

United States District Court for the
Eastern District of New York

Procedures Governing Pro Bono Counsel in Pro Se Civil Actions

For each civil action commenced in the Eastern District of New York, by or against a pro se party, the District Judge or Magistrate Judge (hereinafter “Judge”) to whom the action is assigned may request pro bono counsel under 28 U.S.C. § 1915(e) in accordance with these procedures. See *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 310 (1989) (Court may only request, not appoint, pro bono counsel).

1. Civil Pro Bono Program

(A) Law firms, individual attorneys and students under the supervision of a law school clinical supervisor who are interested in representing pro se parties in civil actions when such parties lack the resources to retain counsel may volunteer to participate in the Court’s Civil Pro Bono Program. Attorneys must be admitted to practice in the Eastern District of New York and must be in good standing in the Eastern District of New York and in the State of New York or file a motion for leave to appear pro hac vice.

(B) Available pro bono case summaries are circulated to attorneys via email through the Pro Bono Listserv. If you do not already receive these summaries, you may subscribe to the Pro Bono Listserv. See <https://www.nyed.uscourts.gov/pro-bono-attorney-information> You will receive a confirmation message to which you must respond as instructed to activate your subscription to the Pro Bono Listserv.

2. Request for Pro Bono Counsel: Application Procedure

(A) A pro se litigant who is seeking pro bono counsel may submit an application to the Judge assigned to the action. The Court considers the following factors to decide whether or not to grant an application for pro bono counsel: (i) the nature and complexity of the action; (ii) the potential merit of the claims; (iii) the inability of the pro se party to retain counsel by other means; (iv) the degree to which the interests of justice will be served by seeking pro bono counsel for the litigant; and (v) any other factors deemed appropriate by the Judge. See *Ferrelli v. River Manor Health Care Center*, 323 F.3d 196, 204 (2d Cir. 2003); *Hodge v. Police Officers*, 802 F.2d 58, 61 (2d Cir. 1986).

(B) With or without an application from a litigant, the assigned Judge may issue an order pursuant to 28 U.S.C. § 1915(e)(1) seeking a pro bono attorney to volunteer from the Civil Pro Bono Panel to represent the pro se party.

(C) A summary of each case for which pro bono counsel is sought shall be prepared and published by monthly email to attorneys who have subscribed to the Court's Pro Bono Listserv. The email shall contain a link to the current docket sheet of the case. Attorneys should review the list of case summaries to determine if they are interested in a case. If interested, the attorney must contact the Court's Pro Bono Coordinator via email at edny_probono@nyed.uscourts.gov. If requested, the Pro Bono Coordinator will send relevant documents to the interested attorney via email. In social security matters, the Administrative Record will be made available to the interested attorney upon request. The interested attorney will have 30 days to review the case and to contact the litigant in order to decide whether to file a notice of appearance.

If, after 30 days, the attorney reviewing the case has not filed a notice of appearance, the attorney must notify the Pro Bono Coordinator. Additional time may be requested for review of the file or to arrange to meet the pro se party. The Court strongly recommends that counsel contact and, if possible, meet the pro se party prior to filing a notice of appearance in any case.

(D) Generally, cases will be made available for review by attorneys on a first-come, first-served basis. If several attorneys are interested in the same pro bono case, a wait list will be established. When a wait list is established for a particular case, the Pro Bono Coordinator will keep account of the time the case has been out for review and shall contact the reviewing attorney prior to the expiration of the 30-day period in order to expedite the process.

(E) If the attorney reviewing the case determines that the attorney cannot represent the pro se party, the attorney shall promptly notify the Pro Bono Coordinator. If the attorney decides to represent the pro se party, the attorney shall serve and file a notice of appearance with the Clerk of Court. A copy of the notice of appearance shall also be sent to the formerly pro se party.

(F) If a case has been published on the Pro Bono Listserv for several months without any attorney volunteering to take the case, the Judge may withdraw the order granting the application for pro bono counsel.

3. Responsibilities of the Pro Bono Attorney

(A) The Court strongly recommends that the pro bono attorney and the client execute a pro bono retainer agreement in each case setting forth the parameters of the pro bono representation.

(B) The pro bono attorney should discuss the merits of the action with the party and explore the possibility of resolving the case by other means, including, but not limited to, utilizing the alternative dispute resolution programs available at the Court. See <https://www.nyed.uscourts.gov/alternative-dispute-resolution>.

(C) If the pro bono attorney has taken a case for the sole purpose of mediation or for some other limited purpose, the retainer agreement should reflect that understanding. It should be made clear to the newly represented party that pro bono counsel is not obligated to continue with the case if it is not resolved through mediation or for the limited purpose for which it has been undertaken.

(D) Upon filing the notice of appearance, the pro bono attorney shall promptly undertake matters regarding the litigation and shall communicate with the newly represented party concerning the action.

4. Duration of Representation

(A) A pro bono attorney shall represent the party in the action in the district court from the date the attorney enters an appearance until the conclusion of the case unless the attorney has taken a case for a limited purpose or has been relieved by the Court.

(B) If the formerly pro se party takes an appeal from the district court's decision or if the matter is remanded to an administrative forum, the pro bono attorney is encouraged, but not required, to represent the party on the appeal or in any administrative proceeding.

(C) Upon request of the pro se party, the pro bono attorney should assist the pro se party to complete a pro se Notice of Appeal. Where the pro bono attorney elects not to represent the party on an appeal or in an administrative proceeding, the attorney shall promptly advise the pro se party on how to preserve his or her rights.

5. Discharge

A party for whom a pro bono attorney has filed a notice of appearance shall be permitted to discharge the attorney. If a litigant discharges a pro bono attorney, the Court shall consider the circumstances of the discharge when deciding whether another pro bono attorney should be sought in the case.

6. Withdrawal

(A) Subsequent to filing a notice of appearance, a pro bono attorney shall not apply to be relieved unless: (i) a conflict of interest precludes the attorney from representing the party in the action which was not apparent prior to filing the notice of appearance in the case; (ii) a personal incompatibility exists between the attorney and the party, or a substantial disagreement exists between the attorney and the party on litigation strategy; (iii) the attorney believes that the party is proceeding for purposes of harassment or malicious injury, or that the party's claims or defenses are not supported by fact or are not warranted under existing law and cannot be supported by a good faith argument for extension, modification, or reversal of existing law; or (iv) other good cause is shown.

(B) An application by the pro bono attorney to withdraw from the case on any of the above grounds must be promptly made to the assigned Judge and must comply with Local Civil Rule 1.4. <https://www.nyed.uscourts.gov/local-rules-documents-and-administrativeorders>. The pro bono attorney shall communicate with the client before seeking to withdraw.

7. Expenses

The pro bono attorney, if unable to bear the cost of certain expenses of the litigation, may apply for reimbursement of expenses from the Eastern District Civil Litigation Fund, Inc. ("EDCLF"), a nonprofit corporation formed for the purpose, inter alia, of providing reimbursement for certain litigation expenses of pro bono counsel. Attorneys should consult the Rules governing the EDCLF for further guidance. See <https://www.nyed.uscourts.gov/content/eastern-district-civil-litigation-fund>.

8. Compensation for Services

(A) Pro bono attorneys may not enter into contingency fee arrangements in cases found on the Pro Bono Listserv or referred to the attorney by the Court.

(B) Attorneys who receive the Pro Bono Listserv must agree not to solicit litigants in cases on the Pro Bono Listserv for fee generation.

(C) Pro se litigants in Social Security Disability cases shall be advised by the pro bono attorney that a statutory attorney's fee may be paid to the pro bono attorney from the award, if any, of retroactive disability benefits.

(D) In cases where a statute provides for an award of attorney's fees to the prevailing party and upon appropriate application by the pro bono attorney, the Judge may award attorney's fees to the pro bono attorney for services rendered in the action. Attorney's fees may be awarded in pro bono cases, as authorized by applicable statute, regulation, rule or other provision of law, and as the parties or the Judge deem just and proper. In deciding whether to award attorney's fees the Judge shall consider: (i) the relevant statutes and provisions of law; (ii) the source of the fee award; (iii) the services rendered; and, (iv) any other factors he or she deems appropriate. The pro bono attorney shall keep contemporaneous time records where a statute provides for an award of attorney's fees to the prevailing party.