



First Judicial Circuit Court

Arthur L. Rusch
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Kim L. Allison
Court Administrator

Memorandum

To: 1st Judicial Circuit Attorneys and County Commissioners
From: Kim Allison, 1st Circuit Court Administrator
Date: 01/05/10
Re: **2010 Court-Appointed Attorney Fees**

Please be advised that the court-appointed attorney rate for 2010, remains at \$ 82.00 per hour. The reimbursement rate for mileage remains \$1.00 per mile as was effective January 1, 2008. For your information I have attached the rules and procedures which govern all cases where an attorney is appointed to represent an indigent. Also attached to this email is the most recent UJS Policy pertaining to court-appointed attorney fees. If you have any questions please contact me.

RULES FOR COMPENSATION OF COURT APPOINTED COUNSEL IN THE CIRCUIT COURTS OF SOUTH DAKOTA

These rules apply to all cases where an attorney is appointed to represent an indigent including criminal proceedings, juvenile delinquency proceedings, children in need of supervision proceedings, dependent and neglected children proceedings, termination of parental rights proceedings, Habeas Corpus, and other special proceedings.

DUTIES OF APPOINTED COUNSEL

- A. Counsel who participate in this plan do so in fulfillment of their professional responsibility as officers of the Court. The limited amount of compensation accruing in no respect diminishes such responsibility. See: Rules 6.1 and 6.2 of the South Dakota Rules of Professional Conduct found in the Appendix to SDCL Chap.16-18.

- B. Appointed counsel shall continue to serve until their representation is terminated as provided by this plan or by Court Order.
- C. While it is recognized that for various reasons a person may not be able to retain legal counsel on their own and should receive court appointed counsel, these same people do sometimes have the financial ability to make periodic partial payments to the county during the course of the attorney's representation. Thus, appointed counsel shall strongly encourage their appointed clients to report any improvement in their financial condition which would allow the client the ability to finance all or a part of the representation.

TERMINATION OF APPOINTMENT OF COUNSEL

- A. Appointed counsel in a criminal case involving a plea of guilty, nolo contendere, or guilty but mentally ill, shall cease to serve when the Court imposes sentence.
- B. In the event that a defendant in a criminal case is convicted following trial, counsel shall advise the defendant of his right of appeal and of his right to counsel on appeal. If the defendant indicates a desire to appeal, counsel shall immediately advise the Court of that fact in writing. In such case, counsel shall continue to represent the defendant until such time as counsel is relieved by the order of a Circuit Court Judge or by the Supreme Court. If the defendant indicates no desire to appeal, counsel shall file a written statement to that effect, and thereupon counsel's appointment will terminate.
- C. Representation by appointed counsel in other proceedings shall terminate when the purpose of the appointment is accomplished or when terminated by Court Order.

COMPENSATION

All appointed counsel will be paid for all legal services on an hourly basis of \$82.00.

All flat fees will be eliminated.

VOUCHERS FOR PAYMENT

- A. All requests and vouchers for the payment of attorney's fees and expenses must be itemized and submitted to the judge presiding over the case for approval.
- B. Upon application by counsel and for good cause shown, the judge presiding in the case may authorize interim payments for services provided.

APPROVAL OR DISAPPROVAL OF ATTORNEY' S FEES AND COSTS

- A. If the full amount of the voucher or statement for fees by counsel is not approved by the trial judge, the trial judge must explain, either orally or in writing, the reasons for change or modification of the statement or voucher submitted by counsel.
- B. Appeal. If the attorney is dissatisfied with the amount of compensation allowed by the judge presiding in the case, the attorney may request that all judges in that circuit review the claim for compensation and hold a hearing thereon. A decision by the majority of the judges in that circuit shall become the amount of the fees and costs authorized.

TRAVEL

Travel will be paid at the rate of \$1.00 per mile for both the use of the automobile and for the attorney's time on necessary travel. No trips are to be made out of the county where a matter is pending without prior approval of the judge; except for travel to and from the attorney's office and court.

EXPERTS

- A. A motion to hire expert witnesses must be made in writing to the judge presiding in the case. This motion must be:
 - 1. Made in good faith;
 - 2. Reasonable in all respects;
 - 3. Timely and specifically set forth the necessity of the expert;
 - 4. Specify that the client is financially unable to obtain the required service himself and that such services would otherwise be justifiably obtained were the client financially able.*

*Counsel must verify with their client that the client is not financially able to retain the desired service as of the time the motion is made.

- B. If the judge approves the request, the order of appointment shall set a ceiling on the amount which can be expended for this purpose. That ceiling includes total outlay for the expert's services and expenses and cannot be exceeded without prior court authorization. Court appointed counsel shall send a copy of the order of appointment to the expert so that he or she has notice of the ceiling.

C. If at all possible, experts from the immediate area of the proceedings should be appointed. When setting the hourly rate of compensation for medical and mental health care professionals, the court should consider the rates allowed to the same

professionals by the then current provider network plan for State of South Dakota employees.

APPOINT OF CO-COUNSEL

Because of their grave nature and/or complexity, certain cases can jeopardize an appointed counsel's practice and sometimes draw into question whether a person will receive effective assistance of counsel. In such cases an appointed counsel may request the court to appoint co-counsel to be paid at the rates established herein. The approval or disapproval of such application for co-counsel rests in the sound discretion of the trial judge.

EXPENSES, PARALEGALS, AND INVESTIGATORS

Appointed counsel shall be allowed reimbursement for expenses reasonably incurred. Costs shall be limited to reasonable copying costs, subpoena service fees, telephone charges, fax charges, fees for obtaining records and similar expenses. Costs ascribed to overhead, such as word processing, messengers, secretarial services and similar expenditures shall not be allowed. Charges for electronic research services such as Lexis or Westlaw will not be allowed unless by prior written court order upon a showing of special need. Counsel are encouraged to subcontract various services ordinarily done by themselves, such as legal research and file organization, if these services can be provided at a reduced rate. Appointed counsel are also encouraged to subcontract factual investigation services when they can be provided at a reduced rate. If appointed counsel wants to utilize the services of a paralegal or investigator, counsel must comply with the section entitled "Experts". The rate of compensation for paralegals is \$30.00 per hour.

FAILURE TO FOLLOW THESE RULES WILL RESULT IN REFUSAL TO APPROVE THE BILL OR VOUCHER FOR SUCH EXPENSE.