

IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT IN
AND FOR INDIAN RIVER, MARTIN,
OKEECHOBEE, AND ST. LUCIE
COUNTIES, FLORIDA

ADMINISTRATIVE ORDER 96 - 4

RE: ADMINISTRATIVE ORDER GOVERNING REVIEW OF COURT APPOINTED ATTORNEY
FEES IN DEATH PENALTY CAPITAL CASES IN THE NINETEENTH JUDICIAL
CIRCUIT

WHEREAS, as Chief Judge of the Nineteenth Judicial Circuit, the undersigned is vested with direct authority over payment of attorney fees for court-appointed counsel in criminal death penalty capital cases and as expected, with this authority comes the heavy burden of responsibility over the adequacy and efficiency of the system in providing such services; and,

WHEREAS, in accordance with this authority and responsibility, the undersigned has reviewed the matter of compensation for attorneys appointed by the Court to represent indigent defendants in death penalty capital cases, and pursuant thereto it is hereby:

ADJUDGED AND ORDERED:

1. Pursuant to Section 925.036(1), Florida Statutes, the prevailing hourly rate in this circuit for counsel appointed pursuant to Section 27.53, Florida Statutes and Section 925.035, Florida Statutes, is hereby fixed at \$50.00 per hour for out-of-court time and \$75.00 per hour for in-court time.

2. The County may question the propriety of the fees and hours itemized by court-appointed counsel. To assist in the review of court-appointed counsel's fee request, each activity of case preparation must be itemized individually in increments of one-tenth of an hour, in place of lumping several activities together in one line-item on the Affidavit and billing in quarter-hour increments. The following procedures are hereby implemented to determine if the fees sought by court-appointed counsel are reasonable given the difficulty and complexity of the case in question.

A. PEER REVIEW COMMITTEE. There is hereby constituted under the auspices of the Court, a Peer Review Committee which shall consist of the following: the State Attorney or his designee, two (2) local attorneys, one (1) alternate local attorney, a member of the finance department from one (1) of the four (4) counties, one (1) alternate member of the finance department from one (1) of the four (4) counties, a member of the County Attorney's Office from one (1) of the four (4) counties, and one (1) alternate member of the County Attorney's Office from one (1) of the four (4) counties. The Administrative Judge shall appoint the initial members, and administer terms of appointment, replacement of members and the like by supplemental Administrative Order. The Committee shall meet as needed but at least once every six (6) months.

B. REVIEW. In a case where the County Attorney questions an item on an itemized schedule of attorneys fees, the County Attorney's Office shall cause copies of said schedule to be transmitted to the members of the Peer Review Committee together with a statement setting out its concerns. Meetings before the Committee shall be arranged as soon as possible after the County indicates the need for an inquiry into a particular request. The County Attorney's Office shall always be noticed of any meetings and shall always be entitled to attend and participate in said meetings.

C. COMMITTEE PROCEDURE. The first review shall occur at a regularly scheduled meeting of the Peer Review Committee. The Committee as a whole will examine the fee requested, the statement of the County's concerns and the Court file to determine if the fees sought are reasonable given the difficulty and complexity of the case. In case a member of the Committee has a conflict of interest, the respective alternate shall review the case in place of the conflicted member. The requesting attorney may attend the meeting and may put on evidence for the Committee. Although all meetings shall be informal and shall afford the requesting attorney and the complaining County representative a liberal amount of time to make their case for their position, the requesting attorney may be represented by Counsel and may retain the services of a Court Reporter. Otherwise, said meetings shall not be recorded and no record shall be maintained.

D. COMMITTEE REPORTS. Following the meeting, the Committee shall issue a brief written opinion regarding the reasonableness of the requested fees. The Committee Report shall specifically state its opinion and the reasons for its opinion. The Report shall be signed by the Committee members and the signing members may have their dissent noted with their signatures or may file written dissents. The dissenting opinions, if any, may be attached to the Report or may be filed independently. Said Committee Reports and Dissents shall be filed in the Court file with copies being transmitted to all interested parties.

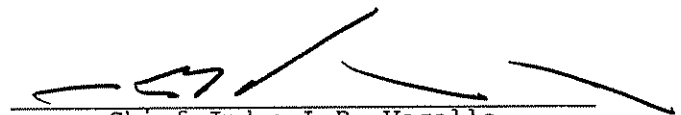
If no settlement is reached on the issue of appropriate fees, either the requesting party or the County Attorney's Office may set a hearing before the presiding judge of the case to obtain an ultimate determination. It is expected that the trial judge in a contested case will give consideration to the Committee Report when ruling on an attorney's fee request.

3. In requesting fees in excess of these guidelines, and particularly the statutory limits of Florida Statute 925.036, counsel should be mindful of the standard or review set forth in Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), as extended in White v. Board of County Com'rs, 537 So.2d 1376 (Fla. 1989), wherein the Court reminded the Bar that it is the indigent defendant right to competent and effective representation, not the attorney's right to reasonable compensation, that guides the Court.

4. The provisions of this Order are procedural in nature and shall, therefore, be applied to any pending or future fee requests.

5. All previous Orders concerning this matter are revoked effective the signed date of this Order.

DONE AND ORDERED in quadruplicate, at Vero Beach, Indian River County, Florida this 4th day of July 1996.



Chief Judge L.B. Vocelle