

STATE OF MINNESOTA

DISTRICT COURT

**COUNTIES OF ANOKA,
CHISAGO, ISANTI, KANABEC,
PINE, SHERBURNE,
WASHINGTON and WRIGHT**

TENTH JUDICIAL DISTRICT

**IN RE: Reimbursement Rate
for Attorney's 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 attorney's fees and costs associated with the representation of any defendant in connection with an appeal initiated by the prosecuting attorney in any pre-trial order in a criminal proceeding;

Whereas, information was solicited from interested parties including the Washington and Anoka County Attorney's Office; Virginia Murphrey, Chief Public Defender of the Tenth Judicial District; and private counsel that represent indigent defendants throughout the Tenth Judicial District along with input from the members of the Tenth Judicial District Bench;

Whereas, information solicited from the above entities, parties or outside counsel developed a range of reasonable attorney's fees rates from \$75.00 to \$150.00 per hour;

Whereas, the fees established below shall be paid by the governmental unit responsible for the prosecution, until further Order of the Chief Judge, in the event that the Chief Judge is provided securing new or additional information concerning the ongoing reasonableness of the hourly rate set forth below.

Now Therefore, the Court makes the following:

ORDER

1. Pursuant to Minn. Stat. §611.27 the compensation rate in the calendar year 2014 and beyond, until further Order of the Chief Judge, for attorneys representing defendants in connection with any pre-trial appeals initiated by prosecuting attorneys in the Tenth Judicial District shall be \$120.00 per hour plus reimbursement for any necessary costs and expenses reasonably incurred in connection with the pre-trial appeal.

2. Compensation shall not exceed a total of \$5,000.00 exclusive of costs and expenses reasonably incurred unless payment in excess of \$5,000.00 is certified by the chief judge of the Tenth Judicial District as necessary to provide fair compensation for services of an unusual character or duration.

3. The attached Memorandum of Law is incorporated by this reference.

July 24, 2014

BY THE COURT

MEMORANDUM OF LAW

The provisions of Minn. Stat. 611.27¹ direct the Chief Judges of each Judicial District in Minnesota to establish an hourly rate to be paid defense counsel representing indigent clients in pre-trial appeals. This Court has signed such Orders establishing fees to be paid defense counsel on March 20, 2013 and February 7, 2014. What follows is an outline of the considerations made in setting hourly rates in 2013 and 2014.

This Court, in establishing fees for 2013 and 2014, utilized the same process of establishing such fees by engaging in the following inquiry:

- By consulting with all of the judges of the Tenth Judicial District Bench to determine the hourly rate to be set in criminal pre-trial appeals;
- The Tenth District Judicial Resources Committee met on December 13, 2012 and considered the matter. The Committee after being informed of hourly rates historically or currently set within each of the eight counties comprising the Tenth Judicial District; by considering the unique nature and scope of representation in a pre-trial appeal versus giving advice as Standby Counsel; by considering the rates established in the metropolitan area abutting the Tenth Judicial District, including the counties of Hennepin and Ramsey, the Committee, and ultimately the entire Tenth District Bench, advised and the undersigned determined that setting such an hourly rate in the range of \$100.00-\$125.00 per hour would be a reasonable setting of hourly fees for appointed or contracted counsel to represent an indigent client in a pre-trial criminal appeal venued in the Tenth Judicial District;

¹ The new amendment to Minn. Stat. Minn. Stat. 611.27, added subd. 16:

Subd. 16. **Appeal by prosecuting attorney; attorney fees.** (a) When a prosecuting attorney appeals to the Court of Appeals, in any criminal case, from any pretrial order of the district court, reasonable attorney fees and costs incurred shall be allowed to the defendant on the appeal which shall be paid by the governmental unit responsible for the prosecution involved in accordance with paragraph (b).

(b) By January 15, 2013, and every year thereafter, the chief judge of the judicial district, after consultation with city and county attorneys, the chief public defender, and members of the private bar in the district, shall establish a reimbursement rate for attorneys fees and costs associated with representation under paragraph (a). The compensation to be paid to an attorney for such service rendered to a defendant under this subdivision may not exceed \$5,000, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the chief judge of the district as necessary to provide fair compensation for services of an unusual character or duration.

- By consulting with the District’s Ad Hoc Subcommittee² which was established to determine the content of the Public Defender application (to be utilized by all counties in the Tenth Judicial District going forward). Input to this Committee included the views and comments of the Chief Tenth District Public Defender, Virginia Murphrey who was invited to participate in the meeting(s). After a review of the historic compensation rates set for Standby Counsel appointed by judges through-out the Tenth Judicial District, which had a range of payments from \$70.00-\$85.00³ per hour, the Committee consensus and advice to the undersigned was that such a range may be appropriate, but left the ultimate setting of the pre-trial appeal hourly rate to the undersigned as Chief Judge. This Court concluded that in applying such a range historically paid to Standby Counsel within the Tenth District it appeared to this Court that the setting would be a substandard range and not in accordance with the skill and obligations needed in processing a time sensitive pre-trial appeal of novel or complicated legal issues that may be presented to the Minnesota Court of Appeals or the Minnesota Supreme Court;
- This Court additionally conferred with and sought input from private counsel that had historically performed legal services in the context of pre-trial criminal appeals representing both private and indigent defendants, including Mark Nyvold, Esq. Mr. Nyvold encouraged the undersigned to set the hourly rate at or above \$108.00 per hour with an upward amount in the range of \$135.00⁴ per hour. This was consistent with a survey the undersigned was privy to involving the hourly rates set throughout the Third Judicial District for such services that ranged from \$20.00-\$200.00 per hour⁵;

² The Tenth District Bench approved forming two Ad Hoc Committees -- one to look at the new Advisory Counsel Legislation and one to look at the delivery of Pysch Services. The Committees included judges and administrators. The discussions regarding pre-trial appeal fees for contracted or appointed counsel were considered by the Advisory Counsel Legislation Ad Hoc Committee.

³ Hourly rates for appointments of court-appointed counsel representing Respondents/Patients in SDP Petitions within the Tenth Judicial District were set at \$100.00 per hour.

⁴ Letters of Mark Nyvold dated November 7 and 8, 2012.

⁵ “SurveyMonkey” results obtained by the Honorable Robert Benson, Chief Judge Third Judicial District dated October 2012.

- This Court additionally conferred with and sought input from the Washington and Anoka County Attorney's Office. The Anoka County Attorney's Office has a significant criminal caseload and has historically performed legal services in the context of pursuing or defending pre-trial criminal appeals. Representatives of the Anoka County Attorney's Office encouraged the undersigned to set the hourly rates for such legal services in the area of \$60.00- \$100.00 per hour. However, based upon this Court's knowledge of the practices of the Tenth Judicial District in these matters; as well as serving as a former county attorney; (and consequently legal counsel to a government entity [Mille Lacs County Board Commissioners] that would ultimately pay such legal fees) this Court determined that the range suggested was only reasonable if the hourly rate was set at or beyond the higher end of the range;
- This Court, when entering its Standing Orders setting hourly attorney's fees for 2013⁶ and 2014,⁷ was familiar with the fact that all of the Chief Judges in this State were doing the same thing; i.e. setting an hourly rate for pre-trial appeal fees in the case of indigent defendants. This Court was also familiar with the fact that within all of the Ten Judicial Districts of the State of Minnesota the hourly rates (as set by each Chief Judge) were in the range of \$50.00⁸- \$135.00, and that the Tenth would have one of the higher hourly rates of any District in the State of Minnesota.
- The undersigned concluded that the setting of the rate at \$120.00 per hour was commensurate with the needs and requirements of legal counsel representing indigent defendants given the complexity of such cases, the geographic expanse of the Tenth Judicial District and the need to have motivated and competent counsel represent indigent defendants in all of the reaches of the Tenth Judicial District.
- After setting the hourly rate for fees pursuant to the Standing Orders issued in 2013 and 2014 this Court has not been made aware of any information inconsistent with the information obtained and the procedure utilized in setting fees pursuant to Minn. Stat. 611.27. If such information becomes available in the future from any sources as identified above, the Standing Orders will be reconsidered and this Court

⁶ Standing Order dated March 20, 2013.

⁷ Standing Order dated February 07, 2014.

⁸ Hennepin County and all counties within the Third Judicial District as contemplated or set effective 2013.

may issue a revised Standing Order. If such information is not forthcoming or remains static the current Order will remain in effect as of the 15th day January and thereafter until modified.

JCH