

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

**REGULATIONS GOVERNING THE DISBURSEMENT OF FUNDS
FROM THE NON-APPROPRIATED FUND FOR
ATTORNEY'S FEES AND OUT-OF-POCKET EXPENSES INCURRED IN
CIVIL AND BANKRUPTCY PROCEEDINGS**

A. Eligibility for Disbursement: Compensation for Attorney's Fees and Reimbursement of Expenses

When an attorney has been appointed to represent an indigent party in a civil proceeding before this Court pursuant to 28 U.S.C. §1915(e), that attorney may apply to the Court for compensation of fees and reimbursement of expenses incurred in the preparation and presentation of the proceeding, subject to the restrictions of these regulations.

When an attorney has taken on the voluntary *pro bono* representation in a bankruptcy adversary proceeding of an indigent party that qualifies to have fees waived in cases under Chapter 7 of Title 11 of the United States Code pursuant to 28 U.S.C. §1930(f), or when an attorney, at the request of the United States Trustee, has replaced an attorney who was representing a party in a bankruptcy case but can no longer do so because of death or other incapacity (including disbarment and the inability of the client and the United States Trustee to locate the attorney), the attorney may apply to the Bankruptcy Court for reimbursement of expenses incurred in the preparation and presentation of the case or adversary proceeding, subject to the restrictions of these regulations. Payment of attorney's fees from the non-appropriated fund is not available to attorneys in bankruptcy cases or adversary proceedings.

B. Limitations

1. *Not Applicable if Criminal Justice Act Funds are Available*

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 CJA guidelines and not from the non-appropriated fund.

2. *Limit on Compensation for Attorney's Fees*

The judge to whom the proceeding is assigned is authorized to approve compensation of fees. The maximum compensation for attorney's fees for any one appointment in a civil proceeding in the District Court is two thousand five hundred dollars (\$2,500). This limit may not be exceeded under any circumstances.

3. *Limit on Assigned Judge's Authority to Order Reimbursement of Out-of-Pocket Expenses*

The judge to whom the proceeding is assigned is authorized to approve reimbursement of out-of-pocket expenses up to five thousand dollars (\$5,000) in a case in the District Court; five hundred dollars (\$500) in a case or adversary proceeding in the Bankruptcy Court. If an attorney requests reimbursement of expenses in excess of these amounts, the assigned judge may order compensation of any claimed attorney's fees if so authorized under these guidelines, but shall forward the request for reimbursement of expenses to the chairperson of the non-appropriated fund committee together with a recommendation thereon. The chairperson shall present the assigned judge's recommendation concerning reimbursement of expenses to the non-appropriated fund committee for consideration. The committee, or majority thereof, shall have the authority to approve the recommendation in whole or in part.

If an attorney requests reimbursement of expenses in excess of ten thousand dollars

(\$10,000), the chairperson of the non-appropriated fund committee shall present the assigned judge's recommendation to the non-appropriated fund committee for consideration. After obtaining the approval required for a disbursement over the \$5,000 limit, four district judges must approve any disbursement for reimbursement of expenses in excess of \$10,000.

4. *Limited to Civil Matters Before the District Court and Cases and Adversary Proceedings in the Bankruptcy Court*

Only those attorney's fees and expenses associated with the preparation and/or trial of a civil suit, action or proceeding in the United States District Court for the Eastern District of Missouri or expenses associated with a case or adversary proceeding in the United States Bankruptcy Court for the Eastern District of Missouri shall be approved for disbursement. No attorney's fees, costs, or expenses associated with the preparation or presentation of an appeal to any United States Court of Appeals, the Bankruptcy Appellate Panel, the District Court, or the United States Supreme Court shall be eligible for disbursements from the non-appropriated fund.

5. *Overhead Costs and Costs of Printing Briefs Not Covered*

General office expenses, including personnel costs, rent, telephone services, secretarial help and other overhead-type expenses are not reimbursable from the non-appropriated fund. The expense of printing briefs, regardless of the printing method utilized, is not reimbursable from the non-appropriated fund.

6. *Not Available to Pay Costs Awarded Against Party*

Under no circumstances shall any disbursements be authorized from the non-appropriated fund to compensate for attorney's fees or reimburse costs taxed as part of a judgment obtained by an adverse party against a party for whom counsel was appointed pursuant to the rules of this Court or that counsel represented either *pro bono* or as a replacement for an incapacitated attorney in a

bankruptcy case or adversary proceeding.

C. Procedures for Obtaining Disbursements From the Fund

1. Request for Compensation of Fees and Reimbursement of Expenses

Any application for the compensation of attorney's fees and/or reimbursement of expenses shall be submitted on the Request for Compensation of Services and Reimbursement of Out-of-Pocket Expenses form for District Court cases, or the "Request for Reimbursement of Out-of-Pocket Expenses in Bankruptcy Matters" ("Request for Reimbursement") approved by the non-appropriated fund committee. The Request for Reimbursement form is available on the District Court's Internet website, www.moed.uscourts.gov (under the "Attorney" tab, select "Appointed Counsel Fees and Expenses - Civil Case") or from the Clerk of either the District Court or the Bankruptcy Court. Also available on the website or from the Clerks are the instructions for completing the Request and worksheet forms.

The Request shall be accompanied by sufficient documentation to permit the Court to determine that the time claimed for attorney's fees was expended and was appropriate and reasonable, and that the amounts claimed for expenses were actually paid out. The Request shall be filed in the civil or bankruptcy case or adversary proceeding in which the attorney was appointed, served *pro bono*, or replaced incapacitated counsel. A Request in a District Court case may be filed during the pendency of the civil proceeding or up to sixty (60) days following the entry of a final judgment. A Request in a bankruptcy case or adversary proceeding may be filed up until the main bankruptcy case is closed. The judge to whom the case or proceeding is assigned may, for good cause shown, extend the time for filing a Request.

2. Request from Attorney No Longer Representing Party

When an appointed attorney is permitted to withdraw from representing the party in a civil proceeding, or a *pro bono* attorney or attorney replacing incapacitated counsel is permitted to withdraw from representing a party in a bankruptcy case or adversary proceeding, and the attorney has incurred attorney's fees and/or expenses which may be compensable under these regulations, the attorney shall file a Request for Reimbursement within sixty (60) days of the date of the order allowing the withdrawal. Except for good cause shown, the assigned judge will not approve compensation of fees and/or reimbursement of expenses where the Request is filed more than sixty (60) days after the entry of the order allowing withdrawal.

3. *Requests May be Made Ex Parte*

Any Request made under these regulations may be made *ex parte*. An *ex parte* submission of a Request in the District Court shall be made in conformity with the requirement for *ex parte* filing set forth in the Administrative Procedures for Case Management/Electronic Case Filing manual available on the Court's Internet website, www.moed.uscourts.gov (under the "CM/ECF" tab, select "Manuals" and then "Administrative Procedures").

4. *Documentation Required by Assigned Judge and/or Non-Appropriated Fund Committee*

The assigned judge and/or the non-appropriated fund committee may refuse to permit compensation of any attorney's fee or reimbursement of any expense in the absence of appropriate documentation.

5. *Processing by the Clerk*

On receipt of a Court order directing the compensation of attorney's fees and/or reimbursement of expenses, the Clerk of the District Court shall determine whether any disbursements have previously been made from the non-appropriated fund for fees and expenses in

the same proceeding. If no such disbursements have been made, the Clerk shall promptly issue the required check or checks in the amount(s) indicated in the order. Where disbursements have previously been made from the non-appropriated fund for attorney's fees or expenses in the same proceeding, the Clerk shall determine whether the amounts authorized by the current order together with amounts previously disbursed (1) exceed the maximum attorney's fee limit of \$2,500 per appointment as established in Section B.2 of these regulations, or (2) require approval by the non-appropriated fund committee and as established in Section B.3 of these regulations.

Where such approval is required, the Clerk shall promptly forward the application to the assigned judge or to the chairperson of the non-appropriated fund committee for further action.

6. *Amounts Disbursed from the Fund to be Reimbursed from Any Fee Award*

Attorney's fees are compensable and/or expenses are reimburseable from the non-appropriated fund only when counsel has not otherwise been compensated or reimbursed for the representation of an appointed client, a *pro bono* client, or a client whose previous attorney is incapacitated. Where a fee or cost award is made to an appointed or *pro bono* attorney, or to an attorney replacing an incapacitated attorney, either by the Court or pursuant to a settlement agreement, the attorney awarded fees or costs shall, within twenty (20) days of receipt thereof, repay the non-appropriated fund any amounts disbursed to said attorney under these regulations.

D. Attorney's Fees Covered

The maximum available compensation for attorney's fees for any one appointment in a civil proceeding in the District Court is two thousand five hundred dollars (\$2,500). This limit may not be exceeded under any circumstances. However, 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, and substitute counsel is appointed), each appointed attorney may be compensated for fees up to \$2,500.

Any Request seeking compensation for attorney's fees shall be accompanied by sufficient documentation to permit the Court to determine that the time claimed for attorney's fees was expended and was appropriate and reasonable. In addition, all requests shall be accompanied by a completed and signed W-9 for the attorney or firm to be paid. If the W-9 form is not provided, any fees reimbursed shall be subject to an income tax withholding of 28% per IRS regulations. At the end of the calendar year, a 1099-MISC will be sent to all parties receiving reimbursement for compensation in excess of \$600 for the year. The W-9 form can be filed with the District Court-Finance and does not need to be included with any documents that are filed in the case.

E. Out-of-Pocket Expenses Covered

Any Request seeking reimbursement of out-of-pocket expenses shall be accompanied by sufficient documentation to permit the Court to determine that the amounts claimed for expenses were actually paid out. If multiple or successive attorneys were appointed to represent an indigent party in a civil proceeding, or successive attorneys represented an indigent party in a bankruptcy adversary proceeding or replaced an incapacitated attorney in a bankruptcy case pursuant to these regulations, each such attorney may request reimbursement of out-of-pocket expenses.

1. Deposition and Transcript Costs

The costs of transcripts or depositions shall not exceed the regular original page and copy rate established by the Judicial Conference of the United States in effect at the time any transcript was filed or deposition was taken, unless some other rate was previously approved by order of

court. Except as otherwise ordered by the Court, only the cost of the original of any transcript or deposition together with the cost of one copy each where needed by counsel will be authorized.

2. *Travel Expenses*

Travel by privately-owned automobile may be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, tolls and similar expenses. Travel other than by privately-owned automobile may be claimed on an actual expense basis and must be approved **prior** to the travel by the judge to whom the case is assigned.

Per diem in lieu of subsistence is not allowed; only actual expenses may be reimbursed. Actual expenses reasonably incurred shall be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.

3. *Service of Papers; Witness Fees*

Those fees for service of papers and the appearance of witnesses that are not otherwise avoided, waived or recoverable may be reimbursed from the non-appropriated fund.

4. *Interpreter Services*

Costs of interpreter services not otherwise avoided, waived or recoverable may be reimbursed from the non-appropriated fund.

5. *Cost of Photocopies, Photographs, Facsimile Transmission, Postage, Telephone Toll Calls, Telegrams*

Out-of-pocket expenses incurred for items such as photocopying services, photographs, facsimile transmissions, postage, telephone toll calls, and telegrams necessary for the preparation of a case may be reimbursed from the non-appropriated fund.

6. *Computer-Assisted Legal Research*

Expenses related to computer-assisted legal research must be accompanied by receipts that show the method of billing and the total time spent using the computerized system. In addition, a statement of the issues researched must also be included.

7. *Other Expenses*

Out-of-pocket expenses other than those described in sections 2-6 of this regulation may be approved by the assigned judge for reimbursement. When requesting reimbursement of any other expense under this section, a detailed description of the expense and why it was required should be attached to the Request for reimbursement filed with the assigned judge.