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IN THE SECOND JUDICIAL CIRCUIT OF FLORIDA

OFFICE OF THE CHIEF JUDGE

ADMINISTRATIVE ORDER NO. 2001-02

IN RE: ATTORNEY FEES AND COSTS FOR SPECIAL PUBLIC DEFENDERS

WHEREAS, Sections 27.53, and 925.036, Florida Statutes, provide for payment of and limits to fees awarded to special public defenders appointed in instances wherein a conflict of interest exists in the Public Defender's Office; and

WHEREAS, the Second Judicial Circuit Conflict Committee is statutorily obligated to select and approve attorneys for appointment pursuant to Section 27.53(3) and 925.035, Florida Statutes, commonly known as conflict case appointments; and

WHEREAS, capital cases have been recognized as unique and require special qualifications and compensation for attorney's handling such cases; and

WHEREAS, contracts have been negotiated and executed between Leon County and private attorneys to represent juveniles in delinquency cases and defendants in non-life felony cases, misdemeanor cases and traffic cases, for a negotiated fee; and

WHEREAS, Sections 39.0134, Florida Statutes, provides for payment of and limits to fees awarded to counsel for indigent parents in proceeding related to all stages of dependency and termination of parental rights cases; and

WHEREAS, the Second Judicial Circuit Conflict Committee is hereby charged to select and approve attorneys for appointment pursuant to Chapter 39, Florida Statutes, for indigent parents; and

WHEREAS, contracts have been negotiated and executed between Leon County and private

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attorneys to represent parents in Chapter 39, Florida Statutes, proceedings related to juvenile dependency and termination of parental rights cases, for a negotiated fee; it is therefore,

ORDERED THAT:

The following fees and policies shall apply to all capital cases, all cases where a defendant has been adjudicated indigent for purposes of costs, all cases where a conflict attorney has been appointed to serve as a special public defender, and all cases where a parent in a juvenile dependency or termination of parental rights proceeding has been adjudicated indigent, excluding those cases in which a contract for such fees and services has been entered into.

I. FIRST DEGREE MURDER CASES

A. Conflict List Qualifications

1. The Court Administrator shall maintain lists of counsel qualified for appointment in capital cases in each of three categories:

(a) lead trial counsel;

(b) trial co-counsel; and

(c) appellate counsel.

No attorney may be appointed to handle a capital trial or appeal unless duly qualified on the appropriate list.

2. No attorney may be qualified on any of the capital lists unless the attorney has attended within the immediately preceding year a continuing legal education program of at least ten hours' duration devoted specifically to the defense of capital cases. No later than March 1 of each year, beginning with the year 2002, each attorney on the conflict list shall certify to the Court

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Administrator in writing that he or she has met this requirement in the preceding year

3. Persons designated on the conflict list as lead trial counsel must be attorneys who meet the qualifications set out in the Florida Supreme Court rule governing such qualifications. Lead counsel shall be compensated for all hours reasonably expended at the rate of $115 per hour, except for travel time to a destination outside the county in which the case is venued, shall be compensated at the rate of $75 per hour.

4. Persons designated on the conflict list as trial co-counsel must be attorneys who meet the qualifications set out in the Florida Supreme Court rule governing such qualifications. In cases where trial co-counsel has been authorized, lead trial counsel shall have the right to select trial co-counsel from attorneys on the lead counsel or co-counsel list, utilizing the procedures set out in Section I(B)(4) of this order. Trial co-counsel shall be compensated for all hours reasonably expended at the rate of $100 per hour, except for travel time to a destination outside the county in which the case is venued, shall be compensated at the rate of $75 per hour.

5. Persons designated on the conflict list as appellate counsel must be attorneys who meet the qualifications set out in the Florida Supreme Court rule governing such qualifications. Appellate counsel shall be compensated for all hours reasonably expended at the rate of $100 per hour, except for travel time to a destination outside the county in which the case is venued, shall be compensated at the rate of $75 per hour.

B. **Procedures in Capital Cases**

1. Certification that Counsel Meets Requirements. In all first degree murder cases, regardless of whether defense counsel is appointed or privately retained, defense counsel shall include a statement in the attorney's notice of appearance that the attorney meets the educational and

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other requirements as set out herein and in the Rules of the Florida Supreme Court for the role the attorney will serve in the case.

2. Psychologist. In all capital cases, appointed conflict counsel and counsel for defendants who have been declared indigent for purposes of costs may employ a psychologist without obtaining prior approval up to a cap of $1,500.00. Any additional psychologist fees should be authorized in advance by motion and order, in accordance with the procedures set out in Section IV(C) herein.

3. Investigator/Mitigation Specialist. In all capital cases, appointed conflict counsel and counsel for defendants who have been declared indigent for purposes of costs may employ an investigator and/or mitigation specialist without obtaining prior approval not to exceed a cap of $1,500.00 each. Any additional fees for an investigator or mitigation specialist should be authorized in advance by motion and order, in accordance with the procedures set out in Section IV(C) herein.

4. Trial Co-counsel. In all capital cases, lead trial counsel and counsel for defendants who have been declared indigent for purposes of costs may move the Court for the appointment of trial co-counsel and , if granted by the Court, trial co-counsel shall be selected by lead counsel, with the Court's concurrence , from the trial co-counsel list. The procedures for making such a request shall be those set out in Section IV(C) herein.

5. The procedures to be utilized for billing and employing experts, other than those set out in paragraphs I (B)(2) and (3), above, are the same as in non-capital cases, as set out in Section IV (C) herein.

II. CASES OTHER THAN FIRST DEGREE MURDER CASES

A. **Conflict List Qualifications**.

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1. The Court Administrator shall maintain lists of counsel qualified for appointment in cases in each of five categories:

(a) Capital Sexual Battery/Life Felonies 1st Degree Felonies;

(b) Other Felonies;

(c) Traffic/Misdemeanors;

(d) Juvenile delinquency cases; and

(e) Appeals.

2. No attorney may be qualified on any of the lists unless he or she has attended within the immediately preceding two years a continuing legal education program of at least fifteen hours' duration devoted to criminal law. Attorneys on the appeal conflict list only may substitute courses in appellate law for those in criminal law. No later than March 1 of every other year, beginning with the year 2002, each attorney on the conflict list shall certify to the Court Administrator in writing that he or she has met this requirement in the preceding two years.

3. Persons designated on the capital sexual battery/life felony/first degree felony conflict list shall be attorneys who meet the following qualifications:

(a) Are members of the Florida Bar; and

(b) Are experienced and active trial practitioners with at least three years of litigation experience in the field of criminal law; or, if the attorney lacks three years of litigation experience in the field of criminal law, the attorney is employed by the appointed attorney and is generally supervised throughout the case by the appointed attorney; and

(c) Are familiar with the practice and procedure of the criminal courts of the Second Judicial Circuit; and

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(d) Are familiar with and experienced in the utilization of expert witnesses and evidence, including but not limited to psychiatric and forensic evidence.

4. Persons designated on the conflict list for all felony cases shall be attorneys who meet the following qualifications:

(a) Are members of the Florida Bar; and

(b) Are experienced and active trial practitioners with at least three years of litigation experience in the field of criminal law, or, if the attorney lacks three years of litigation experience in the field of criminal law, the attorney is employed by the appointed attorney and is generally supervised throughout the case by the appointed attorney; and

(c) Are familiar with the practice and procedure of the criminal courts of the Second Judicial Circuit; and

(d) Are familiar with and experienced in the utilization of expert witnesses and evidence, including but not limited to psychiatric and forensic evidence.

5. Persons designated on the conflict list for traffic/misdemeanors, juvenile delinquency cases, or appeals shall be attorneys who meet the following qualifications:

(a) Are members of the Florida Bar; and

(b) Are active trial practitioners in the field of criminal law; and

(c) Are familiar with the practice and procedure of the criminal courts of the Second Judicial Circuit; and

(d) Are familiar with and experienced in the utilization of expert witnesses and evidence, including but not limited to psychiatric and forensic evidence.

6. Persons designated on the conflict list for juvenile dependency and termination of

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parental rights cases or appeals shall be attorneys who meet the following qualifications:

(a) Are members in good standing of the Florida Bar.

(b) Have at least one year of juvenile court practice with demonstrated competence.

(c) Have had, within the past two years, some specialized training in juvenile law or litigation.

(d) Be familiar with the requisite court system, including specifically the procedural rules regarding timeliness of filings and procedural default.

(e) Have demonstrated proficiency and commitment to quality representation.

B. Conflict counsel shall not allow other attorneys to perform services on behalf of the defendant unless the other attorney meets the qualifications applicable to that case. Conflict counsel shall include a statement in the attorney's notice of appearance that the attorney and any other attorney who will work on the case meets the educational and other requirements as set out herein.

C. In cases where a contract has been executed between a county and one or more attorneys to serve as conflict counsel, the terms and conditions of that contract shall determine the rate of that compensation paid to said attorney.

III. GENERAL PROVISIONS

A. Compensation for conflict attorneys in all cases under Section II of this order shall be pursuant to the Fee and Cost schedule adopted by Second Circuit Conflict Committee and incorporated into this order as Attachment "A," except as otherwise set out herein.

B. In cases where the defendant is subject to penalties under the laws pertaining to 10-20-life, prison releasee re-offender, habitual felony offender, or violent felony offender, and where the case

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proceeds through the selection of a jury, conflict counsel shall be compensated at the statutory limits permitted by Section 925.036, Florida Statutes, except where the case is deemed extraordinary and unusual, as set out in paragraph III (C) herein.

C. **Extraordinary and Unusual Case Procedure**

1. **Criminal Cases**

In cases where conflict counsel believes that any case meets the "extraordinary and unusual cases" criteria as set for in *Makemson v. Martin County*, 491 So. 2d 1109 (Fla. 1986), *cert. denied*, 479 U.S. 1043 (1987), the attorney should submit a motion requesting that the trial court certify the case as "extraordinary and unusual" and serve the County Attorney with said motion. Said motion may be made as soon as it appears to counsel that the case meets the criteria of *Makemson*. In the event that conflict counsel and the County Attorney cannot agree on whether a case meets the *Makemson* criteria for a finding that a case is "extraordinary and unusual," that determination shall be made by the trial court, after a hearing where conflict counsel and the County Attorney are present. In cases determined to be "extraordinary and unusual," counsel shall first apply for compensation not exceed the statutory limits permitted by Section 925.036, Florida Statutes. Then, upon a showing of necessity, counsel may be authorized to exceed the statutory limits imposed under Section 925.036, Florida Statutes, by order of the court.

2. **Juvenile Dependency/Termination of Parental Rights Cases**

A determination that a case meets the criteria set forth in Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), cert. denied, 479 U.S. 1043, 107 S. Ct. 908, 93 L.Ed 2d 957 (1987) for a finding that a case is "extraordinary and unusual", shall be made by the trial

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court. In cases venued in Leon County the finding may be made by the trial court, after the recommendation of the General Master. In cases determined to be "extraordinary and unusual" and termination of parental rights cases, counsel shall first apply for compensation not exceed the statutory limits permitted by Section 39.0134, Florida Statutes. Then, upon a showing of necessity, counsel may be authorized to exceed the statutory limits imposed under Section 39.1034, Florida Statutes, by order of the court.

3. ***In Camera* Proceedings/Compensation**

In the event that conflict counsel believes that the attorney must disclose privileged information at such hearing, the hearing will be held *in camera* and the County Attorney will keep all information learned from the hearing confidential. Compensation in cases deemed "extraordinary and unusual" shall be as provided by Attachment "A."

D. An attorney who represents a defendant charged with the more than one offense in the same case may be compensated in accordance with the statutory maximum provided for the most serious offense for which representation of the defendant occurs.

E. Should counsel seek the services of an investigator, psychologist, or other expert, counsel must obtain prior court approval, as set out in paragraph IV(C) herein.

F. The attorneys shall consider video discovery depositions of all witnesses residing outside of the Second Judicial Circuit in order to reduce travel cost. The scheduling of any video depositions shall be through the Official Court Reporter's office in Leon County or as otherwise directed by the court.

IV. PROCEDURES FOR BILLING, PAYMENT, AND OBTAINING ADVANCE AUTHORIZATION TO INCUR EXPENSES

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A. **Hourly Billing**. Attorney time shall be billed at intervals no greater than quarter hours. All hours billed should be properly documented, with entries briefly explaining what service was rendered during the time claimed. Similarly, costs must be properly documented and receipts must be attached.

B. **Interim Billing**. In hourly fee cases, interim bills shall be submitted within thirty days after the conclusion of each calendar quarter. Bills which are not submitted within forty-five days after the conclusion of the calendar quarter shall be reduced by 20%. Bills which are not submitted within ninety days after the conclusion of the calendar quarter shall be reduced by 40%. The calendar quarter shall be defined as beginning January 1, April 1, July 1, and October 1 of each year. Interim billing is required, however, interim payments may be made at the discretion of each county.

C. **Role of County Attorney**. All requests for payment of attorney's fees, costs, investigator, or experts, and motions seeking advance authorization in such matters or the appointment of co-counsel, shall first be submitted to the County Attorney of the County where the case is pending, together with a proposed order. The County Attorney shall treat all such matters as confidential as required by law and shall not disclose the contents thereof to any person except as authorized by the Court or after the case has concluded. In the event that conflict counsel believes that the attorney must disclose privileged information at any such fee/cost hearing, the hearing will be held *in camera*, where appropriate, and only the conflict attorney, the defendant, the County Attorney, and any necessary witnesses shall be permitted to attend.

D. **Cases in which the Defendant is indigent for purposes of costs**. In cases in which a lawyer has been privately retained but where that lawyer has reason to believe that the defendant is indigent for purposes of costs, a motion to declare the defendant indigent for purposes of costs shall be filed and served upon the County Attorney, together with a proposed order granting the motion.

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Prior to setting the matter for hearing, defense counsel shall follow the procedures set forth in paragraph (C) above. If the defendant is declared indigent for purposes of costs, the procedure for obtaining investigative, expert, or other costs shall be the same as for appointed conflict counsel, as set out in Section I (B) (2) and (3) herein for capital cases and in Section IV (C) herein for all other cases.

V. NUMBER OF ATTORNEYS ON CONFLICT ATTORNEY LIST

The Circuit Conflict Committee shall have the discretion to determine the number of attorneys to be retained or added to each category of the Conflict Attorney List. Any person added to the conflict list shall first meet the minimum qualifications as specified in this Order.

VI. CONFLICT ATTORNEYS - TERMS OF APPOINTMENT

A. Two-year Terms

Appointments to the Conflict Attorney List shall be for a term of two (2) years. After two years, the conflict attorney may petition the Conflict Attorney Committee for reappointment for an additional two (2) year period. There shall be no limit to the number of terms in which an attorney may serve.

B. Performance Review Committee

A Performance Review Committee is created and shall consist of the following individuals:

1. One Circuit Judge from the criminal or juvenile division of the Second Judicial Circuit who is appointed by the chief judge of the Second Judicial Circuit. The chair of the Performance Review Committee shall be the circuit judge appointee
2. One county judge, from the Second Judicial Circuit, who is appointed by the chief judge.

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5. Two representatives from the Criminal Defense Lawyers Association who are appointed by the president of that association. The appointees shall not be members of the Conflict Attorney List.
4. The public defender of the Second Judicial Circuit.
5. Two representatives from the Counties, one of which shall be from Leon County.

C. **Periodic Evaluation**

Prior to being reappointed by the Conflict Attorney Committee, an evaluation of the conflict attorney shall be conducted to determine the attorney's proficiency and commitment to quality representation. This evaluation will be made by the Performance Review Committee. A positive evaluation must be obtained from a majority of the members of the Performance Review Committee for an attorney to be reappointed.

VII. REMOVAL FROM CONFLICT ATTORNEYS LIST

A. **Automatic Grounds for Removal**

1. Suspension or loss of license to practice law;
2. Misapplication or misappropriation of clients' property;
3. False or fraudulent billing to the agency;
4. Extreme cases of misconduct, where removal is determined to be necessary for the protection of clients' interests;
5. Failure to meet continuing legal education requirements; or
6. Solicitation, or an attempt to solicit or receive compensation from the client in addition to any compensation received or expected from the county for that case.

B. **Potential Grounds for Removal**

Potential grounds for removal include the following, if done without just cause:

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1. Failure to consult with the client;
2. Failure to made scheduled court appearances;
3. Failure to met statutory or court-imposed deadlines;
4. Failure to file appropriate motions;
5. Failure to assert an alibi;
6. Failure to investigate a case;
7. Failure to interview witnesses;
8. Failure to consult experts where appropriate;
9. Failure to inform a client of a proposed plea agreement;
10. Failure to subpoena witnesses;
11. Failure to request instructions appropriate to the defense;
12. Failure to present appropriate sentencing alternatives;
13. Failure to assure that the client receives jail credits against his/her sentence;
14. Refusal of an excessive number of offered cases; and/or
15. Consistently billing an unreasonable number of hours.

C. **Complaint and Removal process**

The Performance Review Committee should periodically monitor the performance of assigned counsel to ensure that the client is receiving quality representation. The committee shall also receive and evaluate complaints that are made with regard to the performance of a conflict attorney. Complaints shall be made in writing to the Office of the Court Administrator. The court administrator shall forward all complaints to the conflict attorney with a request to respond within 10 days of receipt. A copy of the complaint will also be forwarded to the presiding judge assigned to the case in which the complaint arose. Where there is compelling evidence that an attorney has inexcusably ignored basic responsibilities

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of an effective lawyer, resulting in prejudice to the client's case, the committee should recommend to the chief judge of the Second Judicial Circuit that the attorney be removed from the Conflict Attorney List. Likewise, if the Performance Review Committee determines that an attorney failed to have just cause for performing an act specified in Section B (Potential Grounds for Removal) above, the committee should recommend to the chief judge of the Second Judicial Circuit that the attorney be removed from the Conflict Attorney List. The chief judge of the Second Judicial Circuit shall have the final authority to remove an attorney from the Conflict Attorney List.

D. **Written Notice**

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The Circuit Conflict Committee shall establish a procedure which gives written notice to counsel whose removal is being sought. At the discretion of the chief judge, a hearing may be held to determine if there is just cause to remove an attorney from the conflict list as a result of behavior that warrants automatic removal (Section V-A of these procedures). A hearing must be held to determine if thee is just cause to remove an attorney from the list as the result of behavior that constitutes potential grounds for removal (Section V-B of these procedures).

E. **Non-Interference**

In fulfilling its monitoring function, the Performance Review Committee should not attempt to interfere with the conduct of particular cases. Representation of an accused establishes an inviolable attorney-client relationship. In the context of a particular case, removal of counsel from representation should be the prerogative of the presiding judge.

F. **Re-admittment to Conflict List**

No attorney should be readmitted to the conflict list after removal under (a) or (c) above unless such removal is shown to have been erroneous or it is established by clear and

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convincing evidence that the cause of the failure to meet basic responsibilities has been identified and corrected.

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VIII. Effective Date. This order will apply to all newly assigned cases as of the date of this Order. Administrative Order 95-02, In Re: Attorney Fees for Special Public Defenders, dated April 3, 1995, and the Conflict Attorney Policies Manual adopted thereunder is hereby repealed.

DONE AND ORDERED in Chambers in Tallahassee, Leon County, Florida, this 26 day of June 2001.

GEORGE S. REYNOLDS, III
Chief Judge, Second Judicial Circuit

Circuit and County Judges, Second Circuit
State Attorney
Public Defender
Circuit Conflict Committee
Clerks of Circuit Court, Second Circuit
All County Attorneys, Second Circuit
All Court Appointed Conflict Attorneys, Second Circuit
Court Administration

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ATTACHMENT A

FEE SCHEDULE

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1. Extraordinary and Unusual Cases	
(a) Criminal	$ 100/hour
(b) Juvenile Dependency/TPR	$ 60/hour
2. Capital Sexual Battery (Trial Level or Appeal)	$2,000
3. Non-Capital Appeal or DCA	$1,000
4. Criminal Contempt (Civil Cases)	$ 200
5. County Court to Circuit Court Appeal	$ 750
6. Life Felony (Trial Level)	$1,000
7. Non-Capital, Non-Life Felony (Trial Level)	$ 600
8. Juvenile Delinquency	$ 300
9. Juvenile Dependency/TPR	$ 60/hour
10. Misdemeanor, Traffic, or Baker Act	$ 300
11. Violation of Probation Proceedings	$ 200
12. Fla. R. Crim. P. 3.850 Proceedings (Felony)	$ 600
13. Fla. R. Crim. P. 3.850 Proceedings (Misdemeanor)	$ 200

In a multi-count information or indictment, the attorney shall be compensated only for the highest degree of crime charged.

Where an attorney is appointed to represent a single Defendant who has been charged *in more than one case,* then the Attorney shall be compensated at the above rate for the single most serious of the cases and will be compensated at the rate of 40% of the amount otherwise payable for all additional cases which has been assigned within 30 days of the original appointment.

COST SCHEDULE

1. Copies	.15/page
2. Faxes	.25/page
3. Mileage	.29/mile

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