

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

JUL 29 2011

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

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ORDER ADOPTING AMENDED PLAN FOR THE PAYMENT OF ATTORNEY FEES AND REIMBURSEMENT OF ATTORNEY EXPENSES IN CIVIL CASES

On this day came on for consideration the proposed "Amended Plan for the Payment of Attorney Fees and Reimbursement of Attorney Expenses in Civil Cases". Having previously forwarded copies of the proposed amended plan to the district judges of this Court for review and comment, and having further discussed the terms and provisions of this amended plan at the Judges Meeting held in San Antonio, Texas on May 5, 2011, a vote of the district judges was taken and all district judges in attendance voted in favor of adopting the amended plan. Upon such approval and there being no objection to the revisions proposed, the Court finds that the following orders should be entered:

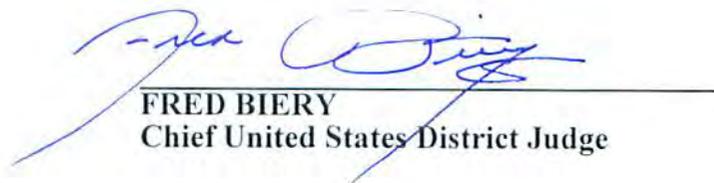
IT IS ORDERED that the attached "Amended Plan for the Payment of Attorney Fees and Reimbursement of Attorney Expenses in Civil Cases" be, and is hereby **APPROVED** and **ADOPTED** by the Court.

IT IS FURTHER ORDERED that this amended plan is effective immediately and made applicable to all pending attorney appointments in civil cases, and requests for payment of attorney fees and reimbursement of expenses hereinafter submitted in accordance with the terms and provisions of this amended plan.

IT IS FURTHER ORDERED that the Clerk shall post a copy of this order and the amended plan to this Court's Internet site and further make a certified copy available in each divisional office of the United States District Clerk for the Western District of Texas, as well as any other place in this district where the Court does business.

SIGNED, this 29th day of July, 2011.

For the Court:



FRED BIERY
Chief United States District Judge

**UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF TEXAS**

**AMENDED PLAN
FOR THE PAYMENT OF ATTORNEY'S FEES AND
REIMBURSEMENT OF EXPENSES IN CIVIL CASES**



Amended: May 5, 2011

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

**AMENDED PLAN FOR THE PAYMENT OF ATTORNEY'S
FEES AND REIMBURSEMENT EXPENSES IN CIVIL CASES**

I. Overview of the Program

It has long been the policy of this Court to encourage members of the bar to represent parties who cannot afford counsel. In furtherance of this policy, the Judges of this Court first adopted a "Plan for the Reimbursement of Attorney Expenses in Civil Cases" (hereinafter, "the Plan") on May 15, 1985.

At that time, it was determined that when an attorney is appointed to represent an indigent party in a civil matter, that attorney would be allowed to petition the Court for reimbursement of certain expenses. These were expenses, as initially defined in the policy section of the Plan, that would be incurred in the preparation and presentation of the case. Funding for this program would be obtained from the Court's Non-Appropriated Fund, and the total limit allowable under this program, as originally enacted, was \$300 per case.

In August of 2002, it appearing to the Judges of this Court that the maximum allowable amount of \$300 was grossly inadequate, and further noting that the newly initiated Attorney Renewal Fee requirement would significantly increase funding into the Non-Appropriated Fund, the Plan was amended to increase the maximum allowable amount of reimbursement for attorney "expenses" to \$1,500.

It now appears to the Judges of this Court that the prompt and efficient administration of justice would be advanced by providing, in addition to certain allowable expenses, reimbursement of attorney's fees to those members of the bar called upon by the Court to (1) represent parties in civil cases who cannot afford counsel or (2) serve in an *ad litem* capacity for a minor child or mentally incompetent person. At this time, and until modification by this Court, the total amount of payment of allowable and approved attorney's fees and reimbursable expenses under these provisions **cannot exceed \$3,500** for any one attorney in any one case, and said fees must be supported by an itemized listing of the time spent and reasonable description of services rendered on specified legal services. Attorney's fees will be claimed at a rate not to exceed the hourly rate allowed under the Criminal Justice Act, current at the time the services were provided.

Further, the maximum amount for payment of attorney expenses under the provisions of this Plan remains at \$1,500 per case and is inclusive in the total amount of \$3,500 awarded in any one case. **Only in rare and exceptional circumstances can this maximum amount be exceeded with the unanimous approval of the Non-Appropriated Fund Committee.**

II. Restrictions of the Program

- A. Only reasonable and necessary attorney's fees and expenses or investigative fees actually incurred by the claimant are payable under the provisions of this Plan.
- B. Any costs or fees that are either waived or recoverable under the provisions of Title 18 or Title 28, United States Code, or which have been recovered under any other plan of reimbursement shall not be reimbursed from the Non-Appropriated Fund. Specifically, in any proceeding in which fees and expenses are covered by the Criminal Justice Act, 18 U.S.C. § 3006A, such fees and expenses shall be paid from such funds in accordance with the CJA guidelines and not from this Court's Non-Appropriated Fund.
- C. In no case shall an appointed attorney for a party who has been awarded costs or expert or investigative fees pursuant to a judgment in a suit before this Court be eligible for reimbursement of costs or expert or investigative fees from the Non-Appropriated Fund.
- D. Only those fees and expenses associated with the preparation and presentation of a civil action in the United States District Court for the Western District of Texas shall be approved for payment. No fees, expenses, or costs associated with the preparation or presentation of an appeal to the United States Court of Appeals for the Fifth Circuit or the Supreme Court of the United States shall be reimbursed from the Non-Appropriated Fund.

III. Procedure for Requesting Reimbursement

- A. All requests for payment of attorney's fees or reimbursement of expenses in civil cases must be filed not later than 30 days of the entry of the judgment. The appointed attorney shall file with the Clerk's office a request for payment of attorney's fees or reimbursement of expenses incurred in the preparation or presentation of the case. The appointed attorney shall first submit the request to the Judge to whom the case was assigned for review and approval. Upon approval from that Judge, the Clerk will then forward the request to the Non-Appropriated Fund Committee for final approval.
- B. In cases in which an appointed attorney has withdrawn or has been dismissed prior to entry of judgment, that attorney shall file a request for payment of attorney's fees or reimbursement of expenses not later than 30 days of withdrawal or dismissal. A copy of any work product or written product of services obtained for which reimbursement or payment is requested from the Non-Appropriated Fund shall subsequently be provided to newly appointed counsel or, where no new counsel is appointed, to the party for whom counsel had been previously appointed.

- C. No interim payments shall be made to counsel for attorney's fees or expenses, absent a showing to the Judge to whom the case is assigned of extreme hardship on the appointed counsel. Attorney's fees and expenses may only otherwise be reimbursed upon the conditions indicated in the next section of the Plan.

IV. Allowable Fees and Expenses

Attorneys appointed by the Court in civil cases may request payment for the following fees and reimbursement for the following expenses, subject to approval by the Judge who is assigned the case and the Non-Appropriated Fund Committee:

A. Attorney's Fees

The maximum total compensation for attorney's fees and expenses in a civil proceeding is **\$3,500**. If multiple or successive attorneys were appointed by the Court to represent an indigent party in a civil proceeding (*e.g.*, if appointed counsel is allowed to withdraw for good cause as determined by the Court, and substitute counsel is appointed), each appointed attorney may be compensated for fees up to **\$3,500**. All requests seeking compensation for attorney's fees shall be accompanied by sufficient documentation to permit the Court and the Non-Appropriated Fund Committee to determine that the time and services claimed for attorney's fees were expended and were appropriate and reasonable. To the extent that the services rendered include a legal assistant performing nonclerical support services, the legal assistant's time and services may be submitted at a rate not to exceed \$50 per hour; however, such a claim for legal assistant services are included within the maximum compensation of **\$3,500**.

B. Depositions and Transcripts

Appointed counsel may order written transcripts or depositions necessary in the preparation of the case. Cost of such transcripts shall not exceed the page rate for ordinary copy established in the Western District of Texas. Only the cost of the original of any transcript shall be allowed; the costs of additional copies shall not be reimbursed. In the interest of efficiency and cost effectiveness, appointed attorneys are encouraged to use audio tapes for depositions. If audio-tape depositions are used, transcription of the deposition may be reimbursed at the ordinary page rate established in the Western District of Texas. The cost of video depositions must be approved in advance by the Judge or the Non-Appropriated Fund Committee, if reimbursement is to be requested.

C. Investigative or Expert Services

1. Counsel may request investigative or expert services necessary for the reasonable preparation of a matter. Such services must have prior court approval by the Judge to whom the case is assigned to be considered for reimbursement under this Plan by the Non-Appropriated Fund Committee. If necessary, the request for approval may be made *ex parte* so that the applicant can avoid revealing trial or case strategy. The trial court shall approve such a request if it determines that the services are reasonably necessary to the prosecution of the applicant's claim. In making this determination, the Court may look by analogy to the standard set for approval of investigative or expert services in 21 U.S.C. §§ 848(q)(9).

2. Counsel should note that approval for this type of expenditure from the Non-Appropriated Fund is not automatic and should be prepared to explain and justify the reasons for its use.

3. Failure on the part of counsel to obtain prior approval of the request may result in a denial of reimbursement by the Judge or the Non-Appropriated Fund Committee.

D. Travel Expenses

Travel by privately owned vehicle for trips in excess of 50 miles each way may be claimed at the mileage rate authorized for federal employees current at the time of travel. In addition, out-of-pocket expenses for reasonable parking fees may also be reimbursed.

E. Fees for Service of Process

Fees for service of papers and the appearance of witnesses that are not otherwise voided, waived, or recovered may be reimbursed from the Non-Appropriated Fund in accordance with the applicable procedures.

F. Interpreter Services

Costs of interpreter services not otherwise voided, waived, or recoverable, may be reimbursed from the Non-Appropriated Fund in accordance with the applicable procedures.

G. Photocopying, Telephone Calls, Etc.

Actual out-of-pocket expenses incurred for items such as photocopying, photographs used in the case, toll calls, and the like may be reimbursed from the Non-Appropriated Fund in accordance with the applicable procedures. Such expenses must be reasonably necessary to the preparation of the case.

H. Computer-Assisted Legal Research

Actual out-of-pocket expenses related to computer-assisted legal research must be accompanied by usage statements, along with an explanation of the amount claimed (*e.g.*, proration of a monthly charge or charges identifiable to the specific research), and the total time spent using the computerized system for research, and the applicable database and rate, relating to the civil proceeding the subject of the court appointment. Such expenditure may be considered to be reimbursed from the Non-Appropriated Fund in accordance with the applicable procedures.

V. Non-Allowable Expenses

The following expenses shall be considered to be nonallowable for reimbursement out of the Non-Appropriated Fund pursuant to this Plan:

- A. General office expenses, including office overhead, secretarial overhead, payroll costs, equipment depreciation, basic telephone service, and the like shall not be reimbursable under this Plan.
- B. Any expenses not properly documented with receipts or other proof may be disallowed by the Judge or the Non-Appropriated Fund Committee.
- C. Expenses that may be statutorily recovered, or costs or fees taxed against a party or appointed counsel shall not be reimbursed by this Plan.

VI. Appendices: Fees and Expenses Claim Documents

The following documents, copies of which are attached hereto as Appendices “A” through “C”, should be used when submitting a claim under the provisions of this plan.

Appendix A: Claim For Payment of Attorney’s Fees and Expenses.

Appendix B: NAF Civil Case Expense Worksheet and Instructions.

Appendix C: NAF Civil Case Hourly Fees Worksheet.

APPENDIX: A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
_____ DIVISION**

INSERT STYLE OF CASE

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INSERT CIVIL ACTION NO.

CLAIM FOR REIMBURSEMENT OF ATTORNEY'S FEES AND EXPENSES

I was appointed by the Honorable *(Insert Name of Judge)*, United States District Judge, to represent *(Insert Name of Client)* in the above captioned case. Final judgment was entered on *(Insert date of Judgment)* or I withdrew or was dismissed from the case on *(Insert date of withdrawal or dismissal)* prior to entry of a judgment. *(Strike out inapplicable wording.)*

In accordance with the provisions of the *Amended Plan for the Payment of Attorney's Fees and Reimbursement of Expenses in Civil Cases*, I am requesting reimbursement for fees and expenses as follows:

Attorney's Fees Claimed:	
Expenses Claimed:	
Total Amount Claimed:	\$0.00

I have attached to this Claim a detailed Hourly Fees Worksheet (with a description of services rendered) or a Report of Expenses Claimed Worksheet, as appropriate, along with all

INSTRUCTIONS

Date Column

Insert actual date of service. Dates must be in chronological order.

Description Column

Attorney must provide brief, but appropriately detailed description of services noted in “Services Provided” columns per following examples:

Services Provided Column Headings

Description Column Example

Prepare and Review Case Documents

Interrogatory’s
Request for Production of Documents
Request for Admissions
Discovery

Prepare and Review Pleadings

Motion to Compel
Motion for Summary Judgment
Motion for Dismissal
Motion to Transfer Judgment
Motion for Continuance

Prepare For and Attend Depositions

Prepare For and Attend Mediation

Prepare and/or Review Pretrial Materials:

Motions in Limine
Witness Lists
Exhibit Lists

Travel Time

Investigative Work:

Interviews
Review Private Investigator Reports

Other:

Other services not classified above.

Columns

Indicate hours logged on each date, for each service provided, in appropriate column.

Note: Prepare separate worksheets for different CJA hourly rates. Multiply hours by CJA rate effective on date of service. Current and historical CJA rate information can be found at <http://www.txwd.uscourts.gov/cja/default.asp>

