

memorandum

DATE: April 12, 1985

REPLY TO
ATTN OF: HOWARD C. BUSCHMAN III

SUBJECT: PRO BONO PANEL

TO: EUGENE F. O'CONNOR
Clerk, U.S. Bankruptcy Court
SDNY

The annexed local rules have been unanimously adopted by the Judges of this Court. Please have them marked and entered accordingly.

CC: Chief Judge Constance B. Motley
Judge Charles E. Stewart Jr.
Chief Judge Burton R. Lifland
District Executive Clifford Kirsch
United States Trustee

M-68

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
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CLERK OF COURT
SOUTHERN DISTRICT OF NEW YORK
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In re

RULES GOVERNING APPOINTMENT
OF PRO BONO COUNSEL

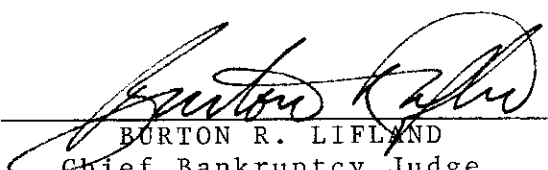
ORDER

By unanimous approval of the Bankruptcy Judges for the Southern District of New York, the rules governing procedures for appointment of pro bono counsel in bankruptcy proceedings, attached hereto, are hereby adopted.

SO ORDERED,

DATED: NEW YORK, NEW YORK
~~April~~ , 1985

May 8


BURTON R. LIFFLAND
Chief Bankruptcy Judge

4-68

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

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

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

1. Bankruptcy Pro Bono Panel

There shall be a panel of attorneys and law firms who are willing to accept appointment to represent pro se parties in bankruptcy proceedings when such parties lack the resources to retain counsel.

2. Composition of Bankruptcy Pro Bono Panel

The Bankruptcy Pro Bono Panel will consist of the following:

(a) Law Firms

Law firms, including public interest law firms, may apply to participate in the panel as firms by completing an application setting forth, among other things: (i) the number of appointed cases per calendar year the firm is

willing to accept; (ii) the ability of participating attorneys to represent non-English speaking clients; (iii) the name of an attorney with the firm designated as panel liaison; and (iv) preference, if any, for appointment between courthouses. Where an action is assigned to a participating firm, the appointment will be directed to the panel liaison and appearance in the action may be entered by the firm or the assigned attorney, at the firm's option.

(b) Individual Attorneys

Attorneys who are willing to accept appointment to represent pro se parties shall apply on an application form setting forth, among other things: (i) the number of appointed cases per year the attorney is willing to take; (ii) the ability of the attorney to represent non-English speaking clients; and (iii) the attorney's preference for appointment between the courthouses.

(c) Information on an application may be amended at any time by letter. An attorney or firm may by letter withdraw from the panel at any time subject to Rule 5 (Relief from Appointment).

(d) The list of attorneys and law firms willing to serve on the Bankruptcy pro bono panel shall be maintained by the United States Trustee in the Southern District and an estate administrator designated by the Clerk

in the Eastern District. Such person is hereafter called the Panel Administrator.

3. Appointment Procedure

(a) Whenever a bankruptcy judge concludes that appointment of counsel from the panel may be warranted, the judge shall direct the Panel Administrator to appoint counsel from the Bankruptcy pro bono panel. The direction may be on the record or in writing. The Panel Administrator may, if deemed desirable in specific cases, appoint, pursuant to 28 U.S.C. §1915(d), counsel not on the panel or appoint a specific attorney on the panel who is especially qualified to undertake the representation. The Panel Administrator may in appropriate cases direct the applicant to a bar association referral service in any case where it appears that adequate counsel fees may be awarded as provided by statute. The provisions of the Bankruptcy Code relating to the appointment of counsel by the court shall be complied with.

(b) In making a determination to appoint counsel from the panel, the following factors shall be taken into account: (i) the nature and complexity of the matter in which the pro bono counsel is to represent the client; (ii) the apparent potential merit of the claim or issue involved;

(iii) the inability of the client to retain counsel by other means; (iv) the degree to which the interests of justice will be served by the appointment of counsel, including the benefit the court may derive from the assistance of the appointed counsel; (v) any other factors deemed appropriate. It is not intended that counsel will be appointed for any party prior to the filing of a petition under Title 11 of the U.S. Code. It is also not intended that counsel generally will be requested to represent a debtor with respect to all matters which may arise in the bankruptcy case; it is intended that counsel will normally be appointed for debtors to represent them on specific matters and proceedings which have arisen in a case. Counsel may also be appointed to represent non-debtors in connection with contested matters, adversary proceedings or other litigated matters arising in or related to a bankruptcy case. Except as otherwise provided in these rules, cases shall be assigned to counsel on a random basis for the purpose of distributing assignments equitably.

(c) Pro bono counsel will be appointed only for persons who have appeared pro se or had counsel but were unable to pay for litigated matters. Such persons must file an in forma pauperis affidavit affirming they lack the resources to retain counsel and containing the waivers set

forth in Rule 10. Such affidavits shall be filed with the Panel Administrator who shall provide persons with suitable forms and information which may help them in preparing the affidavit.

(d) The Panel Administrator shall immediately send written notice to the client, the attorney and the Clerk of the appointment of the selected counsel. If practicable, copies of the docket sheet and of relevant pleadings and other correspondence shall accompany the notice to counsel. If the file is unusually voluminous, counsel may be asked to designate papers needed for copying.

(e) The Panel Administrator shall maintain a record of all appointments.

4. Responsibilities of the Appointed Attorney

(a) Upon receiving a notice of appointment, counsel shall review the file and, if deemed appropriate, communicate with the client. Counsel shall determine, as soon as practicable and within such time prior to the adjourned date of the matter so as to permit another appointment to be made, whether the representation should be accepted. Upon determining that the representation is accepted, counsel shall file a notice of appearance and inform other counsel as appropriate. The notice of appearance shall, where appropriate, specify the discrete matter or matters upon which pro bono counsel is to

represent the client and further state that all pleadings and other papers shall continue to be served upon the client as well as upon pro bono counsel. A copy of the notice of appearance shall be sent to the client and to the Panel Administrator.

(b) Upon accepting an appointment and filing a notice of appearance, counsel shall fully discuss the merits of the matter with the client. Unless, after consultation with the appointed counsel, the party decides not to proceed in connection with the matter, the appointed counsel shall represent the party until the attorney-client relationship is terminated in the ordinary course in connection with the matter as to which counsel was appointed or until terminated as provided for herein.

5. Relief From Appointment

(a) Prior to filing a notice of appearance and within the time period set forth in Rule 4(a), if counsel does not wish to accept an assignment due to lack of time, personal preference or any other ground set forth below, counsel may promptly return the file to the Panel Administrator who will attempt to reassign the case.

(b) Subsequent to filing a notice of appearance, appointed counsel may apply to be relieved of an appointment only on reasonable grounds, including but not limited to the following: (i) the Code of Professional Responsibility precludes acceptance of the responsibilities of representing

the party in the action; (ii) a personal incompatibility exists between counsel and the party, or a substantial disagreement exists between counsel and the party on strategy; (iii) counsel believes that the party is proceeding for the purposes of harassment or malicious injury, or (iv) the party's claims or defenses are not supported by the facts or are not warranted under existing law and cannot be supported by good faith argument for extension, modification or reversal of existing law.

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

(d) If counsel wishes to be relieved from an appointment on the grounds set forth in Rule 5(b)(iii) or (iv) or similar grounds, counsel shall send a request to that effect to the client, stating the grounds for relief. If the client does not object to the request for relief, counsel will so advise the Panel Administrator, the request for relief will be granted, and an order to that effect endorsed by the Panel Administrator shall be submitted to the Court. If the client objects to the request for relief, counsel shall submit the request and the grounds therefor to the Panel Administrator, in a document to be kept under seal and not to be available in discovery or otherwise used in

connection with the matter or any other litigation. The attorney shall be relieved and the Panel Administrator shall forthwith select other counsel to represent the party. If a second counsel declines representation on the grounds set forth in Rule 5(b)(iii) or (iv) above, a third pro bono counsel need not be appointed, in the discretion of the court. If a determination is made not to appoint other counsel, the Panel Administrator shall so inform the party.

6. Discharge

A party for whom counsel has been appointed shall be permitted to request the Panel Administrator to discharge such counsel from the representation and to appoint other counsel. When such a request is supported by good cause (e.g., substantial disagreement between the party and counsel on strategy), the order of discharge shall be granted. The Panel Administrator, in his discretion, may appoint other counsel. It is contemplated that other counsel shall generally be appointed consistent with Rule 5(d) above.

7. Expenses

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

8. Compensation for Services

(a) If the matter is one for which compensation for legal services may become available to the appointed counsel by virtue of the Bankruptcy Code or other statutory authority, the Panel Administrator shall furnish information with regard thereto to the party at the time an application for appointed counsel is made. The Panel Administrator shall also inform the party that any award of counsel fees may only be made by the Court upon application of counsel and on grounds permitted by law. Upon appropriate application by appointed counsel, and taking into consideration counsel's initial agreement to take the matter without compensation, the judge may award counsel fees to the appointed counsel or law firm for services rendered, as permitted by applicable law.

(b) If, after appointment, the appointed counsel discovers that the party is able to pay for legal services, counsel shall bring this information to the attention of the Panel Administrator. Upon appropriate motion, the Court may thereupon permit counsel to continue the representation in the expectation that a fee will be granted in connection with the matter or relieve counsel from the representation and permit the party to retain other counsel or proceed pro se.

9. Duration of Representation

(a) Appointed counsel shall represent the party in connection with the matter on which counsel was appointed. If the bankruptcy case is continuing after the matter is concluded, counsel shall inform the client in writing with a copy to the Panel Administrator that counsel's responsibilities have concluded and that the party is again proceeding pro se. If an appealable order or judgment is entered in connection with the matter, counsel shall inform the client of the possibility of appeal and, if the client requests, file a notice of appeal, a designation of the items to be included in the record on appeal and a statement of the issues to be presented, or assist the party in filing such papers.

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

(c) Nothing in these rules shall be read to (i) affect an attorney's responsibilities under the Code of Professional Responsibility or law; or (ii) affect the manner in which and to whom a notice of appearance or notice of withdrawal is to be given.

10. Any application for the appointment of counsel shall contain the following language

"I hereby waive my privilege of attorney-client confidentiality to the extent necessary for my appointed attorney to make an application to be relieved from such appointment, as provided in the rules governing procedures for appointment of attorneys in bankruptcy proceedings. I further waive my attorney-client privilege to the extent my attorney may withdraw from representation if the attorney learns that I or my estate is able to bear the cost of the legal services for which the appointment was made."

OFFICE OF THE DISTRICT EXECUTIVE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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NEW YORK, N.Y. 10007
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FTS: 662-9211

PRESS RELEASE

SOUTHERN AND EASTERN DISTRICTS OF NEW YORK
ANNOUNCE JOINT BANKRUPTCY PRO BONO PANEL

Bankruptcy Judge Howard C. Buschman, III of the Southern District of New York and Chief Bankruptcy Judge Conrad B. Duberstein of the Eastern District of New York with the support of Chief Judge Constance Baker Motley of the Southern District of New York and Chief Judge Jack B. Weinstein of the Eastern District of New York announced today the creation of a Pro Bono Panel for the Bankruptcy Courts of the Southern and Eastern Districts of New York. The Panel was designed with the assistance of Volunteers of Legal Services, Inc. (VOLS) of the Bar of the City of New York and an ad hoc committee of volunteer attorneys headed up by Allan L. Gropper, Esq. of White & Case. It is expected that the Panel will afford an appropriate manner in which to give the private bar an opportunity to represent the indigent debtor, creditor or party in interest in in forma pauperis proceedings.

Upon appointment, members of the Panel will serve in cases, proceedings and contested matters before the Southern District at Foley Square and before the Brooklyn, Westbury, and Hauppauge locations of the Eastern District. Panel members will be requested to take on matters at the court locations near their offices. Such service will count toward the annual obligation requested by VOLS. The Panel may be expanded to include the White Plains and Poughkeepsie parts of the Southern District at a later date.

The Rules Governing Procedures for Appointment of Pro Bono Counsel in Bankruptcy Proceedings for the Southern and Eastern Districts of New York have been unanimously adopted by the respective Bankruptcy Courts and are in keeping

with the private Bar's concern that professional services be engaged only on matters of merit.

An application form for membership to the Pro Bono Panel for the Bankruptcy Courts of the Eastern and Southern Districts of New York may be obtained from and should be returned to: Cornelius Blackshear, United States Trustee, 26 Federal Plaza, New York, New York 10278, or Leslie Anker, Brooklyn Estate Administrator, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201.

Copies of the Rules will be available at the respective offices of the bankruptcy court clerks.