

*FEDERAL  
PRO BONO COUNSEL TRAINING  
SEMINAR*



Thursday, April 25, 2019

*Co-Sponsored*

*United States District Court – Eastern District of Missouri  
Federal Practice Committee – Eastern District of Missouri*

*Judicial Reception courtesy of Federal Bar Association*

# Federal Pro Bono Counsel Training Seminar

Thomas F. Eagleton United States Courthouse  
Jury Assembly Room, First Floor  
(Approved for 4.4 MCLE including 1.0 Ethics)

April 25, 2019

- 12:00 p.m. Welcome  
*Rodney W. Sippel*, Chief Judge, United States District Court, EDMO
- 12:10 p.m. Working the Help Desk: Intake, Forms, Logistics  
*Gregory J. Linhares* - Clerk of Court, EDMO  
*Daniel G. Barnett* - Assistant Executive Director, BAMSL  
*Christine A. Miller* - Pro Se Law Clerk, EDMO  
*LeeAnn R. Zigler* - Pro Se Law Clerk, EDMO
- 1:00 p.m. Pro Bono Limited Scope Representation in a Mediation Setting  
*John W. Grimm* - The Limbaugh Firm / ADR Committee Member / FPC Member  
*James W. Reeves* - United States Arbitration & Mediation / ADR Committee Member  
*Tom Albus* - Missouri Attorney General's Office  
*Brendan Roediger* - Associate Professor/Litigation Clinic Director, SLU Law
- 1:50 p.m. Break
- 2:00 p.m. Ethics of Limited Scope Representation (ADR Setting and Intake Setting)  
*Phyllis A. Jaudes* - Senior Conflicts and Ethics Counsel, Husch Blackwell  
*Simone Haberstock McCartney* – Law Offices of Simone Haberstock McCartney, LLC
- 2:50 p.m. Appointments 101: I've Been Appointed, Now What?  
*Joseph C. Blanton, Jr.* - Blanton, Nickell, Collins, Douglas & Hanschen, LLC  
/ FPC Member  
*Steve E. Holtshauser* - Husch Blackwell / FPC Member
- 4:00p.m. Volunteer Roundup  
*Chief Judge Rodney W. Sippel* and *Clerk of Court Gregory J. Linhares*
- 4:15 p.m. Judicial Reception  
*Sponsored by Federal Bar Association*

*CLE Co-Sponsored by*  
United States District Court - Eastern District of Missouri  
Federal Practice Committee - Eastern District of Missouri

Welcome

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*Chief Judge Rodney W. Sippel*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI**



**ACCESS TO JUSTICE EFFORT TO INCREASE SERVICE  
TO INDIGENT AND SELF-REPRESENTED CIVIL LITIGANTS**

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**CHALLENGE TO ATTORNEYS TO PROVIDE LEGAL SERVICE**

***Improved Intake Services for Self-Represented Litigants, Training Opportunity for Pro Bono Attorneys, and Increase in Pro Bono Attorney Reimbursement Are Among the New Efforts***

The U.S. District Court for the Eastern District of Missouri has announced several initiatives designed to provide better assistance and improved understanding of process to indigent and self-represented persons in civil cases. The initiatives include providing better compensation and improved training to attorneys appointed to cases involving self-represented indigent persons, as well as a new program to help self-represented indigent persons with initial case review and filing processes. Parts of the plan are effective immediately; others will be implemented soon.

**HIGHER PRO BONO ATTORNEY REIMBURSEMENT EFFECTIVE IMMEDIATELY**

In order to encourage a greater number of attorneys to represent indigent litigants, and recognizing the growing complexity of cases involving indigent and self-represented litigants, the Court has significantly increased its reimbursement to attorneys who handle these cases.

- Judge-approved attorney fees in district court cases are increased from \$2,500 to \$5,000;
- Judge-approved attorney expenses in district court cases are increased from \$5,000 to \$10,000 (limit can be exceeded with additional approvals);
- Attorneys who represent parties as limited scope counsel in mediations are eligible for reimbursement in the same way as attorneys in other appointed cases;
- Judge-approved attorney expenses in bankruptcy cases are increased from \$500 to \$1,000;
- Details on attorney reimbursement can be found at:

<https://www.moed.uscourts.gov/appointed-counsel-fees-and-expenses>

**NEW INTAKE ASSISTANCE IN JUNE**

Beginning in June, the U.S. District Court will partner with the Bar Association of Metropolitan St. Louis (BAMSL) to assist self-represented litigants with initial filing form completion and initial case review. BAMSL will recruit and manage a group of volunteer attorneys to help lead this effort.

Attorneys interested in serving as limited scope counsel to self-represented litigants for initial case review or for mediation; or as assigned counsel in pro bono cases, please contact the Clerk of Court at: [greg\\_linhares@moed.uscourts.gov](mailto:greg_linhares@moed.uscourts.gov) or at (314) 244-7890.



**INSTRUCTIONS FOR COMPLETING  
REQUEST FOR COMPENSATION OF SERVICES AND  
REIMBURSEMENT OF OUT-OF-POCKET EXPENSES  
FOR APPOINTED COUNSEL**

**1) ELIGIBILITY**

Attorneys appointed pursuant to 28 U.S.C. § 1915(e), Local Rule 12.03, Local Rule 6.02, and Administrative Order-Attorney Admission Fee Non-Appropriated Fund to represent indigent civil litigants in cases before the U.S. District Court for the Eastern District of Missouri; pro bono attorneys representing indigent parties in bankruptcy adversary proceedings; and attorneys replacing incapacitated attorneys at the request of the U.S. Trustee in bankruptcy cases may be eligible to request payment for their services and/or related expenses associated with those cases and adversary proceedings. See Administrative Order – Attorney Admission Fee Non-Appropriated Fund governing the disbursement of funds for Attorney Fees and Out-of-Pocket Expenses incurred in civil and bankruptcy proceedings.  
<https://www.moed.uscourts.gov/appointed-counsel-fees-and-expenses>

**2) HOURLY RATE AND REPORTING OF TIME**

Counsel requesting payment of attorney’s fees shall submit worksheets on the forms provided by the Court detailing and describing the in-court and out-of-court time that has been expended. Time entries should apprise the court of the nature of the services rendered and should be separately described and recorded on the worksheets.

**3) FILING DEADLINES**

A request for Compensation of Services and Reimbursement of Out-of-Pocket Expenses may be filed:

- a. District Court Civil Appointment - any time during the pendency of the civil action and **up to sixty (60) days following the entry of a judgment order** in a District Court case.
- b. Bankruptcy Court Appointment - any time during the pendency of the action and **until the main bankruptcy case is closed** for a bankruptcy case or adversary proceeding.
- c. Limited Scope Counsel Appointment – upon the conclusion of the mediation, or at any time **up to sixty (60) days following the termination of the limited scope representation.**
- d. Withdrawal of Appointed Counsel - If an attorney representing an indigent civil litigant or substituting for incapacitated counsel is granted leave to withdraw as appointed counsel, any request for compensation of services and expenses must be

filed **within sixty (60) days of the entry of the order allowing withdrawal.**

Except for good cause shown, the Court will not allow reimbursement of services and out-of-pocket expenses outside of the deadlines set forth in paragraphs a-d above.

**4) COMPLETING THE FORM**

Please complete each item, noting in particular whether the request is for interim or final compensation of attorney services and reimbursement for out-of-pocket expenses, the amount of previous payments from the fund (if any), and the date of a judgment order or order granting leave to withdraw, if any. If no designation is made as to whom a payment check shall be made payable, the check shall be made payable to the attorney. In addition to completing the request form, counsel requesting attorney's fees must attach worksheets detailing and describing the work performed, and the time expended for each task. Counsel must also attach sufficient documentation to permit the court to determine that the request for reimbursement of expenses is appropriate and reasonable and that the amounts were actually paid out. The request form shall be filed with the judge to whom the case is assigned. Any counsel seeking attorney's fees must also submit a completed W-9 form for the payee to the Finance Department of the District Court. Call 314-244-7872 for contact information or a copy of this form.

**5) REVIEW AND APPROVAL PROCEDURES**

The assigned judge in District Court cases may approve total payments for attorney compensation for services up to and equal to \$5,000.00 and out-of-pocket expenses up to and equal to \$10,000.00. Attorney's fees are not compensable from this fund in bankruptcy cases or adversary proceedings. The assigned judge in Bankruptcy Court may approve total payments for out-of-pocket expenses up to and equal to \$1,000 in bankruptcy cases and adversary proceedings. Where the amount requested for compensation of services and expenses falls within these limits and the assigned judge approves payment, the assigned judge shall forward the request to the Clerk of the District Court for payment. Where the amount requested, plus the amount of expenses or previous payments exceeds these limits, the assigned judge shall forward the request to the Chairperson of the Non-Appropriated Fund Committee for approval in accordance with the Administrative Order - Attorney Admission Fee Non-Appropriated Fund, Section IV(C).







# Working the Help Desk: Intake, Forms, Logistics

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*Gregory J. Linhares, Clerk of Court*

*Daniel G. Barnett, Assistant Executive Director,  
BAMSL*

*Christine A. Miller, Pro Se Law Clerk*

*LeeAnn R. Zigler, Pro Se Law Clerk*



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
PRO BONO PANEL APPLICATION



*Application does not obligate anyone to any appointment. Appointment as counsel for a party in mediation or civil case is made by the Court. Service as counsel for intake purposes is referred to the Bar Association of Metropolitan St. Louis (BAMSL) who manages intake appointments.*

NAME \_\_\_\_\_ FIRM \_\_\_\_\_  
*(last) (first) (middle)*

STREET ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

FIRM CONTACT *(for Law Firm Volunteers)*: \_\_\_\_\_

PHONE \_\_\_\_\_ FAX \_\_\_\_\_ E-MAIL \_\_\_\_\_

Admitted to the Bar of the U.S. District Court for the Eastern District of Missouri? Yes No

DATE ADMITTED TO THE BAR: \_\_\_\_\_

I am licensed to practice in the following states: \_\_\_\_\_

Please indicate any areas of legal specialization or case interest: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

I am willing to provide Pro Bono Legal Assistance for these District Divisions:

Eastern Division

Southeastern Division

Northern Division

I am willing to serve as Pro Bono Counsel in the following roles:

Limited Scope Counsel; Intake

Limited Scope Counsel; Mediation

General Civil Cases

**To be approved for the panel, an attorney must be a member in good standing of the bar of the Eastern District of Missouri and must agree to serve without compensation from the client. Limited compensation for attorney fees and reasonable expenses is available upon application, see <https://www.moed.uscourts.gov/appointed-counsel-fees-and-expenses>**

Attorney/Firm Acknowledgement: \_\_\_\_\_

**Signature**

**Date**

*Only to be used when applying as Limited Scope Intake Counsel.*

**Attorney Enrollment  
Missouri for Legal Expense Fund**

For the purpose of registering with the Attorney General of Missouri for Legal Expense Fund Coverage (Section 105.711, RSMo Supp.) for practicing law without compensation through the Saint Louis Bar Foundation, a governmental agency or a nonprofit community social services center, the following information is provided.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Daytime phone: \_\_\_\_\_

Mo Bar Number: \_\_\_\_\_

Place of employment, if any: \_\_\_\_\_

Estimated number of hours per year of legal services provided without compensation are:

\_\_\_\_\_

General area of law engaged in will be: Civil Litigation

Records of clients represented through this program shall be maintained at:

Saint Louis Bar Foundation, 555 Washington Ave, Ste 100, Saint Louis, MO 63101

At the address given above.

It is understood that:

- (a) I will not represent any client under this program if I have a preexisting attorney client relationship with the client under which fees have been collected or contracted for;
- (b) No fee will be charged, sought or accepted from the client for any representation or consultation regardless of outcome;
- (c) I will not discriminate in providing legal services on the basis of race, sex, religion, national origin or ethnic background.

Signed \_\_\_\_\_

Dated: \_\_\_\_\_

Witness for the governmental or charitable agency:

Signed \_\_\_\_\_

Name/Title \_\_\_\_\_

Dated: \_\_\_\_\_

# St. Louis District Court Pro Se Assistance Program



[GET HELP](#)

[VOLUNTEER](#)

## What is the Pro Se Assistance Program?

The St. Louis District Court Pro Se Assistance Program ("PSAP") is a free legal clinic, located at the Thomas F. Eagleton U.S. Courthouse in St. Louis, designed to help individuals without an attorney get **answers to legal questions about filing a civil case in federal court and assistance with completing the filing forms**. The PSAP provides self-represented litigants with an opportunity to meet with a volunteer private attorney for a free 30-minute consultation.

Thomas F. Eagleton U.S. Courthouse  
U.S. District Court for the Eastern District of Missouri  
111 South 10th Street, 3rd Floor  
Saint Louis, Missouri 63102

### *Building Access and Parking Information*

If you need legal representation services after your 30-minute consultation, please call (toll-free) 1-855-978-7070 for a referral to a qualified attorney. *Referred attorneys may charge fees for their services.*

The PSAP is provided by the Saint Louis Bar Foundation with support from The Bar Association of Metropolitan St. Louis.

*The PSAP is not affiliated or related to the United States District Court.*

## Get Help

**Meet with a volunteer private attorney for up to 30 minutes in our FREE legal clinic.**

[Schedule an Appointment Online](#) or call (toll-free) 1-855-978-7070.

### Preparing for your appointment

To prepare for your PSAP appointment you should gather any letters, papers or documentation you think are relevant to the questions you are planning to ask the attorney during your appointment. Review those documents before you come to the appointment.

**You are not required to bring any documentation to your appointment.** However, your 30-minute appointment will be best utilized if you have the information readily available.

Your appointment will be on the 3rd Floor of the Thomas F. Eagleton US Courthouse, 111 S. 10th Street, St. Louis, MO 63102. The public entrance to the courthouse is located on the East side of the building at Level 1. There are numerous parking lots in the area with varying costs. There is also a small amount of metered on-street parking. Public transportation is available in St. Louis through Metro Transit or bus. Visitors must have a valid ID and must pass through security screening before being granted entry to the courthouse. The courthouse is fully accessible to people with disabilities.

Please arrive at least 15 minutes before your appointment time to ensure you have enough time to get through security. You should bring paper and a pen or pencil so that you can take notes or write down important points learned during your appointment.

## Are you an attorney interested in volunteering with the PSAP?

[ATTORNEY VOLUNTEER REGISTRATION PACKET](#)

Please email [districtcourtpsap@bamsl.org](mailto:districtcourtpsap@bamsl.org) for more information.

# ST. LOUIS DISTRICT COURT

## PRO SE ASSISTANCE PROGRAM

WWW.BAMSL.ORG/FEDERALCOURT



SAINT LOUIS  
BAR FOUNDATION



## INTAKE SHEET

**PLEASE COMPLETE BLANK SPACES BELOW AND TURN IN TO ATTORNEY**

Today's Date: \_\_\_\_\_ Have you had a consultation with us before? Yes \_\_\_ No \_\_\_

If YES, how many visits have you had, prior to today? \_\_\_\_\_

Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

Preferred Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Have you talked to a lawyer about this case? Yes \_\_\_ No \_\_\_

If YES, did you hire a lawyer for this case? Yes \_\_\_ No \_\_\_

Have you already filed a case regarding this matter? Yes \_\_\_ No \_\_\_

If YES, what is/was the case number? \_\_\_\_\_

How did you hear about the Pro Se Assistance Program?

\_\_\_ Flyers      \_\_\_ Court's Website      \_\_\_ Court Staff      \_\_\_ Legal Services Organization

\_\_\_ Attorney      \_\_\_ Friend/Family      \_\_\_ Walk-In

\_\_\_ Other: (please specify) \_\_\_\_\_

# ST. LOUIS DISTRICT COURT

## PRO SE ASSISTANCE PROGRAM

WWW.BAMSL.ORG/FEDERALCOURT



SAINT LOUIS  
BAR FOUNDATION



THE BAR ASSOCIATION OF  
METROPOLITAN ST. LOUIS

## FEEDBACK FORM

Today's Date: \_\_\_\_\_

Name (Optional): \_\_\_\_\_

Phone Number (Optional): \_\_\_\_\_

Email (Optional): \_\_\_\_\_

### YOUR FEEDBACK

Rate your overall experience on a scale of 1 to 5  
(1 = Very Dissatisfied to 5 = Very Satisfied) \_\_\_\_\_

Rate your overall experience with the Attorney Advisor on a scale of 1 to 5  
(1 = Not at all Helpful to 5 = Very Helpful) \_\_\_\_\_

Would you recommend this program to others? YES \_\_\_\_\_ NO \_\_\_\_\_

Would you like a response based on your feedback? YES \_\_\_\_\_ NO \_\_\_\_\_

Comments (What did you like? Any suggestions for what should be changed or improved?)

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If necessary, please continue your comments on the back of this page.  
We appreciate your feedback.

# ST. LOUIS DISTRICT COURT

## PRO SE ASSISTANCE PROGRAM

WWW.BAMSL.ORG/FEDERALCOURT

### **AGREEMENT FOR LIMITED LEGAL ADVICE**

This is an agreement between the Saint Louis Bar Foundation's and The Bar Association of Metropolitan St. Louis's District Court Pro Se Assistance Program, the volunteer attorney who is assisting you today, and you. It contains the basic terms of our agreement to provide you with limited legal advice and assistance so that if you choose, you can better represent yourself in United States District Court. The District Court Pro Se Assistance Program is not affiliated or related to the United States District Court.

**Scope of Legal Advice:** You have asked us to provide legal advice. We will assist you by providing you with limited advice and information regarding the possibility of filing a claim in the United States District Court and understanding the forms necessary to do so. We have not agreed to represent you by, for example, verifying the information you have input into the forms, going to a hearing or trial with you, preparing your case for trial, addressing any dispute you may have with any particular person or entity, or providing any legal help other than the assistance provided in this meeting. We cannot guarantee a particular outcome of your case or any legal matter.

**Duration of Legal Help:** OUR AGREEMENT TO ADVISE YOU BEGINS IMMEDIATELY AND WILL END AT THE COMPLETION OF OUR MEETING TODAY.

**Cooperation:** To advise you effectively, we need your complete cooperation. You agree to fully and honestly answer any questions we ask you regarding your case. You acknowledge that we are relying entirely on the accuracy of the information you provide in this meeting and that we will not perform any verification of the information you provide in this meeting.

**Attorney's Fees:** The Pro Se Assistance Program is a free service and we will not charge you any fees for the assistance you will receive today.

**Prohibited Conduct:** Neither the Saint Louis Bar Foundation, nor The Bar Association of Metropolitan St. Louis, nor the volunteer attorney assisting you today is permitted to refer you to specific attorneys or law firms that could represent you in connection with your legal matters. If you determine that you are in need of additional legal representation, you may call 1-855-978-7070 (toll-free) and The Bar Association of Metropolitan St. Louis will give you a list of up to three attorneys who may be able to assist you. These attorneys are not obligated to represent you and may charge fees for their services.

### **I/WE HAVE READ AND UNDERSTAND THE ABOVE AGREEMENT BEFORE SIGNING IT.**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name of Program Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# ST. LOUIS DISTRICT COURT

## PRO SE ASSISTANCE PROGRAM

WWW.BAMSL.ORG/FEDERALCOURT



SAINT LOUIS  
BAR FOUNDATION



THE BAR ASSOCIATION OF  
METROPOLITAN ST. LOUIS

### VOLUNTEER REMINDERS HANDOUT

1. The District Court PSAP Clinic appointments take place in the Clerk's Office on the Third Floor.
2. Please arrive no later than 15 minutes before your appointment time and check in at the front desk in the Clerk's office. The deputy clerks at the front counter are busy and cannot give legal advice, but they will direct you to the appropriate room.
3. What if you are late or have to cancel? – Don't call the court! Call BAMSL at 1-855-978-7070. If late, tell BAMSL (who will contact the Court) if you are on the way and will arrive in a short period of time or that you will not be coming.
4. Forms are located outside the office and on the desk in the office. Please remember to have the client fill out the following forms:
  - Agreement for Limited Legal Advice – Must be signed prior to the start of the legal consultation. (Make a copy for the client on the scanner.)
  - Intake Sheet – Should be completed prior to the appointment. (Note: Some people may not want to disclose their name on this sheet but will tell you during the consultation.)
  - Feedback Form – After the consultation is over, instruct the client to step outside with the feedback form and ask them to put the completed form in the blue box on the table.
5. Except for the Feedback Form, please scan the completed forms to BAMSL using the scanner in the office at the end of the session. Instructions on how to use the scanner are on a double-sided instruction sheet on the desk and on the scanner itself.
7. Please notify someone at the front counter when you are finished, so that the consultation room can be secured.
8. Attempt to keep the client calm. However, on occasion, if that does not work and you feel uncomfortable – leave the room immediately and go to the front counter. Front desk staff is trained for these types of situations.
9. If there is a medical emergency – Immediately notify the front desk who will notify the nurse located on the first floor of the Courthouse.



## LIMITED SCOPE INTAKE COUNSEL ATTORNEY REGISTRATION PACKET

### ATTORNEYS, PLEASE READ PRIOR TO REGISTRATION

The St. Louis District Court Pro Se Assistance Program (“PSAP”) is a free legal clinic, located at the Thomas F. Eagleton U.S. Courthouse in St. Louis, designed to help individuals without an attorney get answers to legal questions about filing a civil case in federal court and assistance with completing the filing forms. The PSAP provides self-represented litigants with an opportunity to meet with a volunteer private attorney for a free 30-minute consultation.

The PSAP is sponsored by the Saint Louis Bar Foundation (“Foundation”) with support from The Bar Association of Metropolitan St. Louis (“BAMSL”). The PSAP is not affiliated or related to the United States District Court.

**General Provisions.** All volunteers must be a member in good standing of The Missouri Bar and a member in good standing of the bar of the Eastern District of Missouri. Any volunteer may be removed from the PSAP by BAMSL or the Foundation with or without cause. All attorneys participating in the PSAP are required to attend at least one training session prior to participation in the PSAP.

At the appointment, volunteer attorneys should be available to answer questions, review filings, assist with completing filing forms, and address other matters that pro se civil litigants may encounter. Please note that attorneys are not expected to answer all questions. The PSAP hopes to answer questions that can reasonably be answered within a 30 minute consultation and to provide direction and guidance to individuals on how to proceed after the consultation (i.e. what to expect in their case if they continue without an attorney). If a potential conflict appears, the volunteer attorney should terminate the consultation.



The PSAP clinic office is a furnished office located in the District Court Clerk's Office on the third floor of the courthouse. The office has a computer, scanner/printer/copier, and Wi-Fi Internet connectivity available for use by volunteer attorneys. The Wi-Fi access is only for the volunteer attorneys and is not for public use.

**Malpractice Coverage.** Insurance is not automatically provided to PSAP volunteers. Volunteer attorneys should check their own firm's malpractice policy to determine if their volunteer work with the PSAP is already covered. Moreover, limited coverage is provided under the Missouri Legal Defense Fund, Section 105.711 RSMo. All volunteer attorneys will be required to show that they are covered under an existing malpractice policy or register for coverage under Section 105.711 RSMo. The registration form is one page and provides limited coverage to attorneys practicing law without compensation through a pro bono agency. Please see the statute for more details and confer with your malpractice carrier.

**Ethical Considerations.** All individuals and clients are required to sign a limited representation form at the beginning of the consultation that acknowledges the limited relationship which terminates at the end of the PSAP appointment. Please review Rule 4-6.5 of the Missouri Supreme Court Rules for an understanding of the applicable Rule of Professional Conduct. According to Rule 4-7.3 of the Missouri Supreme Court Rules, attorney volunteers are not permitted to solicit clients in-person or to hand out their business cards during the consultation, but will refer clients to BAMSL and give the clients a BAMSL telephone number (toll-free 855-978-7070) so that they can call to ask for an attorney referral from BAMSL if they are interested in hiring an attorney after the consultation.

**Training and Registration.** Training will be made available periodically to volunteer attorneys interested in participating in the PSAP. If you wish to participate in the PSAP, all volunteers must complete the volunteer registration form, located at <https://www.bamsl.org/FederalCourt>.

## MOTION FOR TEMPORARY RESTRAINING ORDER CHECK LIST

### FILING MOTION WITH NEW COMPLAINT

- When a new case is being opened by plaintiff's attorney and a Motion for Temporary Restraining Order is being filed in that case, plaintiff's attorney is expected to notify the defendants, giving them information concerning the TRO, including the exact date and time to appear. Reasonable time should be given for the defendants to appear. If the defendants choose not to appear, an Affidavit is to be prepared informing the Court of the defendants' response. (Pursuant to FRCP 65)
- After docketing the Complaint, the attorney will docket the Motion for Temporary Restraining Order. The memorandum in Support and the Proposed Order for TRO should be filed as attachments to the Motion. The Proposed Bond Order should be filed as a separate event-Motion for Bond.
- **A separate notice must be filed indicating the date and time the plaintiff is requesting the TRO be heard, as well as the parties and attorneys expected to appear.**
  - **The Notice Requesting Hearing on Motion for Temporary Restraining Order will be filed using the Court's form MOED-0062. The form is located at [www.moed.uscourts.gov/forms](http://www.moed.uscourts.gov/forms).**
  - **The filer will find the proper CM/ECF event for docketing under Civil>Other Filings>Notices>Notice (Other).**
  - **This notice MUST be filed before the case can be quality controlled by a Deputy Clerk and assigned to a judge for hearing.**
- After opening the case and filing the motions and notice, the Clerk's Office is to be informed that a Motion for Temporary Restraining Order and Notice of Motion has been filed and whether or not defendants have been notified. Upon completion of these requirements a Deputy Clerk will quality control the new case and a judge will be notified that a TRO has been filed.

### REQUIREMENTS

- **The attorney of record must be a member of the Eastern District of Missouri bar or have a Motion to Appear Pro Hac Vice.** (See Local Rule 12.01 for requirements)
- The attorney of record must sign all documents pursuant to FRCP11. When the attorney is opening the new case on ecf, the use of the ecf login and password assigned by the court complies with Rule 11.
- See the Civil Case Check List for the documents required when filing a new case and service of the Complaint requirements.
- The Motion for Temporary Restraining Order with a Memorandum in Support and a Proposed Order. (Please do not include this motion in the body of the Complaint.)
- A proposed Bond Order to be signed by the judge who will determine the amount of bond to be posted.
- If a surety bond is being posted, the cashier will check the Federal Registry to make sure the surety company is listed. The court requires a current certified Certificate of Authority from the Missouri Division of Insurance be on file and the Attorney-in-Fact is registered with this court. To contact the cashier to verify a surety company's information, please call 314-244-7872.

- When the TRO Order entered directs the U.S. Marshal to serve a Temporary Restraining Order, the U.S. Marshal requires a completed U.S. MARSHAL FORM 285.

**The FEE for filing a civil case is \$400.00.** When an attorney is opening the case electronically through CM/ECF, a valid credit card or ACH/debit is required for payment through Pay.Gov. If a person representing him or herself Pro Se is filing the case, this Court accepts payment by cash, credit card, or check – the check should be made payable to “Clerk, U.S. District Court.”

(Rev. 11/16)



**I. The Parties to This Complaint**

**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name \_\_\_\_\_  
Street Address \_\_\_\_\_  
City and County \_\_\_\_\_  
State and Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
E-mail Address \_\_\_\_\_

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person’s job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name \_\_\_\_\_  
Job or Title \_\_\_\_\_  
Street Address \_\_\_\_\_  
City and County \_\_\_\_\_  
State and Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
E-mail Address \_\_\_\_\_

*(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant. If you are suing for violation of your civil rights, you must state whether you are suing each defendant in an official capacity, individual capacity, or both.)*

## II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only three types of cases can be heard in federal court. Provide the information for this case. *(Include all information that applies to your case)*

### A. Federal question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

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### B. Suit against the Federal Government, a federal official, or federal agency

List the federal officials or federal agencies involved, if any.

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### C. Diversity of Citizenship

These are cases in which a citizen of one State sues a citizen of another State or nation, and the amount at stake is more than \$75,000. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

#### 1. The Plaintiff(s)

The plaintiff, *(name)* \_\_\_\_\_, is a citizen of the State of *(name)* \_\_\_\_\_.

*(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)*

2. The Defendant(s)

If the defendant is an individual

The defendant, *(name)*\_\_\_\_\_, is a citizen  
of the State of *(name)*\_\_\_\_\_ Or is a citizen  
of *(foreign nation)*\_\_\_\_\_.

If the defendant is a corporation

The defendant, *(name)*\_\_\_\_\_,  
is incorporated under the laws of the State of *(name)*  
\_\_\_\_\_, and has its principal place of  
business in the State of *(name)*\_\_\_\_\_ Or  
is incorporated under the laws of *(foreign nation)*  
\_\_\_\_\_, and has its principal place  
of business in *(name)*\_\_\_\_\_.

*(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)*

3. The Amount in Controversy

The amount in controversy---the amount the plaintiff(s) claims the defendant(s) owes or the amount at stake---is more than \$75,000, not counting interest and costs of court, because *(explain)*:

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Do you claim the wrongs alleged in your complaint are continuing to occur now?

Yes

No

Do you claim actual damages for the acts alleged in your complaint?

Yes

No

Do you claim punitive monetary damages?

Yes

No

If you indicated that you claim actual damages or punitive monetary damages, state the amounts claimed and the reasons you claim you are entitled to recover these damages.

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## V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature of Plaintiff(s)

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
\_\_\_\_\_ DIVISION

|                                                    |   |                     |
|----------------------------------------------------|---|---------------------|
|                                                    | ) |                     |
|                                                    | ) |                     |
| <b>NAME OF THE PLAINTIFF</b>                       | ) |                     |
|                                                    | ) |                     |
| - vs -                                             | ) |                     |
|                                                    | ) |                     |
|                                                    | ) | Case No.            |
|                                                    | ) |                     |
|                                                    | ) |                     |
|                                                    | ) | JURY TRIAL DEMANDED |
|                                                    | ) |                     |
|                                                    | ) | YES ___ NO ___      |
| <b>NAME OF THE DEFENDANT OR</b>                    | ) |                     |
| <b>DEFENDANTS</b> (Enter above the full name(s) of | ) |                     |
| ALL defendant(s) in this lawsuit. Please           | ) |                     |
| attach additional sheets if necessary.             | ) |                     |

**EMPLOYMENT DISCRIMINATION COMPLAINT**

1. This employment discrimination lawsuit is based on (check only those that apply):

\_\_\_\_\_ Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, for employment discrimination on the basis of race, color, religion, gender, or national origin.  
**NOTE:** *In order to bring suit in federal district court under Title VII, you must first obtain a right-to-sue letter from the Equal Employment Opportunity Commission.*

\_\_\_\_\_ Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621, *et seq.*, for employment discrimination on the basis of age (age 40 or older).  
**NOTE:** *In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file charges with the Equal Employment Opportunity Commission.*

\_\_\_\_\_ American with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, *et seq.*, for employment discrimination on the basis of disability.  
**NOTE:** *In order to bring suit in federal district court under the American with Disabilities Act, you must first obtain a right-to-sue letter from the Equal Employment Opportunity Commission.*

\_\_\_\_\_ Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701, et seq., for employment discrimination on the basis of a disability by an employer which constitutes a program or activity receiving federal financial assistance.

**NOTE:** *In order to bring suit in federal district court under the Rehabilitation Act of 1973, you must first file charges with the appropriate Equal Employment Office representative or agency.*

\_\_\_\_\_ Other (Describe)

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**PARTIES**

2. Plaintiff's name: \_\_\_\_\_

Plaintiff's address: \_\_\_\_\_

Street address or P.O. Box

\_\_\_\_\_  
City/ County/ State/Zip Code

\_\_\_\_\_  
Area code and telephone number

3. Defendant's name: \_\_\_\_\_

Defendant's address: \_\_\_\_\_

Street address or P.O. Box

\_\_\_\_\_  
City/County/State/ Zip Code

\_\_\_\_\_  
Area code and telephone number

**NOTE: IF THERE ARE ADDITIONAL PLAINTIFFS OR DEFENDANTS, PLEASE PROVIDE THEIR NAMES, ADDRESSES AND TELEPHONE NUMBERS ON A SEPARATE SHEET OF PAPER.**

4. If you are claiming that the discriminatory conduct occurred at a different location, please provide the following information:

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(Street Address) (City/County) (State) (Zip Code)

5. When did the discrimination occur? Please give the date or time period:

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**ADMINISTRATIVE PROCEDURES**

6. Did you file a charge of discrimination against the defendant(s) with the Missouri Commission on Human Rights?

Yes Date filed: \_\_\_\_\_

No

7. Did you file a charge of discrimination against the defendant(s) with the Equal Employment Opportunity Commission or other federal agency?

Yes Date filed: \_\_\_\_\_

No

8. Have you received a Notice of Right-to-Sue Letter?

Yes  No

If yes, please attach a copy of the letter to this complaint.

9. If you are claiming age discrimination, check one of the following:

60 days or more have passed since I filed my charge of age discrimination with the Equal Employment Opportunity Commission.

fewer than 60 days have passed since I filed my charge of age discrimination with the Equal Employment Opportunity Commission.

**NATURE OF THE CASE**

10. The conduct complained of in this lawsuit involves (check only those that apply):

failure to hire me

termination of my employment

failure to promote me

failure to accommodate my disability

terms and conditions of my employment differ from those of similar employees

retaliation

harassment

other conduct (specify): \_\_\_\_\_

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Did you complain about this same conduct in your charge of discrimination?

Yes

No

11. I believe that I was discriminated against because of my (check all that apply):

race

religion

national origin

color

gender

disability

age (my birth date is: \_\_\_\_\_)

other: \_\_\_\_\_

---

Did you state the same reason(s) in your charge of discrimination?

Yes

No

12. State here, as briefly and clearly as possible, the essential facts of your claim. Describe specifically the conduct that you believe is discriminatory and describe how each defendant is involved in the conduct. Take time to organize your statement; you may use numbered paragraphs if you find it helpful. It is not necessary to make legal arguments, or to cite cases or statutes.

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13. The acts set forth in paragraph 12 of this complaint:

\_\_\_\_\_ are still being committed by the defendant.

\_\_\_\_\_ are no longer being committed by the defendant.

\_\_\_\_\_ may still be being committed by the defendant.

**REQUEST FOR RELIEF**

State briefly and exactly what you want the Court to do for you. Make no legal arguments; cite no cases or statutes.

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Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Plaintiff



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
\_\_\_\_\_ DIVISION**

\_\_\_\_\_, )  
 )  
 )  
 Plaintiff(s), )  
 )  
 v. ) Case No. \_\_\_\_\_  
 )  
 \_\_\_\_\_, )  
 )  
 Defendant(s). )

**MOTION FOR APPOINTMENT OF COUNSEL  
AND AFFIDAVIT IN SUPPORT**

I, \_\_\_\_\_, hereby apply for appointment of Counsel. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the plaintiff in the above-entitled case and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay a reasonable attorney fee.
- (3) I have made diligent efforts to obtain legal counsel but because of my poverty I have been unable to secure same. Following is a description of the efforts I have made:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Plaintiff



UNITED STATES DISTRICT COURT  
Eastern District of Missouri  
\_\_\_\_\_ Division

\_\_\_\_\_,  
Plaintiff(s),  
v.  
\_\_\_\_\_,  
Defendant(s).

)  
)  
)  
) Civil Case No. \_\_\_\_\_  
)  
)  
)  
)  
)

**APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS  
(Short Form)**

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: \_\_\_\_\_.

If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ \_\_\_\_\_, and my take-home pay or wages are: \$ \_\_\_\_\_ per  
(specify pay period) \_\_\_\_\_.

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- |                                                    |         |        |
|----------------------------------------------------|---------|--------|
| (a) Business, profession, or other self-employment | ___ Yes | ___ No |
| (b) Rent payments, interest, or dividends          | ___ Yes | ___ No |
| (c) Pension, annuity, or life insurance payments   | ___ Yes | ___ No |
| (d) Disability or worker's compensation payments   | ___ Yes | ___ No |
| (e) Gifts or inheritances                          | ___ Yes | ___ No |
| (f) Any other sources                              | ___ Yes | ___ No |

*If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.*

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4. Amount of money that I have in cash or in a checking or savings account: \$ \_\_\_\_\_.

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

*Declaration:* I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

Pro Bono  
Limited Scope Representation  
in a  
Mediation Setting

~~~

*John W. Grimm, The Limbaugh Firm /  
ADR Committee Member / FPC Member*

*James W. Reeves, United States Arbitration &  
Mediation / ADR Committee Member*

*Tom Albus, Missouri Attorney General's Office*

*Brendan Roediger, Associate Professor /  
Litigation Clinic Director, SLU Law*

**Federal Pro Bono Counsel Training Seminar  
Pro Bono Limited Scope Representation in a Mediation Setting**

**Alternative Dispute Resolution in the Eastern District**

Presented by

John Grimm, The Limbaugh Firm, ADR Advisory Committee/Federal Practice Committee

Jim Reeves, United States Arbitration & Mediation/ADR Advisory Committee

Tom Albus, Missouri Attorney General's Office

Brendan Roediger, St. Louis University School of Law

**Overview of the ADR Program**

The Eastern District of Missouri has one of the most robust ADR programs of all of the federal courts in the country. For years, other courts have looked to the Eastern District's ADR program as one to model. The Court has an ADR Advisory Committee that meets quarterly to review the program, evaluate its effectiveness, and suggest changes to the program. The ADR Advisory Committee is made up of judges of the Court, practicing attorneys, ADR practitioners, and ADR scholars.

The ADR program in the Eastern District is governed by Local Rules 16-6.01 et seq. Unlike many state courts, all of the Eastern District judges refer cases to ADR and expect that counsel and their clients will abide by the local rules. The judges in the Eastern District do enforce the local rules and take the ADR program seriously.

Under the local rules, certain cases are not referred to ADR:

- appeals from rulings of administrative agencies;
- habeas corpus and extraordinary writs;
- bankruptcy cases; and
- Social Security cases.

The local rules provide for two types of ADR processes:

**Mediation**, “an informal nonbinding dispute resolution process in which an impartial mediator facilitates negotiations among the parties to help them reach settlement.” Rule 16 – 6.01 (A), and

**Early Neutral Evaluation**, a process that “brings together the parties and counsel in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator.” Rule 16 – 6.01 (B).

## **Referrals to ADR**

Rule 16 – 6.02 describes the process of referring cases to ADR. The referral process typically occurs at the Rule 16 conference very early in the case. You would be well advised to know your case well enough to give the judge a realistic timeframe in which to complete the ADR referral. For example, know the nature of the case and the timeframe to complete enough discovery to participate in ADR. Consider the number of potential witnesses, the number of documents to be exchanged, and the necessity of expert witnesses.

At the Rule 16 conference, when the judge refers the case to ADR, the referral will include a deadline by which the ADR referral must be completed. If, for some reason, counsel discover that the ADR referral cannot be completed by the deadline, counsel should file a motion with the Court for an extension of time. Such motions are only granted upon a showing of good cause.

## **Mandatory Attendance at the ADR Conference**

The local rules require that the “attorney primarily responsible for trial of the case” attend the ADR conference and that the client or a client representative (in the case of a corporate or governmental entity) who possesses “requisite settlement authority” must also attend. If anyone required to attend cannot be present, counsel must file a motion with the court not less than 14 days prior to the ADR conference specifying the reasons for the non-attendance. Counsel and clients are required to participate in the ADR conference “in good faith.”

## **Limited Scope Representation**

Relatively recently, the court enacted a local rule providing for the appointment of counsel on a limited scope basis to represent pro se parties in the ADR process. Although the scope of the representation is limited, the representation does encompass all of the activities needed to prepare for the ADR conference, participation in the ADR conference, and for any follow-up tasks that need to be completed following the conference. The court has a panel of attorneys from which the appointed counsel may be chosen, all of whom have agreed to serve on a pro bono basis.

## **The Neutral Panel, Ex Parte Communications, and Confidentiality**

The foundation of any good court-annexed ADR program is the quality of its neutral panel. The Eastern District maintains its own panel of pre-qualified neutrals and takes pride in the quality of its panel. Because all of the neutrals on the Eastern District’s panel have met stringent experience and training requirements (specified in Rule 16 – 6.03), the court encourages counsel to choose a neutral from its panel. If counsel decide that they want to use a neutral who is not listed on the court’s panel, counsel must file a motion with the court specifying the reasons for using the non-listed neutral.

Counsel are encouraged, and are generally required, to provide the neutral with a pre-ADR conference brief outlining a brief recitation of the facts, unique legal issues, the procedural posture of the case, and a brief history of any settlement negotiations that have occurred. Briefs are usually sent only to the neutral and are kept confidential.

Communications made or disclosed to the neutral are confidential and may not be disclosed by the neutral without the disclosing party's permission. Many mediators contact each counsel prior to the ADR conference to speak privately about the case. Counsel are encouraged to use pre-ADR conference ex parte communications with the neutral in order to alert the neutral to any special circumstances that may need to be overcome in order to get the case settled.

The time and location of the ADR conference is usually left up to the neutral and counsel. The court does maintain ADR facilities on the third floor of the courthouse.

### **Preparing for and Participating in the ADR Conference**

Prepare carefully for the ADR conference. Know your case. Gather and have available significant documents and exhibits ready to provide the neutral and opposing party. Remember that mediation is not a trial – trial advocacy suggests in an adversarial tone. In ADR, particularly in mediation, your “audience” is the opposing lawyer and his or her client. Your job is to inform the opposing party of your perspective of the case. The tone of your advocacy in mediation will be more “conversationally persuasive” rather than adversarial. People generally do not listen to argument.

Prepare your client for the ADR conference well in advance. If your client has never been through an ADR process before, help them understand what to expect and clearly explain what their role is. Decide whether you want your client to speak at the ADR conference or not. If so, prepare them. Successful ADR processes, particularly mediation, require flexibility, patience, appropriate client expectations, and a willingness to absorb new information about the case and to consider that new information in your client's settlement decisions.

### **The Neutral's Post-Conference Report**

Following the ADR conference, the neutral is required to file a report with the court stating:

- Whether or not the case was resolved at the conference;
- Whether all of the parties and counsel attended the conference as required and had the requisite settlement authority; and
- Whether all of the parties and counsel participated in the ADR conference in good faith.

The court does enforce the attendance and participation requirements. See *Nick v. Morgan Foods, Inc.*, 270 F.3d 590 (8<sup>th</sup> Cir. 2001).

Ethics  
of  
Limited Scope Representation  
(ADR Setting / Intake Setting)

~~~

*Phyllis A. Jaudes, Senior Conflicts and Ethics  
Counsel, Husch Blackwell*

*Simone Haberstock McCartney, Law Offices  
of Simone Haberstock McCartney, LLC*

# Ethics of Limited Scope Representation

## April 25, 2019



**PRESENTED BY**

**PHYLLIS JAUDES, HUSCH BLACKWELL**

**AND**

**SIMONE HABERSTOCK MCCARTNEY, THE LAW  
OFFICES OF SIMONE HABERSTOCK MCCARTNEY**



**Ethical Rules Governing  
Limited Scope  
Representation in Federal Courts**

# Ethical Rules For Limited Scope Representation



**Mo. Rule of Professional Conduct 4-1.2(c):**

**“A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer’s limited role.”**

# Informed Consent



**Rule 4-1.0(E) Lawyer must advise client of:**

- **Alternatives to limited scope (going solo, finding full-representation lawyer) and**
- **Risks of limited scope (could miss issues, client will have to do some of it solo)**

# Put It In Writing!



“In a writing signed by the client,” Rule 4-1.2(c)

Although not required for initial consultation *or* for pro bono services through a nonprofit, bar association or court, Rule 4-1.2(d), still highly recommended to prevent misunderstanding.

Include terms of limited scope *and* disclosures for informed consent.

# Form for Limited Scope Representation



In comment 2 to Rule 4-1.2

When used, creates presumptions that:

- 1) the representation is limited to the services set out in the form ; and
- 2) the lawyer doesn't represent the client in any matter not on the form.

# The Rule 1.2 Form



- Lawyer won't give more help than agreed
- Lawyer won't help on any other part of matter
- Lawyer is relying on client's disclosure, no independent investigation

# Rule 1.2 Form Options



- Give legal advice in person, by email or phone
- Advise about ADR
- Evaluate case and advise about legal rights and responsibilities
- Review documents prepared by client
- Draft documents
- Discovery
- Limited court appearance
- Evaluate settlement options

## Rule 1.2 Form – Client’s Consent



ONLY legal services listed above

Lawyer isn't my lawyer for any other purpose

Lawyer will stop helping me when scope is  
completed

# Other Ethical Obligations: Competence



**Rule 4-1.1 requires competent representation of all clients**

**Rule 4-1.2 form states, lawyer must provide competent help**

# Communication



**“A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”**

**Rule 4-1.4(b)**

# Duty to investigate?



- **Mo. Proc. R. 55.03(c)** – May rely on self-represented party's representation of facts, when helping with drafting
- **Rule 4-1.2 form** states, no investigation, relying on client for facts
- **But may still have duty** if client's statements are inconsistent or don't make sense

# Rule 11



Rule 11 still applies

Still need good faith belief in accuracy of facts

No frivolous claims



**You're not there to  
make the client happy**

**You may have to tell  
client there's no case**

**What if client asks  
you to take a position  
Rule 11 would bar?**



# Conflicts



Rule 4-6.5: when lawyer is under auspices of a program sponsored by a nonprofit or court and providing limited legal services, conflicts rules do not apply, unless you *know* that the representation involves a conflict, or you *know* that another lawyer in your firm has a conflict.

But if representation then becomes ongoing, conflicts rules *do* apply.

# Duties To The Court



## **RULE 4-3.3, CANDOR TOWARD THE TRIBUNAL**

- **GHOSTWRITING – PERMITTED BY PROCEDURAL RULE 55.03(A), DO NOT NEED TO SIGN THE DOCUMENT**
- **BUT MUST ENSURE NO KNOWING FALSEHOODS, IN FACT OR LAW**

# Duty Of Candor



2007 ABA opinion says ghostwriting is not “dishonesty,” so long as there’s no “affirmative statement by the client, that can be attributed to the lawyer”

# Entering An Appearance



**Permitted as part of limited scope representation**

**When completed, file notice of termination of  
limited appearance, rule 4-1.16(c)**

Other rules still apply



Other than in the scope of representation, a limited scope client is like any other client --

All ethics rules still apply, except as specifically stated above.

# Malpractice Exposure



**Check your/your firm's insurance  
policy to be sure your pro bono  
and limited scope work is covered**

# When an opposing party has limited scope representation



- ❖ **OK TO COMMUNICATE DIRECTLY WITH PARTY, UNLESS LAWYER HAS GIVEN WRITTEN NOTICE TO COMMUNICATE WITH LAWYER. R. 4-1.2(E)**
- ❖ **MUST SERVE BOTH PARTY AND LAWYER UNTIL LAWYER FILES TERMINATION OF APPEARANCE. MO. R. CIV. PRO. 43.01(B).**

# Limited Scope Representation: Intake



**“Limited scope” disclosures and consent not required for intake, R. 4-1.2(d).**

**But court or bar association will generally have forms signed by clients anyway.**

## Intake: Clear communication is essential

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- Identify what the claim is
- Confirm whether client is in correct forum
- Identify proper defendants
- Consider whether to refer out
- Assist with filling out Court forms
  - In forma pauperis application (E.D. Mo. L.R. 3-2.05)
  - Court-provided forms required for pro se plaintiffs (E.D. Mo. L.R. 45-2.06)



- Letters or calls
- Mediation



**Consider other options**

# ADR



**Limited scope representation:  
Early Mediation or  
Early Neutral Evaluation**

**Ideally, get new limited scope  
agreement**

# ADR: Appointment of Counsel



“Upon request of an unrepresented party, the Court may appoint counsel for the limited purpose of providing legal advice and representation in preparation for and during the course of mediation or early neutral evaluation ordered under this rule.”

E.D. Mo. L.R. 16-6.02(C)(1).

# ADR: What is the scope?



“Although the scope of this representation is limited, counsel will *provide such services as counsel deems appropriate* to the mediation, including but not limited to review of the pleadings, communication with opposing counsel, and interviews with the client and such key witnesses as may be necessary in advance of the mediation or early neutral evaluation. Counsel will not be precluded from conducting or participating in *such discovery, if any, as may be necessary* in advance of mediation or early neutral evaluation.”

E.D. Mo. L.R. 16-6.02(C)(1)(emphasis added)

# ADR: What will you do?



- Review pleadings
- Interview client; interview witnesses as needed
- Formulate a demand
- Present case at mediation
- Advise client on any settlement offers
- Make sure final agreement protects client's rights

# ADR: Discovery?



- Idea behind early mediation is to avoid it, but rule expressly allows for it, if “necessary”
- Spell out in limited scope agreement what you will and won’t do

# A Limited Scope Client is still a “Real” Client



In general, your fiduciary duties to a limited scope client are the same as those to any other client—loyalty, confidentiality, competence, etc.

Except as set out above, the only real difference is in your scope of work, not how you perform it.

## **ETHICS and LIMITED SCOPE REPRESENTATION**

---

### **1. Background**

### **2. Rules governing unbundling**

#### 2.1 Professional conduct

##### 2.1.1 Informed consent

#### 2.2 Civil procedure

#### 2.3 Advisory opinions

### **3. Client intake relationship**

#### 3.1 Suggested limited scope form

### **4. Candor**

### **5. Communicating with opposing parties who have limited scope representation**

### **6. Marketing**

### **7. Resources**

---

### **1. Background**

#### **1.1 What's meant by unbundling or limited scope services + examples**

A lawyer unbundles legal services by breaking down the tasks associated with a legal matter and providing the client with limited services to a portion of that matter. A few examples of unbundling include:

- Reviewing documents;
- Researching areas of law;
- Drafting legal documents;
- Making limited appearances;

# Limited Representation Agreement

## Notice and Consent to Limited Representation

To help you with your legal matters, you, the client, and \_\_\_\_\_, the lawyer, agree that the lawyer will limit the representation to helping you with a certain legal matter for a short time or for a particular purpose.

The lawyer must act in your best interest and give you competent help. When a lawyer and you agree that the lawyer will provide limited help:

- The lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and you agreed; and

- The lawyer DOES NOT HAVE TO HELP WITH ANY OTHER PART of your legal matter.

While performing the limited legal services, the lawyer:

- Is not promising any particular outcome; and

- Is relying entirely on your disclosure of facts and will not make any independent investigation unless expressly agreed to in writing in this document.

If short-term limited representation is not reasonable, a lawyer may give advice, but will also tell you of the need to get more or other legal counsel.

I, the lawyer, agree to help you by performing the following limited services listed below and no other service, unless we revise this agreement in writing.

[INSTRUCTIONS: Check every item either **Yes** or **No** - do not leave any item blank. Delete all text that does not apply.]:

### **Y N**

- Give legal advice through office visits, telephone calls, fax, mail or e-mail;
- Advise about alternate means of resolving the matter including mediation and arbitration;
- Evaluate the client's self-diagnosis of the case and advise about legal rights and responsibilities;
- Review pleadings and other documents prepared by you, the client;
- Provide guidance and procedural information regarding filing and serving documents;
- Suggest documents to be prepared;
- Draft pleadings, motions and other documents;

- h)   Perform factual investigation including contacting witnesses, public record searches, in-depth interview of you, the client;
- i)   Perform legal research and analysis;
- j)   Evaluate settlement options;
- k)   Perform discovery by interrogatories, deposition and requests for admissions;
- l)   Plan for negotiations;
- m)   Plan for court appearances;
- n)   Provide standby telephone assistance during negotiations or settlement conferences;
- o)   Refer you, the client, to expert witnesses, special masters or other attorneys;
- p)   Provide procedural assistance with and appeal;
- q)   Provide substantive legal arguments in an appeal;
- r)   Appear in court for the limited purpose of \_\_\_\_\_;
- s)   Other: \_\_\_\_\_.

I will charge to the Client the following cost costs to be billed to client as provided in the attached contract: \_\_\_\_\_

I will charge to the Client the following fee for my limited legal representation as provided in the attached contract: \$\_\_\_\_\_ per hour for attorney services, \$\_\_\_\_\_ per hour for paralegal services.

\_\_\_\_\_ Date: \_\_\_\_\_  
 Simone Haberstock McCartney

### CLIENT'S CONSENT

I have read this Notice and Consent form and I understand it. I agree that the legal services listed above are the ONLY legal services to be provided by the lawyer. I understand and agree that the lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me more legal help. If the lawyer is giving me advice or is helping me with legal or other documents, I understand the lawyer will stop helping me when the services listed above have been completed.

The address I give below is my permanent address where I may be reached. I understand that it is important that the court handling my case and other parties to the case be able to reach me at the address after the lawyer ends the limited representation. I therefore agree that I will inform the Court and other parties of any change in my permanent address.

In exchange for the Lawyers limited representation, I agree to pay the attorney's fee and costs described above and in the contract for services accompanying this Consent.

Sign your name: \_\_\_\_\_

Print your name: \_\_\_\_\_

Print your address: \_\_\_\_\_

\_\_\_\_\_

Phone number: \_\_\_\_\_ FAX: \_\_\_\_\_

Message Phone: \_\_\_\_\_ Name: \_\_\_\_\_

E-mail address: \_\_\_\_\_

- Preparing a client for a hearing;
- Ghostwriting;
- Negotiating;
- Advising on procedures;
- Preparing and organizing trial documents (exhibits and discovery materials); and
- Opining on discrete issues.

## 1.2 Unbundling in Missouri & the typical self-represented person

A study by Professor Greg Casey of UMC for Legal Services in Missouri found that over 63 thousand low-income households each year have at least one legal problem needing a lawyer and over 47 thousand (75 percent) receive no lawyer's help. (The latter total does not count persons outside of Legal Services eligibility.) The simple fact is there is a great need to address the problem of access to justice for many needy households. The existing legal agencies together can serve less than 30 percent of the needy. This leaves tens of thousands of poor families with legal problems unassisted.<sup>2</sup>

To get an idea of the typical self-represented person we can look to who is using Missouri's self-represented forms. In 2009, a survey showed that the typical pro se litigant is a female, high school educated, making less than \$11 thousand per year, and was not likely to contact a lawyer because she assumed it would be too expensive.<sup>3</sup> That same survey also suggested there are individuals who either make more than \$20 thousand or who

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<sup>1</sup> M. Sue Talia, *Roadmap for Implementing a Successful Unbundling Program*, <http://www.courts.ca.gov/partners/documents/Roadmap.pdf> (accessed Oct. 12, 2014).

<sup>2</sup> Mo. Courts, *The Need of the Poor for Legal Assistance 1*, <http://www.courts.mo.gov/file.jsp?id=37213> (Feb. 25, 2010).

<sup>3</sup> Allison Retka, *Who's using Missouri's pro se divorce forms?*, Missouri Lawyer's Weekly, (July 17, 2009); Terry Conaway, *Who's using Missouri's pro se divorce forms?*, <http://blogs.law.harvard.edu/shlep/2009/07/22/whos-using-missouris-pro-se-divorce-forms/> (Jul. 22, 2009).

have fairly significant assets that are choosing self-representation.<sup>4</sup>

### 1.3 Benefits of unbundling

Benefits of unbundling are many. **FIRST**, unbundling benefits clients by empowering them to take control of their own destiny,<sup>5</sup> increasing their access to affordable legal services, and giving them a sense of accomplishment. **SECOND**, unbundling benefits lawyers by expanding their client base, increasing their revenue, improving their scheduling flexibility, and arguably discharging their responsibility to provide pro bono services by offering their services at a reduced fee.<sup>6</sup> **FINALLY**, unbundling benefits the courthouse by increasing the efficiency of its operations.<sup>7</sup>

## 2. Rules governing unbundling services

### 2.1 Unbundling and Missouri's professional conduct rules

- **CONDUCT RULE 4- 1.2** expressly permits limited representation with written consent and governs communication between opposing counsel and limited representation client. The client's consent must be informed and written.
- **CONDUCT RULE 4-1.4(b)** a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation.

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<sup>4</sup> *Id.*

<sup>5</sup> Justice Fern Fisher-Brandveen & Rochelle Klempner, *Unbundled Legal Services: Untying the Bundle in New York State*, 29 Fordham Urb. L.J. 1107, 1113 (2001).

<sup>6</sup> See Mo. R. Civ. Pro. 4-6.1 (providing that a lawyer may discharge his or her responsibility to render public interest legal service by providing professional services at a reduced fee)

<sup>7</sup> American Bar Association, *Resolution 108, "Improving access to legal services through limited scope representation,"* [http:// www. americanbar. org/ content/dam/aba/administrative/delivery\\_legal\\_services/lr\\_resolution\\_and\\_report\\_108.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/lr_resolution_and_report_108.authcheckdam.pdf) (accessed Oct. 12, 2014).

- **CONDUCT RULE 4- 1. 16( c )** requires a lawyer to file a notice of termination of limited appearance to withdraw from representation.
- **CONDUCT RULE 4-3.01(b)** requires service on otherwise self-represented person and not on limited appearance lawyer unless notified in writing to do otherwise.
- **CONDUCT RULE 4-5.3** The lawyer should not delegate limited scope services to non-lawyer support staff without that staff being supervised by a lawyer.
- **CONDUCT RULE 4- 6.5** governs the responsibility to determine conflicts in non-profit and court-annexed limited service programs.

### 2.1.2 Informed consent

When considering how to ethically provide unbundled legal services to a client, there is one overarching theme: ensuring the client’s consent is informed. So what is informed consent?

Rule 4–1.0(e) states that informed consent “denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.” This means that the lawyer who has agreed to engage in a limited scope engagement has a duty to advise the client of all the options available in the representation, including traditional representation, and the risks of limited scope representation and self-representation. Further, the lawyer must ensure that the client completely understands the nature of limited scope representation and services the lawyer will offer the client.

The limited scope representation does not exempt the lawyer from the duty to provide competent representation.<sup>8</sup> So even though a client is considering limited scope services, the lawyer’s duty as an advisor remains. And because of that duty, the lawyer should not only advise that client on the direct legal issue being unbundled, but also should advise of other relevant

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<sup>8</sup> See comment 2 to Mo. R. Prof. Conduct Rule 4–1.2.

moral, economic, social, and political factors affecting the client's decision to use limited scope representation.<sup>9</sup>

## 2.2 Unbundling and Missouri's rules of civil procedure

- **PROCEDURE RULE 55.03(a)** permits a lawyer to draft pleadings or motions for self-represented litigants without signing the documents;
- **PROCEDURE RULE 55.03(b)** allows limited appearances with a written entry of appearance and allowing a lawyer to withdraw, when the matter is completed, by filing a "Termination of Limited Appearance"; and
- **PROCEDURE RULE 55.03(c)** permits a lawyer who assists with drafting to rely on the self-represented party's representation of facts.

Also, Procedure Rule 88.09 requires unrepresented parties to complete a litigant awareness program and to use court-approved forms.

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## 3. Client intake relationship

Screening the client is of the utmost importance. Questionnaires designed to assess both the client and the case factors help the lawyer focus on screening criteria important in helping the client decide about limited scope representation. When the lawyer helps the client assess limited scope representation, the lawyer should consider the capacity of the client and the complexity of the matter.

In considering the client's capacity, the lawyer should evaluate the client's:

- Education;
- Ability to follow instructions;
- Forms and level of difficulty;
- Availability and time;
- Communication skills and comfort; and
- Personality.

In considering the complexity of the matter, the lawyer should evaluate the matter's:

- Legal complexity;
- Procedural components;
- Evidentiary scope; and
- Potential for collateral issues and consequences.

The lawyer also must consider the skills and abilities of the law firm to manage limited scope clients by considering whether:

- The lawyer can limit contact with the client to keep the service efficient and affordable while also meeting the Rules of Professional Conduct and the policies of the firm;
- The firm can support the technology required to limit contact with the client and still provide the services required;
- The firm has supporting staff trained to understand limited scope representation and the ability to support this service appropriately;
- The firm has policies and procedures for billing that will enable limited scope representation;
- The firm is offering limited scope representation as a service intended to compliment traditional services or as a steady source of new revenue; and
- The lawyer or firm can distinguish limited scope services to clients who have elected traditional representation in a way that does not make those clients feel they have not received value.

### **3.1 Comment to Rule 4-1.2: the suggested limited scope agreement**

The authors of Missouri Rule 4-1.2 have provided a limited scope agreement in the comments to the rule. Using that lengthy form (or a substantially similar form) creates two presumptions:

1. that the representation is limited to the services described in the form; and
2. the lawyer doesn't represent the client in any matter not identified in the form.

#### **4. Ghostwriting + candor to the tribunal**

Procedural Rule 55.03(a) permits ghostwriting, stating that a lawyer who assists in preparing a filing for a client “is not required to sign the document.” Although it’s permitted, a lawyer must consider whether ghostwriting violates personal duties of candor and honesty to a tribunal. Specifically, the lawyer must ensure that in ghostwriting for a client the lawyer does not knowingly offer false evidence, make a false statement of fact or law, or fail to disclose directly adverse controlling authority.<sup>10</sup> Stated otherwise, a lawyer must ensure that even when ghostwriting he or she is revealing in both fact and law to the court.

But what does a lawyer do when his or her intuition suggests that something about the events underlying the provided ghostwriting service is inaccurate or inappropriate? Does the lawyer have a duty to disclose his or her concern?

In Missouri, the answer to both those questions remain unanswered. To date, there has been no opinion or advisory reconciling a lawyer’s duty to reveal with his or her ability to provide ghostwriting services. On a national level, however, the ABA has tried to reconcile the two. In a 2007 formal opinion, the ABA’s Standing Committee on Ethics and Professional Conduct said that “absent an affirmative statement by the client, that can be attributed to the lawyer...the lawyer has not been dishonest within the meaning” of the ABA’s analogue to rule 4-8.4. Given that interpretation of the rule, it’s arguable that intuition is not enough to trigger a lawyer’s duty to protect the profession’s integrity.

#### **5. Communicating with opposing parties who have limited scope representation**

Sometimes a lawyer will confront a situation where the opposing party has entered into a limited scope representation. In that situation, the lawyer can safely communicate with the

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<sup>10</sup> Mo. R. Prof. Conduct 4-3.3(1)-(3).

party even though he or she is represented by counsel.<sup>11</sup> This is because a party receiving limited representation is considered unrepresented for communication under Rules 4-4.2 and 4-4.3. The one exception to that consideration is that a lawyer may not communicate with a party represented by a limited scope lawyer when that lawyer provides written notice to communicate only with him or her.

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<sup>11</sup> See Mo. R. Prof. Conduct 4 – 4.2 (e)(prohibiting a lawyer from communicating with a represented opposing party).

As far as service is concerned, the lawyer must serve both the opposing party who has limited scope representation with notices and his or her limited scope lawyer.<sup>12</sup> Service must be made on both parties until the limited scope lawyer files a termination of limited appearance.<sup>13</sup>

## 6. Marketing considerations

As with any marketing campaign, a lawyer should not market limited scope representation in a manner that creates unrealistic expectations about outcomes.<sup>14</sup> That may mean that on-line services intended to provide limited scope services should not represent to the consumer or client that the services will be similar to traditional full-scope representation. Further, when taken with the duty to provide clients with informed consent, such on-line services should differentiate limited scope representation from traditional representation and describe the risks of limited scope representation to the user.

Marketing materials should also not overstate the lawyer's experience with legal matters in the substantive area. Limited scope representation and traditional representation often require the same level of experience.<sup>15</sup> Because of that, limited scope representation is not necessarily a strategy for young lawyers or lawyers without experience in a substantive area of law to gain experience. Experience may be a necessity due to the brief nature of the relationship between the lawyer and client and the frequent requirement for the lawyer to understand and discuss the breadth of the decision with the client considering limited scope representation.

Rule 4-7.1 suggests that while "'price' advertising can provide a valuable service to consumers of legal services and is not discouraged by the Rule 4, lawyers should not characterize their

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<sup>12</sup> Mo. R. Civ. Pro. 43.01(b)(1)-(2).

<sup>13</sup> Mo. R. Civ. Pro. 43.01(b)(2).

<sup>14</sup> Mo. R. Prof. Conduct 4-7.1(b)

<sup>15</sup> Mo. R. Prof. Conduct 4-7.1(f).

services as “discount” or “low price” unless this can be factually ascertained.

### **6.1 Marketing tips**

- Partner with online legal services such as UpCounsel and Rocket Lawyer. Both companies connect lawyers with clients seeking unbundled legal services.
- Invest more in online marketing. Many clients seeking unbundled legal services are using the internet to identify lawyers offering those services.
- Provide clients with sample fixed prices for legal service packages.

## **7. Resources**

- A free e-book discussing unbundling legal services for the private practitioner
- **Report from the Standing Committee on The Delivery of Legal Services**
- **Guide to unbundling legal services**
- **Sample limited scope retainer agreements**
- **25 tips for unbundling**

Appointments 101:  
I've Been Appointed,  
Now What?

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*Joseph C. Blanton, Jr. - Blanton, Nickell,  
Collins, Douglas & Hanschen, LLC*

*/ FPC Member*

*Steve E. Holtshouser, Partner, Husch Blackwell  
/ FPC Member*

# CIVIL APPOINTMENTS 101: Now What?

**Pro Bono Appointments in the U. S. District Court  
Eastern District of Missouri  
By Joe Blanton and Steve Holtshouser**

**HUSCH BLACKWELL**



# The Appointment

- How will you be notified?
- What typically precedes your appointment?
  - Pro Se Law Clerk review
  - Limited Scope representation – intake and mediation
- Typical types of cases:
  - Employment discrimination
  - Section 1983 actions
    - Prisoner and non-prisoner
  - Other Diversity jurisdiction claims
- Court's power to appoint – 28 USC Sec. 1915(e)(1)

# The Appointment

- Appointment does not always mean “pro bono”
  - Admin Order 2019 – Non-appropriated fund available to disburse \$10,000 for expenses and \$5,000 for compensation
  - Comp form found on court website
  - Keep track of hours and expenses on forms provided
  - Apply within 60 days entry of judgment
  - Assigned judge has \$1000 authority; panel for over \$100
  - Some causes of action may have right to recover fees

# Getting Started

- Contact and meet your client
  - Should you enter into an engagement agreement?
  - Need to clear conflicts like any other case
  - Consider a contingency fee if case strong
  - You have an attorney/client relationship
    - What is its scope?
  - The appointment is yours – not your firm's
  - Mentor attorneys do not have A/C relationship
  - Verify coverage under malpractice

# Getting Started

- Treating your client as you would a fee-paying commercial client.
- The power of “NO”
- Good communication-get client’s materials and thoughts
- Fear
- Ethics require that we be affirmative in our analyses and recommendations-we are not “potted plants;”
  - client usually has the last word, especially on settlement, unless we are requested to do something improper

# First Steps

- Review sufficiency of complaint, jurisdiction and venue
  - Rule 12 motions
  - Consider exercising right to amend as of right
    - Clarity
    - New causes of action
    - Proper parties named – sins of omission/commission
- Is there an exhaustion of remedies requirement?
- Establish trust and rapport with client
  - Pro Se plaintiffs often distrustful of legal system and its participants

# First Steps

- Pleading sufficient facts
  - *Twombly* and *Iqbal*
  - Plausibility standard
    - Complaint must contain enough *factual allegations* to state a claim that is plausible on its face

# First Steps

- Failure to exhaust in an affirmative defense, start preparing immediately.
  - Does *pro se* complaint contains grievance materials as exhibits
  - Obtain from client all his materials on grievances/exhaustion.
  - Raise and resolve exhaustion issue before work on the substantive case starts with discovery limited to the exhaustion issue.

# First Steps

- After determining client's version of events, raise the potential for early mediation
  - Often, in non-prisoner cases, mediation may not have been considered
  - Defendant now facing expense of federal lawsuit
  - Use the services of volunteer panel
- Advise your client to hold and preserve pertinent materials
  - Don't overlook ESI – e-mail, text messages, social media
  - Best practice – letter with written acknowledgement<sup>9</sup>

# First Steps

- If mediation is not possible, then proceed like any federal lawsuit
  - Learn local rules and deadlines
  - Look at the Court's website
  - Evaluate discovery needs –
    - ROGs, RFPs, Experts, Depositions
- Prepare for the Rule 26(f) conference with opposing counsel and the Rule 16 conference with the Court
  - Federal judges appreciate parties who reach agreement on a schedule

# First Steps

- **Rule 16 Conference** - Need to have a conference to submit a joint proposal
  - Trial Dates and Mediation Referrals
  - Limits on Interrogatories and Discovery – presumptive limits in FRCP

# First Steps

- **Rule 16 Conference** Scope of discovery – relevance to a claim or defense
  - Proportionality factors
  - Deadlines for:
    - Adding Parties
    - Amendments to Pleadings
    - Dispositive Motions
    - Designations of Experts
    - Discovery

# First Steps

- **Discovery Tools**
  - RFPs (FRCP 34)
  - RFAs (FRCP 36\_
  - ROGs (FRCP 33)
  - Physical Exams (FRCP 35)
  - Corporate rep depos – Rule 30(b)(6)
  - Third-party discovery – Rule 45
    - Notice to opposing party

# First Steps

- Make sure jury trial right is reserved
  - Must demand it
  - Should appear on face of pleadings
- How are you going to communicate with your client?
  - Prisoner – collect calls?
  - Managing the amount of time (non-billable) that you will allow your client to take up

# First Steps

- Article III District Judge vs. 28 U.S.C. Section 636 Magistrate
  - EDMO Unique – Magistrates no different than District Judges in civil cases if Parties Consent
  - Cases assigned to District and Magistrate Judges by “wheel”
    - If assigned to Magistrate, Parties must consent
    - If all Parties don’t consent, then reassigned to District Judge by “wheel”

# First Steps

- Pros and cons – mostly pros
  - EDMO has tradition of excellent magistrates
  - Magistrate civil trial dockets may move faster because not burdened by criminal trial docket and non-consents
  - Consent will need to be obtained from client

# State v. Federal Practice

- Local Rules Are Voluminous and Strictly Enforced
  - Deadlines Are Really Deadlines
  - Don't assume any are "soft"
    - But exceptions may be permitted for good cause shown and showing of due diligence
    - If Need More Time, File a Short Motion or a Memo, with Consent of the Other Side if Possible
    - Meet and confers" are prerequisite to most motions

# State v. Federal Practice

- PACER vs. Casenet vs/ ECF
  - Staff will need to learn PACER and ECF if not already using
  - Client will have to receive filing notices from you
- Hallmarks of Federal practice:
  - Active involvement of Court in case management
  - More motions practice = more written product
  - Discovery deadline leads to *MSJ/Daubert*
  - Mediation could be mandatory
  - Pretrial compliance can be burdensome

# State v. Federal Practice

- Can serve RFPs 21 days after service of complaint
  - Only for parties
  - Considered served as date of Rule 26(f) conference of counsel
  - Defendant has to respond in 30 days after Rule 26(f)
  - Tip: Wait to see what you get in Initial Disclosures
    - See Rule 26(a)(1)(A) for scope of initial disclosures
    - Due 14 days after the Rule 26(f) conference

# State v. Federal Practice

- Initial Disclosures
  - Witnesses with Knowledge
  - Documents to Be Used
  - Damages Calculations
  - Insurance Info
  - Expert Witness – this is deferred until later
  - Electronic Data
- Must be Supplemented Like Any Other Discovery Response

# State v. Federal Practice

- As in State Court – Party Control of Discovery
  - Most Judges Encourage Contacting Court to resolve Discovery Disputes
    - Motions to Compel disfavored
  - Must Attempt Good Faith Dispute Resolution
  - Sanctions Are Rare but Are Sometimes Ordered
- There Are No Periodic Status Conferences – Attorneys Are Expected to Work on Case and Meet Deadlines

# State v. Federal Practice

- Motions Are Not “Noticed Up” for a Hearing
  - Motions Must Be Briefed – Motion, Response, Reply
  - Oral Arguments Rare
  - Motions “Submitted” When Fully Briefed
- Do Not Contact Law Clerks regarding substantive matters
- Dispositive Motions Are More Likely to Be Granted

# State v. Federal Practice

- Expert Witnesses
  - Reports – Rule 26
  - Treating Physicians?
- *Daubert* Motions have been commonplace in federal court for decades – Missouri State Courts Have Now Adopted
  - They are effective to exclude or trim expert opinions
  - Liability, Causation, Damages
- Reference Manual on Scientific Evidence (3d. Ed.)

# State v. Federal Practice

- **Pre-Trial Compliance**
  - Motions in Limine
  - Witness List
  - Exhibit List (Plaintiff Numbers, Defendant Letters)
  - Deposition Designations
  - Stipulations
  - Jury Instructions
  - Trial Brief
  - Responses, Objections, and Counter-Designations.

# State v. Federal Practice

- Trial –
  - Voir Dire
    - Jury List and Questionnaires Right Before Panel Brought In
    - Voir Dire Very Limited – 15 minutes
- Offering Exhibits
- Jury of Six with Alternates (or all deliberate)
  - Must Be Unanimous
- Writ of Habeas Corpus ad Testificandum – prisoner suits

# Final Considerations

- What if you learn that your client has the means to hire counsel?
- Exit strategy from the appointment:
  - Withdraw after client has been advised of right to file notice of appeal and timetable
  - Or file notice for client?

# Final Considerations

- Resources
  - Mentor counsel
  - Colleagues
  - BAMSL
  - Prison Litigation Publication

# Final Considerations

- Questions?

# Volunteer Roundup

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*Chief Judge Rodney W. Sippel*

*Clerk of Court Gregory J. Linhares*

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## Judicial Reception

*Sponsored by Federal Bar Association*

A special thank you from the Court to our speakers, BAMSL, Federal Practice Committee members, and the Federal Bar Association. Your continued efforts to improve the services of the Court are appreciated.



*Only to be used when applying as Limited Scope Intake Counsel.*

**Attorney Enrollment  
Missouri for Legal Expense Fund**

For the purpose of registering with the Attorney General of Missouri for Legal Expense Fund Coverage (Section 105.711, RSMo Supp.) for practicing law without compensation through the Saint Louis Bar Foundation, a governmental agency or a nonprofit community social services center, the following information is provided.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Daytime phone: \_\_\_\_\_

Mo Bar Number: \_\_\_\_\_

Place of employment, if any: \_\_\_\_\_

Estimated number of hours per year of legal services provided without compensation are:

\_\_\_\_\_

General area of law engaged in will be: Civil Litigation

Records of clients represented through this program shall be maintained at:

Saint Louis Bar Foundation, 555 Washington Ave, Ste 100, Saint Louis, MO 63101

At the address given above.

It is understood that:

- (a) I will not represent any client under this program if I have a preexisting attorney client relationship with the client under which fees have been collected or contracted for;
- (b) No fee will be charged, sought or accepted from the client for any representation or consultation regardless of outcome;
- (c) I will not discriminate in providing legal services on the basis of race, sex, religion, national origin or ethnic background.

Signed \_\_\_\_\_

Dated: \_\_\_\_\_

Witness for the governmental or charitable agency:

Signed \_\_\_\_\_

Name/Title \_\_\_\_\_

Dated: \_\_\_\_\_









# Federal Pro Bono Counsel Training Seminar April 25, 2019

## Evaluation

Please use the following scale to rate activities on how much they contributed to making this seminar useful for you:

1 = Not at all useful    2 = Not very useful    3 = Neutral    4 = Somewhat useful    5 = Very useful

\*\*\*\*\*

Working the Help Desk: Intake, Forms, Logistics	1	2	3	4	5
Pro Bono Limited Scope Representation	1	2	3	4	5
Ethics of Limited Scope Representation	1	2	3	4	5
Appointments 101	1	2	3	4	5
Overall Program	1	2	3	4	5

*Please provide comments, suggestions, and recommended topics for future seminars below:*

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