

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

In Re

CV 15-34-BU-BMM

MARY KAY DUFFIE,

Debtor.

**ORDER on Referral of Case to
Bankruptcy Court**

MARY KAY DUFFIE

Appellant,

v.

STEVE GOTCHER AND SHARON
GOTCHER,

Appellees.

28 U.S.C. § 158 (b)(6)(c) provides that:

- (1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless--
- (A) the appellant elects at the time of filing the appeal; or
- (B) any other party elects, not later than 30 days after service of notice of the appeal; to have such appeal heard by the district court.

The Appellant in this action, Mary Kay Duffie, filed a Notice of Appeal on June 15, 2015. (Doc. 1-1.) Ms. Duffie filed an Amended Notice of Appeal on July

6, 2015, allegedly “to cure a paperwork deficiency.” (Doc. 1.) Ms. Duffie filed an Election to Proceed in the District Court with the Amended Notice of Appeal also on July 6, 2015. (Doc. 1-3.) Ms. Duffie’s Election to Proceed in the District Court represented that Ms. Duffie failed to file an election with her original Notice of Appeal because she was unaware of her inability to apply for the Bankruptcy Appeals Pro Bono Program if the appeal were to proceed under the Bankruptcy Appellate Panel.

The Appellees in this matter, Steve and Sharon Gotcher, filed an Objection to the referral of this case to the District Court of Montana. (Doc. 2.) Appellees argue that Ms. Duffie’s Election to Proceed in the District Court was untimely. Appellees specifically argue that Ms. Duffie was required under 28 U.S.C. § 158 (b)(6)(c), to file an Election to Proceed in the District Court with her original Notice of Appeal.

The Court determines that this matter was properly referred to the District Court of Montana through Ms. Duffie’s Election to Proceed in the District Court. Ms. Duffie is a pro se litigant. The Court takes into account Ms. Duffie’s pro se status and thereby lessens the potential consequences of Ms. Duffie’s failure to understand the unavailability of the pro bono program at the time she filed her original Notice of Appeal. The Court further considers that Ms. Duffy filed the

Election to Proceed in the District Court only approximately three weeks after she filed the original Notice of Appeal.

Accordingly, **IT IS ORDERED:**

1. Ms. Duffie's Motion to Transfer Case # MT-15-1201 to the United States Ninth Circuit, District Court of Appeals is GRANTED.
2. The appeal in the matter shall be referred to the District Court of Montana.

DATED this 22nd day of March, 2017.



Brian Morris
United States District Court Judge