

FORM TO BE USED BY A LITIGANT FILING  
AN APPLICATION FOR PRO BONO COUNSEL

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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DISTRICT COURT  
2005 AUG 16 A 11:20

Commodity Futures Trading Commission

APPLICATION FOR PRO BONO COUNSEL  
28 U.S.C. § 1915(e)(1)

Plaintiff,

Equity Financial Group, LLC; Tech Traders, Inc.;  
Tech Traders, Ltd.; Magnum Investments, Ltd.; Magnum  
Capital Investments, LTD; Vincent J. Firth; Robert W. Shimer;  
Coyt E. Murray; and J. Vernon Abernethy

Civil Action No. 04 CV 1512

Judge Robert B. Kugler

Defendants.

INSTRUCTIONS - READ CAREFULLY

1. There is no constitutional guarantee to representation in civil cases. However, pursuant to 28 U.S.C. § 1915(e)(1), a district court may request an attorney to represent a person who has been granted permission to proceed in forma pauperis in the action and is unable to afford counsel.
2. If you have been granted permission to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, you are unable to afford counsel, and you feel that you need counsel to represent you in the action, then you may ask the judge assigned to your case to request a pro bono (free of charge) attorney to represent you by completing and filing the attached "Application for Pro Bono Counsel." If the defendant has been served with the summons and complaint in the case, you must mail to him or his lawyer (if he has one) a copy of your application and file with the Court a certification proving service of your application on your adversaries.
3. If your initial application for counsel is denied, you are free to make subsequent applications as your case nears trial.
4. If you file an Application for Pro Bono Counsel, the judge assigned to your case will determine whether to grant your application. Factors that the judge will consider include:
  - (a) the claim has some merit;
  - (b) the pro se party lacks the ability to present an effective case without an attorney;
  - (c) the legal issues are complex or, the ultimate legal issues are not complex, but the pro se party lacks the familiarity with the rules of evidence and discovery needed to translate understanding of the law into presentation of the proofs;
  - (d) factual investigation will be necessary and the party is not adequately able to pursue said investigation;
  - (e) the case is likely to turn on credibility determinations;

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- (f) the case will require expert testimony;
- (g) the party is unable to attain and afford counsel on his/her own behalf.

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See Parham v. Johnson, 126 F.3d 454 (3d Cir. 1997) ; Tabron v. Grace, 6 F.3d 147 (3d Cir. 1993).

- 5. If the judge grants your application, there is no guarantee that an attorney will be willing to accept your case. The Court cannot force or require an attorney to accept a civil case pro bono. The District of New Jersey has a panel of lawyers who may volunteer to provide pro bono representation where the judge has determined to request pro bono counsel for a party. The Clerk's Office attempts to find pro bono attorneys to take civil cases upon a judge's request; however, you will receive pro bono representation only if one of these attorneys volunteers to take your case. Despite the diligent efforts of the Clerk's Office, the process of finding pro bono attorneys may be lengthy and unsuccessful.
- 6. At any time during the process of trying to locate a pro bono attorney for you, you have the right to withdraw your Application for Pro Bono Counsel and continue to represent yourself.
- 7. If an attorney decides to accept your case, you will be notified by the Clerk's Office by mail.
- 8. Please note that you are fully responsible for prosecuting your case by yourself, unless and until the Clerk's Office notifies you by mail that a pro bono attorney will represent you in the action **AND** the attorney informs the Court in writing that he/she is representing you in the action. Even though you may have filed an Application for Pro Bono Counsel, the failure on your part to prosecute your case at any stage of the proceedings may result in dismissal of your case.

QUESTIONS TO BE ANSWERED

1. Name of applicant Jack Vernon Abernethy

2a. Have you previously requested counsel from the court in this case? Yes

2b. If so, what was the outcome? Denied; without prejudice.

3. Explain specifically why you feel you need a lawyer to represent you at this time. If the judge denied your previous Application for Pro Bono Counsel in this case, please include any changes concerning your need for counsel since your last application. (Use additional paper if necessary.) I currently receive income from three sources. Those sources are

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rental properties, what is left of an accounting practice I started in 1984,  
and a limited amount of part time employment wages. I have previously received just  
over \$5,000 repairing properties owned by others; however, I do not expect to earn any  
income in the future from this activity.

My current sources of rental income are from two rental houses with gross monthly rents  
of \$475 each. After mortgage payments, insurance, and taxes, the net income is less  
than or equal to approximately \$100/month. The mortgage on one of those houses is past due  
for three periods and subject to go into foreclosure.

Property taxes are due on several properties that I own. Other properties that I own are  
either in foreclosure, condemned, vacant, or deserted because I am not financially able, nor  
physically able to maintain the properties in a rentable condition.

I have been terminated from my insurance agency, and have lost the majority of my accounting  
practice. I have cashed in all my savings, stocks, and IRA's to zero to pay attorneys.  
Over the past year, I have been looking for permanent employment or new clients, but have  
been unable to find either one. I have been able to obtain occasional parttime employment  
paying hourly wages. From that source I have earned \$3,000 in the past 12 months.

4. If you have been unable to attain an attorney, please explain why. I previously had attorneys  
in North Carolina. Their services were discontinued when I was no longer able to pay  
their fee.

5. If you need a lawyer who speaks in a language other than English, state what language you  
speak: Not Applicable

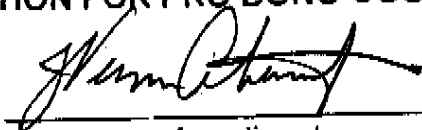
I understand that if a lawyer volunteers to represent me and my lawyer learns that I can afford  
to pay for a lawyer, the lawyer may give this information to the Court.

I hereby waive my privilege of attorney-client confidentiality to the extent necessary for my pro  
bono attorney to make an application to be relieved as provided in Appendix H of the Local  
Civil Rules.

I declare under the penalties of perjury that my answers to the foregoing questions are true to  
the best of my knowledge.

Signed this 20th day of July, 2005.

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Signature of applicant