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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 IN THE MATTER OF:
7 PRO BONO PROGRAM
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AMENDED GENERAL ORDER 2019-07¹

10 WHEREAS, attorneys admitted to practice in this District have a strong tradition of
11 providing *pro bono* representation to indigent litigants in civil cases in the courts of the State of
12 Nevada;

13 WHEREAS, the Federal Bar Association, William S. Boyd School of Law, Legal Aid
14 Center of Southern Nevada, Nevada Legal Services, and Washoe Legal Services are willing to
15 support and coordinate providing qualified volunteer lawyers to represent indigent *pro se* litigants
16 in this District;

17 WHEREAS, volunteer lawyers provide an extremely valuable service, which enhances
18 our legal system;

19 WHEREAS, volunteer lawyers who provide their time and resources to preserve access
20 to justice for those unable to afford a lawyer greatly assist this Court in the performance of its
21 mission;

22 WHEREAS, the Judges of this District have authorized the implementation of the attached
23 Program for the Representation of *Pro Se* Litigants;

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¹The order was amended only to make two changes to Section 1(b).

1 IT IS THEREFORE ORDERED that the *Pro Bono* Program for the Representation of *Pro*
2 *Se* Litigants in the United States District Court for the District of Nevada, attached hereto, is
3 adopted.

4 IT IS FURTHER ORDERED that the Court's *Pro Bono* Committee is directed to maintain
5 statistics measuring program activity and submit annual reports to the Judges of this District.

6 DATED *nunc pro tunc* to this 25th day of October 2019.

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9 MIRANDA M. DU, CHIEF JUDGE
10 UNITED STATES DISTRICT COURT
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1 not an endorsement of the merits of the case. Whether to refer a case for appointment is
2 discretionary and generally based on a number of factors, including but not limited to:

- 3 A. the inability of the *pro se* party to retain counsel by other means;
- 4 B. the potential merit of the claims as set forth in the pleadings;
- 5 C. the nature and complexity of the action, both factual and legal, including the need
6 for factual investigation, the need for expert/s, and the overall needs of discovery;
- 7 D. the presence of conflicting testimony calling for a lawyer's presentation of evidence
8 and cross-examination;
- 9 E. whether the *pro se* party has another case pending before the Court and, if so,
10 whether counsel has been appointed in such case;
- 11 F. the capability of the *pro se* party to present the case;
- 12 G. the degree to which the interests of justice will be served by appointment of
13 counsel, including the benefit the Court may derive from the assistance of
14 appointed counsel;
- 15 H. whether reasonable costs and attorney's fees may be recoverable by the prevailing
16 party in the action;
- 17 I. the degree to which it appears an early ADR procedure, such as a settlement
18 conference or early neutral evaluation under Local Rule 16, may bring about an
19 early, inexpensive and consensual resolution of the litigation by:
 - 20 (i) facilitating or improving communications between the parties;
 - 21 (ii) providing the parties an opportunity to be heard regarding their
22 respective grievances, positions, concerns, goals and interests;
 - 23 (iii) promoting the parties' understanding of the strengths and weaknesses
24 of their respective cases;
 - 25 (iv) limiting, narrowing or simplifying the issues in dispute;
 - 26 (v) restoring or preserving personal or business relations;
 - 27 (vi) otherwise creating an atmosphere conducive to settlement;

1 (vii) achieving settlement on terms not available through litigation; or
2 (viii) achieving settlement of some or all issues as between some or all
3 parties; and

4 J. any other factors deemed appropriate by the referring Judge.

5 (2) Scope of Appointment. Cases may be referred to the Program for either general
6 purpose or limited purpose representation. Limited purpose representation will normally,
7 though not necessarily, correlate to representation for purposes of participating in an
8 Alternative Dispute Resolution proceeding under Local Rule 16, including early mediation
9 conferences in Section 1983 prisoner litigation.

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11 **(b) Appointment.** Upon referral by a Judge to the Program, the case will be sent to the
12 *Pro Bono* Liaison. The Liaison will gather pertinent materials, including copies of all
13 necessary filings in the case, and forward them to Legal Aid Center of Southern Nevada
14 or Washoe Legal Services who, in turn, will screen the litigant for financial eligibility and
15 attempt to locate counsel willing to take on the pro bono representation.

16
17 **(c) Appointment Response Form.** Within thirty (30) days after pro bono counsel accepts
18 an appointment, counsel shall complete and return to the Liaison the *Pro Bono* Response
19 Form, indicating: "Representation of [*pro se* litigant's name] for [type of appointment (*i.e.*
20 "the limited purpose of" or "All Purposes"))] is accepted." *Pro bono* counsel shall also
21 indicate that he/she has conferred with the litigant and that the litigant agrees to the
22 representation. Should a *pro se* litigant determine not to accept representation by pro
23 bono counsel, the Response Form shall so indicate. The decision by a *pro se* litigant not
24 to participate in the Program may preclude further participation in the Program on the
25 specific case for which representation was refused. It does not preclude the possibility of
26 future participation in the Program in a different case.

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1 **(d) Order of Appointment.** Upon receipt of the Appointment Response Form, the Liaison
2 will forward the form along with a proposed order appointing pro bono counsel to the
3 referring Judge. Absent unusual circumstances, pro bono counsel is expected to remain
4 as counsel for the duration of the purpose of the appointment. Docketing of the order
5 appointing *pro bono* counsel shall result in the setting of a public PROBONO case flag.
6 Appointment under this Program does not extend to the appeal, if any, of a final decision,
7 which shall be the responsibility of the client.

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9 **(e) Notice of Completion of Pro Bono Appointment.** The Notice of Completion Form
10 is critical to the Program's success, the accuracy of case records, and the quality of
11 service to *pro se* litigants. The Form shall be submitted within fourteen (14) days after
12 completion of legal services rendered by *pro bono* counsel to the Liaison.

13
14 **(f) Record of Attorney Appointments.** The Liaison, in conjunction with Legal Aid Center
15 of Southern Nevada and Washoe Legal Services, will maintain a record of appointments
16 and provide an annual written report to the *Pro Bono* Committee and Chief District Judge.

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18 **(g) Waiver of CM/ECF Fees.** Attorneys who have taken on the *pro bono* representation
19 shall not be charged fees for use of the Court's electronic filing system (PACER) in the
20 case on which they are serving as *pro bono* counsel.

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22 **(h) Liability Insurance.** Participating attorneys will be eligible for professional errors and
23 omissions insurance coverage provided by Legal Aid Center of Southern Nevada or
24 Washoe Legal Services, to the extent such coverage is available.

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26 **(i) Business Entities Not Eligible.** Business entities are not eligible for participation in
27 the Program.

1 **(j) Pro Hac Vice.** Attorneys who file for *pro hac vice* status will not be charged the petition
2 filing fee in a case where they are serving as *pro bono* counsel.

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4 **SECTION 2. EXPENSES**

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6 **(a) Reimbursement of Reasonable Expenses.** An attorney assigned pursuant to the
7 Program to represent a party in a proceeding before this Court may apply for
8 reimbursement from the Court Fund of reasonable, eligible expenses not paid by the
9 party. Before seeking reimbursement of costs, pro bono counsel must seek payment from
10 the party, to the extent feasible. The “Court Fund” consists of an annual allowance made
11 by the District of Nevada’s Attorney Admission Fund to the Pro Bono Committee to use
12 in the Committee’s discretion for reimbursement of eligible costs on a pro rata basis.

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14 **(b) Advancement of Expenses.** The assigned attorney or firm may, but is not required
15 to, advance the payment of expenses. Assigned counsel or the firm with which counsel
16 is affiliated may advance part or all of the payment of any such expenses without requiring
17 that the counsel or firm remain ultimately liable for such expenses. In appropriate
18 circumstances, the Pro Bono Committee may approve an advance of costs requested by
19 pro bono counsel.

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21 **(c) Expenses Eligible for Reimbursement from the Court Fund.**

- 22 1. Deposition and Transcript Costs. Except as otherwise ordered by the Court, the
23 cost of the original of any transcript or deposition together with the cost of one copy
24 each where needed by counsel and, for deposition, the copy provided to the Court
25 shall be eligible for reimbursement.
- 26 2. Travel Expenses. Reasonable costs of travel, of more than 50 but less than 200
27 miles, by privately owned automobile are eligible for reimbursement at the rate

1 currently prescribed for federal judiciary employees who use a private automobile
2 for conduct of official business ("Reimbursed Vehicle Rate"), plus parking fees,
3 tolls, and similar expenses, provided, however, that if the cost of a vehicle rental
4 plus fuel ("Rental Vehicle Rate") is less expensive than the Reimbursed Vehicle
5 Rate, reimbursement shall be capped at the Rental Vehicle Rate, plus parking
6 fees, tolls, and similar expenses. Reasonable costs for transportation other than
7 by privately owned automobile may be claimed on an actual expense basis. Actual
8 expenses reasonably incurred shall be guided by the prevailing limitations placed
9 upon travel and subsistence expenses of federal judiciary employees in
10 accordance with existing government travel regulations.

11 3. Service of Papers; Witness Fees. Fees for service of papers and the appearances
12 of witnesses that are not otherwise avoided, waived, or recoverable are eligible for
13 reimbursement.

14 4. Interpreter Services. Reasonable costs of interpreter services not otherwise
15 avoided, waived, or recoverable are eligible for reimbursement. The fees/rates are
16 subject to a reasonableness standard and may not exceed the hourly rate
17 established by the Criminal Justice Act.

18 5. Experts. Reasonable costs for expert services, other than interpreters, not
19 otherwise avoided, waived, or recoverable, are eligible for reimbursement.

20 6. Expenses Ineligible for Reimbursement from the Court Fund. General office
21 expenses, including personnel costs, rent, telephone services, secretarial help,
22 and photocopying, are not reimbursable from the Court Fund. Any costs incurred
23 in conducting computer assisted legal research is not reimbursable from the Court
24 Fund. The expense of printing briefs, regardless of the printing method utilized, is
25 not reimbursable from the Court Fund.

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1 **(d) Limits for Reimbursements.**

- 2 1. Types of Actions. Only those expenses associated with the preparation of a civil
3 action in the U.S. District Court for the District of Nevada shall be eligible for
4 reimbursement. For clarity, costs associated with the preparation or presentation
5 of an appeal to the U.S. Court of Appeals or the U.S. Supreme Court shall not be
6 reimbursed from the District Court Fund. Reimbursement from the Court Fund may
7 be limited by funds available.
- 8 2. Dollar Limits. To the extent the represented party is unable to bear all or part of the
9 costs of litigation, advances plus reimbursements are limited to \$2,500 in
10 aggregate.

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12 **(e) Procedures for Obtaining Reimbursement or Advance.**

- 13 1. Reimbursement. A request for reimbursement must be made by application to the
14 Pro Bono Committee for reasonable expenses not paid by the litigant. All requests
15 must be submitted through the Liaison. Requests may be made at any time after
16 the expense has been paid and during the pendency of the proceedings and up to
17 thirty days following the entry of judgment in the proceedings. The request shall
18 set forth the reason for the request and the amount of the expense, as well as any
19 expenses that have already been advanced and/or reimbursed in the action on
20 behalf of the party. The Committee may condition approval of such requests
21 subject to the availability of funds at the time of the request.
- 22 2. Advance. A request for an advance disbursement to cover an expense must be
23 made by application to the Pro Bono Committee. All requests for preapproval and
24 advancement must be submitted through the Liaison. The request shall set forth
25 the reason for the request and the estimated amount of the expense, as well as
26 any expenses that have already been advanced and/or reimbursed in the action
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1 on behalf of the party. The Committee may condition approval of such requests
2 subject to the availability of funds at the time of the request.

- 3 3. Format. Any request made under this Section 2 may be made ex parte, and shall
4 include the voucher form approved by the Committee and available on the Court's
5 website. The request shall be accompanied by sufficient documentation to permit
6 a determination that the request is appropriate and reasonable, and if the expense
7 has already been paid.

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9 **(f) Repayment to the Court Fund.** To the extent a party assigned counsel under the
10 Program obtains a monetary award through settlement, final judgment, or an award of
11 taxable costs or attorney fees; the party shall reimburse the Court Fund as follows:

- 12 1. Repayment Limits in case of Settlement or Judgment. If a party settles or obtains
13 a judgment in excess of the party's previous reimbursement from the Court Fund,
14 full repayment to the Court Fund is required. If a party settles or obtains judgment
15 in an amount that is less than the previously approved reimbursement, the Court
16 Fund shall be repaid at a rate of 50 cents on the dollar in an amount not to exceed
17 fifty percent (50%) of the total settlement or judgment.
- 18 2. Amounts to be Repaid from Cost or Attorney Fee Award. Where a party prevails
19 and is awarded taxable costs or attorney fees, the Court Fund shall be repaid in
20 full, first from the cost award and then from the attorney fees award, not to exceed
21 the total amount of the awards.

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23 **(g) Extraordinary Expenses.** If pro bono counsel has incurred expenses of an
24 extraordinary nature, and after exhausting the maximum amount reimbursable from the
25 Court Fund as set forth in paragraph 2(d)(1) above, counsel may apply to the Attorney
26 Admission Fund of the District of Nevada for additional reimbursement. Any such
27 application by counsel must:

- 1 1. demonstrate that the expenses are extraordinary and not an expense typically
2 incurred by counsel in the handling of a pro bono assignment, such as those costs
3 identified in Section 2(c), or if the expense is of a type listed in Section 2(c), that
4 the amount in excess of \$2,500 was essential to effective representation of the pro
5 bono client;
- 6 2. be accompanied by the presiding judge's determination that the extraordinary
7 costs for which pro bono counsel seeks reimbursement were reasonable and
8 necessary; and,
- 9 3. provide documentation by pro bono counsel that the client represented is unable
10 to reimburse pro bono counsel for the extraordinary expenses for which
11 reimbursement is sought.

12 The AAF Committee will then make a recommendation as to whether to grant the pro
13 bono counsel's application for reimbursement of extraordinary costs, which will be placed
14 on the agenda of the next quarterly judges' meeting.

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16 **SECTION 3. COMPENSATION FOR SERVICES**

17 **(a)** Upon appropriate application, the Judge may award attorney fees against an opposing
18 party for services rendered in the action as authorized under applicable statutes,
19 regulations, rules, or other provisions of law, and as the Judge deems just and proper
20 considering the applicable legal standards.

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22 **(b)** If, after appointment, the appointed attorney discovers the party, due to changed
23 circumstances, is no longer financially eligible as originally determined pursuant to
24 Section 1(b), the attorney shall bring this information to the attention of the assigned
25 Judge, who may thereupon (i) approve a fee arrangement, including a contingency
26 fee arrangement, between the party and the appointed attorney, or (ii) relieve the
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1 attorney from the responsibilities of the order of appointment and permit the party to
2 retain an attorney or proceed *pro se*.

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4 **(c)** Nothing in these rules shall preclude or limit appointed counsel and the *pro se* litigant
5 from entering into a contingency fee agreement, subject to any legal and ethical
6 obligations, at the outset of the appointment. Except as provided in subsection (b) of
7 this section, any such agreement shall be made within the time frame for submitting
8 the Appointment Response Form, which shall indicate that a contingency fee
9 agreement is in place. In the case of a contingency agreement or other arrangement
10 made under this subsection or subsection (b), appointed *pro bono* counsel is not
11 eligible for advancement or reimbursement of costs or expenses from the Court Fund.
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