

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAN 14 1 32 PM '86

DEPT

IN RE:

ADOPTION OF PROCEDURES
FOR ESTABLISHMENT OF A
BRADSHAW PANEL IN SACRAMENTO

GENERAL ORDER NO. 188

_____/

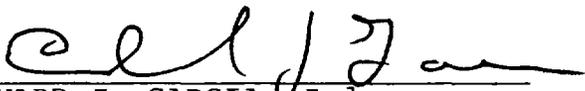
Pursuant to Bradshaw v. Zoological Society of San Diego, 662
F.2d 1301 (9th Cir. 1981) the attached procedure for the
appointment of counsel in Title VII (Title 42 U.S.C. §
2000E5(f)(1)) is hereby adopted by the Court.

DATED: January 14, 1986


LAWRENCE K. KARLTON, Chief Judge
U.S. District Court


MILTON L. SCHWARTZ, Judge
U.S. District Court


RAUL A. RAMIREZ, Judge
U.S. District Court


EDWARD J. GARCIA, Judge
U.S. District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Pursuant to Bradshaw v. Zoological Society of San Diego (C.A. Cal. 1981) 662 F.2d 1301, the following procedure for the appointment of counsel in Title VII [Title 42 U.S.C. Section 2000E5(f)(1)] cases is hereby adopted by the court.

1. The court's memorandum and procedure entitled, "Appointment of Counsel in Title VII Cases," shall be duplicated and provided to all plaintiffs eligible for court appointed counsel. (Example attached as Exhibit A hereto.)

2. The court shall establish and maintain with the Clerk a panel of attorneys for appointment in Title VII cases. This order shall be publicized in a manner calculated to insure the widest possible geographical representation of attorneys in the Eastern District. Counsel shall be compensated, as described below, for reasonable costs expended.

Unless subsequent experience dictates otherwise, the panel shall be open to those members of the bar of this court willing to serve. Counsel shall be appointed on a rotating basis with due regard, however, for the proximity of counsel's office to the residence of the client and the court in which the action is pending.

3. Regulating cost expenditures and reimbursements, at least at the outset, shall be handled on a case by case basis with each expenditure pre-approved. A simple form shall be submitted ex parte for approval by the district court. This form

will set out the nature of the contemplated expenditure, the reason for it, the anticipated amount and a summary of previous costs. A recommended form titled, "Request for Authority to Incur Costs (Appointed Counsel) and Request for Payment" is attached as Exhibit B. In the event that costs become excessive, the judge may either disapprove a contemplated expenditure, schedule a discovery or status conference or take such other action as is deemed appropriate.

4. Due to the responsibilities placed upon counsel in civil matters, e.g. Rule 11 of the Federal Rules of Civil Procedure, it is important that appointed counsel have a procedure to facilitate withdrawal when necessary. It is deemed advisable that this procedure allow for a withdrawal motion to be heard in camera by a judicial officer other than the trial judge so as to minimize prejudice to the plaintiff. Accordingly, rather than the procedure provided by Local Rule 182(b), when counsel appointed by the court pursuant to this rule desires to withdraw, upon the filing of the motion, it shall be referred to another district judge or to a magistrate. The motion shall then be heard ex parte and in camera.

5. It shall be the responsibility of counsel for plaintiff to reimburse the Clerk of the Court for all costs advanced pursuant to this procedure immediately upon settlement or other successful resolution of the case. Such reimbursement shall be made prior to any disbursement to counsel, plaintiff or any other person.

APPOINTMENT OF COUNSEL IN TITLE VII CASES

The law permits, but does not require, the judge to appoint a lawyer for a Title VII plaintiff, 42 U.S.C. § 2000e-5(f)(1). A Title VII plaintiff who wants the judge to appoint a lawyer to represent him must do more than simply ask.

A judge of this court must consider three factors in deciding whether or not to appoint counsel: (1) the poverty of the plaintiff; (2) the efforts of the plaintiff to get counsel for himself; and (3) the merits of the plaintiff's lawsuit. Bradshaw v. Zoological Society of San Diego, 662 F.2d 1301 (9th Cir. 1981). A plaintiff who wants the court to appoint counsel for him must show that he is too poor to hire his own lawyer, that he has made reasonable efforts to get a lawyer, and that his lawsuit is a likely winner.

Poverty generally means that the plaintiff has only enough money to eat and meet other basic needs. Poverty is shown by filing an Affidavit in Support of an Application for Leave to Proceed In Forma Pauperis.

Reasonable efforts mean that the plaintiff tried the appropriate legal aid offices and also at least two lawyers without success. The lawyers tried should be lawyers that do, sometimes, represent people in Title VII actions.

The merits of the lawsuit means that the plaintiff is likely, with the help of court-appointed counsel, to win his lawsuit. Likelihood of success can be shown by producing a

Right-To-Sue letter issued by E.E.O.C. in which the E.E.O.C. determines that there is "probable cause" to believe that the plaintiff was discriminated against. Otherwise, the plaintiff must explain to the judge what evidence he will produce if he is provided court-appointed counsel and why this evidence will show discrimination against the plaintiff.

In order to get a judge to consider a request for the appointment of counsel, the plaintiff must make a motion. The *appropriate forms are attached* ~~clerk's office has the forms~~ which the plaintiff needs to make a motion.

The first form is called "Motion." This is the simple request for the appointment of counsel. All the plaintiff need do is fill in the name and number of the case, sign and date the form.

The second form is called "Notice of Motion." This is a formal notice to the defendant that the plaintiff is making the motion, and telling the defendant on which day the motion will be argued before the judge. All the plaintiff need do is fill in the name and number of the case, sign and date the form.

The third form is called "Memorandum of Points & Authorities." This is a discussion of the law and the facts. In the memorandum the plaintiff explains why he is entitled to the appointment of counsel under the statute and the Bradshaw case. The plaintiff may simply refer the judge to his declarations of poverty and effort, but the plaintiff must be very clear and persuasive on why he is likely to win his lawsuit. The plaintiff

must fill in the name and number of the case. He must finish the memorandum with his clear and persuasive explanation of the merits of his lawsuit. He must sign and date the form.

The fourth form is called "Declaration." A declaration is a statement under penalty of perjury by a person having actual knowledge of the facts. The declaration form supplied by the clerk's office is intended to establish that the plaintiff has tried to get a lawyer for himself. It should be completed and signed by the plaintiff.

The fifth form is called a "Proof of Service." It establishes that the plaintiff sent copies of the Motion, Notice of Motion, Memorandum of Points and Authorities, and Declaration to the defendants' lawyers. The important thing about the Proof of Service is that it must be signed by someone other than the plaintiff, someone who is an adult and who actually puts the copies in the envelopes and puts the envelopes in the mail.

STEPS TO FOLLOW

1) Upon receipt of your right-to-sue letter, begin looking for a lawyer to represent you. Visit a legal aid office (see attached list). If none of those organizations will represent you, then visit two or three lawyers. If none of those lawyers will represent you, then you may file the motion.

2) ~~Obtain the forms from the clerk's office.~~ Completely fill out the Notice of Motion, Motion, Memorandum of Points and Authorities and Declaration.

3) Call the clerk's office. Tell the clerk the number of your case. Ask the court to tell you the next available date that is at least one month away. Fill in that date on the Notice of Motion.

4) Photocopy your papers. Make as many photocopies as there are defendants, plus two. Have a responsible, adult friend put a set of copies into an envelope for each defendant's lawyer; seal, address and stamp each envelope, and put the envelopes in the mail. Then have this same friend fill out the proof of service.

5) Bring the originals of your papers and the extra two copies to the clerk's office. The clerk will take the original and one set of the copies. The clerk will return the other set of copies to you stamped "Original Filed." Keep this set in your file.

6) Come to the hearing on the date you put on the Notice of Motion.

SACRAMENTO DIVISION COUNTIES
LEGAL AID OFFICES

Mother Lode Regional Office
Legal Services of Northern California
1133 High Street
Auburn, California 95603

Legal Center for the Elderly & Disabled
2125 "J" Street
Sacramento, California 95814

Legal Center for the Elderly
937 Spring Street
Placerville, California 95667

Community Legal Services
McGeorge School of Law
University of the Pacific
3200 Fifth Avenue
Sacramento CA 95818

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Plaintiff,
v.

Defendants.

NO.
MOTION FOR
APPOINTMENT
OF COUNSEL

TO THE HONORABLE COURT:

The plaintiff hereby moves for the appointment of counsel to represent (him) (her). This motion is based on the attached memorandum of points and authorities and on the attached declarations.

DATED: _____

Respectfully submitted,

Plaintiff

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counsel for (himself) (herself), and (3) the merits of the plaintiff's lawsuit. All three of these factors warrant the appointment of counsel in this case.

The plaintiff's indigency is established by the declaration submitted by the plaintiff in support of (his) (her) Application for Leave to Proceed in forma pauperis. The diligent, but unsuccessful, efforts of the plaintiff to obtain a lawyer to represent (him) (her) are established by the declaration of the plaintiff attached hereto.

The plaintiff has a strong likelihood of success in this action, provided that counsel is appointed to represent (him) (her), because _____

The plaintiff therefore respectfully urges that (he) (she) is entitled to court-appointed counsel under the authority of Bradshaw v. Zoological Society, supra, and asks the Court to grant the motion.

DATED: _____

Respectfully submitted,

Plaintiff

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

_____)	
_____)	
Plaintiff,)	
v.)	NO.
_____)	DECLARATION
_____)	
Defendants.)	
_____)	

COMES NOW THE PLAINTIFF AND DECLARES UNDER PENALTY OF PERJURY:

I am the plaintiff in the above-entitled action, which has been brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, to remedy discrimination in employment on the basis of (race) (sex) (religion) (national origin).

On _____, I visited the Community Legal Services Clinic at McGeorge School of Law, and asked them to represent me in connection with this case. They refused to do so.

On _____, I visited the office of Legal Services of Northern California, and asked them to represent me

1 in connection with this case. They refused to do so.

2 On _____, I visited the law offices of
3 _____ and asked (him)(her) to represent me
4 in connection with this case. (He)(She) refused to do so.

5 On _____, I visited the law offices of
6 _____ and asked (him)(her) to represent me
7 in connection with this case. (He)(She) refused to do so.

8 On _____, I visited the law offices of
9 _____ and asked (him)(her) to represent me
10 in connection with this case. (He)(She) refused to do so.

11 This declaration has been signed on _____
12 in _____, California.

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15 Plaintiff
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This declaration has been signed on _____
at _____, California.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

_____)	
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Plaintiff,)	
)	
v.)	NO.
)	NOTICE OF MOTION
_____)	
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_____)	
)	
Defendants.)	
_____)	

TO THE DEFENDANTS AND THEIR COUNSEL:

PLEASE TAKE NOTICE that on _____
at the hour of _____ a.m., in Courtroom No. ____, United States
Courthouse, 650 Capitol Mall, Sacramento, California, the plain-
tiff will move the Honorable Court to appoint counsel to repre-
sent (him) (her).

DATED: _____

Respectfully submitted,

Plaintiff

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

_____)	
_____)	NO. CIV.S-
Plaintiff,)	
v.)	<u>ORDER</u>
_____)	
_____)	
Defendant(s).)	
_____)	

Plaintiff, _____, is proceeding pro se with an action seeking relief for alleged employment discrimination on the basis of _____ under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e, et seq. On _____, plaintiff petitioned this Court for an appointment of counsel pursuant to the rationale of Bradshaw v. Zoological Society of San Diego, 662 F.2d 1301 (9th Cir. 1981). Pursuant to 42 U.S.C. §2000e-5(f)(1)(B), this Court is empowered

1 to appoint counsel in Title VII actions "in such circumstances
2 as the court may deem just ..." A trial court's discretion un-
3 der said provision is broad, albeit not a matter of right.
4 Bradshaw v. U.S. Dist. Court for S.D. of Cal., 742 F.2d 515 (9th
5 Cir. 1984); Ivey v. Board of Regents, 673 F.2d 266 (9th Cir.
6 1981).

7 The three relevant factors the district court must
8 consider in resolving the request for appointment of counsel
9 are: (1) the plaintiff's financial resources; (2) the efforts
10 made by plaintiff to secure counsel; and (3) whether plaintiff's
11 claim has merit. Bradshaw, supra, at 1318.

12 Upon examination of the record, this Court is per-
13 suaded that plaintiff has satisfied all three criteria. First,
14 since plaintiff is proceeding in forma pauperis, the first fac-
15 tor is a fortiori resolved in his favor. Second, since plain-
16 tiff has made several unsuccessful attempt to obtain legal coun-
17 sel, e.g., _____, the
18 second factor is likewise satisfied. As to the meritoriousness
19 of plaintiff's claim, this Court finds plaintiff has made a suf-
20 ficient preliminary showing.

21 For the foregoing reasons, and good cause appearing
22 therefor,

23 IT IS HEREBY ORDERED that plaintiff's motion for ap-
24 pointment of counsel is GRANTED;

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IT IS FURTHER ORDERED that _____,
who has volunteered to serve on the Title VII attorney panel, be
appointed as counsel for plaintiff.

IT IS SO ORDERED.

DATED: _____.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF CALIFORNIA

_____,
Plaintiff(s),
vs.
_____,
Defendants.

No.
REQUEST FOR AUTHORITY
TO INCUR COSTS
(APPOINTED COUNSEL)
AND REQUEST FOR
PAYMENT

Complete part and return it to the court (with two copies) for approval prior to incurring the cost for which reimbursement is requested.

PART I

I, _____, attorney for plaintiff(s),
declare as follows:

I was appointed to represent plaintiff(s) in this action on _____, 1985, by the Honorable _____, United States District Judge. I believe that the following course of action is reasonably necessary to the prosecution of this action:

(e.g., deposition of _____, defendant herein).

I have made reasonable inquiry and believe that the cost of this course of action will not exceed \$_____.

I therefore request that this court authorize the expenditure in an amount not to exceed that stated above for the completion of this

contemplated course of action.

The following payments of costs have been heretofore approved in this matter:

<u>Amount</u> <u>Approved</u>	<u>Purpose</u>	<u>Amount</u> <u>Paid</u>

I declare under penalty of perjury that the foregoing is true and correct.

Signed this _____ day of _____, 19____,
in _____, California.

Attorney for Plaintiff(s)

The above expenditure is

_____ Approved.

_____ Disapproved.

or,

_____ Good cause appearing therefor, this matter is set for discovery conference, pursuant to Rule _____, on _____, 19____, at _____ .M., in courtroom number _____.

UNITED STATES DISTRICT JUDGE

PART II

After securing court approval and after incurring the approved cost, complete this part of the form and return it to the clerk of the court with two copies.

To the clerk of the above-entitled court:

I declare under penalty of perjury that I have completed the action contemplated above, that I have incurred actual cost in the amount of \$____, and that I have paid that cost.

I therefore request reimbursement of this cost. I understand and agree that this cost will be reimbursed out of any recovery or settlement resulting from this action.

Signed this _____ day of _____, 19____, at _____, California.

Attorney for Plaintiff(s)