

ABA Military Pro Bono Project “Affirmation of Good Cause” Checklist

It is crucially important that all clients referred to the ABA Military Pro Bono Project (“MPBP”) have high-priority legal issues justifying receipt of the limited pro bono time available from private attorneys. In order to ensure that cases referred to the Project meet this standard, you must review the MPBP “good cause” checklist, and when referring cases, you will check off a box to indicate that you affirm and certify that the case has good cause for referral. In addition to certification that the client meets financial eligibility requirements, you will be affirming good cause based upon your answers to the following questions:

What are the operative facts regarding the legal issue? You will concisely state the operative facts related to the client’s legal issue. Attribute information for which the client is the sole source (“Client says X”; “Client claims Opposing Party did Y”) and will make clear which facts you have verified, or of which you have personal knowledge. Describe attempts to verify key factual elements either through further discussion with the client or independent verification. It is not expected, however, that you will exercise any more due diligence than would ordinarily be undertaken in any given case. In some cases, the facts provided by the client may be incomplete, confusing, or present a close question as to whether the client’s legal position is supportable. You may still refer the case if you believe, in your best legal judgment, that it is more likely than not that a pro bono attorney will be able to develop the facts more fully in the client’s favor; however, you should specifically identify those facts that you believe need further development to support the client’s position. Consultation with a Cause Panel regarding the factual elements necessary to support the client’s case may be helpful in this instance.

What is the client’s desired outcome? State the client’s specific objective (or objectives) for the pro bono representation. Good cause will be found only where you can articulate a good-faith legal basis for the client to obtain his or her objective. Identify both an attainable legal remedy under the facts and the law, and explain how securing this remedy will support the well-being of the servicemember. For example, an attorney would use remedies available under state landlord-tenant law and the SCRA to prevent eviction and maintain stable housing for the servicemember’s family.

What is the specific legal theory under which the client may achieve his or her objective? Explain the statutory and/or case law supporting the client’s legal position in the matter. In some instances you may not be able to obtain clear or supportable facts that are necessary to clearly establish a legal claim. Again, you will need only to determine a reasonable likelihood of success on the merits based upon further development of the facts by a pro bono attorney and the legal theories available should those facts be developed. If the client is a plaintiff or petitioner, describe the legal theory under which the client has a reasonable possibility of securing the remedy sought. If the client is a defendant or respondent, demonstrate the existence of a non-frivolous defense. In family matters, the person seeking a change in the status quo shall be deemed the plaintiff and the person defending the status quo shall be deemed the defendant for purposes of this determination, regardless of their formal procedural status. It is understood that certain

statutory protections found in the Servicemembers Civil Relief Act (SCRA) will be implicated in many cases involving other substantive areas of law. Consultation with Cause Panels may be helpful in developing legal theories.

How has the client attempted to resolve this issue? Explain the client's description of any formal or informal efforts to resolve the legal issue, whether with the help of military legal assistance or otherwise. Good cause to refer a case will exist only where all reasonable efforts to resolve the matter, whether in a legal forum or not, have either failed or are impracticable. The account of good-faith efforts to resolve the dispute will include explanation of attempts to secure legal assistance through alternative means (e.g., pursuing the claim through a government agency, or obtaining counsel on a contingency fee) when relevant, whether self-help and pro se representation is either not recommended or has been attempted and is no longer effective, and in every case why the local Legal Assistance office is not in a position to resolve the issue in the manner being requested of the volunteer private attorney.

Certification: Following the completion of the above five elements, you will affirm good cause (by clicking an "affirm" button) the following statement: "To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that the client I am referring to the Military Pro Bono Project has a bona-fide legal dispute, that the client's position is legally meritorious, with a good-faith basis for proceeding with the client's claim or defense, and that other available avenues for resolution of the issue have been exhausted."

As stated above, a referral should not be made until other known and practical means of resolving the legal issue have been exhausted, including (but not limited to) where appropriate: negotiation, seeking assistance from government agencies, attempting to secure contingency fee counsel, proceeding pro se with advice and self-help materials, and additional assistance through military legal assistance office. You should assess what alternative resources or means of resolving the issue are available and explain how these have been exhausted.