

**RESOLUTION
OF THE
BOARD OF GOVERNORS**



**GUAM BAR ASSOCIATION
BOARD OF GOVERNORS**

**RESOLUTION SUPPORTING AMENDMENTS TO INDIGENT
DEFENSE RULES TO PROVIDE FAIR COMPENSATION AND
EFFECTIVE REPRESENTATION**

WHEREAS, since *Gideon vs. Wainright*, 372 U.S. 335 (1963), and the enactment of the federal Criminal Justice Act, the right to counsel includes the right to effective counsel, fairly compensated by the Courts;

WHEREAS, the Courts of Guam have experienced a significant decrease in private panel attorneys serving as court-appointed counsel under the Miscellaneous Rules re: Indigent Defense, and has resorted to appointing **all** active members of the Guam Bar to criminal and juvenile cases; and

WHEREAS, the appointment of all active members of the Guam Bar, including in-house corporate counsel, bankers, teachers and authors, to represent criminal and juvenile clients, violates the clients' rights to effective assistance of counsel; and

WHEREAS, the Supreme Court of Guam has proposed amendments to the Local Rules Re: Indigent Defense, specifically MR1.1.5 – Indigent Defense Rules, to increase hourly rates for private counsel; and

WHEREAS, the proposed Amendments raise the hourly rate from \$100 per hour to \$148 per hour, still less than the federal CJA Rate; and

WHEREAS, the proposed Amendments do not raise the maximum limits (caps) for all cases, which must also be increased by 50% to provide fair compensation; and

WHEREAS, the proposed Amendments do not clarify that the caps apply “per attorney, per case,” as they should, in order to provide fair compensation and effective representation; and

WHEREAS, the proposed Amendments do not address application for fees in excess of the caps, including judicial review and criterion for payment; and

WHEREAS, the Guam Bar Association Board of Governors, recommends amendments to the Rules, based on the federal CJA Guidelines, that will address the above concerns of the Bar.

NOW THEREFORE BE IT RESOLVED, BY THE GUAM BAR ASSOCIATION BOARD OF GOVERNORS:

That the Guam Bar Association recommends and supports regular and periodic increase in hourly rates for private attorneys appointed to represent indigent clients in criminal and juvenile court cases; and

That the Guam Bar Association recommends, supports and encourages the Court to clarify that the maximum amounts (caps) apply “per attorney, per case;” and

That the Guam Bar Association recommends, supports and encourages the Court to increase the maximum limits as well, and amend the Rules accordingly; and

That the Guam Bar Association supports and encourages the Court to provide for judicial review of rejection of claims to exceed the caps, as well as amend other criterion for consideration in payment of such claims, including use of a CJA Form 26 or similar form; and

That the Guam Bar Association supports the following Amendments to the Rules:

MR 1.1.5. COMPENSATION. (a) Unless otherwise provided for, the hourly rate for legal services by counsel appointed under these Rules shall be ~~\$100.00~~ \$150.00 per hour for legal services rendered in and out of the courtroom, subject to the following maximums, per case, per attorney appointed:

(1) Not more than \$25,000.00 \$30,000.00 shall be paid in cases where the defendant faces life imprisonment (without the imposition of an Extended Term under 9 GCA § 80.32).

(2) Not more than \$20,000.00 \$25,000.00 for First Degree Felonies other than those compensated under category (1).

(3) Not more than \$10,000.00 \$15,000.00 for Second Degree Felonies.

(4) Not more than \$7,500.00 \$10,000.00 for Third Degree Felonies.

(5) Not more than \$3,500.00 \$4,000.00 shall be paid for misdemeanors.

(6) Not more than \$3,150.00 ~~\$4,000.00~~ shall be paid for habeas corpus proceedings.

(7) Not more than \$3,150.00 ~~\$4,000.00~~ shall be paid for juvenile delinquency cases.

(8) Not more than \$7,500.00 for attorneys appointed in juvenile special proceedings cases or appointed to provide guardian ad litem services.

(9) Not more than \$10,000.00 ~~\$15,000.00~~ shall be paid for each level of appeal in a particular case.

For First Degree Felonies in which the court appoints more than one attorney, not more than \$30,000.00 total will be paid, ~~to be divided among the attorneys~~ to each attorney.

For any other case in which the court appoints more than one attorney, the cap and hourly rates will remain the same, ~~to be divided among the attorneys~~ per case, per attorney.

In the event an attorney is appointed in separate cases that are fully or partially consolidated, the attorney may not submit duplicative billings in multiple cases for the same hours worked. Instead, the attorney should divide the hours worked by the number of cases in which the hours will be claimed, and apply the appropriate fraction in the billings for each case.

Counsel appointed under these rules may apply to the Administrator of the Courts to exceed these maximums and/or contest whether the appropriate maximum has been identified for a specific case. Counsel must demonstrate ~~extraordinary circumstances and good cause~~ that the case was extended or complex and that excess payment is necessary for fair compensation to justify an exception to the maximums. Approval of any amount in excess of the limits herein shall be recommended for approval or rejection ~~approved~~ by the Administrator of the Courts. In the event the Administrator of the Courts rejects the application in whole or in part, the Superior Court Judge presiding over the case may provide input in this regard, shall review the Administrator of the Court's determination, and make the final determination for rejection or approval of any payments made in excess of the maximum limits. In determining whether the circumstances of a particular case are ~~extraordinary~~ extended or complex and that excess payment is necessary for fair compensation, the Administrator of the Courts and presiding judge of the case shall consider the following non-exhaustive list of factors:

- i. Trial
- ii. Contested and Litigated Motions
- iii. Multiple Counts or Multiple defendants
- iv. Length, age and history of case
- v. Extensive and voluminous discovery, including digital evidence
- vi. Novel issues presented
- vii. Joint or separate trials with co-defendants
- viii. Multiple incidents (including multiple victims in separate incidents)
- ix. Mistrials and re-trial(s)
- x. Substitution of trial counsel; additional trial proceedings or phases (e.g., grand jury, competency phase, sanity phase)
- xi. Multiple special circumstances
- xii. Prior convictions or unadjudicated conduct admitted at penalty phase
- xiii. Prosecution's use of informants
- xiv. Extensive litigation of the admissibility of evidence
- xv. Forensic testing, analysis, and evidence (e.g., DNA, hair, fingerprint, blood, ballistics) introduced at trial or necessary for habeas investigation
- xvi. Mentally ill or mentally impaired defendants
- xvii. Non-English-speaking defendant or witnesses
- xviii. Minimal guilt and/or penalty phase investigation done for trial
- xix. Investigation requirements in multiple locations, requiring travel
- xx. Extended elapsed time since offenses/trial
- xxi. Necessity of expert witnesses
- xxii. Necessity of using some fees to cover investigative and incidental expenses
- xxiii. Length of record
- xxiv. Number of trial witnesses

No single factor is dispositive, and the Administrator of the Courts and Judge presiding over the case shall weigh all factors in determining whether the representation in any particular case ~~is extraordinary~~ that the case was extended or complex and that excess payment is necessary for fair compensation.

Application for payment by appointed counsel in excess of the maximum limits shall be submitted on the appropriate voucher form (attached MR1.1.5 Form B/CJA Form 26) to the Clerks of the Superior Court and Supreme Court, whichever is applicable.

(b) Application for payment by appointed counsel shall be submitted on the appropriate voucher form to the Clerks of the Superior Court and Supreme Court, whichever is applicable. Appointed counsel shall submit vouchers on a monthly basis. The Clerks for each court shall not approve payments unless vouchers are submitted as herein provided. The Administrator of the Courts shall have sixty (60) days to act on the submitted voucher or any requests to exceed the maximum compensation. Failure to act within the sixty-day time period shall be deemed an approval of the submitted voucher.

ATTACHMENT: MR1.1.5 FORM B: CJA FORM 26


Jacqueline T Terlaje (Mar 7, 2023 21:41 GMT+10)

03/07/23

JACQUELINE TAITANO TERLAJE
President

CERTIFIED BY:



03/07/23

JANICE M. CAMACHO
Secretary

ATTACHMENT:
MR1.1.5 FORM B: CJA FORM 26

**SUPPLEMENTAL INFORMATION STATEMENT FOR A COMPENSATION CLAIM IN EXCESS OF THE
STATUTORY CASE COMPENSATION MAXIMUM: DISTRICT COURT**

THIS FORM PROVIDES INFORMATION TO SUPPORT COUNSEL'S CLAIM THAT THE REPRESENTATION GIVEN WAS IN AN EXTENDED OR COMPLEX CASE, AND THAT THE EXCESS PAYMENT IS NECESSARY TO PROVIDE FAIR COMPENSATION. [SECTION 230.23.40](#) OF THE GUIDELINES FOR ADMINISTERING THE CJA AND RELATED STATUTES, IN THE *GUIDE TO JUDICIARY POLICY*, VOLUME 7, PART A, CHAPTER 2, DEFINES THE TERMS "EXTENDED" AND "COMPLEX," AND SUGGESTS CRITERIA FOR DETERMINING "FAIR COMPENSATION." THIS FORM SERVES AS COUNSEL'S MEMORANDUM REQUIRED BY [SECTION 230.30\(b\)\(1\)](#) OF THOSE GUIDELINES, AND DOES NOT REPLACE ANY OTHER DOCUMENTATION REQUIRED TO SUPPORT THE PAYMENT REQUEST. IF EXTRA SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS OF PAPER.

ATTORNEY NAME:

CASE NAME:

DOCKET NUMBER:

DEFENDANT NUMBER:

VOUCHER NUMBER:

1 PERIOD OF APPOINTMENT (DATES): _____ TO _____

TOTAL NUMBER OF IN-COURT HOURS: _____ 0 SPECIFYING: PRETRIAL HEARINGS _____ TRIAL _____
SENTENCING HEARINGS _____ ALL OTHER IN-COURT _____
TOTAL NUMBER OF OUT-OF-COURT HOURS: _____

2 OFFENSES CHARGED:

NUMBER OF COUNTS CHARGED: _____ NUMBER OF CO-DEFENDANTS: _____

OTHER PENDING CASES (DOCKET NUMBERS) OF DEFENDANT DURING REPRESENTATION:

IF APPLICABLE, SENTENCING GUIDELINE RANGE FOUND BY THE COURT FOR SENTENCING:

WAS A MANDATORY MINIMUM FOUND OR AT ISSUE AT SENTENCING? YES _____ NO _____

3 DESCRIBE DISCOVERY MATERIALS (NATURE AND VOLUME) AND/OR DISCOVERY PRACTICES WHICH ARE A NOTEWORTHY FACTOR IN THE NUMBER OF HOURS CLAIMED:

4 LIST AND DESCRIBE MOTIONS, LEGAL MEMORANDA, JURY INSTRUCTIONS, AND SENTENCING DOCUMENTS, OR LEGAL RESEARCH NOT RESULTING IN SUCH, WHICH ARE A NOTEWORTHY FACTOR IN THE NUMBER OF HOURS CLAIMED AND WHICH WERE DRAFTED ORIGINALLY FOR THIS CASE (DO NOT INCLUDE STANDARDIZED MOTIONS, ETC., UNLESS CONTENT WAS MODIFIED SIGNIFICANTLY):

5 SUMMARIZE INVESTIGATION AND CASE PREPARATION (E.G., NUMBER AND ACCESSIBILITY OF WITNESSES INTERVIEWED, RECORD COLLECTION, DOCUMENT ORGANIZATION) WHICH ARE A NOTEWORTHY FACTOR IN THE NUMBER OF HOURS CLAIMED:

6 EXPLAIN, IF NOTEWORTHY, IMPACT ON THE NUMBER OF HOURS CLAIMED OF INVESTIGATIVE, EXPERT, OR OTHER SERVICES USED (CJA 21 VOUCHER):

7 CHECK WHETHER ANY OF THE FOLLOWING CLIENT CONSIDERATIONS ARE A NOTEWORTHY FACTOR IN THE NUMBER OF HOURS CLAIMED AND EXPLAIN EACH: COMMUNICATION WITH CLIENT/FAMILY _____ LANGUAGE DIFFERENCE _____
ACCESSIBILITY OF CLIENT _____ OTHER _____

8 EXPLAIN ANY EXPENSE (ITEMS 17 AND 18 OF THE CJA 20 VOUCHER) GREATER THAN \$500:

9 EXPLAIN ANY OTHER NOTEWORTHY CIRCUMSTANCES REGARDING THE CASE AND THE REPRESENTATION PROVIDED TO SUPPORT THIS COMPENSATION REQUEST:

INCLUDE, IF APPLICABLE: (A) NEGOTIATIONS WITH U.S. ATTORNEY'S OFFICE OR LAW ENFORCEMENT AGENCY; (B) COMPLEXITY OR NOVELTY OF LEGAL ISSUES AND FACTUAL COMPLEXITY; (C) RESPONSIBILITIES INVOLVED MEASURED BY THE MAGNITUDE AND IMPORTANCE OF THE CASE; (D) MANNER IN WHICH DUTIES WERE PERFORMED AND KNOWLEDGE, SKILL EFFICIENCY, PROFESSIONALISM, AND JUDGMENT REQUIRED OF AND USED BY COUNSEL; (E) NATURE OF COUNSEL'S PRACTICE AND HARDSHIP OR INJURY RESULTING FROM THE REPRESENTATION; AND (F) ANY EXTRAORDINARY PRESSURE OF TIME OR OTHER FACTORS UNDER WHICH SERVICES WERE RENDERED.

SIGNATURE OF APPOINTED ATTORNEY:

DATE:

GBA BOARD RES. RE SUPPORT. AMEND. TO INDIGENT RULES

Final Audit Report

2023-03-07

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