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NEWS RELEASE

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FOR IMMEDIATE RELEASE

March 5, 2012

Supreme Court Updates “Benchmark” Hours for Capital Case Evidentiary Hearings

***Court also revises corresponding “Fixed Fee Guidelines” and
modifies attorney compensation practices and procedures
concerning “Atkins” evidentiary hearings***

San Francisco — As part of its continuing review of procedures governing the compensation of appointed counsel in death penalty appeals and related habeas corpus proceedings, the California Supreme Court today announced that it has modified its hourly “benchmarks” set out in its published time-and-costs “Payment Guidelines” governing evidentiary hearings in habeas corpus matters.

The Supreme Court anticipates that the new benchmark range will ease administrative burdens for both appointed counsel and the court. The changes adopted by the court are summarized below.

The Supreme Court awards payment for attorney hours above the benchmark ranges if appointed counsel provides information showing that the additional attorney hours are warranted. After recently reviewing the relevant data, the court concluded that the existing 150-300 hours benchmark range for attorney time devoted to preparation for a habeas corpus evidentiary hearing is not reflective of actual compensation that the court has approved in such matters. Accordingly, the court has doubled the upper benchmark range to 150-600 hours.

As an alternative to time-and-costs billing under the Payment Guidelines and related benchmarks, appointed death penalty counsel may choose to be compensated pursuant to a “fixed fee” with “fixed expenses” under the “Fixed Fee Guidelines.” In light of changes made to the Payment Guideline benchmarks, the court has made corresponding changes to the fixed legal fees and fixed expenses components of the Fixed Fee Guidelines.

In addition, the court has revised the Payment Guidelines to make it clear that the capital habeas corpus hourly benchmarks — including the newly revised range — apply to all types of evidentiary hearing matters. In other words, the same hourly benchmarks apply to both regular evidentiary hearings and so-called “*Atkins* hearings,” which address whether an inmate is “mentally retarded” and therefore ineligible for execution under the United States Supreme Court’s decision in *Atkins v. Virginia* (2002) 536 U.S. 304.

Finally, the court also amended its procedures for approval of requests for fee compensation, and to incur investigative expenses, related to *Atkins* hearings. These revisions clarify that the superior court, before which such hearings occur, makes *recommendations* to this

court as to whether counsel’s requests for fee compensation, and for pre-authorization to incur investigative expenses, are reasonable. However, the Supreme Court will thereafter independently decide these issues pursuant to its Payment Guidelines and compensation standards. To the extent the Supreme Court finds the superior court’s recommendations to be reasonable, it will pay the recommended fee compensation, and will approve the recommended investigative expenses for later reimbursement. The court has made corresponding changes to the form letter it regularly sends to the presiding judge of the superior court in such matters. The court also has adjusted its internal review procedures to expedite the payment of fees and expenses it deems reasonable.

The court will continue to review these and other procedures in order to make funding of capital habeas corpus litigation more efficient and predictable. The court also will continue to review its internal compensation data and, as appropriate, consider increases to other hourly benchmark ranges applicable to death penalty appeals and related habeas corpus proceedings.

Copies of these revised time-and-costs Payment Guidelines, and Guidelines for Fixed Fee Appointments, are attached, and posted on the California Courts Web site, www.courts.ca.gov/5641.htm . The changes are effective March 5, 2012. Questions concerning these and related procedures should be directed to the court’s Automatic Appeals Monitor, Robert Reichman, at 415-865-7016, or Robert.Reichman@jud.ca.gov.

Attachments

I. Revisions to “Payment Guidelines for Appointed Counsel Representing Indigent Criminal Appellants in the California Supreme Court,” Guideline II, subpart *I.3.(ii)b*; Guideline II, subpart *I.3.(ii)*, new subpart d; and Guideline III, subpart C.8.a.

II. Revisions to “Guidelines for Fixed Fee Appointments, On Optional Basis, to Automatic Appeals and Related Habeas Corpus Proceedings in the California Supreme Court,” Fixed Fee Guideline 10, subpart (1).

Attachment I

Revisions to “Payment Guidelines for Appointed Counsel Representing Indigent Criminal Appellants in the California Supreme Court,” Guideline II, subpart I.3.(ii)b; Guideline II, subpart I.3.(ii), new subpart d; and Guideline III, subpart C.8.a

Time-and-costs Payment Guideline II, subpart I.3.(ii)b, first benchmark range, is revised to read:

“*Preparation: 150-~~300~~ 600 hrs.*”

The same provision is further revised to include the following final sentence at the end of subpart I.3.(ii)b:

“These benchmarks apply collectively to all counsel, appointed and supervised, who are engaged in work related to a habeas corpus evidentiary hearing, and are not multiplied, or otherwise increased, by virtue of the fact that more than one attorney is participating in this work.”

Time-and-costs Payment Guideline II, subpart I.3.(ii), is revised to include new subpart d as follows:

d. Habeas Corpus Proceedings Returnable in Superior Court Following Order to Show Cause on Alleged Mental Retardation of Condemned Inmate

The “allowable hours” benchmark ranges for habeas corpus proceedings after issuance of an order to show cause, including any traverse to the return, and preparation for, or presentation at, an evidentiary hearing, as set forth in Payment Guideline II, subpart I.3.(ii), apply to all habeas corpus proceedings following an order to show cause issued by the Supreme Court, including any order to show cause returnable to the superior court regarding a condemned inmate’s alleged mental retardation and resulting ineligibility for the death penalty within the meaning of *Atkins v. Virginia* (2002) 536 U.S. 304.

Before requesting compensation from the Supreme Court for attorney fees related to such *Atkins* litigation in superior court, appointed counsel first must obtain the superior court’s recommendation for payment of the incurred hours. However, the superior court’s recommendation is not binding on the Supreme Court, which will, in all cases, exercise independent review concerning attorney fees recommended for payment by the superior court.

These requirements apply to all such fee requests, for *Atkins* litigation in superior court, pending before the Supreme Court on or after March 5, 2012.

In addition, time-and-costs Payment Guideline III, subpart C.8, is revised to read as follows:

8. *Proceedings returnable in superior court following order to show cause on alleged mental retardation of condemned inmate*

[Par.]

a. ~~The decision whether to authorize funding for any experts, investigators or law clerks/paralegals is to be made by, and is within the discretion of, the superior court in which the proceedings are pending.~~ The superior court in which the *Atkins*-related proceedings are pending makes only a *recommendation* for pre-authorization to incur, and payment of, the expenses of investigators, experts, and other service providers for whom reimbursement is sought by appointed counsel. Thereafter, the Supreme Court independently determines, pursuant to its time-and-costs Payment Guidelines and the Policy 3 compensation standards (see Supreme Ct. Policies Regarding Cases Arising From Judgments of Death), whether the recommended funding is reasonable and, to the extent found reasonable, authorizes appointed counsel to incur such expenses and reimburses appointed counsel, as appropriate.

This provision will apply to all such funding requests pending before the Supreme Court on or after March 5, 2012.

Attachment II**Revisions to “Guidelines for Fixed Fee Appointments, On Optional Basis, to Automatic Appeals and Related Habeas Corpus Proceedings in the California Supreme Court,” Fixed Fee Guideline 10, subpart (1)**

The Fixed Fee Guideline 10, subpart (1), combined legal fee and expense categories are revised to read as follows:

“Category A: ~~\$52,500~~ \$68,500 (~~\$49,000~~ \$60,000 legal fees; ~~\$3,500~~ \$8,500 expenses)

“A matter presenting a single issue or limited issues expected to require minimal additional investigation, minimal or no services of experts, and to consume 1-2 hearing days.

“Category A(1): ~~\$57,500~~ \$74,000 (~~\$49,000~~ \$60,000 legal fees; ~~\$8,500~~ \$14,000 expenses)

“A matter otherwise within Category A, but which is expected to require significant additional investigation and use of experts.

“Category B: ~~\$80,500~~ \$108,000 (~~\$72,000~~ \$94,000 legal fees; ~~\$8,500~~ \$14,000 expenses)

“A matter expected to require significant additional investigation and/or significant use of experts, and to consume 3-4 hearing days.

“Category B(1): ~~\$86,000~~ \$115,000 (~~\$72,000~~ \$94,000 legal fees; ~~\$14,000~~ \$21,000 expenses)

“A matter otherwise within Category B, but which is expected to require substantial additional investigation and use of experts.

“Category C: ~~\$116,000~~ \$156,000 (~~\$102,000~~ \$135,000 legal fees; ~~\$14,000~~ \$21,000 expenses)

“A matter expected to require substantial additional investigation and/or services of experts, and to consume 5-6 hearing days.

“Category C(1): ~~\$123,000~~ \$165,000 (~~\$102,000~~ \$135,000 legal fees; ~~\$21,000~~ \$30,000 expenses)

“A matter otherwise within Category C, but which is expected to require substantial additional investigation and use of experts.

“Category D: ~~\$148,000~~ \$202,500 *base sum* (~~\$124,000~~ \$167,500 base amount for legal fees; ~~\$24,000~~ \$35,000 base amount for expenses)

“A matter that is expected to require substantial additional investigation and services of experts, and to consume 7 or more hearing days. In this category, counsel may present justification at the outset for a fixed sum higher than the base amount.”

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