STATE OF SOUTH DAKOTA CIRCUIT COURT

COUNTIES OF MINNEHAHA & LINCOLN SECOND JUDICIAL CIRCUIT

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

These rules apply to all cases where an attorney is appointed to represent an indigent party including criminal proceedings, juvenile delinquency proceedings, child 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 compensation described in this order 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. The Court recognizes that for various reasons defendants or parties may not be able to retain legal counsel on their own and should receive court appointed counsel. However, these clients do sometimes have the financial ability to make periodic partial payments to the county during the course of an attorney's representation. Therefore, appointed counsel shall strongly encourage their clients to report any improvement in their financial condition which would enable the clients to finance all or 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 an order of the Circuit Court 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. The statewide rate was set at $84.00 per hour effective January 1, 2013.[1] *Tappe v. Circuit Court.* Etc., 326 NW2d

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[1] Hourly rates for court appointed counsel are reviewed for adjustment each fall for the subsequent calendar year. Rate adjustments usually correspond to the annual across-the-board adjustments, if any, made to state employee salaries determined by the Legislature each year. That annual increase was 2.25% in 2006, 3% in 2007 and 3% in 2008. No increase was granted in 2009, 2010, or 2011, or 2012 and the hourly rate remained $82 for that period.

892 (SD 1982). Legal services should be billed at the rate in effect at the time the service was rendered. All flat fees have been eliminated. Counsel should also be aware of the following Second Circuit Local Rules:

> CIV EIGHT. COURT APPOINTED ATTORNEYS. In all actions, suits and proceedings, where the court appoints an attorney to be paid with public funds, the initial appointment is authorized for an amount not to exceed one thousand five hundred dollars.[2] The court appointed attorney must obtain prior approval, by a motion and an order from the judge assigned to the case, to exceed the approved amount. A hearing on the motion need not be scheduled unless requested by the court. Source: SL 1999, ch 274, Supreme Court Order dated Aug. 25, 1998. [Appears as appendix following SDCL 15-6-83.]
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> CR NINE. COURT APPOINTED ATTORNEYS. In criminal cases where the court appoints an attorney to be paid with public funds, the initial appointment is authorized for an amount not to exceed one thousand five hundred dollars.[3] The court appointed attorney must obtain prior approval, by a motion and an order from the judge assigned to the case, to exceed the approved amount. A hearing on the motion need not be scheduled unless requested by the court. Source: SL 1994, ch 402, § 2; Supreme Court Order dated Aug. 25, 1998. [Appears in Appendix A following SDCL 23A-45-15.]

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. 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 if complete before the circuit court. Failure to submit the fee requests within the time provided in this 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.

C. 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.

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[2] Rule CIV EIGHT formerly set the initial authorization or "cap" at $1,000. Effective August 5, 2010, the Supreme Court approved an amendment to the local rule raising the cap to $1,500.

[3] Rule CR NINE formerly set the initial authorization or "cap" at $1,000. Effective August 5, 2010, the Supreme Court approved an amendment to the 2nd Circuit Local Rules raising the cap to $1,500.

TRAVEL[4]

Travel will be paid at the rate of $1.00 per mile for both the use of a vehicle and for the attorney's travel time.[5] 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 to do so. *State v. Sahlie*. 245 NW2d 476 (SD 1976). Counsel must verify with the 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.

APPOINTMENT 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 counsel may request that the Court 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 reimbursed for reasonable expenses. Costs shall be limited to reasonable copy costs, subpoena service fees, telephone and 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

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[4] Local Note on Travel: In the 2nd Judicial Circuit, attorneys outside Sioux Falls are welcome to place themselves on the list for court appointments in Minnehaha County. However, in light of the number of local attorneys readily available and in fairness to the taxpayers of Minnehaha County, by local policy the judges in Sioux Falls expect out of town attorneys to waive mileage charges in Minnehaha cases unless special circumstances exist as determined by prior judicial approval. This policy does not apply to Lincoln County cases.

[5] The mileage rate for 2008 and prior was $0.80 per mile. The rate was increased by the Supreme Court to $1.00 per mile effective January 1, 2008 and remains unchanged through 2013.

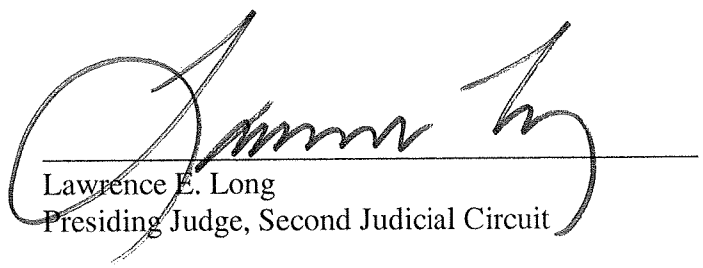
as Lexis or Westlaw will not be allowed unless by prior written court order upon a showing of special need. Counsel are encouraged to subcontract various services ordinarily done by themselves, such as legal research and file organization, if these services can be provided at a reduced rate. Appointed counsel are also encouraged to subcontract investigation services when available at a reduced rate. If appointed counsel wishes to use a paralegal or investigator, counsel must comply with the section entitled "Experts." The compensation rate for paralegals is $30.00 per hour.

STATE-WIDE UNIFORMITY

Effective January 1, 2000, the schedule of attorneys' fees shall be uniform throughout the State of South Dakota, and is subsequently reviewed and amended annually.

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

Dated at Sioux Falls, South Dakota this 31st day of December, 2012.



Lawrence E. Long
Presiding Judge, Second Judicial Circuit

ATTEST:
Angelia M. Gries

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By Clerk of Courts/Deputy Court Clerk