PLAN OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON FOR THE REPRESENTATION OF *PRO SE* LITIGANTS IN CIVIL RIGHTS ACTIONS (AS AMENDED, EFFECTIVE JUNE 30, 2006)

The United States District Court for the Western District of Washington adopts the following amended plan for furnishing representation to *pro se* litigants in civil rights actions where the Court exercises its discretion to provide such representation. *See* 42 U.S.C. § 2000e, *et seq.* and 28 U.S.C. § 1915. This Plan shall govern the appointment of attorneys from the Western District Pro Bono Panel ("Panel") to represent *pro se* litigants in civil rights actions. For each civil action duly commenced in the Western District by such a litigant, the Judge to whom the action is assigned may issue an order of appointment and other orders relating to representation by the appointed attorney in accordance with this Plan and the accompanying Rules. For all purposes, the term Judge shall include Magistrate Judge. The Federal Bar Association of the Western District of Washington shall work in conjunction with the Court and the Clerk of the Court, who may act through a designated Pro Bono Coordinator, to administer this Plan.

Section 1. Pro Bono Panel

(a) Individual Application. Attorneys who are willing to accept appointment to represent *pro se* litigants in civil rights actions shall apply for designation to the Pro Bono Panel on appropriate forms, which are available on the website of the Federal Bar Association of the Western District of Washington (www.fba-wdwash.org) and from the Clerk of the Court. Each application shall set forth, among other things: (i) the attorney's prior civil trial experience, including the number and type of trials and areas of trial experience; (ii) the attorney's ability to consult and advise in languages other than English; (iii) the attorney's preferred practice area(s), if any, for appointment, and (iv) a statement describing any other experiences that qualify the attorney for appointment to the Pro Bono Panel.

(b) Law Firm Application. A law firm may apply as a firm for designation to the Panel by completing the appropriate form available on-line and from the Clerk of the Court. In its application, the law firm shall set forth, among other things: (i) the number of appointed cases per calendar year the firm is willing to accept; (ii) the ability of participating firm attorneys to consult and advise in languages other than English; (iii) the firm's preferred practice area(s), if any, for appointment, and (iv) the name of the firm's managing partner or a senior member of the firm designated as the Panel Liaison. Where an action is assigned to a participating firm, the order of appointment may be directed to the firm and the assignment of a firm attorney to the action may be made by the managing partner or the Panel Liaison.

(c) Amending/Withdrawing Information. Information on an application may be amended in writing at any time by letter to the Clerk of the Court. An attorney or firm may withdraw from the Panel at any time by written notice to the Clerk of the Court, except during

appointment to an active case. No attorney will be required to handle more than one action at one time.

(d) Eligibility. An attorney must be admitted to practice in the United States District Court for the Western District of Washington to be eligible for designation as a member of the Pro Bono Panel.

Section 2. Nonprisoner Civil Rights Case Screening Committee

(a) Composition of the Screening Committee. The Nonprisoner Civil Rights Case Screening Committee shall be composed of no less than six members of the bar of this Court. The Screening Committee may be larger, however, as determined by need from time to time by the Court and/or the Federal Bar Association. An attorney who serves on the Screening Committee shall not simultaneously serve as a Panel member. Members of the Screening Committee may resign by sending written notice to the Pro Bono Committee of the Federal Bar Association. The Court or the Pro Bono Committee may also remove members from the Screening Committee at will.

(b) Selection of Screening Committee Members. Screening Committee members shall have experience in non-prisoner civil rights actions. The Chief Judge and the Federal Bar Association may consult with bar associations, not-for-profit legal aid organizations, or other groups to obtain the names of prospective Screening Committee members.

Section 3. Appointment Procedure in Nonprisoner Civil Rights Cases

(a) Application and Affidavit of *Pro Se* Party. Whenever a *pro se* litigant in a nonprisoner civil rights action files an appearance or first pleading, the Clerk of this Court shall make available to the party an information sheet and an application for the appointment of counsel.

The information sheet shall notify the *pro se* party of: (i) the possibility of obtaining appointed counsel; (ii) the steps needed to complete and file the application; (iii) his or her responsibility to pay expenses to the extent reasonably feasible based on his or her financial condition; (iv) his or her responsibility to pay part or all of the attorney's fees to the extent reasonably feasible based on his or her financial condition; and (v) the provisions of 42 U.S.C. §§ 1988 and 2000e-5(k) for the award of attorney's fees to prevailing parties in civil rights and Title VII employment discrimination actions.

Any application for the appointment of counsel by a party appearing *pro se* in a nonprisoner civil rights action shall include an affidavit/declaration stating the party's efforts to obtain counsel by means other than appointment and indicating any prior pro bono appointments of counsel to represent the party in cases brought in this Court, including both pending and previously terminated actions. A completed copy of an affidavit of financial status shall be attached to the application.

The decision to apply for appointment of counsel rests with the *pro se* party. Failure of a party to make written application for appointed counsel, however, shall not preclude appointment if the assigned Judge determines that appointment of counsel is warranted.

(b) Change of Circumstances. A *pro se* litigant in a nonprisoner civil rights action ineligible for appointed counsel at the outset of the litigation, who later becomes eligible by reason of changed circumstances, may apply for appointment of counsel, using the procedures specified in section (a) above, within a reasonable time after the change in circumstances has occurred. Likewise, if an applicant is found to be ineligible after counsel has been appointed, the *pro se* litigant may be asked to repay costs waived or paid by the court, and to retain the services of counsel through the litigant's own resources.

(c) Referral to the Screening Committee. Upon receiving an application for appointment of counsel from a *pro se* litigant in a nonprisoner civil rights action, and after having made a preliminary determination based on the face of the complaint and case records that the case is not frivolous, and the applicant's financial eligibility, the Judge to whom the case is assigned shall ask the Clerk of the Court to forward the application, copies of the pleadings and documents filed to date, and other relevant documents to the Screening Committee.

(d) Screening Committee Review. Upon receipt of an application from the Clerk of the Court, the Screening Committee shall, within a reasonable time, review the application, pleadings, and other relevant documents. The Screening Committee may in its discretion also contact and interview the nonprisoner *pro se* party. Confidential communications between the *pro se* party and the Screening Committee shall be protected from disclosure, pursuant to the attorney-client privilege and the attorney's ethical responsibilities.

Based upon its review of the case and the factors set forth in section (e) below, the Screening Committee shall determine whether counsel should be appointed to represent the *pro se* party. If the *pro se* litigant has not demonstrated that s/he has tried to find counsel before applying for appointment of *pro* bono counsel, the Screening Committee may ask the *pro se* party to take specific steps to obtain private counsel before the Screening Committee determines whether counsel should be appointed.

(e) Factors to Determine Whether to Appoint Counsel. Factors the Screening Committee shall take into account in making its determination are:

(i) the inability of the *pro se* party to retain counsel by other means;

(ii) the potential merit of the claims as set forth in the pleadings;

(iii) the nature and complexity of the action, both factual and legal, including the need for factual investigation;

(iv) the presence of conflicting testimony calling for a lawyer's presentation of evidence and cross-examination;

(v the capability of the *pro se* party to present the case;

(vi) the degree to which the interests of justice will be served by appointment of counsel, including the benefit the Court may derive from the assistance of appointed counsel; and

(vii) any other factors deemed appropriate by the Screening Committee.

(f) Report to the Court. The Screening Committee's recommendation that counsel should or should not be appointed shall be forwarded promptly to the assigned Judge.

(g) Order of Appointment. When, after receiving the recommendation of the Screening Committee, the assigned Judge concludes that the appointment of counsel is warranted, the Judge shall direct the Clerk of the Court to identify an attorney(s) or law firm from the Pro Bono Panel for appointment. After the selected attorney has confirmed that s/he has no conflict of interest (*see* section 3(h) below), the Judge shall issue an order directing the appointment of the attorney selected by the Clerk of the Court to represent the *pro se* party. If the Screening Committee has not recommended the appointment of counsel and the Judge nonetheless believes that appointment is warranted, the Judge may ask the Clerk of the Court to select an attorney from the Panel to represent the *pro se* party. If the Court denies the *pro se* party's application for appointment of counsel, the assigned Judge shall issue an order so stating.

If an appointment is made, the Clerk of the Court shall immediately send written notice of the appointment to the selected attorney. A copy of the order of appointment shall accompany the notice. In addition to notifying the attorney, the Clerk shall also notify all of the parties to the action of the appointment, including the name, address, and telephone number of the appointee. Upon receiving notice of appointment, the appointed attorney shall enter an appearance in the action. The complete case file shall be made available to the attorney by the Clerk of the Court for inspection and copying.

(h) Check for Conflicts of Interest. Before the name of an attorney(s) or law firm from the Pro Bono Panel is given to the assigned Judge for appointment, the Clerk shall forward the names of the parties in the case to the selected attorney. The selected attorney shall promptly notify the Clerk of the Court of the existence of an actual conflict of interest.

(i) Record of Attorney Appointments. The Clerk shall maintain a record of all appointments.

Section 4. Appointment Procedure in Prisoner Civil Rights Cases

(a) Pro Se Prisoner Party. A civil rights action duly commenced by a *pro se* prisoner litigant will be assigned to a Judge in the same manner as any other civil action.

(b) Order of Appointment. Whenever the assigned Judge concludes that appointment of counsel is warranted pursuant to 28 U.S.C. § 1915, the Judge shall direct the Clerk of the Court to identify an attorney(s) or law firm from the Pro Bono Panel to represent the litigant. If

deemed desirable, the Judge may direct appointment of a specific attorney on the Panel or an attorney not on the Panel who is especially qualified by interest or otherwise to undertake the representation. After the selected attorney has confirmed that s/he has no conflict of interest (*see* section 4(c) below), the Judge shall issue an order directing the appointment of the attorney or law firm selected to represent the *pro se* prisoner litigant.

The Clerk of the Court shall immediately send written notice of the appointment to the selected attorney or law firm. A copy of the order of appointment shall accompany the notice. In addition to notifying the attorney, the Clerk shall notify all of the parties to the action of the appointment, including the name, address, and telephone number of the appointee. Upon receiving notice of appointment, the appointed attorney shall enter an appearance in the action. The complete case file shall be made available to the attorney by the Clerk of the Court for inspection and copying.

(c) Check for Conflicts of Interest. Before the name of an attorney(s) or law firm is given to the assigned Judge for appointment, the Clerk shall forward the names of the parties in the case to the selected attorney. The selected attorney shall promptly notify the Clerk of the Court of the existence of an actual conflict of interest.

(d) Record of Attorney Appointments. The Clerk shall maintain a record of all appointments. Before assigning an attorney to represent a *pro se* prisoner litigant, the Clerk shall determine whether the litigant has any other case pending before the Court and whether an attorney has been appointed in such case. Whenever an appointed attorney is already representing the litigant in another action, such attorney is encouraged but not required to represent the litigant in the new action. The Clerk shall inquire of the appointed attorney whether he or she will accept appointment in the new action. If the appointed attorney declines, the Clerk shall appoint an attorney, at random, in accordance with this Plan.

Section 5. Expenses

(a) The appointed attorney or the firm with which the attorney is affiliated shall seek reimbursement from the *pro se* litigant for the costs incurred in litigating the action to the extent the litigant is able to bear such costs. If the litigant is unable to do so, the appointed attorney or the firm with which the attorney is affiliated may apply for reimbursement of reasonable expenses to the Western District Court Civil Rights Litigation Fund as specified below. If reimbursement is not available from the *pro se* litigant or the Litigation Fund, the appointed attorney or the firm with which the attorney is affiliated may be required to bear the costs of the litigation (e.g., discovery expenses, subpoena fees, or transcript expenses).

(b) If the litigant is unable to bear the costs of the litigation, the attorney may apply for reimbursement of reasonable expenses to the Western District Court Civil Rights Litigation Fund formed to provide monies to defray costs for this purpose.

Section 6. Compensation for Services

(a) If the action is one for which compensation for legal services may become available to the appointed attorney by statute, the Clerk of the Court shall provide a written notice informing the *pro se* litigant at the time the order of appointment is issued. Such notice shall also inform the party that any statutory fee award may be made only by the Judge at the conclusion of the case.

(b) Upon appropriate application by the appointed attorney, the Judge may grant attorney's fees to the appointed attorney for services rendered in the action, as authorized by applicable statute, regulation, rules, or other provisions of law, and as the Judge deems just and proper. In deciding whether to award attorney's fees, the Judge shall consider the relevant statutes and prevailing legal standards.

(c) If, after appointment, the appointed attorney discovers the party is able to pay for legal services, the attorney shall bring this information to the attention of the assigned Judge. The Judge may thereupon (i) approve a fee arrangement between the party and the attorney, or (ii) relieve the attorney from the responsibilities of the order of appointment and permit the party to retain another attorney or to proceed *pro se*.

(d) All costs advanced by the Western District Court Civil Rights Litigation Fund shall be repaid to the Fund if later awarded by the Court to a prevailing *pro se* plaintiff.

Section 7. Educational Panels and Pilot Projects

(a) Educational panels of attorneys and others experienced in the preparation and trial of civil rights actions involving *pro se* litigants may be created to assist Panel members.

(i) The panels are authorized to conduct educational programs for attorneys on the Pro Bono Panel to train and assist said attorneys in the preparation and trial of civil rights actions involving *pro se* litigants.

(ii) The Clerk is authorized to maintain a list of attorneys experienced in the preparation and trial of civil rights actions involving *pro se* litigants, whether or not such attorneys serve on an educational panel. Such attorneys may be consulted by attorneys on the Pro Bono Panel as necessary and appropriate.

(iii) Each attorney appointed to a civil rights *pro se* litigant case shall receive a copy of materials prepared for training purposes.

(b) Pilot projects may be developed that augment and enhance the Plan for the purpose of assisting *pro se* litigants. If approved by the Court, the Plan may be amended to incorporate any successful pilot project.

Section 8. Rules and Regulations

The United States District Court for the Western District of Washington shall adopt rules and regulations in accordance with this Plan and reserves the right to amend such rules from time to time as the Court deems appropriate.