shall promptly be presented to the presiding judge or court. If the request is approved by the presiding judge or court, the Clerk shall promptly issue the payment in the amount approved. If the Clerk, presiding judge, or court disallows any or all of the

amounts requested, the Clerk shall promptly transmit to the appointed attorney a copy of the application showing such action.

IV. MISCELLANEOUS

A. EFFECTIVE DATE

This Plan shall be effective on January 1, 1999.

B. APPLICATION

This Plan shall only apply to cases in which an attorney was appointed after the effective date.

C. AMENDMENTS TO AND MODIFICATIONS OF THE PLAN

This Plan may be amended in writing by the court at any time.

APPROVED BY THE COURT this 1st day of August, 2016.

FOR THE COURT: _____
J. DANIEL BREEN
CHIEF UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**CIVIL PRO BONO PANEL
VOLUNTEER FORM**

[Please print or type]

Attorney's Name

Board of Prof. Resp. #

Office Address

Zip _____

(____) _____

Phone #

Date licensed to practice law: ____/____/____

Date admitted to practice before this court: ____/____/____

Please check the kinds of cases you agree to accept:

Employment Discrimination	_____
Prisoner Civil Rights	_____
Other Civil Rights	_____
Social Security	_____
Other (Miscellaneous)	_____

I am willing to serve as a mentor to supervise a younger or less experienced attorney:

Yes ___

No ___

I have received and reviewed Local Rule 83.2 and the Plan for Reimbursement of Expenses. I agree to abide by the conditions of appointment stated therein.

Signature of Attorney

____/____/____
Date