

FILED

STATE OF MINNESOTA

2014 FEB -6 PM 3:59

DISTRICT COURT

COUNTY OF HENNEPIN

BY ~~XXXXXXXXXXXXXXXXXXXX~~ DEPUTY
COURT ADMINISTRATOR

FOURTH JUDICIAL DISTRICT

In Re: 2014 Reimbursement Rate
for Attorneys' Fees and Costs
Pursuant to Minn. Stat. § 611.27

STANDING ORDER

Whereas, Minn. Stat. § 611.27 requires the chief judge of each judicial district to establish a reimbursement rate for attorneys' fees and costs associated with the representation of any defendant in connection with the appeal initiated by the prosecuting attorney of any pre-trial order in a criminal proceeding, and

Whereas, the fees established shall be paid by the governmental unit responsible for the prosecution, and

Whereas, the undersigned has consulted with various city attorneys, county attorneys, the chief public defender of the Fourth Judicial District and members of the private bar of the Fourth Judicial District regarding the appropriate reimbursement rate to be paid pursuant to Minn. Stat. § 611.27, subd. 16(a) as follows:

1. The undersigned received letters from two private criminal defense attorneys, one stating that the hourly rate should be \$200.00 and another that the rate should be at least \$150.00 per hour.
2. The Chief Public Defender informed the undersigned that he pays contract public defenders between \$40.00 and \$60.00 per hour.
3. The undersigned has reviewed a letter dated October 13, 2012, from Kevin Kajer, Chief Administrator of the State Board of Public Defense, disclosing that in the five years preceding the letter, nine contract attorneys had been used by the Appellate Division of the State Board of Public Defense and had been paid between \$30.00 and \$42.50 per hour.
4. The undersigned spoke with the panel administrator for the Federal Public Defender who stated that attorneys appointed under the Criminal Justice Act are paid \$110.00 per hour.
5. A proposed \$60.00 hourly rate for Minn. Stat. 611.27 reimbursement was on the agenda of the February 2014 Hennepin County Criminal Justice Task Force for comment and discussion. The Task Force is composed of representatives from the Hennepin County Department of Community Corrections and Rehabilitation, the Minneapolis City Attorney's Office, the Hennepin County Suburban Prosecutor's Association, the Hennepin County Attorney's Office, the Fourth Judicial District Public Defender's Office, the Fourth Judicial District Court, the Hennepin County Sheriff's Office and the private bar. All parties were

represented at the February, 2014 meeting except the private bar did not attend. There were no comments from the group.

6. The undersigned received a letter from Jean Burdorf, chief of the Appeals Section of the Office of the Hennepin County Attorney, stating that the proposed \$60.00 hourly rate was reasonable and fiscally sound.

Now, therefore,

IT IS ORDERED

1. The reimbursement rate in the calendar year 2014 for attorneys' fees associated with representation under Minn. Stat. § 611.27, subd. 16(a) shall be \$75.00 per hour plus costs and expenses reasonably incurred. This rate is effective immediately and shall apply to all services performed from January 1, 2014, and shall be in effect until further order of the Court.

2. Reimbursement shall not exceed a total of \$5,000 exclusive of costs and expenses reasonably incurred unless payment in excess of \$5,000 is certified by the chief judge of the Fourth Judicial District as necessary to provide fair reimbursement for services of an unusual character or duration.

BY THE COURT



Peter A. Cahill
Chief Judge
Fourth Judicial District

DATED: February 6, 2014

PAUL ENGH

(612) 252-1100

LAWYER

**SUITE 1225
220 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402
FAX: (612) 339-7851**

12.11.2013

Chief Judge Peter Cahill
Hennepin County District Court
Hennepin County Courthouse
Minneapolis, MN 55487

RE: Hourly rates for representation in State pretrial appeals

Dear Judge Cahill,

May this serve as a comment on the issue of what a “reasonable fee” is under Minn. Stat. 611.27, Subd. 16 (a). This statute permits fees to be paid to lawyers who are forced to represent the client’s interests when the State pursues a pretrial appeal. The current approved hourly rate is \$50.00 per. That’s too low.

There are any number of ways to see what that is. First off, the \$50.00 doesn’t take into account the lawyer’s overhead expenses. Even a minimum amount of overhead in this market is \$25.00 per hour, or \$1,000.00 per week.

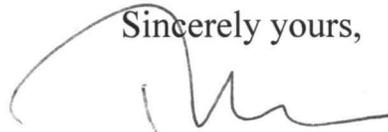
Second, assuming the lawyer clears the balance, \$25.00 less FICA alone (15% off the top), and balance becomes \$21.00. Less state and federal tax, and the take home is about \$12.00. Which is less than your law clerk makes, and perhaps slightly more than a sixteen-year-old babysitter can get on a Saturday night. This is why, when approached by the Hennepin County Public Defender to do conflict work this year, I had to turn it down, and that proposed rate was less, at \$40.00 per hour.

Which leaves the question of what rate would be workable. I understand the MACDL is writing to suggest a rate of \$150.00. The Eighth Circuit is supposed to pay \$125.00. I would suggest \$200.00. At that quantum there would be an eagerness from the Bar. At \$50.00 per hour, by contrast, there is a sense of insult. Because that rate sends a signal from the Bench that cheap is the way to go. That the financial needs of the lawyers are meaningless.

Letter to Judge Cahill, page 2

I sometimes imagine what it would be like to be a Judge, and if I would remember the days and nights of practice, what it was like. You were once there. It's good work. There is a certain nobility to it. But if the judiciary sets a low rate, it tells everyone involved that cheap is the way to go. If the \$50.00 rate remains, then I suggest that the salaries of the Hennepin County Attorneys handling appeals be lessened to a reciprocal number. Say, \$50,000.00. That would fair. That won't happen.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Paul Engh', with a large, sweeping initial stroke.

Paul Engh

PE/cm

MANKEY LAW OFFICE

ATTORNEYS AT LAW

THE COLONNADE

5500 WAYZATA BLVD., SUITE 1025

GOLDEN VALLEY, MN 55416

763-560-4388

FAX 763-591-1653

MATTHEW J. MANKEY

E-MAIL:

matthewmankey@comcast.net

December 27, 2013

The Honorable Peter Cahill
Hennepin County District Court
300 South 6th Street
Minneapolis, MN 55487

Re: Statutory reimbursement for pretrial appeal

Dear Judge Cahill:

I am writing to you in your position as Chief Judge to express my opinion regarding the compensation paid to attorneys in cases of prosecutorial appeals. As you are aware, Minnesota Statute § 611.27 Subd. 16(b) allow for adjustment of the rate for reimbursement paid to attorneys who represent defendants in cases where a prosecutor has appealed an adverse trial court decision. I am involved in these cases at the request of the State Public Defender so invariably I represent people of limited financial means from whom I cannot receive income in excess of that paid by the government.

The rate in Hennepin County is currently \$50 per hour. This is extremely low compared to other jurisdictions. According to my research the rates range from a \$135 in the First District to \$50 in the Fourth. Most districts provide for a \$120 hourly rate. These appeals represent a very small part of my practice. I am concerned however that the payment of \$50 per hour is so low that it may dissuade the most competent of my colleagues from accepting cases from the State Public Defender's Office.

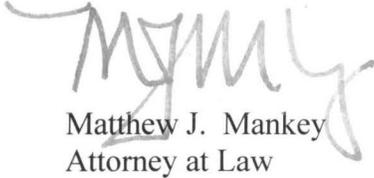
Given your private practice background I know I need not remind you of the expense involved in running a law practice. The current rate is so low that accepting a case from the Public Defender is tantamount to a request to do the work pro bono. The costs of running a law firm do not decrease because our client is indigent.

I believe we are the foot soldiers in the battle and the battlefield is fought in the criminal courts on behalf of defendants who cannot afford private counsel. It is only when we fight for the rights of the accused are everyone's rights protected. I encourage you in the most strenuous way to consider the larger implications if the best and the brightest of us are discouraged from participating in this crucial task by the inability to justify taking such cases on the basis of economic necessity.

For the reasons discussed here, I request that you raise the hourly rate to at least \$150 per hour, so that the reasonable fee that 611.27, subd. 16(a) requires can be achieved.

Thank you for your consideration of my thoughts on this issue. I would be happy to discuss this matter if you believe such a discussion would be beneficial.

Very truly yours,



Matthew J. Mankey
Attorney at Law



OFFICE OF THE HENNEPIN COUNTY ATTORNEY

MICHAEL O. FREEMAN COUNTY ATTORNEY

FILED

2014 JAN -8 AM 10:24
January 7, 2014

CLERK OF DISTRICT COURT
DISTRICT FOURTH

The Honorable Peter Cahill
Chief Judge – Fourth Judicial District
C-714 Government Center
300 South 6th Street
Minneapolis, MN 55487

Re: Defense Reimbursement Rate for Pretrial Prosecution Appeals

Chief Judge Cahill:

The Hennepin County Attorney's Office (HCAO) supports the proposed defense attorney fee rate of \$60 per hour for work performed in pretrial prosecution appeals.

As the court is aware, a significant percentage of criminal defendants are indigent and are eligible for the services of counsel at government expense. *See* Bill Whitehurst, A.B.A. Standing Comm. On Legal Aid & Indigent Defendants, Report to the House of Delegates: Recommendation #110 at 1(2004) www.abanet.org/legalservices/downloads/scloid/indigentdefense/rec110.pdf (estimating that up to eighty percent of criminal defendants are eligible publicly paid counsel). The fees paid for indigent defense services are a reasonable baseline for setting the reimbursement rate under Minn. Stat. § 611.27. Appellate attorneys working for the State Public Defender's Office (SPDO) are paid between \$25.12 and \$46.97. *See* <http://agency.governmentjobs.com/pubdefmn>. Contract attorneys who handle pretrial prosecution appeals on behalf of the SPDP are paid between \$30.00 and \$42.50 per hour. *See* Letter from Kevin Kajer, Chief Administrator for the Minnesota Board of Public Defense, dated October 13, 2012 (attached). The proposed 2014 reimbursement rate for the Fourth District exceeds "the fee customarily charged for similar legal services." *Ly v. Nystrom*, 615 N.W.2d 302, 312 n. 17 (Minn. 2002). Setting a higher rate would act as a significant deterrent to the filing of pretrial prosecution appeals. This contravenes the express purpose of the statute. It was designed to control taxpayer costs and remove an obstacle to filing meritorious prosecution appeals.

The HCAO is aware that other districts have set higher reimbursement rates. This fact does not justify increasing the proposed rate. The statutory process gives the Chief Judge of each judicial district the flexibility to set a rate that meets



(612) 349-2565

**STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE**

331 Second Avenue South
Suite 900
Minneapolis, MN 55401



FAX (612) 349-2568

October 13, 2012

Thomas Ragatz
Assistant Ramsey County Attorney
50 West Kellogg Boulevard, Suite 315
St. Paul, MN 55102

Dear Mr. Ragatz:

I am writing in response to your letter dated October 5, 2012 requesting information about contract attorneys who have completed briefs for the Appellate division of the Board of Public Defense within the last five years.

We have nine attorneys who have performed work for us:

Jenneane Jansen	\$30.00 per hour.
Stephanie Karri	\$35.00 per hour
Steven Wright	\$35.00 per hour.
Renee Bergeron	\$42.50 per hour.
Jennifer Chaplinski	\$42.50 per hour.
Charlie Clippert	\$42.50 per hour
Brad Delapena	\$42.50 per hour
Kerri Hermann	\$42.50 per hour
Mark Nyvold	\$42.50 per hour.

Please call me if you should need further assistance.

Sincerely:

Kevin Kajer
Chief Administrator
Minnesota Board of Public Defense