

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**APPROVED BY BOARD OF JUDGES
January 8, 2018**

**ATTORNEY PANEL FOR *Pro Se* PLAINTIFFS IN SOCIAL SECURITY CASES
PROGRAM DESCRIPTION**

Effective as of January 8, 2018

The Court endorses and lauds the goal of providing counsel to *pro se* plaintiffs who have been denied benefits, who have filed non-frivolous complaints in this Court seeking review of the denial, and who desire counsel but cannot obtain counsel. Accordingly, the United States District Court for the Eastern District of Pennsylvania has established the Plaintiffs' Social Security Appeals Panel ("the Panel"), which is comprised of volunteer attorneys who have agreed to represent *pro se* plaintiffs in social security actions by court appointment (the "Panel").¹ The Court and the bar shall join together to make this program successful.

¹ From time to time the Chief Judge of the Eastern District will designate one or more members of the Panel to be Program Coordinator(s). The Program Coordinator(s) will supervise the recruitment of attorneys for the Panel and will work with the Court and the Clerk's Office to implement the program.

The Attorney Panel for *Pro Se* Plaintiffs in Social Security Cases shall operate as follows:

1. Upon the filing of a *pro se* complaint, a plaintiff in a social security action shall be given a notice about this program and a form application for appointment of counsel to allow placement of his or her case on the Panel. If plaintiff files his or her social security complaint by mail, the Office of the Clerk of Court shall mail a copy of the notice and a form application for appointment of counsel in a Social Security case to plaintiff's address of record. The notice shall inform the *pro se* plaintiff that a request for appointed counsel does not guarantee that counsel will ultimately be appointed, and that the appointment of counsel is left to the sole discretion of the assigned Judge. The notice shall also inform the plaintiff that appointment of counsel may be dependent upon the availability of an attorney from the Panel who is willing to undertake the requested representation, that the plaintiff is expected to cooperate with the attorney(s) to whom he or she is referred, and that Court approval will be required to terminate the representation. The notice shall also inform the plaintiff that he or she will be required to sign a retention agreement with the attorney and that the Equal Access to Justice Act allows an attorney to recover fees without diminishing the amount of the plaintiff's recovery.

2. The Court has created an extranet for social security cases referred to the Panel by the Judges of this Court. The extranet will be accessible to Panel members through a user name and password provided by the Court, and will be supported by an assigned Panel Administrator. The Panel Administrator will prepare a brief description of each case to be posted on the extranet. The extranet system will issue an email notice to all Panel attorneys each time a new social security case is posted on the extranet. The extranet will contain a link to both the case

summary and a copy of the case docket, as well as instructions for accepting appointment of the case.

3. The Panel Administrator shall maintain a list of Panel members. Law firms shall notify the Panel Administrator of the current contact person(s) in the firm to whom notices, including notices from the extranet, should be sent.

4. *Pro se* litigants seeking counsel through the Panel will be required to sign a consent, which will be included as part of the Court's form application for appointment of counsel in social security cases, that grants the Court permission to give Panel members and their agents access to the plaintiff's records and personal identifiers in the record for the purpose of reviewing the case and determining whether to accept appointment. Additionally, Panel members must sign a document to be kept on file with the Clerk agreeing that they will not use any litigant's personal identifying information for any purpose other than reviewing the case and determining whether to accept appointment.

5. If the assigned Judge determines that a case is appropriate for appointment of counsel, that Judge will direct, through written Order, the Clerk of Court to place the case on the extranet for selection by a Panel attorney. The Order shall stay paragraphs three (3) through eight (8) of the Court's Standing Procedural Order For Cases Seeking Social Security Review, which set forth a briefing schedule, but shall not stay paragraphs one (1) and two (2) of the order, which pertain to service and filing of an answer and the Administrative Record. A copy of the Order shall also be sent to the Panel Administrator. A Judge need not wait for the filing of the Administrative Record to appoint counsel and is encouraged to endeavor to appoint counsel as early in the case as possible.

6. Panel attorneys are responsible for regularly reviewing the extranet postings to decide whether to accept a given case. A Panel attorney accepts a case by following instructions provided on the extranet, and shall not contact a *pro se* plaintiff prior to accepting a case on the extranet. The following procedures will apply once an attorney accepts a case on the extranet:

a. The case is removed from the extranet.

b. The attorney has 14 days in which to more closely examine the case and confer with the plaintiff to determine whether to accept an Order of Appointment.

c. Before the attorney accepts an Order of Appointment, the attorney and plaintiff shall enter into a written retention agreement at the outset of the representation. Such agreement shall include any agreement as to fees and costs, and the attorney shall conform to all applicable professional and ethical codes with respect to such agreements.² The accepting attorney should be prepared to seek costs and counsel fees on behalf of the plaintiff as the prevailing party at any permissible point in the litigation (such as upon remand in some cases) pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

d. If the attorney accepts an Order of Appointment, he or she shall notify the plaintiff and the assigned Judge within the 14-day period. The assigned Judge will enter an Order appointing the attorney to represent the plaintiff and removing the case from suspense if the case had been placed in suspense. A copy of the Appointment Order shall also be sent to the Panel Administrator. The appointed attorney shall promptly file an entry of appearance, and any attorney in the appointed attorney's firm may also file an entry of appearance as they would in any case.

² In cases in which the Panel attorney has not earned a fee and has not recovered his or her costs, and the Plaintiff has been granted leave to proceed *in forma pauperis*, funding for litigation costs up to a maximum of \$4000.00 per case is available through the Public Interest Civil Litigation Fund (PICLF). (See extranet – Public Interest Civil Litigation Fund Guidelines.)

e. If the attorney declines to accept an Order of Appointment, he or she shall notify the plaintiff and the Panel Administrator within the 14-day period, in which event the case will be returned to the extranet for review by other Panel attorneys unless the assigned Judge instructs otherwise.

f. If counsel requires additional time to review the case, he or she should notify the assigned Judge and the Panel Administrator with the amount of additional time sought for review. In the event counsel fails to either accept or decline an Order of Appointment or seek additional time from the Court within the 14-day period, the case will be returned to the extranet for review by other Panel attorneys.

g. If the Administrative Record is filed in a case awaiting appointment after the case has been placed on the extranet site, the Panel Administrator will update the extranet site so that Panel members have access to the Administrative Record for that case. Panel attorneys will receive a notification when the Administrative Record has been filed in a panel case.

h. If the case is still on the extranet after one-hundred and eighty (180) days without an Order of Appointment, the Panel Administrator will remove the case from the extranet unless otherwise directed by the assigned Judge.

7. Counsel are responsible for conducting a conflicts check before accepting appointment, and shall exert every reasonable effort to accept a case for an Order of Appointment. Counsel shall provide competent and ethical representation to the same extent that they would for any other client, and in accordance with all applicable professional duties and ethical obligations, until the case is concluded. The bar recognizes that such commitment is essential to the effective operation of the Panel.

8. The Court recognizes that these are public interest representations and, to the extent practicable, will consider this factor in case management and scheduling. If after having been appointed, the Panel attorney finds it necessary to ask for leave to withdraw, a motion shall be made to the assigned Judge. The Court will give due consideration to the public service nature of the representation. Court approval is, however, required to end an appointment obtained through the Panel.

9. Any attorney or law firm with a question or concern about the operation of the Panel may direct it to one of the Panel Coordinator(s), who, in the event they are unable to resolve the matter, may discuss it with the Court's Public Interest Litigation Committee.

10. Panel attorneys who specialize in the field will be available to confer with other panel members on particular issues. Should counsel require such assistance, they should contact the Panel Coordinator(s) for an appropriate referral.

11. The Panel Coordinator(s) will make reasonable efforts to increase and maintain the number of attorneys and law firms participating in the Panel. The Court will also encourage bar associations in all counties that make up the Eastern District of Pennsylvania to make such efforts.