Court Appointed Attorney Guidelines

Last Updated January 21, 2020

Scope

- The following govern cases where an attorney is appointed to represent an indigent individual. Please also be aware that there is a state Catastrophic Legal Expense Relief Program, managed by the Association of County Commissioners, that can reimburse court appointed attorney fees to a county in certain situations. SDCL 7-16B.
- These guidelines apply to all cases where an attorney is appointed to represent an indigent individual, 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.
- Circuit specific information that varies from these general procedures is attached as an addendum to this document as it relates to each section.

Duties of Appointed Counsel Referral

- Counsel who participate in this plan do so in fulfillment of their professional responsibility as officers of the court. The compensation or appointment in no respect diminishes such responsibility.
- Appointed counsel shall continue to serve until their representation is terminated as provided by rule or by court order.
- If an individual receives court appointed counsel, they may still have the financial ability to make periodic partial payments to the county during the attorney's representation. Thus, appointed counsel shall instruct their appointed clients to report any improvement in their financial condition which would allow the client the ability to finance all or part of the representation.
- Each court appointed defense attorney shall receive training on mental illness, available mental health services, eligibility criteria and referral processes, and forensic evaluations in order to be eligible for court appointments. SDCL 23A-40-21. This training is available on the UJS website.
- Counsel appointed to represent abused or neglected children, including as guardian ad litem, shall certify that they have viewed and completed the A&N attorney training developed by the UJS. Upon completion of the training, counsel information is submitted to the State Court Administrator's Office and added to the list of certified A&N attorneys. UJS Policy 1-PJ-19. This training is available on the UJS website.

Termination of Appointment of Counsel

- Appointed counsel in a criminal case involving a plea of guilty, nolo contendere, or guilty but mentally ill, shall cease to serve when a judgment of conviction has been entered.
- Counsel shall advise the defendant of their right of appeal and of their 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 seek appointment to represent the defendant on appeal.
- Representation by appointed counsel in other proceedings shall terminate when the purpose of the appointment is accomplished or when terminated by Court Order.

Fourth Circuit: See addendum

Compensation

- Unless appointed counsel has a contract providing otherwise, all appointed counsel will be justly compensated for reasonable legal services in an amount fixed on an hourly basis. The schedule of court appointed attorneys' fees will be uniform throughout the State of South Dakota and will be published each year by the State Court Administrator's Office.
- The rate effective as of January 1, 2020, is $97.00 per hour. Current compensation rates can be found on the UJS website.
- All claims for compensation must be reasonably necessary and the amount must be reasonably valued. See Duffy v. Circuit Court for the Seventh Judicial Circuit, 2004 SD 19, ¶ 14-17, 676 NW2d 126 (discussing factors in determining the reasonableness of attorney fees).

Sixth Circuit: See addendum

Vouchers for Payment

- All requests and vouchers for the payment of attorney's fees and expenses must be itemized and submitted to the assigned judge for approval on the date of completion of the case or no later than 30 days after the case is completed unless otherwise approved by the court for good cause shown.
- Upon application by counsel and for good cause shown, the judge presiding in the case may authorize interim payments for services provided or waive payment deadlines.
- Please utilize the Court Appointed Counsel Voucher for Compensation & Expenses form when submitting your claims. This form is available on the UJS website.
- Failure to follow established rules will result in refusal to approve the bill or voucher for such expense.

First Circuit: See addendum
Second Circuit: See addendum
Fourth Circuit: See addendum
Sixth Circuit: See addendum
Seventh Circuit: See addendum

Travel

- Travel will be paid at a rate per mile for 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, court or any jail, detention facility or the penitentiary where the individual they are representing is being held. Travel will be paid at the rate of $1.00 per mile for both the use of the automobile and for the attorney's travel time.

Second Circuit: See addendum
Seventh Circuit: See addendum

Approval or Disapproval of Attorney's Fees and Costs

- 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 trial judge, the attorney may request that a three-judge panel in that circuit review the claim for compensation and hold a hearing. A decision by the majority of the judges on the panel shall become the amount of fees and costs authorized.

Third Circuit: See addendum
Fifth Circuit: See addendum
Seventh Circuit: See addendum

Experts

- A motion to hire expert witnesses must be made in writing to the judge presiding in the case. This motion must be:
    a. made in good faith;
    b. reasonable in all respects;
    c. timely and specifically set forth the necessity of the expert; and
    d. 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.
        i. 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.
- If the judge approves the motion, 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. Counsel shall send a copy of the order of appointment to the expert so that he or she has notice of the ceiling.
- If possible, experts from the immediate area of the proceedings should be appointed.

Fifth Circuit: See addendum
Seventh Circuit: See addendum

Appointment of Co-Counsel

- Because of their grave nature 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 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 reasonably incurred expenses. 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 may subcontract services if these services can be provided at a reduced rate. Services of a paralegal or investigator must comply with the above section entitled "Experts".
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Second Circuit: See addendum
Fourth Circuit: See addendum
Fifth Circuit: See addendum
Sixth Circuit: See addendum
Seventh Circuit: See addendum

Addendum

Termination

- Fourth Circuit: Any additional legal work performed in sentence reduction matters or other post-judgment matters is not compensable unless a new order of appointment is entered.

Compensation

- Sixth Circuit Legal services should be billed at the rate in effect at the time the service was rendered. All flat fees have been eliminated.

Vouchers for Payment

- First Circuit: When the attorney is representing a defendant on multiple cases, a combined voucher for payment is NOT allowed. A separate voucher must be filed for each case and the fees and expenses reasonably apportioned between each case. Where one or more of the cases has been dismissed the sentencing court will direct the attorney as to how to apportion the invoices. No voucher would be filed in a dismissed case unless all cases are dismissed. Invoices attached to vouchers must show the fees and expenses for each individual case or clearly show how the fees and expenses have been apportioned between the cases. All vouchers and accompanying documentation must be scanned in and filed in to File and Serve as one document. When court-appointed attorneys are handling lengthy cases, interim vouchers should be filed annually at a minimum, but preferably every six months. Attorneys should use the UJS CAA Voucher form available on UJS website, and the 1st Circuit MIL CAA Voucher available @ ujs.sd.gov/Attorneys/Forms and Documents/1st Judicial Circuit for Mental Illness cases filed in Circuit Court.

- Second Circuit: All invoices and vouchers for the payment of attorney's fees and expenses must be itemized and submitted to the assigned judge for approval no later than 90 days after the case is completed unless otherwise approved by the court for good cause shown.
- Third Circuit: Interim billings for court-appointed attorney fees are allowed, to eliminate the submission of large bills to a county for expenses incurred, especially from a different fiscal year, or to prevent confusion due to the changing of rates set by the Supreme Court.
- Fourth Circuit: Absent prior authorization, court-appointed counsel in all criminal and committal cases shall submit to the Court one billing or court-appointed counsel fees at time of sentencing or disposition of the case, which will be made a part of the sentence or order. Juvenile court appointments may be billed on a monthly or quarterly basis. Failure to submit billings 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.
- Fifth Circuit: Upon application by the defense attorney, in a trial of greater than normal length, the judge presiding in the case may authorize monthly payments to that attorney for services provided. Vouchers submitted outside of the 30-day period shall be accompanied by a separate statement outlining good cause for the delay.
- Sixth Circuit: 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 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.
- Seventh Circuit: Absent prior authorization, court-appointed counsel in all criminal and committal cases shall submit to the Court one billing or court-appointed counsel fees at time of sentencing or disposition of the case, which will be made a part of the sentence or order. Juvenile court appointments may be billed on a monthly or quarterly basis. For complex cases, upon application by the attorney, the Court may waive this policy and provide for interim billings. Submissions are required to comply with the Voucher for Compensation and Expenses of Court Appointed Counsel document.

Travel

- Second Circuit: 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. 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 large number of local attorneys readily available nearby and in consideration of 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 travel waiver does not apply to Lincoln County cases. Travel to out-of-county correctional facilities to interview in-custody clients when video or telephonic meetings are not practical is generally considered an exception to the local policy against travel reimbursement.
- Seventh Circuit: Due to the availability of local attorneys, no travel costs will be paid for attorneys representing clients whose case is venued in Pennington county, unless travel outside the county is necessary and prior permission from the Judge presiding over the case has been obtained. Such motion may be made *ex parte* and under seal. Attorneys representing clients in Custer, Fall River, and Oglala Lakota counties must allocate their travel costs equally between all clients represented in one of those counties on any given court day.

Approval or Disapproval of Attorney's Fees and Costs

- Third Circuit: Appeals by attorneys to the Third Circuit judges regarding cuts in court-appointed attorney fees shall be reviewed under an abuse of discretion standard.
- Fifth Circuit:
    - If it appears that the total fee in any case will exceed $1,500 for a misdemeanor case and $2,500 for a felony case, prior approval from the judge assigned to try the case should be obtained before that limit is limited if counsel wishes to exceed that amount.
    - No Fee for any of these types of cases up to appeal may exceed $25,000. Payment for attorney fees from any source will be included in the computation. The trial judge will make a determination as to total payment considering reasonably necessary services to affect a proper defense, and the trial judge may, in their sound discretion, set a lower maximum limit for a particular case.
    - In juvenile matters, which concern children in need of supervision, juvenile delinquencies and abuse and neglect cases, no fee for any case for any one attorney may exceed $5,000. This, however, excludes costs for attorney fees that may be incurred during an appeal.
- Seventh Circuit: Appeals by attorneys to the Seventh Circuit judges regarding cuts in court-appointed attorney fees shall be reviewed under an abuse of discretion standard.

Experts

- Fifth Circuit: Permission must be obtained from the trial judge before any expenditure can be committed to hire an expert witness. The anticipated cost for services and expenses of such a witness and the reasons for such a need must be provided to the trial judge at the time such request is made.
- Seventh Circuit: Permission must be obtained from the trial judge before any expenditure can be committed to hire an expert witness. The anticipated cost for services and expenses of such a witness and the reasons for such must be provided to the trial judge at the time such request is made. The motion may be made *ex parte* and under seal. Under no circumstances shall the expert exceed the allowed cost without prior authorization from the trial judge.
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Expenses, Paralegal, and Investigators

- Second Circuit: Routine office overhead expenses such as consumable office supplies will not normally be re-reimbursed. 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.
- Fourth Circuit: 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 is 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 entitle "Experts" and must be preapproved by the Court.
- Fifth Circuit: Special Investigator Fees: A request to hire an investigator when it will involve an additional charge over and above that allowed to the attorney must be addressed to the judge presiding in the case. If the judge approves the request, the court will set a ceiling on the amount that

can be expended for this purpose. That ceiling includes total outlay for the investigator's services and expenses and cannot be exceeded without prior authorization from the judge.

- Sixth Circuit: 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.
- Seventh Circuit: 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 per hour.

1-Presiding Judge Policy-19

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: $97/hr. beginning January 1, 2020. 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 if complete 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 a three-judge panel of circuit and/or magistrate judges appointed by the presiding judge, or the next most senior judge in the event the presiding judge was the judge presiding in the case, in that circuit review the claim for compensation and hold a hearing thereon. A decision by the majority of the three-judge panel in the circuit shall become the amount of the fees and costs authorized. [SDCL 23A-40, (Rule 44)]