



Pro se - Oh Boy

Insights

3.07.16

The dreaded *pro se* case. Clients and lawyers alike dread the costs, difficulties and the multitude of other headaches they can usually expect when dealing with a *pro se* litigant. In the context of employment cases, *pro se* plaintiffs regularly file lawsuits against their current or former employer. These cases, in many instances, are brought by spurned and angered employees who believe they have viable claims under federal, state and/or local anti-discrimination statutes. Unfortunately, many of these *pro se* litigants have very little understanding of the nuances associated with attempting to file a discrimination lawsuit including, for example, the timing for filing the lawsuit and the requirement to first exhaust available administrative remedies prior to filing a discrimination lawsuit. While many *pro se* litigants may have the best of intentions, the end result is a docket in federal and state court filled with cases filed by *pro se* plaintiffs that have little to no merit.

Faced with a growing docket of employment cases filed by *pro se* plaintiffs, the Eastern District of Pennsylvania recently acted in an effort to manage these cases. Under a Standing Order that was entered by the Court, *pro se* employment cases are placed “in suspense for 90 days” while an attorney, chosen from a preexisting panel, may be appointed to represent the *pro se* litigant. The initial 90 day suspense period may be further extended by the judge assigned to the case. Within 7 days of an attorney being appointed to represent the previously unrepresented *pro se* plaintiff, the employment case must be referred to “early mediation” before a judge other than the judge who is assigned to the case. Only the judge assigned to the case may choose not to have the case referred to “early mediation.” The same Standing Order further explains that unless an extension is granted, the mediation “shall take place within 21 days” of the attorney being appointed to represent the *pro se* plaintiff who originally filed the employment case. In short, the Standing Order fast-tracks employment cases, originally filed by *pro se* plaintiffs, into court mandated mediation.

From all indications, the Standing Order was entered by the Eastern District of Pennsylvania with the goal of more effectively handling a growing trend of employment cases being filed by *pro se* plaintiffs. The appointment of counsel should enable *pro se* plaintiffs to receive sound legal advice on the merits of their claim, and the mediation process provides a mechanism for a previously unrepresented plaintiff to get in front of a federal judge and potentially resolve his or her case very early in the litigation process. While some may dislike the extremely condensed timeframes established by the Standing Order, the program created by the Eastern District of Pennsylvania, if successful, could save employers the significant costs and time associated with litigating an

employment case filed by a *pro se* plaintiff. Defense lawyers and employers will have to wait and see if this program, in practice, results in employment cases initially filed by *pro se* plaintiffs being resolved early on in the litigation process.