

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Rules Governing Procedures for Appointment
of Pro Bono Counsel in Bankruptcy
Proceedings from a Bankruptcy Pro Bono Panel.

General Order

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The Court having adopted in May of 1985 the “Rules Governing Appointment of Pro Bono Counsel” (the “Old Rules”); and the Bankruptcy Judges of this District having subsequently adopted the annexed “Rules Governing Procedures for Appointment of Pro Bono Counsel in Bankruptcy Proceedings from a Bankruptcy Pro Bono Panel” (the “New Rules”) to replace the Old Rules; it is hereby

ORDERED, that the New Rules are adopted.

Dated: Brooklyn, New York
February 21, 2006

MELANIE L. CYGANOWSKI
Melanie L. Cyganowski
Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURTS FOR THE
SOUTHERN AND EASTERN DISTRICTS OF NEW YORK

RULES GOVERNING PROCEDURES FOR APPOINTMENT
OF PRO BONO COUNSEL IN BANKRUPTCY PROCEEDINGS
FROM A BANKRUPTCY PRO BONO PANEL

The following procedures shall govern the appointment of pro bono counsel from a bankruptcy pro bono panel to represent pro se parties in bankruptcy proceedings when such parties lack the resources to retain counsel by any other means.

1. Bankruptcy Pro Bono Panel

There shall be a bankruptcy pro bono panel (the “Panel”) of attorneys and law firms who are willing to accept appointment to represent pro se parties in bankruptcy proceedings when such parties lack the resources to retain counsel. Registration forms to participate in the Panel shall be available at the Clerk’s office in the Southern and Eastern District Bankruptcy Courts, on each court’s respective website (Southern District: www.nysb.uscourts.gov; Eastern District: www.nyeb.uscourts.gov) and through the Panel Administrator (as defined in Rule 3).

2. Composition of Bankruptcy Pro Bono Panel

The Panel will consist of the following:

(a) Law Firms

Law firms, including public interest law firms, may register to participate on the Panel as firms by completing a registration form setting forth, among other things: (i) the firm’s mailing and website addresses; (ii) the name of the attorney or pro bono coordinator with the

firm designated as Panel liaison, along with such individual's electronic mail address, phone number and facsimile number; (iii) the number of attorneys employed by the firm; (iv) the ability of participating attorneys to represent non-English speaking clients, and the languages that can be accommodated; and (v) preference, if any, for appointment between courthouses. Where a firm is appointed to an action, the appointment will be directed to the Panel liaison and appearance in the action may be entered by the firm or the assigned attorney, at the firm's option.

(b) Individual Attorneys

Attorneys who are willing to accept appointment to represent pro se parties may register to participate on the Panel by completing a registration form setting forth, among other things: (i) the name, mailing address and website address, if any, of the attorney, along with the attorney's electronic mail address, phone number and facsimile number; (ii) the firm or organization, if any, with which the attorney is affiliated; (iii) the number of years the attorney has been admitted to practice; (iv) the attorney's principal practice areas; (v) the attorney's experience in bankruptcy and/or litigation matters; (vi) the ability of the attorney to represent non-English speaking clients; (vii) the courts in which the attorney is admitted to practice; and (viii) the attorney's preference, if any, for appointment between the courthouses.

(c) Attorney Instructors in Law School Clinical Programs

The Southern and Eastern District Bankruptcy Courts may authorize a clinical program, under the auspices of one or more law schools accredited by the American Bar Association and located in the Southern or Eastern District, through which students, appropriately supervised by an attorney instructor, may appear in matters referred to the Panel. An attorney instructor may apply to participate on the Panel by completing a registration form setting forth, among other things: (i) the name, mailing address and website address of the law

school administering the clinical program; (ii) the number of students involved in the clinical program; (iii) the practices of the clinical program in supervising participating students; (iv) the name, mailing address and website address, if any, of the attorney instructor, along with the attorney instructor's electronic mail address, phone number and facsimile number; (v) the firm or organization, if any, with which the attorney instructor is affiliated; (vi) the name and mailing address of the supervisor of the clinical program, along with the supervisor's electronic mail address, phone number and facsimile number; (vii) the number of years the attorney instructor has been admitted to practice; (viii) the attorney instructor's principal practice areas; (ix) the attorney instructor's experience in bankruptcy and/or litigation matters; (x) the ability of the attorney instructor and the clinical program to represent non-English speaking clients; (xi) the courts in which the attorney instructor is admitted to practice; and (xii) preference, if any, for appointment between the courthouses.

(d) Information on a registration form may be amended at any time by letter.

An attorney or firm may by letter withdraw from the Panel at any time subject to Rule 6 (Relief From Appointment).

(e) Nothing in these rules shall restrict the authority of a bankruptcy judge to appoint pro bono counsel by other means, including direct appointment or appointment through organizations other than the pro bono panel established by these rules, whether or not the counsel appointed is a member of such panel.

3. Panel Administrator

A list of law firms, individual attorneys and attorney instructors who have registered to participate on the Panel shall be maintained by a representative of the City Bar Justice Center (hereinafter, the "Panel Administrator"). The Panel Administrator may receive

assistance in administering the Panel from members of the Association of the Bar of the City of New York's Committee on Bankruptcy and Corporate Reorganization, from the New York City Bankruptcy Assistance Project and from other qualified organizations. The Panel Administrator may remove an attorney or firm from the Panel at any time. It is not intended that the Panel Administrator shall be responsible for supervising attorneys appointed to represent clients. The Southern and Eastern District Bankruptcy Courts may appoint additional Panel Administrators. Attorneys and law firms participating in the Panel are not required to be members of any bar association.

4. Appointment Procedure

(a) Whenever a bankruptcy judge concludes that appointment of counsel from the Panel may be warranted and the client consents, the judge may request, on the record or in writing, that the Panel Administrator select counsel from the Panel. The judge's chambers shall inform the Panel Administrator of the appointment and any scheduled court dates and provide the Panel Administrator with a copy of the docket sheet and any necessary pleadings. The Panel Administrator may, in its discretion, if deemed desirable in specific cases, select counsel not on the Panel or select a specific attorney on the Panel who is especially qualified to undertake the representation. The Panel Administrator may direct the applicant to a bar association referral service in any case where it appears that adequate counsel fees may be awarded as provided by statute. The provisions of the Bankruptcy Code relating to the appointment of counsel by the court shall be complied with.

(b) Pro bono counsel will be appointed only for individuals who have appeared pro se and are unable to afford counsel, or who had counsel but were unable to pay for litigated matters. Such persons may be requested to file with the court an in forma pauperis

affidavit affirming they lack the resources to retain counsel. In determining whether to request that the Panel Administrator select counsel from the Panel for appointment, the judge may take the following factors into account: (i) the nature and complexity of the matter in which the pro bono counsel is to represent the client; (ii) the apparent potential merit of the claim or issue involved; (iii) the inability of the client to retain counsel by other means; (iv) the degree to which the interests of justice will be served by the appointment of counsel, including the benefit the court may derive from the assistance of the appointed counsel; and (v) any other factors deemed appropriate. It is not intended that counsel will be appointed for any party prior to the filing of a petition under Title 11 of the U.S. Code. These rules are not intended to provide any party with a right to have counsel appointed.

(c) It is intended that counsel will be appointed to represent debtors only on a specific contested matter or adversary proceeding rather than generally with respect to the bankruptcy case, and counsel's responsibilities shall be limited only to such matter or proceeding. Counsel also may be appointed to represent non-debtors in connection with specific contested matters, adversary proceedings or other litigated matters arising in or relating to a bankruptcy case.

(d) Upon receiving a request, as set forth in Rule 4(a), to select counsel from the Panel, it is expected that the Panel Administrator shall forward a request for pro bono counsel to members of the Panel via electronic mail or otherwise. Panel members may contact the Panel Administrator to indicate their interest in accepting a case. Appointments of counsel generally shall be on a first-come first-served basis; provided, however, that the Panel Administrator may select counsel on other bases where appropriate. If several Panel members are interested in the same case, a wait list may be established. The Panel Administrator shall forward a notice of appointment, along with the client's name and contact information, to the

selected Panel member. In the event no Panel member accepts the assignment, the Panel Administrator shall so inform the client and the judge's chambers and no further attempts at assignment shall be required.

5. Responsibilities of the Appointed Attorney

(a) Upon receiving a notice of appointment, counsel shall obtain, either through the applicable Case Management/Electronic Case Files System or otherwise, and review the case file and, if deemed appropriate, communicate with the client, but must advise the client that s/he has not yet decided whether to accept the appointment. Counsel shall determine as soon as practicable, and within such time prior to the matter's next scheduled hearing date so as to permit another appointment to be made, whether to accept the representation. Upon accepting the representation, and upon the client's consent, counsel shall file a notice of appearance and inform other counsel as appropriate. The notice of appearance shall, if appropriate, specify the discrete matter or matters upon which pro bono counsel is to represent the client and further state that all pleadings and other papers shall continue to be served upon the client as well as upon pro bono counsel. Pro bono counsel shall send a copy of the notice of appearance to the client, the judge's chambers and the Panel Administrator. The Panel Administrator shall maintain a record of all assigned matters.

(b) Upon accepting an appointment and filing a notice of appearance, counsel shall fully discuss the merits of the matter with the client. Counsel may, if appropriate, explore with the client the possibility of resolving the dispute by other means, including but not limited to seeking a negotiated settlement or proceeding to mediation. If, after consultation with counsel, the client decides to prosecute or defend the action, counsel shall represent the party until the attorney-client relationship is terminated in the ordinary course in connection with the matter as to which counsel was appointed or until terminated as provided for herein.

(c) If the appointed attorney after reviewing the file reasonably anticipates a need to request relief from appointment, the attorney shall, before discussing the merits of the case with the client, advise the client that a procedure for such relief exists. Where the attorney did not reasonably anticipate the need for such relief prior to discussing the merits of the case with the client, the attorney may request the waiver at any time the need for such relief becomes apparent. The attorney should then request the client to execute a limited waiver of the attorney-client privilege permitting the attorney to disclose under seal to the Court the attorney's reasons for seeking to be relieved of the appointment. The waiver should indicate that the application for relief will be a privileged court document and may not be used in the litigation. The client's refusal to execute a waiver shall not preclude the attorney from applying for relief.

6. Relief From Appointment

(a) Prior to filing a notice of appearance and within the time period set forth in Rule 5(a), if counsel does not wish to accept an appointment due to lack of time, personal preference or any other ground set forth below, or upon the client's request, counsel shall promptly inform the Panel Administrator, who will attempt to reassign the case to another Panel member. In the event no Panel member accepts the assignment, the Panel Administrator shall so inform the client and the judge's chambers and no further attempts at assignment shall be required.

(b) Subsequent to filing a notice of appearance, pro bono counsel may apply pursuant to the Court's Local Rules to be relieved of an appointment on any grounds available to an attorney-of record except for the non-payment of fees or expenses.

(c) An application by counsel for relief from an appointment on any of the grounds set forth above must be made promptly upon counsel acquiring knowledge of the facts leading to the application.

(d) If counsel wishes to be relieved from an appointment on any of the grounds set forth in Rule 6(b) or similar grounds, counsel shall send a request to that effect to the client, stating the grounds for relief. If the client does not object to the request for relief, counsel shall so advise the Panel Administrator and submit a proposed order, endorsed by the Panel Administrator, to the court. If the client objects to the request for relief, counsel shall submit the request and the grounds therefor to the judge's chambers for consideration, along with a proposed order, in a document to be kept under seal and not to be available in discovery or otherwise used in connection with the matter or any other litigation. Counsel shall provide a copy of the request and proposed order to the client and the Panel Administrator.

(e) If an order for relief from appointment is entered, the judge may request, on the record or in writing, that the Panel Administrator attempt to reassign the case to another Panel member. In the event no Panel member accepts the assignment, the Panel Administrator shall so inform the client and the judge's chambers and no further attempts at reassignment shall be required.

7. Discharge

A party for whom counsel has been appointed may request the judge, on the record or in writing, to discharge such counsel from the representation. The client shall provide a copy of any written request to the appointed counsel. When such a request is supported by good cause (e.g., substantial disagreement between the party and counsel on strategy), the order of discharge shall be granted and the appointed counsel shall duly inform the Panel Administrator and the client. The judge may request, on the record or in writing, that the Panel Administrator attempt to reassign the case to another Panel member. In the event no Panel member accepts the assignment, the Panel Administrator shall so inform the client and the judge's chambers and no further attempts at reassignment shall be required.

8. Expenses

There being no public funds available for the purpose, appointed counsel or the firm may advance the expenses of the matter.

9. Compensation for Services

(a) No payment of money or other valuable consideration shall be demanded or accepted in connection with the services rendered by pro bono counsel.

(b) Notwithstanding paragraph (a), the matter may be one for which compensation for legal services may become available to the appointed counsel under the Bankruptcy Code or other authority. Upon appropriate application by appointed counsel, and taking into consideration counsel's initial agreement to take the matter without compensation, the judge may award fees to the appointed counsel or law firm for services rendered, as permitted by applicable law.

(c) If, after appointment, the appointed counsel discovers that the party is able to pay for legal services, counsel shall bring this information to the attention of the Panel Administrator. Upon appropriate motion, the court may relieve counsel from the representation and permit the party to retain other counsel or proceed pro se.

10. Duration of Representation

(a) Subject to the provisions of Rules 10(b) and (c), appointed counsel shall represent the party in connection with the matter on which counsel was appointed from the date counsel enters an appearance until a final order or judgment is entered in the matter and reasonable efforts have been made to enforce the order or judgment, or until counsel has been relieved from appointment by the court. If the bankruptcy case is continuing after the matter is concluded, counsel shall inform the client in writing with a copy to the Panel Administrator that counsel's responsibilities have concluded and that the party is again proceeding pro se.

(b) If an appealable order or judgment is entered in connection with the matter, counsel shall inform the client of the possibility of appeal and, if the client requests, file a notice of appeal, a designation of the items to be included in the record on appeal and a statement of the issues to be presented, or assist the party in filing such papers.

(c) In the event the party desires to take an appeal from an appealable order or judgment, or if such order or judgment is appealed by another party, counsel is encouraged but not required to represent the party on the appeal and in any proceeding that may ensue upon an order of remand. If counsel elects not to represent the client on the appeal or remand, counsel shall give prompt notice of such election to the Panel Administrator who may attempt to reassign the matter to another Panel member or refer the client to the pro se panel of the court to which the appeal is taken.

(d) Nothing in these rules shall be read to affect: (i) an attorney's responsibilities under the Code of Professional Responsibility or applicable law; or (ii) the manner in which and to whom a notice of appearance or notice of withdrawal must be given under the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, or any order of the court in the particular bankruptcy case.