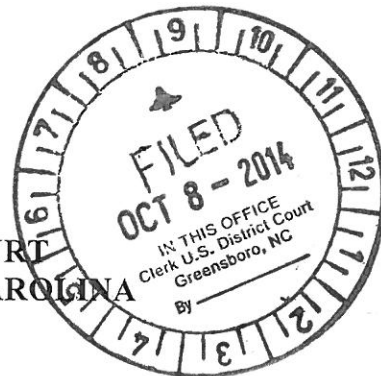


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



PILOT PROGRAM FOR PRO BONO)
REPRESENTATION IN PRO SE) STANDING ORDER NO. 6
CIVIL CASES)

The judges of this court periodically receive motions from pro se litigants requesting appointment of counsel in civil cases in which the pro se litigant has been permitted to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). Under 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” However, in cases brought under the provisions of § 1915, “a plaintiff does not have an absolute right to appointment of counsel.” Miller v. Simmons, 814 F.2d 962, 966 (4th Cir. 1987). Instead, the provision of counsel by the court remains “a matter within the discretion of the District Court. It is a privilege and not a right.” Bowman v. White, 388 F.2d 756, 761 (4th Cir. 1968).

In delineating the scope of the district court’s discretion to appoint counsel, the Fourth Circuit has held that the requesting litigant “must show that his case is one with exceptional circumstances.” Miller, 814 F.2d at 966 (citing Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975)). “The question of whether such circumstances exist in any particular case hinges on characteristics of the claim and the litigant.” Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984), abrogated in part on other grounds, Mallard v. United States Dist. Ct. for S.D. of Iowa, 490 U.S. 296, 109 S. Ct. 1814, 104 L. Ed. 2d 318 (1989). “If it is apparent to the district court that a *pro se* litigant has a colorable claim but lacks the capacity to present it, the district court

should appoint counsel to assist him.” Gordon v. Leeke, 574 F.2d 1147, 1153 (4th Cir. 1978).

In Mallard, the United States Supreme Court ruled that a court could not make “compulsory assignments of attorneys in civil cases” pursuant to the provision in 28 U.S.C. § 1915 (then codified at subsection (d), now set out in subsection/paragraph (e)(1)) stating that a “court may request an attorney to represent’ an indigent litigant.” Mallard, 490 U.S. at 300-01 (holding that the statute’s use of the word “request” means that courts may ask, but may not command, attorneys to represent civil litigants). Mallard did not address the possibility of pro bono appointment of counsel pursuant to an inherent authority of a court and that issue has not been resolved. However, this court finds it appropriate to explore other options for appointing counsel for pro se litigants who have been permitted to proceed pursuant to the provisions of 28 U.S.C. § 1915 and may be entitled to appointment of counsel pursuant to 28 U.S.C. § 1915(e), as well as for pro se defendants who have demonstrated a financial inability to secure counsel in a civil case.

The judges of this court will therefore institute a pilot program to provide for pro bono representation of pro se parties in civil cases through the use of attorneys willing to volunteer their services. These voluntary services may be utilized where exceptional circumstances are believed to exist, generally where summary judgment has been denied and the case is set for trial.

In light of the foregoing, **IT IS HEREBY ORDERED:**

The Clerk shall compile and maintain a list of attorneys who have expressed a willingness to be considered for appointment on a pro bono basis in pro se cases.

Attorneys interested in participating in the program shall complete the attached Pro Bono Representation Request Form and submit the form to the Clerk. The Clerk shall ensure that the interested attorney has been counsel of record in more than one civil action in a federal court or, alternatively, has the close assistance and supervision of an attorney who has previously served as counsel of record in a civil action in a federal court. If either condition is met, the Clerk will then place the attorney on a pro bono representation list.

If a judge of this court believes the appointment of counsel should be considered in a pro se case, attorneys on the pro bono representation list may be considered for appointment. For each such case, the presiding judge will have absolute discretion in making a determination of whether exceptional circumstances exist and whether appointment of a pro bono attorney is appropriate.

Upon receiving the first request from a judge of this court for appointment from the list, the Clerk shall randomly order all names on the list, select the first name and send a Notice of Appointment of Counsel via email regarding a particular civil case. The attorney may decline the appointment for any reason. If the attorney declines to accept the appointment, the attorney will remain on the panel list for a future appointment in another civil case. Subsequent appointments shall be made sequentially from the list.

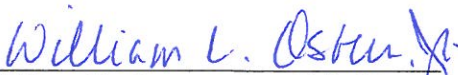
Responses to the Notice of Appointment of Counsel shall be made within two business days. The Clerk may grant up to one written request (email is acceptable) for extension of time to decide whether to accept or decline an appointment, totaling

not more than 10 days. The Clerk shall not disclose the names on the list nor the details of any notice of appointment to the pro se litigant.


In the event of appointment of an attorney to a civil case under the circumstances described herein, the order of appointment shall advise the pro se litigant of the name, address, and telephone number of appointed counsel and, further, that the pro se litigant has no right to advancement of costs and expenses by counsel. The order shall specifically advise the pro se party the appointment is solely for the purpose of providing legal advice, counsel, and representation on behalf of the pro se party.

The procedures described herein shall remain in effect as a pilot program for a period of one year from the date of this order unless otherwise ordered by this court.

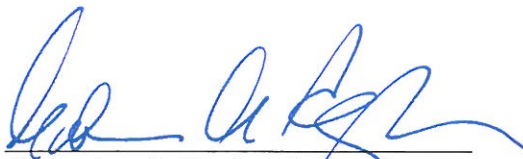
This the 8th day of October, 2014.



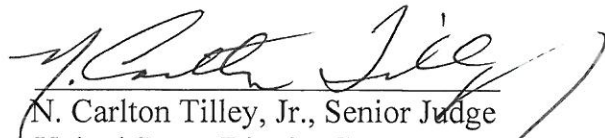
William L. Osteen, Jr., Chief Judge
United States District Court



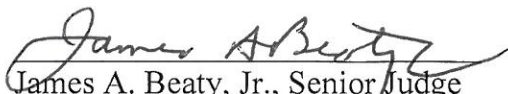
Thomas D. Schroeder, Judge
United States District Court



Catherine C. Eagles, Judge
United States District Court



N. Carlton Tilley, Jr., Senior Judge
United States District Court



James A. Beaty, Jr., Senior Judge
United States District Court