

FILED

MAR 24 2021

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY WFO
DEPUTY CLERK

In re: Appointment of Counsel to
Represent Indigent Parties in
Civil Cases

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STANDING ORDER ESTABLISHING
A+, A, AND B PANELS FOR CIVIL
APPOINTMENTS IN THE SAN
ANTONIO DIVISION AND
SUPPLEMENTING AMENDED PLAN
FOR REIMBURSEMENT OF
COUNSEL

To assist the Judges of the San Antonio Division of the Western District of Texas in appointing counsel to represent indigent parties in civil cases, the Court hereby enters this Order supplementing the Court’s Order Adopting Amended Plan for the Payment of Attorney Fees and Reimbursement of Attorney Expenses in Civil Cases (W.D. Tex. July 29, 2011) (hereinafter “2011 Amended Plan”).

I. Preamble: Representation of the Indigent in Federal Court.

The law has long recognized the inherent power of the Court, and the ethical obligations of the bar, to ensure the adequate representation of the indigent. The Court’s inherent power to require attorneys to represent indigent parties is “rooted in courts’ duty to maintain the functioning of the civil justice system as a whole.” *Naranjo v. Thompson*, 809 F.3d 793, 803 (5th Cir. 2015). The Court’s duty accords with the ethical obligations of the bar. “[T]he bar’s monopoly over legal services entails obligations to court and society.” *Id.* (quoting *United States v. Bertoli*, 994 F.2d 1002, 1018 (3d Cir. 1993)). By virtue of their special status as officers of the court, lawyers have an ethical duty of “[a]ccepting a court’s request to represent the indigent.” *Naranjo*, 809 F.3d at 804 (quoting *Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 310–11 (1989) (Kennedy, J., concurring)). This duty is formalized in the Texas Disciplinary Rules of Professional Conduct, which highlight the “moral obligation of each lawyer” to provide legal services to those unable to pay, *see* TEX. DISCIP. R. OF PROF. CONDUCT, preamble note 6, and require that attorneys

accept court appointments absent good cause, *see id.*, Rule 6.01. Attorneys commit to these rules, and this ethical and moral obligation, when admitted to this Court. *See* W.D. TEX. R. AT-7(a).¹

Although the obligation to represent those unable to afford counsel is one shared by all attorneys, the Court recognizes the heavy burden it can impose on members of the bar, particularly given the ever-increasing difficulty and expense associated with federal civil litigation. For this reason, the Judges of the Western District of Texas have enacted orders over the past 35 years, culminating in the 2011 Amended Plan, which establish policies designed to help alleviate some of that burden. This Order is intended to further assist the Court and the San Antonio Division bar in addressing this important obligation.

II. Adoption of Procedures and Policy for Appointment in Civil Cases.

In accordance with the traditions set out in Part I, *supra*, and to assist the Court in fairly allocating the burden of *pro bono* civil representations in the San Antonio Division, the procedures in Parts III through VIII below are hereby **ADOPTED**. These procedures are intended to:

- (1) limit the frequency of civil appointments to any particular member of the Bar;
- (2) limit civil appointments to those attorneys most willing, and most qualified, to accept them;
- (3) increase the amount of fees that may be paid and expenses that may be reimbursed for appointed counsel; and

¹ Thus, as the Fifth Circuit long ago noted, “[a]n applicant for admission to practice law may justly be deemed to be aware of the traditions of the profession which he is joining, and to know that one of these traditions is that a lawyer is an officer of the court obligated to represent indigents for little or no compensation upon court order.” *Dolan v. United States*, 351 F.2d 671, 672 (5th Cir. 1965) (citations omitted). “It is not too much to expect that attorneys will accept these appointments as a matter of course, even if that burden falls most heavily on those practicing in areas where representation is hardest to find.” *Naranjo*, 809 F.3d at 804.

- (4) ensure that the ethical obligations of members of this bar are fulfilled in accordance with both state and federal law.

It is further **ADOPTED** as the general policy of the Judges of the San Antonio Division of the United States District Court for the Western District of Texas that no attorney be appointed to more than one civil case every three years, absent either the attorney's consent or other special circumstances as found by the presiding judge in any particular case.

III. Establishment of the A+, A, and B Panels for Civil Appointments.

In order to effectuate the policies set out in Part II, *supra*, it is hereby **ORDERED** that all attorneys in private practice² admitted to practice in the San Antonio Division³ shall be placed in one of three panels for appointment in civil cases:

(1) *The "A+" Panel.* The "A+" panel will consist of attorneys who:

- (A) are qualified by their experience, background, or expertise to handle common categories of San Antonio Division *pro se* civil cases⁴; and
- (B) are willing to accept more than one appointment every three years.

It is the general policy that, absent the circumstances mentioned in Part II of this Order, no A+ panel attorney will be required to accept more than one case per year, or handle more than one case at any time.

² Attorneys employed by federal, state, or local government entities are excluded from the panels established in this Part.

³ This Order applies only to those attorneys who were admitted to the bar of the Western District of Texas based on an application submitted to San Antonio Divisional Committee on Admissions. *See* W.D. TEX. R. AT-1(c), (d).

⁴ Such common categories include civil rights, employment, debt collection, property rights, personal injury, immigration, and social security. A list of common categories is provided in the CM/ECF registration system as discussed in Part IV, *infra*.

- (2) *The “A” Panel.* The “A” panel will consist of attorneys who are qualified by their experience, background, or expertise to handle one or more common category of San Antonio Division *pro se* civil cases as noted in paragraph (1) of this Part, but who prefer not to handle more than one appointment every three years.
- (3) *The “B” Panel.* The “B” panel will consist of all San Antonio Division attorneys in private practice not placed in either the “A+” or “A” panels set out above. Unless otherwise requested by an attorney or ordered by the Court, an attorney who offices outside the San Antonio Division will be placed on the “B” panel.

Lists of the lawyers on each panel set out above will be maintained by the Clerk of Court, and shall be publicly available upon request.

IV. Panel Placement.

In order to determine the placement of each attorney admitted to practice in the San Antonio Division into one of the three panels set out in Part III, it is **FURTHER ORDERED** as follows:

- (1) **On or before July 1, 2021**, each attorney admitted to the San Antonio Division must update the information in his or her account in the Court’s automated “Case Management/Electronic Case Files” (CM/ECF) system to provide information necessary to determine the attorney’s proper placement in one of the appointment panels described in Part III, *supra*. The link to provide the required update may be accessed on each attorney’s “Attorney Welcome” page on CM/ECF. **Attorneys are admonished that failure to update their account information as required may constitute grounds for removal from the bar of this Court.**
- (2) Once the attorney has updated his or her account information, the attorney will automatically be placed in one of the three appointment panels described in Part III. The

Court may review and adjust the attorney's panel placement as it deems appropriate.

The attorney's placement will be shown in his or her account profile.

- (3) Each attorney applying for admission to the San Antonio Division after the date of this Order will be required to provide information to allow for placement in accordance with paragraph (2) of this Part.
- (4) In the Court's discretion, admitted attorneys may be required to update and resubmit their account information from time to time so their panel placement may be updated as the Court deems appropriate.

V. Appointment.

After panels are established as set out in Parts III and IV above, the Court may, in any case to which it finds appointment of counsel to be warranted,⁵ appoint an attorney from the "A+" Panel to represent an indigent party.⁶ Should no attorney on the "A+" Panel be available or appropriate for appointment in the case, the Court may appoint an attorney from the "A" Panel. Should no

⁵ Appointment of counsel remains a matter of Court discretion. It has long been settled that the appointment of counsel in a civil case is a privilege, not a constitutional right, and that appointment "should be allowed in civil actions only in exceptional cases." *Lopez v. Reyes*, 692 F.2d 15, 17 (5th Cir. 1982) (citing *Hardwick v. Ault*, 517 F.2d 295, 298 (5th Cir. 1975)); *see also Ulmer v. Chancellor*, 691 F.2d 209, 212 (5th Cir. 1982) (same). Although the Fifth Circuit has declined to articulate a comprehensive definition of the "exceptional" circumstances that support appointment of counsel, it has identified a number of factors that a district court should consider in determining whether appointment is warranted, including: (1) the type and complexity of the case; (2) the party's ability to present and investigate the case; (3) the presence of evidence which largely consists of conflicting testimony so as to require skill in presentation of evidence and in cross-examination; and (4) the likelihood that appointment will benefit the party, the court, and the opposing party by shortening the trial and assisting in just determination. *Naranjo*, 809 F.3d at 799 (citing *Parker v. Carpenter*, 978 F.2d 190, 193 (5th Cir. 1992)). District courts may also consider the extent of a party's attempts to secure private counsel independently. *See Jackson v. Cain*, 864 F.2d 1235, 1242 (5th Cir. 1989).

⁶ For purposes of this Order, an indigent party is defined as one who has been unable to retain counsel due to lack of adequate resources. *Cf.* 28 U.S.C. § 1915(e)(1). The Court may require a party to establish indigency by affidavit. *Cf.* 28 U.S.C. § 1915(a)(1).

attorney on the “A” Panel be available or appropriate for appointment in the case, the Court may consider appoint an attorney from the “B” Panel.

In any particular case, the Court may, in the interests of justice, assign counsel without regard to the attorney’s panel placement.

VI. Representation.

An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty, confidentiality, and zealous advocacy. TEX. DISCIP. R. OF PROF. CONDUCT 6.01, note 2.

The general terms of appointment in civil cases are set out in the Appendix to this Order. An appointed attorney may request that the party agree to modify these terms or add other terms by written contract; however, a party’s refusal to agree to additional terms is not grounds for the attorney’s withdrawal from the appointment.

VII. Termination; Withdrawal.

Absent order of the Court, the appointment of counsel terminates at the dismissal or entry of final judgment in the case. Once appointed, an attorney may not seek to withdraw from a case absent a showing of good cause. Examples of “good cause” may include:

- (1) the party’s request that the attorney withdraw;
- (2) a conflict of interest, or other reason required by the applicable professional rule of conduct;
- (3) unusual medical or other personal reasons;
- (4) unreasonable financial hardship; and
- (5) unusually high workload arising from other cases pending in this Court.

Even if heavy, the normal caseload of an attorney or law firm does not typically provide good cause to withdraw from a case.

Consistent with Part III above, an attorney on the "A+" panel may seek to withdraw from an appointed case if the attorney is currently handling another civil or criminal case by appointment, or if the attorney has been appointed to another civil or criminal case within the last year. An attorney on the "A" panel may seek to withdraw from an appointed case if the attorney is currently handling another civil or criminal case by appointment, or if the attorney has been appointed to another civil or criminal case within the last three years.

VIII. Payment and Reimbursement.

Attorneys appointed pursuant to the provisions of this Order may seek reimbursement under the 2011 Amended Plan. Notwithstanding the general limits set out in the 2011 Amended Plan, attorneys appointed pursuant to provisions of this Order may be paid up to \$5,000 in attorney's fees and reimbursed up to \$5,000 in expenses. Absent a showing of good case, fees shall be paid at the hourly rate applicable to non-capital cases under the Criminal Justice Act, 18 U.S.C. § 3006A. Expenses that may be reimbursed are those identified in Part IV of the 2011 Amended Plan.

No payment of fees or reimbursement of expenses may be sought under this Order if they have been waived, or if they are recoverable under the United States Code, the Federal Rules of Civil or Criminal Procedure, or any other statute, rule, regulation, order, or plan of reimbursement.

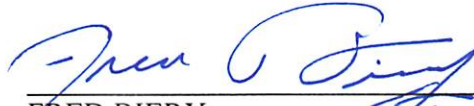
Payment and reimbursement shall be made from the Court's Non-Appropriated Fund ("NAF"). No payment or reimbursement will be made absent approval from the presiding judge in the case and the NAF Committee. Claims for payment or reimbursement shall be submitted in

the form set out in the 2011 Amended Plan. Payment or reimbursement in excess of the maximum amounts set out in this Order may be awarded only as provided by the 2011 Amended Plan.

Adopted by the Court on March 24th, 2021.



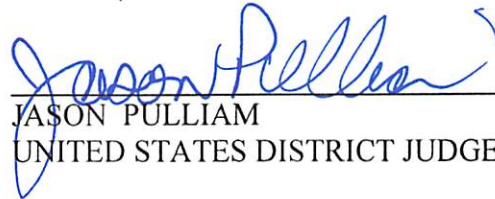
ORLANDO L. GARCIA
CHIEF UNITED STATES DISTRICT JUDGE



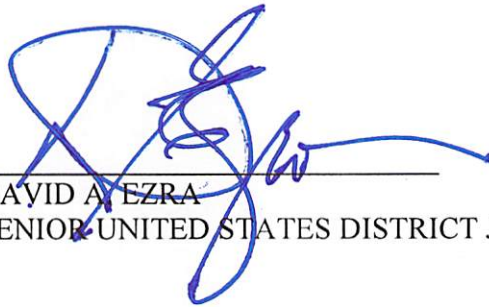
FRED BIERY
UNITED STATES DISTRICT JUDGE



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE



JASON PULLIAM
UNITED STATES DISTRICT JUDGE



DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX

The following are general terms for an appointment of a member of the Bar of this Court (hereinafter “the Attorney”) for an indigent party (hereinafter “the Party”), made under the Court’s Standing Order Establishing A+, A, And B Panels for Civil Appointments in the San Antonio Division and Supplementing Amended Plan for Reimbursement of Counsel (W. D. Tex. Apr. 1, 2021). These terms may be modified only by the written agreement of the Attorney and the Party, or by Order of the Court.

1. The Attorney’s fees and expenses: The party understands and acknowledges that the Attorney has been engaged pursuant to a valid and lawful federal court order. In his or her representation of the Party, the Attorney may seek to recover reasonable Attorneys’ fees on behalf of the Party based on hourly billings if permitted by law, but makes no guarantee that such fees can or will be awarded or recovered. The expenditure of out of pocket litigation expenses is solely in the discretion of the Attorney. The Attorney is authorized to seek reimbursement of out of pocket litigation expenses from the Court’s Non-Appropriated Fund.

2. Representation limited to current case: The Attorney will assist the party only in this matter. The Attorney will not represent the Party in any other matter unless a by separate agreement. Other matters include any lawsuit, agency proceeding, appeal, or enforcement of a judgment.

3. Settlement: Most cases end with an out-of-court settlement agreement rather than a trial. The Attorney and the Party will inform each other of all settlement proposals received from any Opponent. The Attorney will not compromise or settle the Party’s claims without the written consent of the Party.

4. No guarantee of success; consequences of losing: Appointment of counsel is no guarantee of success, recovery or the amount of any recovery. The Attorney cannot accurately predict the outcome of the case. The Party understands that if he or she loses a lawsuit, a Court can, when authorized by law, order the Party to pay an Opponent’s costs and attorney fees.

5. Work by individuals other than the Attorney: The Party understands and agrees that the Attorney may assign lawyers and other staff to provide legal services to the Party in the matter stated above. The Party agrees that the Attorney may change staff over time and may also assign staff who are not the Attorney’s employees. The Attorney agrees that all staff assigned will follow applicable rules of professional conduct and this Agreement.

6. Withdrawal or termination: The Attorney may seek to withdraw from representing the Party as permitted by Court procedure or required by any applicable rule of professional conduct. The Party may terminate the relationship with the Attorney at any time for any reason.

7. Contact with the Opponent and third parties: The Party will promptly tell the Attorney if any reporter, Opponent, or Opponent’s lawyer tries to contact the Party directly. The Party will notify the Attorney prior to contacting any reporter, Opponent, or Opponent’s lawyer.

8. Updated contact information: The Party will make sure that the Attorney always has a good way to contact the Party, work to promptly provide all documents and information that the Attorney requests, and attend all meetings and court proceedings.

9. The Party’s cooperation: The Party shall appear on reasonable notice at any and all depositions and court appearances, and shall comply with all reasonable requests of the Attorney in connection with the preparation and presentation of the matters set forth above.

10. Power of the Attorney to execute documents: Subject to paragraph (3) above, the Party hereby grants the Attorney a special power of attorney to execute all documents connected with the claims, including, but not limited to, contracts, drafts, settlement agreements, compromises and releases, dismissals, judgments, orders and all other documents.

11. Information about the litigation: The Party understands and agrees that the Attorney will reasonably keep the Client informed of the litigation through phone calls and/or electronic message, including providing all documents as necessary.

12. Tax matters: The Attorney will not advise the Party about the taxability of money received from this claim. The Party will seek the advice of the tax professional of their choosing in order to determine the tax consequences, if any, of any settlement, judgment or compromise.

13. The Attorney's obligation to the court system: The Attorney will not advance any groundless, meritless, or spurious claims of fact or law in the advancement of the claim covered by the Attorney's appointment, and such determination as to whether a proposed course of action violates any law or rule shall be solely vested in the Attorney.

14. The Party's authority: The Party represents that he/she is the full owner of the claims and matters for which the Attorney has been appointed.

15. Complaints: In the event the Party has a complaint against or a dispute with Attorney, the Party may contact the State Bar Office of General Counsel to obtain information about how to file a complaint. The State Bar Office of General Counsel may be reached at 1-800-932-1900, which is a toll-free number.