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**ASSIGNED COUNSEL COORDINATOR**

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TO: Assigned Counsel Contractors, Alternate Assigned Counsel, all Ad Hoc Assigned Counsel, all Support Personnel

FROM: Charles Martin

DATE: July 25, 1994

SUBJECT: Explanation of General Procedures  
New Additions to General Procedures

It has come increasingly to my attention that the Assigned Counsel Primer is being misinterpreted by many attorneys participating in the Assigned Counsel Program. What this situation most often accomplishes, unfortunately, is a delay in payment to you, and a lot of frustration for everybody. Your participation in the Program is greatly valued, so won't you carefully look over this memo and join us in making the process a smoother one?

**GENERAL PROCEDURES**

\* You can download the Assigned Counsel's Debenture Forms (District Court Form 361) as well as the Defender General Adult Case Report and the Defender General Juvenile Case Report from this web site.

\* In cases where there are co-counselors, each attorney will be compensated at the established hourly rate. Where further compensation amounts are concerned (see "General Procedures" below, § 2(b)(c)), these amounts must be established between co-counselors and the Coordinator at the **time of assignment**.

\* Assigned counsel must not accept collect calls from correctional centers. Expenses claimed for such calls will be routinely denied payment. Call back—it's cheaper.

1. Your first obligation upon appointment as Assigned Counsel is to notify the Defender General of your appointment. Send a copy of your Notice of Assigned Counsel (District Court Form 360) to: Office of the Defender General, 6 Baldwin Street, 4<sup>th</sup> Floor, Montpelier, VT 05633-3301.

2. The Assigned Counsel Coordinator's principal function is to review and approve payment of documented expenses and claims for compensation. This has several features:

(a) Expenses other than routine office expenses (photocopying, long distance, etc.) **must be approved in advance of being incurred**. Approval is obtained by sending the Coordinator a completed Expenditure Request Form. I will approve, approve with modification, or disapprove the request and return the form to you. Once signed by me, the form must be

returned with your debenture or be attached to the third party's bill, as appropriate. (see "d" below)

**NOTE:** When requesting approval for expenditures related to experts, investigators, paralegals, etc., the hourly rate **must** appear in the space provided on the Expenditure Request Form. Failure to supply this information will result in return of the Expenditures Request Form **unapproved**.

Some tips on the form: Vague expense requests will not be approved. You must inform me what service is required, why you need it, who will provide it, the service provider's address, what maximum amount and hourly rate will be charged, and where appropriate, the number of hours requested if it is a personal service. When in doubt on the details, telephone first. Sketchy requests will be routinely returned unapproved.

b) Rates and Maximum Compensation Levels are established by Supreme Court Administrative Order No. 4 § 6(a), which was amended effective 3/1/94, and further amended by the 1994 Legislature. The rates of compensation are as follows: prior to 3/1/94 - \$25.00 per hour; 3/1/94-4/14/94 - \$50.00 per hour; 4/15/94-6/30/94 - \$25.00 per hour; 7/1/94-6/30/99 - \$40.00 per hour; 7/1/99 - \$50.00 per hour (unless further action by Legislature). The maximum compensation levels were increased as follows effective 3/1/94:

- (i) Misdemeanor maximum \$1,000.00; Miscellaneous maximum \$1,000.00
- (ii) Minor Felony maximum \$2,000.00
- (iii) Major Felony maximum \$5,000.00
- (iv) Felony (life imprisonment) \$25,000.00
- (v) Appeals \$2,000.00
- (vi) Juvenile maximum \$2,000.00
- (vii) Termination of Parental Rights Petition maximum \$5,000.00

**NOTE:** Please note that both multiple counts and multiple juveniles are considered **one case for purposes of establishing compensation levels**, if they are of the **same date**. Thus, for example, three minor felony counts established on July 31, would nevertheless cap at a maximum of \$2,000.00, **not** \$6,000.00. Similarly, three juveniles whose cases were of the same date, and assigned together, would cap at \$2,000.00, **not** \$6,000.00.

All other proceedings, i.e. habeas corpus, post-conviction relief, sentence reconsideration, etc. are regarded as miscellaneous proceedings with a \$1,000 dollar maximum compensation limit. The fact that the matter that caused the incarceration is a felony does not automatically raise that compensation. For example, a post-conviction relief proceeding challenging a homicide conviction has a maximum compensation limit of \$1,000 (unless increased by permission of the Assigned Counsel Coordinator as provided above). To establish compensation levels beyond maximum caps, an Expenditure Request Form must be submitted and approved along with your Interim Debenture (see below). **Failure to follow this procedure will result in the automatic dismissal of any amount above the maximum compensation levels as established by A.O. No. 4 § 6(a).** See Administrative Order No. 4 § 6(d).

c) Excess compensation: Compensation in excess of the maximum provided above will be paid **only** if approval is obtained in advance of the services being incurred and only in truly extraordinary circumstances. Request must be made by submitting an interim debenture with a completed expenditure request form **prior to reaching the maximum**.

**NOTE:** Effective immediately, any Debenture (Form 361) that exceeds maximum compensation as established by Supreme Court Administrative Order No. 4 § 6 (see below), and which arrives at this office without the **original** approved Expenditure Request Form requesting excess compensation, will be forwarded to State Finance for payment for only the maximum amount of the case authorized (see ¶ 2(a) above. Any requested compensation over that amount will be automatically rejected.

Multiple charges: Each charge or count has its own maximum compensation rate only if the multiple charges **do not arise out of the same incident**, or put another way, if the multiple charges are "different date" charges. This is similarly true of multiple juveniles. Therefore, submit a single 361. A separate case report is required for each charge or count, however.

d) Payments are made in two ways:

(i) Direct payment of expenses to provider: First obtain approval for the expense from the Coordinator. **Send the bill for the service with the approved Expenditure Request Form directly to the Defender General.** If expenses are not submitted in this fashion, they will not be approved. **No third party bills are to be paid by attorneys directly**, although witness fees are an exception. Be sure the bill contains the case name and docket number. Sign the bill to indicate that the service billed for has been provided as charged. **NOTE:** If the service provider submits a bill for more than the amount approved on the expenditure request form, that additional amount will automatically not be paid.

(ii) Reimbursement or payment to counsel for expenses and compensation: Complete Assigned Counsel Debenture (District Court Form No. 361) obtained from the court clerks. Please detail how you spent your time and the amount of time spent on each activity. **"Preparation of Debenture" is not an acceptable expense.** Itemize your time in whatever time increments you use in your practice. Attach the approved Expenditure Request Form and any/all related proofs of payment if reimbursement of third party expenses paid by your office is requested. You must also include a completed Adult or Juvenile Defender General Case Report. Send these documents to the Coordinator. If you still have any questions, **call**; failure to follow these procedures exactly will only result in the return to you of the entire debenture and a delay in payment. You may submit your customary professional statement **on your firm's letterhead** in lieu of entering all the information on a debenture form. Complete a single debenture sheet (be sure to sign it), itemize only the totals for compensation and expenses and attach your professional statement. **You must, however, always include with such a statement a fully completed and signed Form 361 as a cover sheet.**

**NOTE:** Photocopies of **signed** debentures are not acceptable. Only in extraordinary circumstances will such debentures be accepted, and then only if clearly marked "Duplicate". This rule does not preclude the use of blank, copied debenture forms.

**NOTE:** Debentures must be received **within three months** of conclusion of the case or compensation is automatically denied. See Administrative Order No. 4, § 6(e).

3. Witnesses: Witnesses are paid \$30.00 plus \$.55 per mile. Complete the ACC Witness Form (don't forget the social security number) and send directly to the Defender General. Witnesses subpoenaed for court appearances also require a witness form. The expenses for witnesses are no longer borne by the court, but when requested by assigned counsel, are payable from the assigned counsel's budget. Don't forget to request prior approval by use of the Expenditure Request Form. Payment for testimony of a psychiatrist, who performed a court-ordered evaluation, although the evaluation is paid for by Department of Mental Health, is the responsibility of the party requesting the attendance of the psychiatrist.
4. Transportation of prisoners for depositions or attorney conferences: Submit Expenditure Request Form in advance.
5. Paralegals: Advance approval is required by submitting an Expenditure Request Form. Paralegal compensation is deducted from the maximum attorney compensation; however, for reporting purposes only, list paralegal time as an expense on the 361 Form. Compensation will not be paid for duplicate services, e.g., attorney and paralegal both attending the same deposition. The compensation to both attorney and paralegal may not exceed maximum attorney compensation.
6. Depositions: Because of the substantial expense of deposition transcripts, please ask yourself these questions:
  - (i) Can it be taken by tape recording? (See V.R.Cr.P. 15(d) eff. 02/01/84)
  - (ii) If not, and after deposing, is a full original copy necessary?
  - (iii) Is another party's original or copy available for review?
  - (iv) Will a partial copy suffice?
  - (v) Do not order both an original and a copy – photocopy the original yourself and bill \$.10 per page.
  - (vi) Deposition subpoenas ordinarily should be served by the county sheriff.
  - (vii) The maximum rate paid to reporters is the judicial rate, \$2.65 per page for the original.
7. Service Costs: Sheriffs or their deputies are paid only mileage for serving deposition subpoenas in criminal cases, but fee plus mileage in juvenile cases. **Do not** pay sheriff's fees and then include them on your debenture. Instead, forward sheriff's bill directly to the Defender General's Office. As with all third party payments, sign the statement and be sure it includes the case name, court, and docket number.
8. Investigators:
  - (i) Specialized investigators, i.e., arson specialist, etc., are treated as an expense.
  - (ii) Routine private investigation is ordinarily treated as attorney time in relation to the maximum compensation but may be treated as an expense depending upon the nature of the investigation proposed to be undertaken. Submit an Expenditure Request Form.
9. Appeals: When a client requests that an appeal be filed, an application for the services of appellate counsel at state expense must be filed in the trial court along with the notice of appeal. When (if) the application is approved, the trial counsel must order the transcripts of all the

proceedings necessary to present the issues that are to be appealed. The transcripts MUST be ordered from the court reporter who covered the hearing for which the transcript is required. However, if the proceedings were taped, the transcript of the tape must be ordered from Court Reporter Associates (148 College Street, 2<sup>nd</sup> Floor, Burlington, VT 05401). The trial attorney is also responsible for preparing the Docketing Statement required by V.R.A.P. 3(f). The transcript order must be forwarded with the Docketing Statement to the Supreme Court.

When all of the above are completed, copies of the same (along with the judge's order approving services of appellate counsel) shall be sent to the Assigned Appellate Contractor together with the Appeal Referral Form included herein. The reason for the conflict with the Public Defender should be noted on the Appeal Referral Form. You will be notified by either the Assigned Appellate Contractor or the Appellate Defender as to which office will be assuming responsibility for the appeal. Until you receive notification that one of these offices will be responsible for the appeal, you continue to be responsible for representing the client.

In the event the client seeks to stay the judgment of the trial court or to be continued on conditions of release pending appeal, any motion to that effect must be filed in the trial court by trial counsel. Trial counsel is also responsible for bail appeals before final judgment; however compensation for that representation shall be billed on a separate debenture and counts as a separate case, and is not included in the compensation limit for proceedings at the trial court. The limits for appellate compensation, as provided for appellate proceedings in Administrative Order No. 4, § 6(a), apply.