

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

United States Courts
District of Idaho

Filed May 19, 2005

By Cameron Burke
Clerk of Court

In the Matter of:)
) **GENERAL ORDER #197**
Standards and Procedures for)
Payment of CJA Fees in)
Habeas Corpus Death Penalty Cases)

In order to provide consistency in the payment of fees and expenses in federal habeas corpus death penalty cases, and to inform counsel in advance of the Court’s expectations, the following standards and procedures have been established.

This general order supercedes General Order 133 entered December 16, 1996.

1. Capital Case Budgeting Procedures. As a cost-containment mechanism, up-front budgeting is required in the Ninth Circuit’s district courts for all capital habeas cases in which counsel will be compensated under the provisions of 21 U.S.C. § 848(q) and 18 U.S.C. § 3006A. Capital habeas cases will be divided into four budgeting phases: Phase I (Appointment, Record Review, and Preliminary Investigation); Phase II (Preparation of the Petition); Phase III (Procedural Defenses, Motion for Evidentiary Hearing, and Briefing of Claims); and Phase IV (Discovery, Evidentiary Hearing, and Final Briefing). Any case that has not yet been budgeted will be budgeted once the case moves into a new phase.

Petitioner’s counsel will submit a proposed budget to be reviewed by the court at the beginning of each phase. Petitioner’s counsel shall also submit a declaration in support of the proposed budget, indicating how counsel developed estimates of time and expenses for that phase. The court and counsel will reach an agreement on the proposed budget, and the court-approved budget will be submitted for review by the Judicial Council of the Ninth Circuit. It will be possible to amend the budget at a later date, provided sufficient justification is presented in advance to the court.

Attorneys are required to submit proposed budgets using the electronic Excel budgeting system, developed specifically for budgeting cases in the Ninth Circuit’s district courts. The Court will maintain a master budget reflecting current balances and fees/expenses paid. All budgetary matters shall remain confidential.

2. Judicial Council Review of Budgeted Cases. As an additional response to the concerns of the Judicial Conference of the United States, the Ninth Circuit Judicial Council will review all budgets that have been approved by the district court.

This review process includes budgets for both new cases and cases that are already pending. The Council will also review any significant modifications to these budgets. A significant

modification is defined as a ten percent (or more) increase in the total amount of the budget or \$15,000, whichever is less.

Initial review of the budgets is completed by the Capital Case Committee, appointed by the Chief Circuit Judge. Budgets are reviewed quarterly by the Committee. The Committee will make a recommendation to the assigned district judges on the Judicial Council. The Committee can also recommend that budget approval be deferred if the budget is incomplete in some way. Judicial Council approval or disapproval will be communicated to the presiding District Judge for action.

If there is a significant lapse between the time petitioner's counsel submits a budget to the court and the time in which the Judicial Council approves that budget, neither counsel nor the court is expected to suspend work on the case while waiting for Judicial Council approval. However, counsel should be aware that the Judicial Council will review the budget and will provide ultimate approval and that no work at rates above the prescribed maximum rates can be performed without prior judicial council approval.

3. Rate of Compensation for Counsel Appointed Under 21 U.S.C. § 848(q). The presumptive rate of compensation for counsel appointed under 21 U.S.C. § 848(q) and 18 U.S.C. § 3006A(2)(B) shall be \$140 per hour for lead counsel. This rate is reserved for those who have substantial experience and skill in federal capital habeas corpus proceedings. The rate for those with significant, but less than substantial experience handling capital habeas corpus proceedings, those who have other comparable experience, such as substantial experience with capital cases or with federal habeas corpus proceedings, and those serving as second counsel, will be compensated at \$125 per hour. This rate of compensation applies only to the portion of services performed on or after May 6th, 2005.
4. Interim Submission of Vouchers. To facilitate the Court in the processing and approval of fees and expenses, counsel appointed in cases which are not under budgeting guidelines shall submit interim vouchers quarterly. Counsel shall submit a CJA Form 30, "Death Penalty Proceedings: Appointment and Authority to Pay Court Appointed Counsel" for each interim period. The first interim period shall conclude no later than the third full month after appointment. Thereafter, each interim voucher shall reflect time and expenses incurred for each subsequent three month period. Cases which are under the direction of a budgeting order, shall comply with requirements of the Court's order. (See Section 1& 2).
5. Payment of Vouchers. All vouchers shall be supported by itemized time and expense statements. Counsel shall identify all payments previously received. Authorization will be made for payment of all approved itemized hours and all reimbursable expenses. Each interim voucher submitted shall be reviewed for the amount of time claimed and type of service provided in accordance with the standards set forth below:
 - a. Itemization of Hours
Billing statements shall list the time expended for each discrete task, specifically describe the work performed and, if necessary, explain the relevance of the task to the federal proceeding. Time entries should relate to specific tasks and not simply

list multiple tasks performed in a specified block of time. For example, work related to obtaining or reviewing documents should identify the documents or source being reviewed, as well as the time devoted to that task; legal research should identify the topic researched, the relevance to the federal proceeding and the time devoted to that task. Aggregate time blocks and time entries which are generally vague or ambiguous may not be approved for payment.

- b. Internal Staff Division of Labor. There should be reasonable division of labor between counsel and other staff to avoid both duplication of effort and excessive staff conferencing. Counsel should minimize time claimed for such items as internal conferences and memos, coordination between co-counsel, and coordination between counsel and staff, such as investigators and paralegals.
- c. Client Conferences. In cases where one attorney is appointed from within a district and another attorney is appointed from outside of the district, whenever possible, the counsel nearest the client should conduct most of the client visits.
- d. Conferences with Co-Counsel. Conferences with co-counsel regarding the status of the case should not be considered billable time. For example, conferences regarding division of labor, scheduling matters and general updates on case development will not be approved for payment (unless specifically allowed by a case budgeting order regarding the initial budget review). Conferences with co-counsel regarding a substantive issue may be approved for payment if the conference was necessary to the development of that issue. Time entries reflecting a conference with co-counsel must identify the individuals involved, the topic discussed and the relevance to the development of a substantive issue related to the federal case.
- e. Attendance by Multiple Staff in Sessions with Experts, Service Providers and Witnesses. Unless prior permission is granted by the court, no more than two persons (two attorneys or one attorney and one paralegal or investigator) will be compensated for time expended in interviews and meetings with experts, service providers and/or witnesses.
- f. Attendance by Multiple Staff at Court Hearings. With the exception of evidentiary hearings, only one counsel will be compensated for attendance at court hearings unless otherwise allowed by the court. Compensation will not be approved for attendance at court hearings by additional support staff, including law clerks, paralegals and investigators without permission from the court.
- g. Non-Reimbursable Services. Appointed counsel may not claim compensation for the following:
 - Time expended in the preparation or submission of vouchers.
 - Time relating to State Court proceedings, or for proceedings arising from an appeal of an order of this court. Requests for payment in these instances should be made to the appropriate court.

- Clerical services regardless of whether the person performing those functions is an attorney, law clerk, paralegal or secretary.
- Services of a personal nature and expenses incidental thereto, for counsel, or on behalf of the person being represented.
- Process service without prior authorization.

6. Reimbursable Expenses. Counsel may be reimbursed for out-of-pocket expenses reasonably incurred incident to the representation. All expenses in excess of \$50 should be supported by appropriate itemization reports and receipts.

Courier and messenger services are discouraged unless a specific need is provided. Receipts will be required.

In-house copy costs may be reimbursed at a rate of \$.10 per page.

Computerized research fees are considered office overhead, as are other fees for library items. All CJA panel attorneys are expected to subscribe to a flat-fee research plan and the court should only provide reimbursement for computerized research when an explanation is provided -- *e.g.*, that fees imposed are outside the scope of the flat fee plan or why a flat fee plan is not feasible.

Counsel should incur no single expense in excess of \$500.00 without prior approval of the Court. Such approval should be obtained by filing an application stating the nature of the expense, the estimated dollar amount and the purpose the expense is necessary to the representation. Upon finding that the expense is reasonable, the Court will issue an order authorizing counsel to incur the expense.

7. Travel Expenses. Travel outside the immediate location of counsel for the purpose of interviewing witnesses, etc., shall be considered a single item expense. Travel expenses, including mileage, meals and lodging, for a single trip which aggregate in excess of \$500.00 shall be considered one itemized expense and shall require prior approval of the Court. In all instances, counsel shall seek authorization for use of the District of Idaho National Travel Service Account for travel requiring airfare. Applications for travel shall be submitted on a "Request for Travel Authorization" form and may be submitted to the court by facsimile.
8. Rates and Pre-Approval of Associates and Paralegals. The rates for associate counsel should be between \$65 and \$80 per hour. The maximum rate for paralegals and law clerks is \$35 per hour or \$45.00 per hour with special skills. Rates for all staff, whether on the appointed attorney's staff or independent, may not exceed the Judicial Council's maximum rates, unless otherwise authorized by the court and the Judicial Council. It should be explicitly noted that attorneys and/or law firms are not to make a profit on these positions. In other words, the court will not authorize a higher hourly rate than the actual out-of-pocket costs, including benefits, to the firm. General overhead costs may not be included in the calculation of the hourly rate.

Appointed counsel are expected to use associates, paralegals or other cost effective means to minimize costs where lead attorney expertise is not required, such as legal research and file review. Use of associates and paralegals must be pre-approved in conjunction with case

budgeting or a funding request; such requests must detail the projected number of hours, the hourly rate, and the total anticipated expenditure.

9. Rates for Investigators. The maximum rate for an investigator is \$55.00 per hour or \$65.00 per hour with special skills. Once funding for investigative services, experts and/or other services has been approved, counsel is responsible for communicating with the service provider to ensure that services comply with specific terms of the court order and do not exceed the amount authorized. Payments to service providers should only be authorized at the appropriate rate for the type of task performed – *e.g.*, an investigator should only be paid at the paralegal rate for performing paralegal tasks (such as record gathering).

10. Additional Maximum Rates.
Strickland Experts -- \$125/hr.

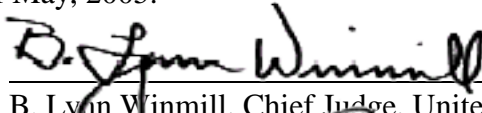
Psychiatrists and other medically licensed mental health experts -- \$275/hour;

Other forensic experts -- \$200/hour;

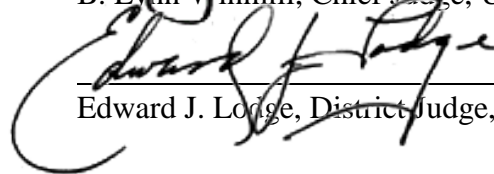
Psychologists (Ph.D.) -- \$200/hour;

Any expert testifying at a court proceeding shall receive eight times the hourly rate per full day or four times the hourly rate per half day, or the actual number of hours, whichever is less. Absent court and Judicial Council approval, experts may not exceed the maximum rates.

Dated this 19th day of May, 2005.



B. Lynn Winmill, Chief Judge, United States District Court



Edward J. Lodge, District Judge, United States District Court