

ADDENDUM FOUR

ELEVENTH CIRCUIT PLAN UNDER THE CRIMINAL JUSTICE ACT

The U.S. Court of Appeals for the Eleventh Circuit, with the approval of the judicial council, adopts this plan for furnishing representation for persons financially unable to obtain adequate representation in the cases and situations described in 18 U.S.C. § 3006A(a), as amended. This plan supplements the CJA plans of the several districts of the circuit concerning provisions for representation on appeal and the guidelines set forth in Volume 7 of the Guide to Judiciary Policy. These guidelines are available on the internet via a link on the court of appeals web site at www.ca11.uscourts.gov, and for inspection in the office of the clerk of each court within the circuit, in the Circuit Library, and in the satellite libraries maintained throughout the circuit.

(a) Philosophy of the Act.

Hourly rates of compensation fixed by the amended Act are designated and intended to be maximum rates and should be so treated. The rates were not intended to change the basic and underlying philosophy of the Act that the bar of the nation owes a responsibility to represent persons financially unable to retain counsel. The compensation provided under the Act is not intended to equate with private counsel fees.

(b) Relation to District Court Plans.

The provisions of the plans of the various district courts within the Eleventh Circuit shall also be applicable on appeals from such courts except insofar as they may be inconsistent with some provision of this plan, in which case this plan shall prevail.

(c) Determination of Need.

In determining need for appointment of counsel under the Act, the court shall not be governed by a requirement of indigency on the part of the party but rather within the spirit and purpose of the Act by financial inability to employ counsel and by congressional intent in formulating this program.

(d) Appointment of Counsel.

(1) Pursuant to subsection (b) of the Act, counsel furnishing representation under this plan shall be selected from the panels of attorneys designated or approved by the district courts of the Eleventh Circuit, which are hereby approved by this court, or from a bar association, legal aid agency, or federal public defender organization or community defender organization approved by a district court plan and authorized to furnish representation under the Act. In addition, when the interests of justice require, any judge of this court may appoint competent counsel not otherwise included in the preceding categories. In accordance, however, with subsection (a)(3) of the Act and with the directives of the Judicial Conference of the United

(7) Reductions to vouchers are limited to mathematical errors, instances in which work billed was not compensable, undertaken, or completed, and instances in which the hours billed are clearly in excess of what was reasonably required to complete the task. Except in extraordinary circumstances, claims that are considered secretarial or general office overhead are not compensable. Such claims include those related to preparing vouchers, contacting court reporters, scheduling calls or meetings, and traveling for the purpose of filing, making copies, or mailing documents.

(8) After approval of allowable compensation and reimbursable expenses payment will be made by the Administrative Office of the United States Courts.

(9) Time and expenses required for preparation of a petition for writ of certiorari, a response to a petition for a writ of certiorari, or a reply to a response to a petition for a writ of certiorari, should be claimed on the voucher as an expense incident to representation before the court of appeals rather than claimed in the Supreme Court. See § (f)(4), above.

(10) When it is considered necessary and appropriate in a specific case, the court on motion of counsel may approve interim payments under the Act. Such interim payments are designed to strike a balance between the interest in relieving court-appointed counsel of financial hardship in extended and complex cases, and the practical application of the statutorily imposed responsibility of the chief judge of the circuit to provide a meaningful review of claims for excess compensation. See § (g)(3), above. Absent exceptional circumstances such interim compensation as may be approved will not ordinarily exceed the amounts specified in 18 U.S.C. § 3006A(d)(2). At the conclusion of representation, counsel should submit a final voucher claiming time and expenses not previously approved, including any amounts claimed on interim vouchers which were not compensated.

GUIDELINES FOR COUNSEL SUPPLEMENTING THE ELEVENTH CIRCUIT PLAN UNDER THE CRIMINAL JUSTICE ACT

(a) Compensation for Legal Services.

(1) Maximum Compensation. Allowable compensation rates for counsel are set out in 18 U.S.C. § 3006A(d). The Judicial Council may from time to time authorize special rates of compensation for certain classes of cases, or for counsel practicing in certain locations. Special rates have been established for capital cases. Information regarding special rates is available from the clerk.

(2) Writ of Certiorari. Counsel claiming time and expenses for preparation of a petition for a writ of certiorari, a response to a petition for a writ of certiorari, or a reply to a response to a petition for a writ of certiorari, must include a copy of the petition, response, or reply with the voucher.

(3) Compensation for substitute attorneys. If an attorney is substituted for one previously appointed in the same case the total compensation that may be paid to both attorneys shall not exceed the statutory maximum for one defendant, unless the case involves extended or complex representation. In such a case vouchers for counsels' services shall not be approved until the conclusion of the appeal.

(4) Itemized listing of hours expended. Counsel shall describe in detail in the electronic system for processing vouchers how the hours claimed were expended.

(5) Travel time. Reasonable and necessary travel time consistent with guidelines established by the Judicial Conference of the United States is compensable at the out of court hourly rate.

(b) Compensation for Reimbursable Expenses.

(1) Travel and transportation expenses. Travel and transportation must be accomplished by the most economical means available. Only actual expenses may be claimed.

(i) Air transportation. At the time the appeal is scheduled for oral argument, the clerk's office provides counsel with a Travel Authorization that may be used to obtain government rate airline tickets from the government's contract travel agency. If counsel decides not to make air travel arrangements in this manner, reimbursement for air travel may not exceed the government rate that could have been obtained by following the procedures provided by the clerk's office.

(ii) Automobile transportation. The total mileage cost shall not exceed the fare authorized for travel by tourist or economy air transport except in an emergency or for other compelling reasons. Travel by privately owned automobile shall not exceed the current government authorized rate for official travel per mile on a straight mileage basis, plus parking fees, ferry, bridge, road, and tunnel fares.

(iii) Local transportation. Local travel will be accomplished by the most economical means available and only actual expenses may be claimed. Transportation to and from an airport should be by airport shuttle, if available.

(iv) Meals and lodging. Reasonable compensation for hotel or motel accommodations and meals will be allowed on an actual expense basis subject to the limitations governing compensation for federal employees traveling to the same destination. Counsel will be notified by the clerk prior to the scheduled oral argument session of the current limitations. A copy of the hotel or motel bill shall be attached to the voucher.

(2) Photocopying. Actual costs not to exceed 25 cents per page will be paid if the copying bill is submitted. For in-house copying, actual costs not to exceed 15 cents per page will be paid.

~~(3) Express Mail and other special arrangements. For delivery of items that could have been mailed via U.S. Postal Service first class mail, additional expenses will be reimbursed only if a satisfactory explanation is given why first class mail service was not utilized. In non-emergency cases routine documents such as briefs and motions should be prepared early enough to permit use of first class mail. (See also FRAP 25(a).)~~

(43) Computer Assisted Legal Research.

(i) By Court Appointed Counsel. The cost of use, by appointed counsel, of computer assisted legal research services, may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable. Whenever appointed counsel incurs charges for computer assisted legal research, counsel should attach to the compensation voucher a copy of the bill and receipt for the use of the legal research services or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research). If the amount claimed is in excess of \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

(ii) By Commercial Computer Assisted Legal Research Services. The court may in advance authorize counsel to obtain computer assisted legal research services, where the research is performed by employees of a commercial legal research firm or organization rather than by appointed counsel, provided that the total amount charged for computer assisted legal research services is reasonable. Requests by counsel for authorization to obtain such computer assisted legal research services should include the following:

a - a brief explanation of the need for the research services; and

b - an estimate of the charges.

(54) Miscellaneous Expenses. The lowest possible cost for expenses such as postage, telephone calls, brief supplies, and parking, shall be incurred.

(65) Briefs. Reimbursement will be provided only for the number of copies of briefs and appendices required by the rules to be filed and served, plus two copies for each party signing the brief. The number of copies and number of pages must be itemized on the voucher.

ADDENDUM FIVE

NON-CRIMINAL JUSTICE ACT COUNSEL APPOINTMENTS

The court adopts these provisions for furnishing representation for persons financially unable to obtain adequate representation in cases and situations which do not fall within the scope of 18 U.S.C. § 3006A, as amended – but in which the court believes that the interests of justice will be served by the presence of counsel.

(a) Determination of Need.

In determining need for appointment of counsel, the court shall generally be governed by the guidelines outlined in 18 U.S.C. § 3006A.

(b) Appointment of Counsel.

(1) Counsel shall be selected from the same panels of attorneys designated or approved by the district courts of the Eleventh Circuit as described in Addendum Four, which are hereby approved by this court, or from a bar association, legal aid agency, or other approved organization. In addition, any judge of this court may appoint competent counsel not otherwise included in the preceding categories.

(2) Any person seeking relief under 29 U.S.C. § 621, 42 U.S.C. § 1981, 42 U.S.C. § 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985, 42 U.S.C. § 1986, 42 U.S.C. § 2000a, 42 U.S.C. § 2000d, and 42 U.S.C. § 2000e or in such other cases as the court shall determine to be appropriate may be eligible for representation. The court may approve such representation on a determination that the interests of justice so require and that the person is financially unable to obtain representation.

(3) The court may at its discretion and in the interest of justice substitute one appointed counsel for another at any stage of the proceedings on appeal.

(4) The court may at its discretion and where circumstances warrant make appointments of counsel retroactive so as to include representation furnished prior to appointment.

(c) Withdrawal or Release of Appointed Counsel.

Counsel appointed under this rule to represent a party shall continue such representation until relieved by order of the court of appeals.

(d) Duties of Appointed Counsel.

(1) Appointed counsel shall furnish the party represented, upon written request, with a copy of motion papers and briefs filed for the party on the appeal, and shall send the party a copy of the court's decision when issued.

(2) Appointed counsel shall appear for oral argument only when directed by the court.

(3) In the event of affirmance or other decision adverse to the party represented appointed counsel shall promptly advise the party in writing of the right to seek further review by the filing of a petition for panel rehearing or a petition for rehearing en banc in this court, or a petition for writ of certiorari with the Supreme Court.

(4) Appointed counsel shall advise the party represented in each case that, if the party wishes to file a petition for a writ of certiorari with the Supreme Court, the party may have the right to do so without prepayment of fees and costs or giving security therefor.

(5) No appointed representative under this rule shall accept a payment from or on behalf of the person represented in this court without prior authorization by a United States circuit judge.

(e) Payment of Claims for Expenses.

(1) In all appeals covered by this rule, the court of appeals may authorize reimbursement of necessary expenses reasonably incurred in representing a party on appeal, consistent with the limitations contained in the Criminal Justice Act, by any private attorney, bar association, legal aid agency, or other approved organization appointed by the court for the purpose of representing a party on appeal pursuant to this addendum. Compensation for attorney services as a fee for either in-court or out-of-court time is not authorized.

(2) Travel expenses and other expenses reasonably incurred and necessary for adequate representation on appeal may be claimed by an appointed attorney or other legal representative. The clerk of court shall furnish each attorney or other representative at the time of appointment with information as to expenses currently allowable and in accordance with rules, regulations and guidelines promulgated by the Judicial Conference of the United States. Per diem may not be claimed in lieu of actual travel and subsistence expenses. Meal and lodging expenses incurred incident to representation on appeal, necessary long distance telephone calls, and the cost of photocopying, are reimbursable expenses within the guidelines established by the court. Expenses of general office overhead, personal items, and filing fees generally are not reimbursable. Expenses of travel by private automobile may be claimed on a straight mileage basis at the authorized rate. See § (6) of the guidelines, below. Parking fees and toll expenses are allowable. Transportation other than by private automobile may be claimed on an actual cost basis, but first class fare is not permitted unless absolutely necessary and documentation is provided that tourist or economy fares were not available.

(3) Unless otherwise ordered by the court for good cause shown, travel expenses other than those incurred in connection with attending oral argument will not be reimbursed without a prior *ex parte* application to and approval by the court.

(4) All claims for reimbursement of expenses for representation on appeal shall be itemized in detail and filed with the clerk of court on officially approved forms that the clerk's

office will provide. Claims should be filed as promptly as possible and in no event later than 45 days after issuance of the mandate.

(5) After approval of allowable reimbursable expenses by the court, the claim form will be forwarded to the circuit executive for payment.

(6) Reimbursable Expenses.

(a) Travel and transportation expenses. Travel and transportation must be accomplished by the most economical means available. Only actual expenses may be claimed.

(i) Air transportation. Tourist or economy accommodations must be used except where unavailable. A copy of the ticket must be attached to the claim form. If travel by first class air transportation is claimed a detailed explanation of the reasons therefor must be provided with the ticket copy.

(ii) Automobile transportation. The total mileage cost shall not exceed the fare authorized for travel by tourist or economy air transport except in an emergency or for other compelling reasons. Travel by privately owned automobile shall not exceed the current government authorized rate for official travel per mile on a straight mileage basis, plus parking fees, ferry, bridge, road, and tunnel fares.

(iii) Local transportation. Local travel will be accomplished by the most economical means available and only actual expenses may be claimed. Transportation to and from an airport should be by airport shuttle, if available.

(iv) Meals and lodging. Reasonable compensation for hotel or motel accommodations and meals will be allowed on an actual expense basis subject to the limitations governing compensation for federal employees traveling to the same destination. Counsel will be notified by the clerk prior to the scheduled oral argument session of the current limitations. A copy of the hotel or motel bill shall be attached to the claim form.

(b) Photocopying. Actual costs not to exceed 25 cents per page will be paid if copy bill is submitted. For in-house copying, actual costs not to exceed 15 cents per page will be paid.

~~(c) Express mail and other special arrangements. For delivery of items that could have been mailed via U.S. Postal Service first class mail, additional expenses will be reimbursed only if a satisfactory explanation is given why first class mail service was not utilized. In non-emergency cases routine documents such as briefs and motions should be prepared early enough to permit use of first class mail.~~

~~(d-c)~~ Computer Assisted Legal Research.

(i) By Court Appointed Counsel. The cost of use, by appointed counsel, of computer assisted legal research services, may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable. Whenever appointed counsel incurs charges for computer assisted legal research, counsel should attach to the claim form a copy of the bill and receipt for the use of the legal research services or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research). If the amount claimed is in excess of \$500 or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

(ii) By Commercial Computer Assisted Legal Research Services. The court may in advance authorize counsel to obtain computer assisted legal research services, where the research is performed by employees of a commercial legal research firm or organization rather than by appointed counsel, provided that the total amount charged for computer assisted legal research services is reasonable. Requests by counsel for authority to obtain such computer assisted legal research services should include the following:

a - a brief explanation of the need for the research services; and

b - an estimate of the charges.

(~~e~~-d) Miscellaneous Expenses. The lowest possible cost for expenses such as postage, telephone calls, brief supplies, and parking, shall be incurred.

(f) Briefs.

Reimbursement will be provided only for the number of copies of briefs and appendices required by the rules to be filed and served, plus two copies for each party signing the brief. The number of copies and number of pages must be itemized on the claim form.

(g) Funding.

By resolution the court may allocate from time to time certain monies from its nonappropriated fund account to support this program of non-CJA counsel appointments.