

PRACTICE DIRECTION NO. 3 OF 2019 - DIFC Courts' PRO BONO PROGRAMME

A. Citation

This Practice Direction shall come into effect from 5 March 2019. It may be cited as **Practice Direction No. 3 of 2019 –DIFC Courts' Pro Bono Programme** and may be abbreviated to **PD 3/2019**.

This Practice Direction is issued pursuant to the powers conferred on me by Article 8(Second)(5)(b) of Dubai Law no. 9 of 2004 as amended and according to Resolution No. (1) of 2019 In Respect of the Dispute Resolution Authority Academy, and repeals and supersedes the following: :

- Practice Direction No 3 of 2009 DIFC Courts' Pro Bono Programme;
- Practice Direction No. 5 of 2013 DIFC Courts' Pro Bono Programme;
- Practice Direction No.1 of 2014 DIFC Courts' Pro Bono Programme Amendment; and
- Practice Direction No. 1 of 2017 In Respect of the Academy of Law's Pro Bono Programme

Zaki Bin Azmi
Chief Justice of the DIFC Courts
Issued: 19 June 2019

Purpose

The responsibilities of the Pro Bono Programme are transferred from the DRA Academy of Law to the DIFC Courts. The introduction of the DIFC Courts' Pro Bono Programme (the "Programme") derived from a need in the community for Pro Bono legal representation. The DIFC Courts' aim is to facilitate representation of individuals that are in need of such, but who cannot afford to retain lawyers. The DIFC Courts has a mission to provide accessibility to justice and to ensure that all parties are on an equal footing in proceedings before the Courts. The services offered in the Programme will be delivered to eligible individuals ("Pro Bono litigants") who approach the DIFC Courts requesting assistance. To ensure consistency of Pro Bono representation, information and procedures, the DIFC Courts provides the following guidelines in relation to the Programme.

In addition, to enable greater accessibility the Programme introduced Pro Bono clinics either through email or in person which run on a regular basis providing free legal advice to individuals who have legal issues that arise within the DIFC area of Dubai and / or fall within the DIFC Courts' jurisdiction and who are unable to afford legal advice.

B. Pro Bono Programme Guidelines

1. The following may participate in the Programme (as a "Volunteer Practitioner"):
 - a. Any person or firm registered in the DIFC Courts' Register of Legal Practitioners; and
 - b. Any person or firm who or which does not qualify under (a.) above but who or which satisfies the Pro Bono Programme Leader that he/she/it is legally qualified to give Pro Bono advice.
2. If a Pro Bono litigant directly contacts a volunteer practitioner, the volunteer practitioner should ask the individual to contact the Pro Bono Programme Leader directly for assistance on the Pro Bono email: pro.bono@ddifccourts.ae.
3. The Pro Bono Programme Leader will be chosen by the Chief Justice of the DIFC Courts. The Programme Leader will be responsible for all aspects of the operation and administration of the Programme.

4. Each individual practitioner wishing to take part in the Pro Bono Programme should complete the volunteer form and submit it to the Programme Leader. The Individual Volunteer form can be found at: www.difccourts.ae.
5. Any firm wishing to register shall include in its volunteer form, among other things, the details of a person in the firm with whom the DIFC Courts can liaise for Pro Bono matters, including the referral of Pro Bono litigants. The Law Firm Volunteer form can be found at: www.difccourts.ae.
6. There are several legal matters that fall outside the purview of our Pro Bono programme. The legal advice provided by the volunteer practitioners will be focused on issues that fall within the jurisdiction of the DIFC Courts. Matters which are criminal in nature or which are governed by personal laws, such as family or inheritance laws, or those originating from organisations or transactions fall outside the DIFC Courts' jurisdiction.
7. A Pro Bono litigant should complete a Pro Bono litigant intake form. The Pro bono litigant intake form can be found at: www.difccourts.ae. The intake form requires the Pro Bono litigant to briefly describe the nature of their claim, their financial position and the type of remedy sought. In order for a Pro Bono litigant to be eligible for the Programme, and to continue to retain free legal services, the Pro Bono litigant must provide evidence to the Programme Leader that he/she cannot afford a lawyer. It is at the discretion of the Programme Leader as to the evidence required, and based on that evidence; the Programme Leader will decide whether the litigant is eligible for the Programme. It must be recognised that the decision of the Programme Leader is final.
8. A Pro Bono litigant must notify the volunteer practitioner and the Programme Leader if, at any time during the course of Pro Bono representation, his or her financial position changes such that he/she is, or will be able, to retain a lawyer. Failure to notify the volunteer practitioner and Programme Leader of such a change in the Pro Bono litigant's financial circumstances may result in him or her being held liable for the legal costs and any fees waived under this Programme.
9. Once an applicant has been admitted into the Programme and the eligibility has been approved, a volunteer practitioner will be assigned. The Programme Leader will endeavour to allocate no more than one Pro Bono litigant to each volunteer practitioner at any given time. However, there may be instances in which that number is exceeded.
10. The successful applicant will be entitled to free legal services, but this is only in relation to his/her own legal costs. Save as provided for in paragraph 11 below, the Pro Bono litigant will most likely have to cover the legal costs of the other party or parties in the event that the Pro Bono litigant loses the case.
11. There can be instances in which a Pro Bono litigant may be entitled to a cost free trial, where he/she will not be obligated to meet the legal costs of the opposing party or parties even if the pro bono litigant loses his or her case. The Pro Bono litigant will only be entitled to this once an application has been approved by the Pro Bono Committee (the 'Committee') of the DIFC Courts.

Not all applications for a costs free trial will be forwarded for the consideration of the Committee. Only certain qualifying applications will be put forward to the Committee for its consideration. The legal representative of the Pro Bono litigant (the law firm that agreed to pursue the Pro Bono litigant's case) must support a Pro Bono applicant's application for a costs free trial, and must certify that in their opinion there is a reasonable prospect of the Pro Bono applicant's case succeeding. Similarly, the opposing party's or parties' legal representative will be given the opportunity to respond to the application for a costs free trial and may provide its submissions about why the Pro Bono litigant should not be permitted a costs free trial. A Pro Bono litigant may only be granted a costs free trial once the application has been forwarded to the Committee by the Programme Leader and the Committee has subsequently determined that the applicant meets the threshold of financial inability, case merit and such other criteria as the Committee may determine is relevant from time to time. The Committee has absolute discretion as to

whether an applicant meets the threshold for a costs free trial. A brief description of the guidelines under which the Committee operates is attached.

12. A Pro Bono litigant can at any time apply to the Programme Leader to have the court fees suspended until the end of the case. The Programme Leader has absolute discretion in determining whether court fees are to be suspended and to what extent.
13. If the Pro Bono litigant's action is successful and the litigant is awarded costs, all legal costs and court fees are payable to the DIFC Courts' Pro Bono Account (refer to Practice Direction No. 4 in respect of the DIFC Courts' Pro Bono Account). Assessment shall be undertaken on a summary basis by a Judge or the Registrar. Parties should consider Practice Direction no. 5 of 2011 – Cost Order in Favour of Party represented Pro Bono.
14. When a volunteer practitioner takes on a Pro Bono engagement, both the volunteer practitioner and the Pro Bono litigant should sign a letter of engagement which outlines the scope of the Pro Bono engagement. One copy will be retained by the volunteer practitioner; one copy will be provided to the Pro Bono litigant; and a third copy will be provided to the Programme Leader.
15. Each Pro Bono engagement must be clearly defined in the Pro Bono letter of engagement in respect to the type of service and scope of work to be provided. Pro Bono engagements can range from basic advice to full case management and trial, as well as representation in proceedings. The Pro Bono engagement only encompasses the Small Claims Tribunal, in accordance with part 53 of the Rules of the DIFC Courts, and the Court of First Instance. If the Pro Bono litigant and the volunteer practitioner agree to continue the representation to cover an appeal or additional claim, a new Pro Bono letter of engagement will need to be submitted to the Programme Leader. In the absence of such agreement, the Pro Bono litigant may apply to the Programme Leader requesting a referral to another volunteer practitioner.
16. If a Pro Bono litigant is not satisfied with the type of service and/or scope of work offered by the volunteer practitioner or for any other valid reason, he/she may approach the Programme Leader to request a change in representation. The Programme Leader has the absolute discretion to determine whether to assign the Pro Bono litigant an alternative volunteer practitioner.
17. Volunteer practitioners shall ensure that Pro Bono litigants and their matters are administered and handled to the same high standards as for non- Pro Bono clients. All volunteer practitioners who represent Pro Bono clients in proceedings before the DIFC Courts must act in accordance with the Code of Professional Conduct for Legal Practitioners, the DIFC Courts' Mandatory Code of Conduct and Supplementary Code of Conduct.
18. In the interests of promoting accessibility to representation for Pro Bono litigants, the DIFC Courts reserve the right to waive the requirement of Part II registration in order for a volunteer practitioner (and where the volunteer practitioner is a firm, for lawyers of that firm) to appear in Court in relation to Pro Bono cases only. Upon application to, and acceptance by, the Programme Leader a volunteer practitioner (and where the volunteer practitioner is a firm, a lawyer of that firm) may represent the Pro Bono litigant in the DIFC Court.
19. The Programme Leader will maintain a confidential spread sheet detailing the number of occasions on which a volunteer practitioner has agreed to provide assistance to a Pro Bono litigant. From time to time, the spread sheet will be reviewed by the Programme Leader to determine which volunteer practitioner should remain on the Pro Bono Register.

C. Pro Bono Committee Guidelines

20. The DIFC Courts' Pro Bono Committee shall act as liaison between the DIFC Courts and all users of the Pro Bono Programme and assist the Pro Bono Programme Leader to provide an efficient, accessible, transparent and professional service to its users. The Committee shall suggest ways of improving the efficiency of the Pro Bono Programme's procedure and services.

21. The Committee shall advise the Pro Bono Programme Leader about matters related to the Pro Bono Programme and any other appropriate matters which will help increase the level of users' satisfaction, including the assessment of the cost free trial applications. The Committee shall not have any authority over the implementation of the suggestions or the advice. The Pro Bono Programme Leader shall, in his or her discretion, determine which matters may properly be considered to be covered by this section.
22. The Pro Bono committee will comprise of seven members and will include:
 - a. The Pro Bono Programme Leader; and
 - b. Six lawyers who are registered with the DIFC Courts' Register of Legal Practitioners.
23. The tenure of membership will be for a period of maximum two years and there will be a review after that period. The review will be done by the Pro Bono Programme Leader. The Pro Bono Programme Leader will assess, among other things, the contribution of the Committee members and can either:
 - a. Choose to continue with the existing Committee members for another year; or
 - b. Choose a new Committee member or members.
24. Not less than two weeks prior to the first meeting of each calendar year the Pro Bono Programme Leader shall write to all registered practitioners with the DIFC Courts, requesting for nominations to join the Committee.
25. Each nomination must be accompanied by detailed reasons for the nominations. At the first committee meeting of each calendar year the Pro Bono Programme Leader will appoint and announce the elected nominees.
26. Upon the election of those members, the longest serving practitioner shall retire from the Committee.
27. Should the number of practitioners be less than six (6), the Pro Bono Programme Leader may appoint such number of additional practitioners as necessary to ensure that there are six practitioners on the Committee.
28. Meetings:
 - a. The Committee shall hold regular meetings during the first two weeks of the month January, April, July and October, or at such other times as they may agree, further meetings may be called by the Programme Leader or other members of the Committee upon not less than three days' notice in writing to all member.
 - b. The venue for each meeting shall be determined by the Pro Bono Programme Leader and Committee members shall be considered present at the meeting if they attend in person or by telephone.
 - c. Not less than three Committee members (including the Pro Bono Programme Leader) must be present at a meeting for the meeting to be quorate and at any meeting the decision of a majority of the Committee members present at that meeting shall bind the Committee. The Pro Bono Programme Leader shall have a casting vote.
 - d. Members shall not be permitted to appoint a delegate or proxy to attend at or vote at meetings.
 - e. It is the responsibility of the Committee's Secretary, who will be one of the DIFC Courts' staff, to schedule meetings, compile the necessary documents and minutes of the meetings in a timely manner.

D. Guidelines for Cost Free Trial Applications

29. The Committee will be required to process a cost free trial application within 14 working days of the application and complete required documents being submitted to it.
30. The Committee will have to assess two different facets of each application:

- a. The financial inability of the Pro Bono applicant: The Committee will have to assess whether the Pro Bono litigant is unable to meet his/her legal costs and that of his/her opponents, in the event that he/she loses the claim. This assessment will be comprehensive and will include thorough examination of all the documents that deal with the financial position of the Pro Bono litigant.
- b. The merits of the case at hand: Aside from the financial inability of the Pro Bono litigant, the Committee will also have to determine whether the case at hand has a reasonable chance of succeeding if it goes to trial.

The Pro Bono litigant can only have a costs free trial once both conditions have been met and when the same has been confirmed by the Committee.

31. When determining whether a costs free trial should be granted, the Committee will give both the Pro Bono litigant's lawyers and the opposing party's or parties' lawyers an opportunity to present their reasons why a costs free trial should or should not be awarded. The Committee, after permitting both sides to present the above arguments, will make a decision as to whether or not the Pro Bono litigant will be granted a costs free trial.
32. Upon confirmation that a Pro Bono litigant is granted a costs free trial, notice is to be served on the other parties to the case that they cannot recover legal costs from the Pro Bono litigant, even if the Pro Bono litigant loses the case.

E. Saving Clause

33. All orders, registered lawyers and law firms, Pro Bono applications and appointed Pro Bono Committee members done under Practice Direction No. 3 of 2017 (In Respect of the Academy of Law's Pro Bono Programme) and all other acts done under the repealed Rules shall continue to be valid and shall be deemed and construed having been done pursuant to the rules under this Practice Direction No. 3 of 2019.