



# First Judicial Circuit Court

Steven R. Jensen  
Presiding Circuit Judge

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Kim L. Allison  
Circuit Administrator

**Presiding Judge**  
Steven R. Jensen  
**Circuit Judges**  
Glen W. Eng  
Bruce V. Anderson  
Timothy W. Bjorkman  
Cheryle Gering  
Patrick T. Smith  
**Magistrate Judges**  
Tami A. Bern  
Gordon D. Swanson

**Circuit Administrator**  
Kim L. Allison  
**Chief Court Services Officer**  
Charles Frieberg  
**Circuit Assistant**  
Joan L. Novak

## Memorandum

To: 1<sup>st</sup> Circuit Attorneys and County Commissioners  
From: Kim Allison, 1<sup>st</sup> Circuit Court Administrator  
Date: 12/16/14  
Re: **2015 Court Appointed Attorney Fees/Rules/Voucher**

**Please be advised that the court appointed attorney rate for 2015 has been increased to \$90.00 per hour and the mileage reimbursement rate remains at \$1.00 per mile.** For your information I have attached the rules and procedures which govern all cases where an attorney is appointed to represent an indigent. Also included in this document is the most recent UJS policy pertaining to court-appointed attorney fees. Please also be aware that there is a state Catastrophic Case Fund that can reimburse court appointed attorney fees to a county in certain situations. If you have questions regarding any of this information, please feel free to contact me at 605.668.5685.

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

#### **SCOPE**

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 Chapter 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

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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 \$84.00 per hour. All flat fees will be eliminated. Per SDCL 23A-40-8 and SDCL 26-7A-31 attorney fees must be reasonable and just.

#### **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 (trial judge) 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.\*

State v. Sahlie. 245 NW2d 476 (SD 1976).

\*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. State v. Shape, 517 NW2d 650 (SD 1994).

## **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.

## **STATE-WIDE UNIFORMITY**

The schedule of attorneys' fees will be uniform throughout the State of South Dakota and will go into effect on January 1, 2000.

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## **UJS POLICY 1-PJ-10**

**COURT APPOINTED ATTORNEY FEES** – All lawyers willing to furnish services as court-appointed counsel to indigent defendants will be paid for all legal services on an hourly basis as follows: \$82/hr. beginning January 1, 2009. Subsequently, court-appointed attorney fees will increase annually in an amount equal to the cost of living increase that state employees receive each year from the legislature. Travel will be paid at the rate of \$1.00/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 without prior approval of the judge. Rules were revised for payment by voucher, approval and disapproval of attorney's fees and costs, special investigators, expert witnesses, capital cases.

An attorney appointed to represent abused or neglected children, including those appointed as guardian ad litem shall certify that they have viewed and completed the A&N attorney training developed by the South Dakota Unified Judicial System. The training video is available at <http://ujs.sd.gov/>. Upon completion of the training the attorney's name is sent to the State Court Administrator's Office and added to the list of certified A&N trained attorneys.

Requests for payment of court-appointed counsel fees should be presented to the court on the date of the completion of the case, but in no event later than 30 days after the case is completed before the circuit court. Failure to submit the fee requests within the time provided in the policy may result in the court denying payment of court appointed counsel fees, in whole or in part. The court may waive the application of this policy for good cause shown.

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.

If the attorney is dissatisfied with the amount of compensation allowed by the judge presiding in the case, the attorney may request that all other judges in that circuit review the claim for compensation and hold a hearing thereon. A decision by the majority of the other judges in that circuit shall become the amount of the fees and costs authorized. [SDCL 23A-40, (Rule 44)]

(November 7, 2012)

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

Please utilize the **Court Appointed Counsel Voucher for Compensation & Expenses** form when submitting your claims. This form is available on the UJS Webpage at [http://www.ujs.sd.gov/First\\_Circuit/Local\\_Forms\\_and\\_Policies](http://www.ujs.sd.gov/First_Circuit/Local_Forms_and_Policies). It is a fill-a-form so you will need to save it to your computer in order to make changes.