

PRO SE PROJECT

OF THE

UNITED STATES DISTRICT COURT,

DISTRICT OF MINNESOTA

AND THE

FEDERAL BAR ASSOCIATION,

MINNESOTA CHAPTER

Overview

Access to justice is a high priority of the Minnesota District Court and the Minnesota Chapter of the Federal Bar Association (FBA). As one of the busiest Districts in the nation, the majority of cases on the Minnesota District Court Judges' dockets are time-consuming civil matters. Over the years, the number of *pro se* litigants making appearances in civil lawsuits has increased and these *pro se* litigants pose unique challenges to Judges, opposing counsel, the court system as a whole. The majority of the *pro se* litigants appearing in Minnesota District Court are minorities, suffer from developmental disabilities or mental health issues, and are without the means to afford representation, thereby falling into the category of individuals typically underserved by our legal system. *Pro se* litigants require more time and attention than litigants represented by counsel, *pro se* hearings take longer, and many Judges spend more time on their written opinions in *pro se* cases so that their reasoning is clear to people without legal training.

The Minnesota District Court and the Minnesota Chapter of the FBA recognized consultation with a volunteer lawyer helps *pro se* litigants by making justice more accessible, focusing *pro se* litigants' claims or defenses, guiding their cases through the judicial system more efficiently, and in some cases, helping them avoid litigation altogether. Even if the *pro se* individual declines representation or refuses to follow a volunteer lawyer's advice, by having access to counsel, the *pro se* litigant is more likely to perceive the justice system to be fairer, thereby reducing the number of appeals. Hence, the Minnesota District Court collaborated with the Minnesota Chapter of the FBA to form the *Pro Se* Project, with the goal of providing civil *pro se* litigants in federal court the opportunity to have a meaningful consultation with volunteer counsel and to improve access to justice in our Federal Courts. To support the development of the *Pro Se* Project, the Court implemented a "Representing Yourself" website that contains valuable resources for *pro se* litigants including forms and a civil *pro se* guidebook.

Some *pro se* litigants have meritorious claims/defenses, and, in those instances, the goal of the project is to recruit a volunteer lawyer to represent the litigant to pursue the meritorious claim/defense. Other *pro se* litigants wish to pursue claims/defenses that have no merit and cannot be pursued consistent with Rule 11 of the Federal Rules of Civil Procedure. In those instances, the goal of the project is to recruit a volunteer attorney to advise the litigant and attempt to steer the litigant in the right direction. The volunteer lawyer uses his/her judgment in assessing the claims/defenses. If a claim/defense can be pursued consistent with Rule 11, it is the goal of this project to recruit counsel to provide *pro bono* representation to the litigant.

Volunteer attorneys who participate in the *Pro Se* Project are a tremendous help to *pro se* litigants, the District Court, and to all federal practitioners with paying clients, whether civil or criminal. Each volunteer attorney's efforts collectively help make justice more accessible to those with limited means and work to unclog our Federal Court system.

Project Goals

- Provide every civil *pro se* litigant in the District of Minnesota the opportunity to consult with counsel and, where appropriate, to be represented by counsel.
- Improve access to justice in the Minnesota District Court.
- Decrease the number of civil *pro se* litigants in the District.
- Communicate effectively with the Court regarding the status of cases referred to the project.

Process for *Pro Se* Project Cases

A. Case Intake And Referral

1. Referral to Project. When a civil case is filed in the District of Minnesota by a *pro se* Plaintiff or a *pro se* Defendant makes an appearance, the Court will write a letter to the *pro se* party indicating that they should contact the *Pro Se* Project Coordinator if they would like to arrange a consultation with a volunteer lawyer. The Court will copy the *Pro Se* Project Coordinator on that letter. The contact information for the *Pro Se* Project Coordinator is:

Tiffany A. Sanders, Esq.
P.O. Box 24378
Minneapolis, MN 55424
(612) 965-3711
proseproject@q.com

2. Referral to Volunteer Lawyer/Firm. If the *pro se* litigant wishes to participate in the *Pro Se* Project, the Coordinator will contact a law firm or lawyer and request a consultation with the *pro se* litigant. The Coordinator will attempt to make referrals that are consistent with the volunteer lawyers' areas of practice.

3. Conflict Check. Upon being contacted by the Coordinator, the volunteer lawyer or law firm shall be responsible to conduct a conflicts inquiry. The preliminary conflicts inquiry shall be done immediately after receiving a case referral. The attorney or firm shall report back to the Coordinator regarding whether a conflict exists. If a conflict exists, the Coordinator will refer the case to another volunteer lawyer or law firm.

4. Assignment of Case and Notification to Litigant Regarding Consultation. If there is no conflict and the volunteer lawyer/firm agrees to accept the referral, the volunteer lawyer/firm will notify the Coordinator. The *Pro Se* Project will send a letter to the *pro se* litigant providing the name of the volunteer lawyer that has agreed to meet with him/her for a consultation and case evaluation and request that the *pro se* litigant contact the volunteer lawyer immediately upon receipt of the letter. If the *pro se* client does not contact the lawyer/firm, the volunteer lawyer shall so report to

the Coordinator. If appropriate, the Coordinator will make efforts to contact the *pro se* litigant and assist with arranging the initial consultation.

5. Notification to Court Regarding Consultation. When a case is referred for consultation, the Coordinator will send a letter to the Court indicating that the case has been referred for consultation and informing the Court of the name of the volunteer lawyer or law firm. The letter may indicate that the volunteer has not yet decided whether to undertake representation, and the volunteer lawyer will enter a notice of appearance if the lawyer assumes representation.

B. Initial Case Analysis and Management; Client Disclosure

1. Case Evaluation. After receiving the case referral, the volunteer lawyer shall meet and interview the *pro se* client, review the case file, and conduct any necessary research to preliminarily analyze the case.

2. No Viable Cause of Action/Defense. If the volunteer attorney finds no viable cause of action or defense after appropriate research and analysis, he or she shall discuss the merits of the claim with the *pro se* client. If the *pro se* client wishes to proceed, the volunteer attorney may, but is not required, to seek the assistance of a volunteer mediator.

3. Viable Cause of Action/Defense. If the volunteer attorney finds a viable cause of action or defense, then the project requests that the attorney enter a notice of appearance and pursue the viable claim(s)/defense(s). The volunteer attorney may choose to provide full representation to the *pro se* client, may enter a special appearance on behalf of the client, or may decline to provide further service to the client. Factors to consider in making this decision include, but are not limited to: 1) whether there are irreconcilable differences in opinion between the attorney and client (i.e. the client does not wish to withdraw unmeritorious claims or defenses); and 2) whether a settlement conference or other ADR mechanism is available and might resolve the case successfully.

4. Notify Pro Se Project Coordinator. The volunteer lawyer shall inform the Coordinator whether additional service will be provided to the client following the case evaluation. Without disclosing client confidences, the Project requests the volunteer lawyer provide the Coordinator with sufficient information to ascertain whether the *pro se* litigant should refer the case to another volunteer attorney or recommend to the Court that the project file be closed. The Coordinator will follow up with the *pro se* litigant to obtain his/her feedback and explain the status of the referral.

5. Notice to Court. The Coordinator will notify the Court of the status of the referral and other suitable information regarding the case (i.e., *pro se* litigant received a meaningful consultation with volunteer attorney and recommend closing project file; case may be appropriate for an early settlement conference with the Magistrate Judge; or suggest the Coordinator be allowed to contact another volunteer attorney.) If the case is referred to a second lawyer/law firm, the Coordinator will inform the Court that a second lawyer/firm has agreed to consult with the litigant.

6. Acknowledgement. When a lawyer assumes representation of a case through the project, the Coordinator will notify the Chief Judge and prepare a letter to the attorney thanking the attorney for his/her contribution to the project.

7. Departure of Volunteer Attorney. When a volunteer attorney handling a *pro se* case leaves the firm, he or she should work with the firm to: (i) locate another attorney within the firm to take over the representation of the *pro se* client, or (ii) take the case with him or her, in which case the volunteer attorney must notify the *pro se* client in writing that the firm is withdrawing from representation, or (iii) contact the Coordinator for assistance with obtaining another lawyer for the client.

8. Malpractice Insurance. The FBA *Pro Se* Project does not provide malpractice insurance.

Engagement Letter, Costs, Expenses, and Attorneys Fees

A. Engagement Letter

Following the initial case consultation, if a volunteer lawyer or law firm elects to provide ongoing representation to the *pro se* client, the volunteer lawyer or firm shall discuss the terms of the representation with the *pro se* client and execute a written retainer/engagement letter. **A sample letter is attached.**

B. Costs, Expenses, and Attorneys Fees

1. Reimbursement of Expenses by Client. The *pro se* client is required to pay the costs and expenses actually incurred.

2. Limiting Costs. If the *pro se* client is indigent and unable to cover the out-of-pocket expenses, each volunteer attorney should endeavor to limit costs wherever possible by consulting legal services programs regarding existing arrangements for free services from court reporters, process servers, and the like. If the Court has not yet issued a Scheduling Order, the volunteer attorney should request limits on discovery in an effort to limit costs and/or request an early settlement conference with the Magistrate Judge.

3. Reimbursement by Project. The FBA will endeavor to pay costs and expenses actually incurred for incidentals that are not reimbursed through any of the above means. The volunteer attorney shall provide a complete and accurate record of the costs and expenses incurred to the Coordinator who will present them to the FBA for review and consideration.

4. Attorneys Fees. If there is a claim to recover attorneys fees in the case, the engagement letter should indicate how any award of attorneys fees will be treated. Unless otherwise agreed, any award of attorneys fees shall first compensate the law firm/lawyer for any out of pocket expenses. After out of pocket expenses are reimbursed, the FBA *Pro Se* Project requests the volunteer lawyer/firm consider a donation to the FBA *Pro Se* Project from the award of attorney fees.

CLE Credits, Law Clerks, and Closing Report

A. Approved Legal Services Provider

Any volunteer lawyer/firm who works on a *Pro Se* Project referral should keep track of time spent on the file and submit a request for *pro bono* CLE credits. Information on submitting a request for *pro bono* CLE credits may be found at:

<http://www.mbcle.state.mn.us/MBCLE/pages/probono.asp>

B. Minnesota Justice Foundation

Any volunteer lawyer/law firm who accepts a *Pro Se* Project referral, regardless of whether the volunteer lawyer enters a notice of appearance, may receive a *pro bono* law clerk through the Minnesota Justice Foundation (MJF) to assist with case. A volunteer lawyer/law firm interested in working with a MJF *pro bono* law clerk should contact the Coordinator to make the arrangements.

C. Closing Report and Comments

Immediately upon completion of the case, whether through settlement, dispositive motions, trial etc., the volunteer lawyer/law firm shall notify the Coordinator that the representation has ended and provide a brief explanation of the disposition of the case. An email to the Coordinator with this information is sufficient. The project welcomes and encourages comments and suggestions and volunteer lawyers/law firms should direct those to the Coordinator.

**SAMPLE *PRO BONO*
AUTHORIZATION AND RETAINER AGREEMENT**

In this Agreement, "Client" means the organization or person whose name appears below and "Firm" means _____.

Client's Name:

Client's Address:

Client's Phone Number:

Client's Key Contact Name:

AUTHORIZATION

Client agrees that Firm shall provide Client with legal representation regarding _____.

RETAINER AGREEMENT

A. Firm will represent Client without charge except as otherwise expressly stated in this Agreement.

B. Client agrees to bear responsibility for all out-of-pocket costs and disbursements incurred by Firm in representing Client, unless Firm specifically agrees to pay for a cost or disbursement or Firm obtains reimbursement for any costs through the Minnesota Chapter of the Federal Bar Association. Firm will advance costs and disbursements for certain items, such as filing fees, travel expenses and long distance telephone calls, and then bill Client. In some cases, Firm may ask providers, such as court reporters or expert witnesses, to submit certain substantial charges directly to Client. Service charges for such items as facsimile service, photocopying and computerized research will be billed to Client at Firm's cost, whether Firm incurs the cost directly or indirectly. Client shall pay all bills for costs and disbursements promptly upon receipt.

C. Any award of attorneys fees obtained shall first compensate the Firm for any out of pocket expenses.

Withdrawal by Firm

Firm must withdraw from representing Client, with Court approval, and terminate this Agreement if:

A. The representation will cause Firm to violate the Rules of Professional Conduct or other law, or

B. The physical or mental condition of the attorney at Firm materially impairs his or her ability to represent the Client.

Firm may withdraw from representing Client, with Court approval, and terminate this Agreement if:

- A. Withdrawal can be accomplished without material adverse effect on the interests of Client;
- B. Client persists in a course of conduct involving Firm's services that Firm reasonably believes is criminal or fraudulent;
- C. Client has used Firm's services to perpetrate a crime or fraud;
- D. Client insists upon taking action that Firm considers repugnant or with which Firm has a fundamental disagreement;
- E. Client fails substantially to fulfill an obligation to Firm regarding Firm's services and has been given reasonable warning that Firm will withdraw unless the obligation is fulfilled;
- F. The representation will result in an unreasonable financial burden on Firm or has been rendered unreasonably difficult by Client; or
- G. Other good cause for withdrawal exists.

Client File at Conclusion of Representation

At the conclusion of the representation, Client may, on written request, have a copy of the Client file, for which Firm will charge a reasonable copying cost.

The undersigned authorizes Firm to act on behalf of Client. CLIENT HAS READ AND AGREES TO THE TERMS OF THIS *PRO BONO* AUTHORIZATION AND RETAINER AGREEMENT. Client has received a copy of this Agreement.

Name of Client:
By (Signature):
Title:
Date:
Attorney in Charge: