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IN THE SUPREME COURT OF GUAM

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|------------------------------------|---|---|
| RE: |) | Supreme Court Case No. PRM06-006 |
| AMENDMENTS TO |) | |
| MISCELLANEOUS RULE 1.1.5 OF |) | |
| THE LOCAL RULES OF THE |) | PROMULGATION ORDER NO. 06-006-23 |
| SUPERIOR COURT OF GUAM |) | |
| (INDIGENT DEFENSE RULE) |) | |

The Supreme Court created the Private Attorney Panel on January 18, 2007, through Promulgation Order No. 07-001. The compensation schedule for the Private Attorney Panel was created as Miscellaneous Rule 1.1.5 of the Local Rules of the Superior Court of Guam when those rules were enacted by Promulgation Order No. 06-006-01 on May 3, 2007. On October 2, 2007, the Supreme Court issued Promulgation Order No. 06-006-03, amending Miscellaneous Rule 1.1.5 to clarify compensation in juvenile delinquency cases and to provide for compensation in juvenile special proceedings cases and for attorneys appointed for guardian ad litem services. On July 16, 2008, the Supreme Court issued Promulgation Order No. 06-006-06, further amending Miscellaneous Rule 1.1, including raising the maximum compensation for felony cases in which the defendant faces life in prison.

On April 14, 2022, the court, on the recommendation of the Standing Committee for the Private Attorney Panel, the Administrative Office of the Courts, and the Judiciary’s Financial Management Division, increased the compensation rates and caps for the Private Attorney Panel, through Promulgation Order No. 06-006-20. In further recognition of the need to fairly compensate attorneys on the Private Attorney Panel due to the rising cost of living, the difficulties faced by the bar and the community created by the dwindling number of attorneys on the Private

1 Attorney Panel, and the increasing community need for indigent representation, the court again
2 revisited the compensation schedule. On February 21, 2023, the proposed amendments were sent
3 to the Guam Bar Association for comment.
4

5 After reviewing all comments received, including the Resolution of the Board of Governors
6 of the Guam Bar Association, the court considered various financial scenarios that would be
7 feasible given the state of the Judiciary’s funding for indigent defense services. Upon consultation
8 with the Judiciary’s Finance Administrator, the court now takes this opportunity to further adjust
9 the hourly rate for court-appointed attorneys from \$100.00 per hour to \$150.00 per hour, increase
10 the compensation cap for misdemeanor cases from \$3,500.00 to \$3,600.00, and increase the
11 compensation cap for investigators from \$1,500.00 to \$2,000.00. These rates will be implemented
12 on a trial basis through December 31, 2023, after which time the court will reassess whether these
13 increases have helped remedy the crisis in indigent representation by getting more attorneys to
14 volunteer for the Private Attorney Panel. Further, this trial period will provide the Judiciary with
15 better data upon which to determine the amount of increased funding it will need to realistically
16 sustain the costs of fulfilling the constitutional mandate to provide indigent representation.
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19 **NOW THEREFORE**, under this court’s Organic Act authority to “make and promulgate
20 rules governing the administration of the judiciary and the practice and procedure in the courts of
21 the judicial branch of Guam,” 48 U.S.C. 5 1424-1(a)(6), the Supreme Court amends Miscellaneous
22 Rule 1.1. The amended portion of the Rules is attached as Attachment 1 and shall be effective as
23 of April 1, 2023, and will expire on December 31, 2023, unless extended by further order of the
24 court. For cases currently pending as of April 1, 2023, the new hourly rates will be effective for
25 all hours done on or after April 1, 2023, and maximum compensation amounts will be adjusted
26 as follows: if over fifty percent of the work on a matter was done before April 1, 2023, then the
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Attachment "1"

MR 1.1.4. INVESTIGATIVE, EXPERT, INTERPRETATIVE AND PARALEGAL SERVICES.

...

(c) Where counsel has received prior authorization for investigators, experts and interpreters, the maximum total shall not exceed ~~\$1,500.00~~ \$2,000.00. Counsel appointed under these rules may apply to the Administrator of the Courts to exceed this maximum. Counsel must demonstrate extraordinary circumstances and good cause to justify an exception to the maximum. Approval of any amount in excess of the limit herein shall be approved by the Administrator of the Courts. The Superior Court Judge presiding over the case may provide input in this regard.

MR 1.1.5. COMPENSATION.

(a) Unless otherwise provided for, the hourly rate for legal services by counsel appointed under these Rules shall be ~~\$100.00~~ \$150.00 per hour for legal services rendered in and out of the courtroom, subject to the following maximums:

- (1) Not more than \$25,000.00 shall be paid in cases where the defendant faces life imprisonment (without the imposition of an Extended Term under 9 GCA § 80.32).
- (2) Not more than \$20,000.00 for First Degree Felonies other than those compensated under category (1).
- (3) Not more than \$10,000.00 for Second Degree Felonies.
- (4) Not more than \$7,500.00 for Third Degree Felonies.
- (5) Not more than ~~\$3,500.00~~ \$3,600.00 shall be paid for misdemeanors.
- (6) Not more than \$3,150.00 shall be paid for habeas corpus proceedings.
- (7) Not more than \$3,150.00 shall be paid for juvenile delinquency cases.
- (8) Not more than \$7,500.00 for attorneys appointed in juvenile special proceedings cases or appointed to provide guardian ad litem services.
- (9) Not more than \$10,000.00 shall be paid for each level of appeal in a particular case.

For First Degree Felonies in which the court appoints more than one attorney, not more than \$30,000.00 total will be paid, to be divided among the attorneys. For any other case in which the court appoints more than one attorney, the cap and hourly rates will remain the same, to be divided among the attorneys.

In the event an attorney is appointed in separate cases that are fully or partially consolidated, the attorney may not submit duplicative billings in multiple cases for the same hours worked. Instead, the attorney should divide the hours worked by the number of cases in which the hours will be claimed, and apply the appropriate fraction in the billings for each case.

Counsel appointed under these rules may apply to the Administrator of the Courts to exceed these maximums and/or contest whether the appropriate maximum has been identified for a specific case. Counsel must demonstrate extraordinary circumstances and good cause to justify an exception to the maximums. Approval of any amount in excess of the limits herein shall be approved by the Administrator

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of the Courts. The Superior Court Judge presiding over the case may provide input in this regard. In determining whether the circumstances of a particular case are extraordinary, the Administrator of the Courts shall consider the following non-exhaustive list of factors:

- i. Multiple defendants
- ii. Joint or separate trials with co-defendants
- iii. Multiple incidents (including multiple victims in separate incidents)
- iv. Mistrials and re-trial(s)
- v. Substitution of trial counsel; additional trial proceedings or phases (e.g., grand jury, competency phase, sanity phase)
- vi. Multiple special circumstances
- vii. Prior convictions or unadjudicated conduct admitted at penalty phase
- viii. Prosecution's use of informants
- ix. Extensive litigation of the admissibility of evidence
- x. Forensic testing, analysis, and evidence (e.g., DNA, hair, fingerprint, blood, ballistics) introduced at trial or necessary for habeas investigation

- xi. Mentally ill or mentally impaired defendants
- xii. Non-English-speaking defendant or witnesses
- xiii. Minimal guilt and/or penalty phase investigation done for trial
- xiv. Investigation requirements in multiple locations, requiring travel
- xv. Extended elapsed time since offenses/trial
- xvi. Necessity of expert witnesses
- xvii. Necessity of using some fees to cover investigative and incidental expenses
- xviii. Length of record
- xix. Number of trial witnesses

No single factor is dispositive, and the Administrator of the Courts shall weigh all factors in determining whether the representation in any particular case is extraordinary.

(b) Application for payment by appointed counsel shall be submitted on the appropriate voucher form to the Clerks of the Superior Court and Supreme Court, whichever is applicable. Appointed counsel shall submit vouchers on a monthly basis. The Clerks for each court shall not approve payments unless vouchers are submitted as herein provided. The Administrator of the Courts shall have sixty (60) days to act on the submitted voucher. Failure to act within the sixty-day time period shall be deemed an approval of the submitted voucher.

(c) Court Interpreter Compensation.

(1) REGISTERED BLOCK PAY – Non-Trial Hearings:

(A) \$60.00 per HALF DAY BLOCK - Morning Block 9:00 a.m. – 12:00 p.m.; Afternoon Block 1:30 p.m. to 5:00 p.m. Compensation for a Half Day Block will be paid in full even if the interpreter only works for a fraction of a Half Day Block.

(B) \$90.00 per FULL DAY BLOCK - Morning Block plus same day Afternoon Block. Compensation for a Full Day Block will be paid in full so long as the interpreter works for any fraction of both the Morning Block and Afternoon Block of a given day.

(C) \$16.00 per hour after 5:00 p.m., compensated at $\frac{1}{4}$ fractions of the hour.

(2) REGISTERED BLOCK PAY – Trial

(A) \$80.00 per HALF DAY BLOCK - Morning Block 9:00 a.m. – 12:00 p.m.; Afternoon Block 1:30 p.m. to 5:00 p.m. Compensation for a Half Day Block will be paid in full even if the

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interpreter only works for a fraction of a Half Day Block.

(B) \$110.00 per FULL DAY BLOCK - Morning Block plus same day Afternoon Block. Compensation for a Full Day Block will be paid in full so long as the interpreter works for any fraction of both the Morning Block and Afternoon Block of a given day.

(C) \$20.00 per hour after 5:00 p.m., compensated at $\frac{1}{4}$ fractions of the hour.

(3) REGISTERED NON-BLOCK PAY – Non-Courtroom Matters (office appointments/visits to the Department of Corrections)

(A) \$28.00 per hour, compensated at $\frac{1}{4}$ fractions of the hour.

(4) UNREGISTERED NON-BLOCK PAY - All matters.

(A) \$16.00 per Hour, not to exceed \$60.00 per day, including after 5:00 p.m. Unregistered interpreters may be compensated for waiting time in addition to actual interpreting time. Calculations should be made to the nearest $\frac{1}{4}$ fraction of the hour.

(5) APPEARANCE FEE. The following compensation shall apply to a courtroom hearing, or

non-courtroom matter/appointment that is cancelled due to no fault of the interpreter, and the interpreter appeared in conformity with his/her scheduled assignment.

(A) Courtroom Appearance Fee - \$30.00

(B) Appointment Appearance Fee - \$12.00