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Decatur County Clerk

In the
Indiana Supreme Court

FILED
Oct 30 2017, 4:08 pm
CLERK
Indiana Supreme Court
Court of Appeals
and Tax Court

Cause No. 94S00-1701-MS-5

Order Amending Rules of Criminal Procedure

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, the Indiana Rules of Criminal Procedure are amended as follows (deletions shown by ~~striking~~ and new text shown by underlining):

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Rule 13. Case reassignment and special judges; selection

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(G) Compensation. A full-time judge, magistrate, or other employee of the judiciary shall not be paid a special judge fee for serving as a special judge or serving in a case reassigned pursuant to this rule. All other persons serving as special judge shall be paid a special judge fee of twenty-five dollars ($25.00) per day for each jurisdiction served for the entry of judgments and orders and hearings incidental to such entries. All judges, magistrates, and other persons who serve in courts outside of their county of residence shall be entitled to mileage at a rate equal to other public officials as established by state law, hotel accommodations, and reimbursement for meals and other expenses. Senior Judges who serve as special judges shall be paid in accordance with a schedule published by the Chief Administrative Officer (CAO)~~Executive Director~~ of the Indiana Office of Judicial ~~division of State Court~~ Administration (IOJA). At the discretion of the special judge and following consultation with the parties, a special judge or a judge reassigned a case in another court may schedule conferences, entertain motions, and perform all administrative tasks without travel to the court where the case is pending. All hearings involving testimony by witnesses, unless the parties agree to the contrary on record, shall be held in the court where the case is assigned. Special judges are encouraged to employ procedures that reduce the necessity for travel, such as telephone conferences, facsimile exchange of information, and other time-saving measures of communication. Compensation as permitted under this provision shall be paid by the State upon presentation of a claim for such services signed by the special judge.

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Rule 15.2. Abstract of Judgment

Upon sentencing a person for any felony conviction, the court shall complete an abstract of judgment in an electronic format approved by the Indiana Office of Judicial ~~Division of State Court~~ Administration (IOJA). The IOJA ~~Division of State Court Administration~~ will

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maintain an automated system for purposes of submitting the electronic abstract of judgment.

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Rule 23. Method of Keeping Records
Under the direction of the Supreme Court of Indiana, the Clerk of the Circuit Court may, notwithstanding the recordkeeping practices set forth for criminal proceedings, keep records in any suitable media. The recordkeeping formats and systems and the quality and permanency requirements employed for the Chronological Case Summary, the Case File, and the Record of Judgments and Orders (Order Book) shall be approved by the Indiana Office of Judicial ~~Division of State Court~~ Administration (IOJA) for compliance with applicable requirements.

Rule 24. Capital Cases

. . .

(C) Compensation of Appointed Trial Counsel. All hourly rate trial defense counsel appointed in a capital case shall be compensated under subsection (1) of this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Hourly rate counsel shall submit periodic billings not less than once every thirty (30) days after the date of appointment by the trial court. All salaried capital public defenders compensated under subsection (4) of this provision shall present a monthly report detailing the date, activity, and time duration of services rendered after the date of appointment. Periodic payment during the course of counsel's representation shall be made.

(1) *Hours and Hourly Rate*. Defense counsel appointed at an hourly rate in capital cases filed or remanded after appeal on or after January 1, 2001, shall be compensated for time and services performed at the hourly rate of ninety dollars ($90.00) only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination shall be made within thirty (30) days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time.

The hourly rate set forth in this rule shall be subject to review and adjustment on a biennial basis by the Chief Administrative Officer (CAO) ~~Executive Director~~ of the Indiana Office of Judicial ~~Division of State Court~~ Administration (IOJA). Beginning July 1, 2002, and July 1st of each even year thereafter, the CAO ~~Executive Director~~ shall announce the hourly rate for defense counsel appointed in capital cases filed or remanded after appeal on or after January 1, of the years following the announcement. The hourly rate will be calculated using the Gross Domestic Product Implicit Price Deflator, as announced by the United States Department of Commerce in its May report, for the last two years ending December 31st preceding the announcement. The calculation by the CAO ~~Executive Director~~ shall be rounded to the next closest whole dollar.

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In the event the appointing judge determines that the rate of compensation is not representative of practice in the community, the appointing judge may request the CAO ~~Executive Director~~ of the IOJA ~~Division of State Court Administration~~ to authorize payment of a different hourly rate of compensation in a specific case.

(2) *Support Services and Incidental Expenses*. Counsel appointed at an hourly rate in a capital case shall be provided, upon an ex parte showing to the trial court of reasonableness and necessity, with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase. In addition to the hourly rate provided in this rule, all counsel shall be reimbursed for reasonable and necessary incidental expenses approved by the trial judge. Counsel may seek advance authorization from the trial judge, ex parte, for specific incidental expenses.

Full-time salaried capital public defenders shall be provided with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase, as determined by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge as set forth above.

(3) *Contract Employees*. In the event counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty case to reflect the limitations of case assignment established by this rule.

(4) *Salaried Capital Public Defenders*. In those counties having adopted a Comprehensive Plan as set forth in I.C. 33-9-15 *et. seq.*, which has been approved by the Indiana Public Defender Commission, and who are in compliance with Commission standards authorized by I.C. 33-9-13-3(2), a full-time salaried capital public defender meeting the requirements of this rule may be assigned in a capital case by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge. Salaried capital public defenders may be designated as either lead counsel or co-counsel. Salaried capital lead counsel and co-counsel must be paid salary and benefits equivalent to the average of the salary and benefits paid to lead prosecuting attorneys and prosecuting attorneys serving as co-counsel, respectively, assigned to capital cases in the county.

Each year, by July 1, those counties wishing to utilize full-time salaried capital public defenders for capital cases shall submit to the CAO ~~Executive Director~~ of the IOJA ~~Division of State Court Administration~~ the salary and benefits proposed to be paid the capital public defenders for the upcoming year along with the salaries and benefits paid to lead prosecutors and prosecutors serving as co-counsel assigned capital cases in the county in the thirty-six (36) months prior to July 1, or a certification that no such prosecutor assignments were made. The CAO ~~Executive Director~~ shall verify and confirm to the Indiana Public Defender Commission and the requesting county that the proposed salary and benefits are in compliance with this rule. In the event a county determines that the rate of compensation set forth herein is not representative of practice in the community, the county may request the CAO ~~Executive Director~~ to authorize a different salary for a specific year.

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(K) Compensation of Appellate Counsel. Appellate counsel appointed to represent an individual sentenced to die shall be compensated under this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Counsel shall submit periodic billings not less than once every thirty (30) days after the date of appointment. Attorneys employed by appellate counsel for consultation shall be compensated at the same rate as appellate counsel.

(1) *Hours and Hourly rate.* Appellate defense counsel appointed on or after January 1, 2001, to represent an individual sentenced to die shall be compensated for time and services performed at the hourly rate of ninety dollars only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination shall be made within thirty (30) days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, *ex parte*, for specific activities or expenditures of counsel's time.

The hourly rate set forth above shall be subject to review and adjustment as set forth in section (C)(1) of this rule.

In the event the appointing judge determines that this rate of compensation is not representative of practice in the community, the appointing judge may request the CAO~~Executive Director~~ of the IOJA~~Division of State Court Administration~~ to authorize payment of a different hourly rate of compensation in a specific case.

(2) *Contract Employees.* In the event appointed appellate counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty appeal to reflect the limitations of case assignment established by this rule.

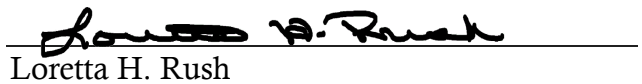
(3) *Salaried Capital Public Defenders.* In the event appointed appellate counsel is a salaried capital public defender, as described in section (C)(4) of this rule, the county must comply with, and counsel shall be compensated according to, the requirements of section (C)(4).

(4) *Incidental Expenses.* In addition to the hourly rate or salary provided in this rule, appellate counsel shall be reimbursed for reasonable incidental expenses as approved by the court of appointment.

. . .

These amendments shall take effect January 1, 2018.

Done at Indianapolis, Indiana, on 10/30/2017 .



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.