CLE Program Materials

Pro Se Assistance Program Training
Friday, January 17, 2014
12:00 – 2:00 p.m.

Outline – Robert M. Elardo, ECBA Volunteer Lawyers Project

Earning Pro Bono Service CLE Credits

New York State Unified Court System – Rules of Professional Conduct

Pro Se Litigant Fact Sheet

Intake Form

Retainer Agreement

U.S. Citizenship Certification

Pro Se Assistance Program Consultation Form

Attorney Affirmation Pro Bono CLE Activities Performed Through The ECBA Volunteers Lawyers Project, Inc.

Outline – Charles S. Carra, Esq. & Betsy L. Sterling, Esq., Pro Se Staff Attorneys, WDNY

What is the Federal Bar Association?
PRO SE ASSISTANCE PROGRAM
Attorney Training
January 17, 2014

Robert M. Elardo
Managing Attorney/CEO
Erie County Bar Association Volunteer Lawyers Project, Inc. (VLP)

Outline

1. What is VLP?
2. Earning CLE credits for pro bono work
3. Attorney Emeritus Status and its benefits
4. Limited Scope Representation under the NY Rules of Professional Conduct
5. Volunteer attorney role at the Pro Se Assistance Program
6. Completing the Consultation Form
7. Completing the Attorney Affirmation Form to get CLE credit
New Liberal Rules for Earning Pro Bono Service CLE Credits

The New York State CLE Program Rules have been revised increasing the number of pro bono service credits which may be used to satisfy the 24 credit biennial CLE requirement and reducing the length of time required to earn these credits.

- Number of Pro Bono Service CLE credits allowed *increased.*
  - 10 out of the 24 required credits per reporting period can be for pro bono service.

- # of minutes needed to earn PB service credits *reduced.*
  - Now earn 1 CLE credit for every 120 minutes of service.

- Attorney Emeritus volunteers eligible to earn *more* credits.
  - Earn up to 15 PB service credits per reporting period.

**NYS CLE Program Rules – Revised §1500.22(J) Credit for Performing Pro Bono Legal Services**

“Credit may be earned for performing uncompensated legal services for clients unable to afford counsel pursuant to (a) assignment by a court; or (b) a program, accredited by the CLE Board, of a bar association, legal service provider or other entity.”

**Pro Bono Service CLE Credits for Newly Admitted Attorneys**

Newly admitted attorneys may earn pro bono CLE credit solely for the purpose of carrying over credits to the following biennial reporting cycle. A maximum of six (6) CLE credits, including pro bono CLE credit, may be carried over to the following biennial reporting cycle.

The Erie County Bar Association Volunteer Lawyers Project, Inc. (VLP), is an accredited *Pro Bono Service CLE Provider.* Volunteer attorneys may earn pro bono service CLE credits for assisting VLP clients with divorces, bankruptcies, immigration matters, child support, unemployment hearings, eviction defense (at Attorney of the Morning) or any of the wide variety of other civil law matters, that VLP handles. To find out about volunteering contact:

Christine Biggie, VLP Volunteer Attorney Coordinator
E-Mail cbiggie@ecbavlp.com or call (716) 847-0662 ext. 317
NEW YORK STATE UNIFIED COURT SYSTEM

PART 1200
RULES OF PROFESSIONAL CONDUCT

Dated: May 1, 2013

These Rules of Professional Conduct were promulgated as Joint Rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009. They supersede the former part 1200 (Disciplinary Rules of the Code of Professional Responsibility).

The New York State Bar Association has issued a Preamble, Scope and Comments to accompany these Rules. They are not enacted with this Part, and where a conflict exists between a Rule and the Preamble, Scope or a Comment, the Rule controls. This unofficial compilation of the Rules provided for informational purposes only. The official version of Part 1200 is published by the New York State Department of State. An unofficial on-line version is available at www.dos.ny.gov/info/nycrr.html (Title 22 [Judiciary]; Subtitle B Courts; Chapter IV Supreme Court; Subchapter E All Departments; Part 1200 Rules of Professional Conduct; §1200.0 Rules of Professional Conduct).

SELECTED RULES:

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless:
   (1) the client gives informed consent, as defined in Rule 1.0(j);
   (2) the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community; or
   (3) the disclosure is permitted by paragraph (b).

“Confidential information” consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential. “Confidential information” does not ordinarily include (i) a lawyer’s legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates.

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:
   (1) to prevent reasonably certain death or substantial bodily harm;
   (2) to prevent the client from committing a crime;
   (3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud;
   (4) to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer’s firm or the law firm;
   (5) (i) to defend the lawyer or the lawyer’s employees and associates against an accusation of wrongful conduct; or (ii) to establish or collect a fee; or
   (6) when permitted or required under these Rules or to comply with other law or court order.

(c) A lawyer shall exercise reasonable care to prevent the lawyer’s employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidential information of a client, except that a lawyer may reveal the information permitted to be disclosed by paragraph (b) through an employee.
Rule 1.7 Conflict Of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

1. the representation will involve the lawyer in representing differing interests; or
2. there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
2. the representation is not prohibited by law;
3. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
4. each affected client gives informed consent, confirmed in writing.

Rule 1.8 Current Clients: Specific Conflict of Interest Rules

(a) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless:

1. the transaction is fair and reasonable to the client and the terms of the transaction are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
2. the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and
3. the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not:

1. solicit any gift from a client, including a testamentary gift, for the benefit of the lawyer or a person related to the lawyer; or
2. prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any gift, unless the lawyer or other recipient of the gift is related to the client and a reasonable lawyer would conclude that the transaction is fair and reasonable. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to conclusion of all aspects of the matter giving rise to the representation or proposed representation of the client or prospective client, a lawyer shall not negotiate or enter into any arrangement or understanding with:

1. a client or a prospective client by which the lawyer acquires an interest in literary or media rights with respect to the subject matter of the representation or proposed representation; or
2. any person by which the lawyer transfers or assigns any interest in literary or media rights with respect to the subject matter of the representation of a client or prospective client.

(e) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that:

1. a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;
2. a lawyer representing an indigent or pro bono client may pay court costs and expenses of litigation on behalf of the client; and
(3) a lawyer, in an action in which an attorney’s fee is payable in whole or in part as a percentage of the recovery in the action, may pay on the lawyer's own account court costs and expenses of litigation. In such case, the fee paid to the lawyer from the proceeds of the action may include an amount equal to such costs and expenses incurred.

(f) A lawyer shall not accept compensation for representing a client, or anything of value related to the lawyer’s representation of the client, from one other than the client unless:
   (1) the client gives informed consent;
   (2) there is no interference with the lawyer’s independent professional judgment or with the client-lawyer relationship; and
   (3) the client's confidential information is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, absent court approval, unless each client gives informed consent in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims involved and of the participation of each person in the settlement.

(h) A lawyer shall not:
   (1) make an agreement prospectively limiting the lawyer’s liability to a client for malpractice; or
   (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
   (1) acquire a lien authorized by law to secure the lawyer’s fee or expenses; and
   (2) contract with a client for a reasonable contingent fee in a civil matter subject to Rule 1.5(d) or other law or court rule.

(j) (1) A lawyer shall not:
   (i) as a condition of entering into or continuing any professional representation by the lawyer or the lawyer’s firm, require or demand sexual relations with any person;
   (ii) employ coercion, intimidation or undue influence in entering into sexual relations incident to any professional representation by the lawyer or the lawyer’s firm; or
   (iii) in domestic relations matters, enter into sexual relations with a client during the course of the lawyer's representation of the client.

   (2) Rule 1.8(j)(1) shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships that predate the initiation of the client-lawyer relationship.

(k) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this Rule solely because of the occurrence of such sexual relations.

Rule 1.9 Duties To Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) Unless the former client gives informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:
   (1) whose interests are materially adverse to that person; and
   (2) about whom the lawyer had acquired information protected by Rules 1.6 or paragraph (c) of this Rule that is material to the matter.
(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

1. use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client, except as these Rules would permit or require with respect to a current client or when the information has become generally known; or
2. reveal confidential information of the former client protected by Rule 1.6 except as these Rules would permit or require with respect to a current client.

Rule 1.10 Imputation Of Conflicts Of Interest

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9, except as otherwise provided therein.

(b) When a lawyer has terminated an association with a firm, the firm is prohibited from thereafter representing a person with interests that the firm knows or reasonably should know are materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm if the firm or any lawyer remaining in the firm has information protected by Rule 1.6 or Rule 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, the firm may not knowingly represent a client in a matter that is the same as or substantially related to a matter in which the newly associated lawyer, or a firm with which that lawyer was associated, formerly represented a client whose interests are materially adverse to the prospective or current client unless the newly associated lawyer did not acquire any information protected by Rule 1.6 or Rule 1.9(c) that is material to the current matter.

(d) A disqualification prescribed by this Rule may be waived by the affected client or former client under the conditions stated in Rule 1.7.

(e) A law firm shall make a written record of its engagements, at or near the time of each new engagement, and shall implement and maintain a system by which proposed engagements are checked against current and previous engagements when:

1. the firm agrees to represent a new client;
2. the firm agrees to represent an existing client in a new matter;
3. the firm hires or associates with another lawyer; or
4. an additional party is named or appears in a pending matter.

(f) Substantial failure to keep records or to implement or maintain a conflict-checking system that complies with paragraph (e) shall be a violation thereof regardless of whether there is another violation of these Rules.

(g) Where a violation of paragraph (e) by a law firm is a substantial factor in causing a violation of paragraph (a) by a lawyer, the law firm, as well as the individual lawyer, shall be responsible for the violation of paragraph (a).

(h) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent in any matter a client whose interests differ from those of another party to the matter who the lawyer knows is represented by the other lawyer unless the client consents to the representation after full disclosure and the lawyer concludes that the lawyer can adequately represent the interests of the client.

Rule 6.1 Voluntary Pro Bono Public Service

Lawyers are strongly encouraged to provide pro bono legal services to benefit poor persons.

(a) Every lawyer should aspire to:

1. provide at least 50 hours of pro bono legal services each year to poor persons; and
2. contribute financially to organizations that provide legal services to poor persons. Lawyers in private practice or employed by a for-profit entity should aspire to contribute annually in an amount at least equivalent to
(i) the amount typically billed by the lawyer (or the firm with which the lawyer is associated) for one hour of time; or
(ii) if the lawyer’s work is performed on a contingency basis, the amount typically billed by lawyers in the community for one hour of time; or (iii) the amount typically paid by the organization employing the lawyer for one hour of the lawyer’s time; or (iv) if the lawyer is underemployed, an amount not to exceed one-tenth of one percent of the lawyer’s income.

(b) Pro bono legal services that meet this goal are:
   (1) professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel;
   (2) activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and
   (3) professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons.

(c) Appropriate organizations for financial contributions are:
   (1) organizations primarily engaged in the provision of legal services to the poor; and
   (2) organizations substantially engaged in the provision of legal services to the poor, provided that the donated funds are to be used for the provision of such legal services.

(d) This Rule is not intended to be enforced through the disciplinary process, and the failure to fulfill the aspirational goals contained herein should be without legal consequence.

**Rule 6.5 Participation in Limited Pro Bono Legal Service Programs**

(a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association or not-for-profit legal services organization, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

   (1) shall comply with Rules 1.7, 1.8 and 1.9, concerning restrictions on representations where there are or may be conflicts of interest as that term is defined in these Rules, only if the lawyer has actual knowledge at the time of commencement of representation that the representation of the client involves a conflict of interest; and
   (2) shall comply with Rule 1.10 only if the lawyer has actual knowledge at the time of commencement of representation that another lawyer associated with the lawyer in a law firm is affected by Rules 1.7, 1.8 and 1.9.

(b) Except as provided in paragraph (a)(2), Rule 1.7 and Rule 1.9 are inapplicable to a representation governed by this Rule.

(c) Short-term limited legal services are services providing legal advice or representation free of charge as part of a program described in paragraph (a) with no expectation that the assistance will continue beyond what is necessary to complete an initial consultation, representation or court appearance.

(d) The lawyer providing short-term limited legal services must secure the client’s informed consent to the limited scope of the representation, and such representation shall be subject to the provisions of Rule 1.6.

(e) This Rule shall not apply where the court before which the matter is pending determines that a conflict of interest exists or, if during the course of the representation, the lawyer providing the services becomes aware of the existence of a conflict of interest precluding continued representation.

**Comments to Rule 6.5**

[1] Legal services organizations, courts, government agencies, bar associations and various non-profit organizations have established programs through which lawyers provide free short-term limited legal services, such as advice or the completion of legal forms, to assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to utilize the conflict-checking system required by Rule
1.10(e) before providing the short-term limited legal services contemplated by this Rule. See also Rules 1.7, 1.8, 1.9, 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client’s informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client, but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, these Rules, including Rules 1.6 and Rule 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7, 1.8 and 1.9 only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer’s firm is affected by these Rules.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer’s firm, paragraph (b) provides that Rules 1.7 and 1.9 are inapplicable to a representation governed by this Rule, except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 only when the lawyer knows that the lawyer’s firm is affected by Rules 1.7, 1.8 or 1.9.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.
Pro Se Litigant Fact Sheet

THE PRO SE ASSISTANCE PROGRAM

WHAT IS IT?
- Free limited scope legal assistance for pro se litigants
- A joint program of the SUNY Buffalo Law School and the ECBA Volunteer Lawyers Project
- This program is not administered by the United States District Court WDNY

WHO IS SERVED?
- You are financially eligible (within 200% of the federal poverty level)
- You do not have an attorney
- You filed or will be filing a civil case or you have been sued in a civil case in the US District Court WDNY

WHAT SERVICES CAN THE VOLUNTEER ATTORNEY PROVIDE?
- Information about federal court procedures and the law as it applies to the facts of your case as you describe them
- Advice about preparing pleadings, motions or other court documents
- Consultation relating to discovery and motion practice
- Referrals to other services, in appropriate cases

THE VOLUNTEER ATTORNEY WILL NOT:
- Appear in court on your behalf
- Research, write or file court documents for you
- Conduct any investigation into the facts of your case
- Negotiate with your opponent or your opponent’s attorney

THE VOLUNTEER ATTORNEY MAY DECLINE TO ASSIST YOU AFTER INTERVIEWING YOU IF:
- The attorney has already given advice to your opponent;
- Your legal problem is beyond the scope of the Pro Se Assistance Program;
- In the attorney’s view, giving you advice would conflict with any provision of the New York Rules of Professional Conduct.
- You are dishonest or uncooperative

WHAT SHOULD I HAVE WITH ME WHEN I MEET WITH THE PRO SE ASSISTANCE PROGRAM?
- Any pleadings or court documents that have already been filed
- Any documents that you want the volunteer attorney to review

Opening on February 12, 2014

THE PRO SE ASSISTANCE PROGRAM IS OPEN
WEDNESDAYS AND FRIDAYS
FROM 11 AM-2PM
AT THE OFFICE OF THE CLERK, 2ND Floor
ROBERT H. JACKSON COURTHOUSE, 2 NIAGARA SQUARE, BUFFALO, NY 14202
Name

Date / / 

Address

City/Zip ____________________________ County ____________

Telephone (__) SS# - - DOB / / Sex M F

Ethnicity: W B H N A Translator: Y N Citizen: Y N Disability: Y N

Marital Status: Divorced Married Widowed Single

Number in Household:
Under 18 Total: Living with client:
18 - 59  Spouse Children/ages
60 & Over Others in household

Opposing Party

Address Phone

Opposing Attorney

Address Phone

Income Source and Amount:
Employment wk, 2wk, ½ mo, mo, yr Vehicles for trans.
SSI mo Other Vehicles
Welfare ½ mo, mo Real Estate
SSD mo. Stocks/Bonds
Child Support wk, 2wk, ½ mo, mo, yr Bank Accounts
UIB wk, 2wk Rent Own Neither (Circle one)

Rent Payment $ /mo

Advocate/Legal Worker

Unit: Federal Court Funding Source: (circle one)
01 LSC/OCA/IOLA 21 DOH General
02 OCA/IOLA 90 Unrestricted
20 DOH Families

Problem Code Legal Problem

Volunteer Attorney

Date Closed / / Closed by

Closing Code
A Counsel and Advice G Negotiated Settlement w/Litigation
B Brief Service H Administrative Agency Decision
C Referred Ia Court Decision - Uncontested
D Insufficient Merit Ib Court Decision - Contested
E Client Withdrew or Did Not Return Ic Court Decision - Appeal
F Negotiated Settlement J Change in Eligibility Status or Not Eligible
Without Litigation K Other

Level of service: (circle one)
Fully Served – Brief Service Fully Served – Extended Service
Unable to Serve Fully Unable to Serve

Litigation:
Avoided Reduced

Hours
VLP Staff
Volunteer Attorney #1
Volunteer Attorney #2
Volunteer Attorney Staff Time

Major Benefit Code:

Number Benefitted:

$ Direct Benefit:

$ /mo $ lump

$ Indirect Benefit:

$ /mo $ lump

Taxpayer Savings:

Federal Court's new intake sheet as of 01/2014
Case No. 14 -02- DC
I, [client], request ECBA Volunteer Lawyers Project, Inc. (VLP) to provide legal representation for the following problem:

**Federal Court Civil Matter - advice only**
(I understand I must complete a separate retainer agreement if I request VLP to represent me before an administrative or legislative body.)

Upon acceptance of this agreement, VLP will attempt to provide the client with legal advice and/or a volunteer attorney and will take such other professional steps to represent the client as are deemed appropriate.

**RESPONSIBILITIES OF CLIENT:**
To honestly and as completely as possible tell VLP and any volunteer attorney assigned to client's case all facts about client's case and eligibility for services. TO COOPERATE FULLY WITH THE VOLUNTEER ATTORNEY.

**RIGHTS OF CLIENT:**
To utilize the client grievance procedure if client is dissatisfied with the treatment or services client receives with the understanding that client can decide at any time that client does not wish VLP to continue to represent client.

The grievance procedure is posted in VLP's waiting room and copies are available upon request.

**RESPONSIBILITIES OF VLP:**
To determine, based upon financial eligibility and case type priorities, whether the client is eligible for service.

**RIGHTS OF VLP:**
To choose the attorney or paralegal to work on a client's case and, in consultation with client, to determine what professional steps are appropriate to represent the client.

VLP is not obliged to represent client in any related or unrelated subsequent proceedings. However, VLP will consider representing client in any subsequent matter, depending upon case type priorities and the availability of a volunteer attorney.

Accepted:

ECBA Volunteer Lawyers Project, Inc. Date

[Client Signature] Date
U.S. CITIZENSHIP CERTIFICATION

I hereby certify that I am a citizen of the United States of America.

Signed  X

Print Name  X  Date  X

If there is reason to doubt an applicant’s claim of citizenship, you must require documentary evidence of U.S. citizenship from the applicant, and make a copy of the evidence, which will be placed in the case file. If the applicant is not a U.S. citizen, VLP must complete the Alien Eligibility Form.

An original or certified copy of any of the following documents is acceptable as proof of U.S. citizenship:

2. Birth certificate         5. Commuter Status Card (INS Form I-178)
3. Naturalization certificate 6. Baptismal certificate showing place of birth within the U.S. and a date of baptism within two months after birth.

INFORMED CONSENT FOR SHORT-TERM LIMITED LEGAL SERVICES

I understand that the attorney that will assist me today is a volunteer or staff attorney of the ECBA Volunteer Lawyers Project and I understand that his/her representation in this Federal Court civil matter will not continue beyond today at the Pro Se Assistance Program. I hereby give my consent to this short-term limited representation.

 X  X
Client Signature  Date

ECBA VOLUNTEER LAWYERS PROJECT, INC.
237 MAIN STREET, SUITE 1000
Buffalo, New York 14203
(716) 847-0662
PRO SE ASSISTANCE PROGRAM
ATTORNEY CONSULTATION FORM
TO BE FILLED OUT BY ATTORNEY and/or LAW STUDENT
(attach additional pages if necessary)

Client Name: ___________________________ Date: ___________________

Attorney Name: ___________________________

LEGAL ISSUE(S): ____________________________________________________

ARE THERE ANY EXISTING ORDERS FOR THIS ISSUE? Yes / No

HAS THE LAW SUIT BEEN FILED? Yes / No

DOES THE CLIENT HAVE AN ATTORNEY FOR THIS MATTER? Yes / No

IS CLIENT THE Plaintiff or Defendant? (circle one)

WHAT STAGE IS THIS CASE AT?

RELEVANT FACTS: ____________________________________________________

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

ADVICE GIVEN TO CLIENT: ___________________________________________

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

OUTCOME:

_________________________________________________________________
_________________________________________________________________

□ Avoided Litigation □ Reduced Litigation
ATTORNEY AFFIRMATION
PRO BONO CLE ACTIVITIES PERFORMED THROUGH
The ECBA VOLUNTEER LAWYERS PROJECT, Inc.

***PLEASE NOTE ANY CHANGES TO YOUR CONTACT INFO***

ATTORNEY NAME: _______________________________________________
LAW FIRM (if any): _______________________________________________
ADDRESS: _______________________________________________________
PHONE #: ________________________________________________________
FAX #: ___________________________________________________________
E-MAIL ADDRESS: _______________________________________________

On ________________________(date) I performed Pro Bono work
through the ECBA Volunteer Lawyers Project, Inc. Pro Bono Program for The PRO
SE ASSISTANCE PROGRAM, A Joint Program of the SUNY Buffalo Law School and
ECBA Volunteer Lawyers Project, which provides pro bono legal advice and limited
scope representation to eligible low income clients regarding WDNY Federal Court
Pro Se litigation matters.

On this day, I volunteered ___ hours.

I hereby Affirm that the foregoing is true and correct.

Attorney Signature Date

PLEASE RETURN THIS FORM TO:
ECBA VOLUNTEER LAWYERS PROJECT
237 Main St., Suite 1000, Buffalo, NY 14203
FAX: (716) 847-0307 or gmurphy@ecbavlp.com
OVERVIEW OF PRO SE LITIGATION IN
THE UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF NEW YORK

Charles S. Carra, Esq.
Betsy L. Sterling, Esq.
Pro Se Staff Attorneys, WDNY

I. What is the Pro Se Office

A. Role of Pro Se Law Clerk/Staff Attorney

B. Role of the Clerk’s Office in relation to pro se litigants.

II. What is In Forma Pauperis (IFP)?

A. **28 U.S.C. § 1915(a)**

   (1.) Form Motion and Affirmation: Filed with complaint.<http://www.nywd.uscourts.gov/sites/default/files/IFPApplicationForm.pdf>


      (i) Covers costs of service of summons and complaint, and costs of printing record on appeal.

      (ii) Does not cover discovery expenses of any kind.

(6.) Appointment of counsel. 28 U.S.C. § 1915(e). Appointment of counsel to indigent litigants—strict standards. See Hendricks v. Coughlin, 114 F.3d 390, 392 (2d Cir. 1997) (when determining whether to appoint counsel, the Court must first look to the "likelihood of merit" of the underlying dispute).

III. Court Forms/Guidelines for Pro Se Litigants:<http://www.nywd.uscourts.gov/pro-se-forms> (Pro Se Forms)

A. Pleading/Complaint Forms:
   Prisoner and Non-Prisoner Complaint Forms; Employment Discrimination Complaint; Social Security Appeal Form

B. Motion Format and Instructions Forms
   (1.) Notice of Motion, Affidavit/Affirmation in Support, Affirmation of Service.


IV. Relevant Local Rules and Standing Orders

A. Local Rule 5.2
   (1.) Case Assignment, LR 5.2(e) and Standing Order, filed July 1, 2013. Non-prisoner pro se cases assigned randomly to a District Judge. All cases filed by same pro se plaintiff will be assigned to District Judge assigned to the last case previously filed by same plaintiff.

   (2.) Current Address, LR 5.2(d). Pro se litigants must provide court, in writing, with a current address and must inform Court of any change of address immediately. Failure to do so may result in dismissal with prejudice.

   (3.) Filing all Discovery Material, LR 5.2(f). All discovery materials, e.g., Initial Disclosures, Requests for Interrogatories, Production of Documents, Deposition Notices, etc., MUST be filed. Litigants are responsible for redacting all confidential information: FRCP 5.2(c).

   (1.) Two types of referrals:

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1 All the court’s forms available for a pro se litigant’s use are located on the Court’s Public Website at this link. They are also available in hard copy form at Clerk’s Office. The website also has a Checklist of Forms (Opening Your Case Checklist) necessary for specific types of cases: Civil Rights or Diversity; Employment Discrimination; Social Security; Habeas Corpus; and Sharpe Motion. <http://www.nywd.uscourts.gov/opening-your-case-checklist>
(i.) Non-dispositive, § 636(b)(1)(A)–e.g., Rule 16 and 26 conferences, discovery, amendments of pleadings, settlement conferences;

(ii) Dispositive, § 636(b)(1)(B)-(C); Referral to hear and report on dispositive matters–e.g., Motions to Dismiss/Summary Judgment, Motion for Injunctive Relief.

C. Consent to Proceed before Magistrate Judge: 28 U.S.C. § 636(c)

(1.) Litigant will receive Notice of Availability of Magistrate Judge and Consent Form shortly after case is filed.

V. Common Subject Areas/Types of Claims Filed by Pro Se Litigants


(2.) Exhaustion requirement is not jurisdictional, but rather “is a precondition to bringing a Title VII claim in federal court ...”, Francis v. City of New York, 235 F.3d 763, 768 (2d Cir.2000) (citation omitted). It is thus subject to waiver and estoppel doctrines.

(3.) Attach Right-To-Sue Notice to Complaint.

(4.) State law claims, N.Y. Executive Law (Division of Human Rights Law), § 290 et seq. Often brought as pendent (supplemental jurisdiction) claim. A place on form to sue under state law. Administrative complaints brought in NYS Division of Human Rights must be brought in one year, N.Y. Exec.L., § 297(5), but plaintiff can file complaint directly in state court and statute of limitations is three years. Murphy v. American Home Products Corp., 58 N.Y.2d 293, 307 (1983). However, cannot do both; election of remedies doctrine under Division of Human Rights Law, Exec. Law § 297(9).

(5.) Individual liability: There is no individual liability under federal anti-discrimination laws. See Tomka v. Seiler, 66 F.3d 1295, 1317 (2d Cir. 1995) (Title VII), abrogated on other grounds, Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998). Individuals may be liable under state law where individual is shown to have an “ownership interest or any power to do more than carry out personnel decision made by others.” Patrowich v. Chem. Bank, 63 N.Y.2d 541, 542, 483 N.Y.S.2d 659, 473 N.E.2d 11 (1984).

(1.) 42 U.S.C. § 1983. Allows someone to sue a “person” acting “under color” of state law for a violation of his/her constitutional rights. This is simply an enabling statute. Section 1983 does not grant any substantive rights but rather “provides only a procedure for redress for the deprivation of rights established elsewhere,” such as in the Constitution. Sykes v. James, 13 F.3d 515, 519 (2d Cir.1993) (citation omitted), cert. denied, 512 U.S. 1240 (1994).


(i.) 1985(3): Conspiracy to violate a person’s rights based on person’s race. To state a cause of action under § 1985, a plaintiff must allege:

(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the laws, or equal privileges and immunities under the laws; [and] (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured or deprived of any right of a citizen of the United States.


(ii) 1985(6): Section 1986 imposes liability on an individual who has knowledge of discrimination prohibited under § 1985. Hence, a § 1986 claim is contingent on a valid § 1985 claim. Mian, 7 F.3d at 1088 (2d Cir. 1993).

(5.) Municipal liability. Although municipalities are considered "persons" for purposes of 42 U.S.C. § 1983, a local government entity may not be held liable under § 1983 unless the challenged action was performed pursuant to a municipal policy or custom. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694 (1978). Departments of Municipalities—e.g., City Police Department— are not proper defendants; only the Municipality is.


(1.) False Arrest: Fourth Amendment. Federal and state law is “substantially the same.” *Weyant v. Okst*, 101 F.3d 845, 852 (2d Cir. 1996). To state a claim for false arrest, Plaintiff must show that (1) Defendant intended to confine him; (2) Plaintiff was conscious of the confinement; (3) Plaintiff did not consent to the confinement; and (4) the confinement was not otherwise privileged. *Shain v. Ellison*, 273 F.3d 56, 68 (2d Cir. 2001) (citing *Singer v. Fulton County Sheriff*, 63 F.3d 110, 119 (2d Cir. 1995)). Probable cause a complete defense to false arrest. See *Singer*, 63 F.3d at 118.

(2.) Malicious Prosecution: Fourth Amendment. “To establish a claim for malicious prosecution under New York law, the plaintiff must show (1) that the defendant initiated a prosecution against the plaintiff, (2) that the defendant lacked probable cause to believe the proceeding could succeed, (3) that the defendant acted with malice, and (4) that the prosecution was terminated in the plaintiff's favor.” *Posr v. Court Officer Shield No. 207*, 180 F.3d 409, 417 (2d Cir. 1999) (citing *Ricciuti v. N.Y.C. Transit Authority*, 124 F.3d 123, 130 (2d Cir. 1997)). Adjournment in Contemplation of Dismissal (ACD) is not considered to be termination in plaintiff’s favor. *Smith v. City of New York*, 2013 WL 5942224 (S.D.N.Y., Nov. 6, 2013), citing *Murphy v. Lynn*, 118 F.3d 938, 947 (2d Cir. 1997).

(3.) Favorable Termination Rule/Delayed Accrual

(I.) *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). If plaintiff's claims—e.g., malicious prosecution—, if established, would imply the invalidity of his conviction or sentence, it can be brought only if his conviction or sentence “has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.” *Id.*

(ii.) *Wallace v. Kato*, 594 U.S. 384, 394-95 (2007). Prior to *Wallace*, courts applied Heck’s delayed accrual rule to false arrest claims and thus dismissed them without prejudice if conviction not invalidated, which it rarely was. But in *Wallace*, the Supreme Court held that a false arrest claims accrues for purposes of statute of limitation purposes when plaintiff is detained pursuant to legal process—e.g., arraignment. Plaintiff thus has three years from that date to bring false arrest claim. However, because a false arrest claim could, if proven, imply the invalidity of a conviction, the Court may stay the false arrest
claim until the criminal prosecution is concluded. “If the plaintiff is ultimately convicted, and if the stayed civil suit would impugn that conviction, Heck will require dismissal; otherwise, the civil action will proceed, absent some other bar to suit.” Wallace, 594 U.S. at 394-95.

D. Fair Debt Collections Practices Act (FDCPA), 15 USC 1692 et seq.

(1.) FDCPA enacted for purposes of eliminating abusive practice by debt collectors. Allows a suit by a “consumer” against a “debt collector” who is harmed by a violation of the practices expressly prohibited by FDCPA. See 15 U.S.C. § 1692a-1692o.

(2.) Various practices prohibited are: acquiring location information, certain types of communication, third-party communication, harassing or abusive conduct, false or misleading representations, unfair or misleading representations, etc. 15 U.S.C. § 1692b-h.

(3.) Strict Liability: Intent is only relevant in determining amount of “additional damages” 15 U.S.C. § 1692k(b).

(4.) Damages: 15 U.S.C. § 1692k:

(i) “actual damages” sustained—e.g., “out-of-pocket expenses, compensatory damages for emotional distress, humiliation, anguish and humiliation, see Kafele v. Lerner, Sampson & Rothfuss, L.P.A., 2005 WL 1379107 (S.D. Ohio 2005);

(ii) any additional damages as the court may allow not exceeding $1,000;

(iii) reasonable attorney’s fees and costs.

E. Social Security Appeals- Disability Benefits, 42 U.S.C. § 405(g), and Supplemental Security Income (SSI), 42 U.S.C. § 1383(c)(3).

(1.) Exhaustion of Administrative Remedies. Notice of Right to Sue. Must sue within 60 days of receipt of Notice of affirmance of ALJ’s determination by Social Security Administration’s Appeals Council. No extension from Court; extensions can be sought from Social Security Administration only.

(2.) Upon service of complaint and appearance by US Attorney’s Office, Court will issue scheduling order requiring parties to make motions within 60 days. See Standing Order, filed September 6, 2013. US Attorney’s Office files administrative record.

(3.) “Substantial Evidence” Standard. The court must accept the findings of fact made by the Commissioner, provided that such findings are supported by substantial evidence in the record. Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consolidated Edison Co. v NLRB, 305 U.S. 197, 229 (1938).
F. Immigration Issues: Court has limited jurisdiction over immigration issues.


(2.) 8 U.S.C. § 1447: Request for Hearing before District Court. If USCIS fails to make determination under § 1446 (Application for Naturalization) within 120 days after the examination is conducted, applicant may apply to district court, which may either determine the matter or remand it to USCIS.

G. Cases related to mortgage foreclosures


H. “Twilight Zone” Claims

(1.) Court has no subject jurisdiction over claims that are “factually frivolous” Denton v. Hernandez, 504 U.S. 25, 32-33 (1992) ("[A] court may dismiss a claim as factually frivolous only if the facts alleged are ‘clearly baseless,’ a category encompassing allegations that are ‘fanciful,’ ‘fantastic, and ‘delusional.’ As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.") (quoting Neitzke v. Williams, 490 U.S. 319, 325, 327, 328 (1989)).

VI. Common Pleading Problems to Avoid

• IFP entries are incomplete or income and expenses do not add up;
• State court (law) claim(s) only- no jurisdiction unless diversity or supplemental jurisdiction;
• No state actor in a civil rights under 42 U.S.C. § 1983;
• State, State Agencies or Municipal Liability in § 1983 actions;
• Name(s) of parties (often wrong or too many);
• Immunity: Eleventh Amendment, Judicial and Prosecutorial, Qualified;
• Failure to attach Right-to-Sue Letter: Employment Discr., Social Security Appeals;
• Too little information provided in complaint (dates, summary of events, individual defendants not named, etc.)/Too much information - court cannot determine what the claim is or if viable;
• Statutes of limitations;
• Inconsistent caption and parties: parties named in caption not referred to in body of complaint or vice versa;
• Failing to providing current address to the court: Notify Court of all address changes;
• Failure to prosecute; six months or court will issue order to show cause
VII. Common Questions

- **Rule 16 Conference**: notice, proposed scheduling order, etc.; and how to prepare for it;
- **Depositions**: having your deposition taken—what it means, how to prepare and how to respond to questions;
- **Types of discovery and how an indigent pro se plaintiff can utilize various discovery mechanisms**: interrogatories, production of documents, subpoenas, written depositions, depositions (including noticing, scheduling, paying for court reporter, transcripts);
- **Court’s Alternative Dispute Resolution (ADR) Program**: All non-prisoner pro se cases automatically referred in the same manner as attorney represented cases, except social security appeals. If pro se litigant proceeding IFP there is no mediator cost/fees. <http://www.nywd.uscourts.gov/alternative-dispute-resolution>
- **Default**: Clerk’s entry of default and default judgment, Fed.R.Civ.P 55;
- **Appointment of Counsel**: how to request. LR 83.1(f); District Court Fund; <http://www.nywd.uscourts.gov/pro-bono-requirement>; and
- **Appeals**: <http://www.nywd.uscourts.gov/sites/default/files/NoticeofAppealInstructions.pdf>
- **Public Law Libraries**: Robert H. Jackson United States Courthouse, 7th Floor; Supreme Court, Erie County Library, 77 West Eagle Street; SUNY Buffalo Law School
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The purpose of the Federal Bar Association is:

- To serve as the national representative of the Federal legal profession;
- To promote the sound administration of justice;
- To enhance the professional growth and development of members of the Federal legal profession;
- To promote high standards of professional competence and ethical conduct in the Federal legal profession;
- To promote the welfare of attorneys and judges employed by the Government of the United States;
- To provide meaningful service for the welfare and benefit of the members of the Association;
- To provide quality education programs to the Federal legal profession and the public;
- To keep members informed of developments in their respective fields of interest;
- To keep members informed of the affairs of the Association, to encourage their involvement in its activities, and to provide members opportunities to assume leadership roles;
- To promote professional and social interaction among members of the Federal legal profession.

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