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May 13, 2024

Hon. Patrick E. Donovan, Chair
Advisory Committee on Rules
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

RE: Proposed Changes to Assigned Counsel Rates

Dear Justice Donovan and Members of the Rules Committee,

As referenced in my earlier letter of March 12, 2024, there is an ongoing shortage of qualified attorneys to take assigned counsel cases to represent indigent defendants. This problem is especially urgent when it comes to incarcerated defendants with serious charges and defendants in rural counties (specifically Cheshire, Sullivan, Grafton, and Coos). At any time, there are between 20-40 incarcerated defendants in New Hampshire without counsel (and over 100 non-incarcerated defendants without counsel). Some of these defendants wait for weeks or even over a month for counsel. This situation is not likely to improve without action and will likely become more urgent as the number of cases increases and the assigned counsel rate becomes even less competitive due to inflation.

The end of felonies first has contributed to delays in assigning counsel. Each case that starts in district court has both an arraignment and probable cause hearing. Both must be covered by an attorney on relatively short notice. Counsel are reluctant to take felonies in remote areas as it means potential travel at short notice to a remote court. The Case Conflict Administrator and JC are not always able to secure counsel for incarcerated defendants within the timeframe required by the rules of Criminal Procedure.

This shortage also leads to situations whereby a contract (instead of assigned) attorney covers the arraignment for a defendant, a separate contract attorney handles the probable cause hearing, and the actual case is ultimately given to assigned counsel, usually after a period of days or weeks where the defendant (who may be incarcerated) is without counsel. This situation is unfair to the defendant who lacks counsel solely because of the geography of his case as well as to the other parties in the case, who must contend with delays caused by a lack of counsel.

Sullivan County is an example of an area that struggles with assigning counsel in criminal matters. In the past, the Judicial Council (JC) held contracts with multiple attorneys in that county who could readily respond to requests for coverage at short notice. However, there is currently no contract attorney based in Sullivan County. This leaves the JC and the Courts completely reliant on assigned counsel, based outside Sullivan County, to handle cases. This routinely leads to longer wait times for defendants who are facing charges in this county.

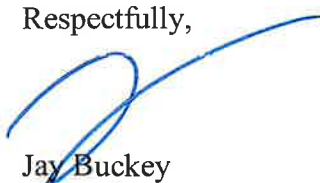
The number of attorneys willing to take cases in abuse and neglect matters and other family proceedings is also rapidly diminishing. The lack of attractiveness for these cases not only impacts the courts presently but makes it less likely that attorneys will take up the practice of law in these cases, especially in rural areas.

The Judicial Council, along with the Case Conflict Administrator (CCA), has worked with the Courts to find non-financial means of increasing access to attorneys for indigent defendants. The Judicial Council offers certifications for student loan forgiveness programs to qualifying attorneys, and several courts have been very helpful in expanding access to remote hearings and scheduling flexibility. However, these efforts have not been sufficient to address the underlying lack of attorneys available to take cases.

Considering the above, the Judicial Council has unanimously voted to recommend the following changes to Supreme Court Rules 47, 48 and 48-A: 1) raising the rate of reimbursement for attorneys for general assigned work to \$125 per hour; 2) raising the rate for major crimes cases to \$150 per hour; and 3) adding a provision that the rate may be adjusted to keep pace with inflation. These recommendations are in addition to the change recommended in the letter of March 12, 2024. The proposed amended rules are attached.

Thank you for considering this request. Please do not hesitate to contact me if I can provide any additional information regarding this request.

Respectfully,



Jay Buckey
Executive Director, New Hampshire Judicial Council

Attachment A-Rate Changes Recommended by the Judicial Council

The Judicial Council makes the following recommended changes to Rule 47, 48, and 48-A (new language underlined, removed language struck through). Please note that these proposed changes also incorporate the recommended changes contained in the letter of March 12

Rule 47 revised to read (in pertinent part):

(2) Fees. Maximum compensation is limited as follows:

(a) Time properly chargeable to case: ~~\$125~~150 per hour for major crime cases (capital murder, homicide, aggravated felonious sexual assault, felonious sexual assault first degree assault, class A felony robbery, felony arson, and any offense punishable, as charged, by life imprisonment); ~~\$125~~150 per hour for Supreme Court appeals and ~~\$90~~125 per hour for all other cases. The paralegal hourly rate shall not exceed \$40 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case.

(b) Maximum fee for misdemeanors: \$2,000.

(c) Maximum fee for ~~aggravated felonious sexual assault, felonious sexual assault and first degree assault~~ major crime cases listed above; \$12,500, and for all other felonies: \$5,500.

(d) Maximum fee (per co-counsel) for homicides under RSA 630:1-2: \$20,000.

(e) Maximum fee for Supreme Court appeal: \$10,000.

(f) In the absence of a change to this rule, the Executive Director of the Judicial Council is authorized to adjust biennially all hourly rate maximums by an amount not to exceed the Consumer Price Index (CPI) as calculated by the U.S. Bureau of Labor Statistics, contingent upon the availability of sufficient funds. The new rates will apply with respect to services performed on or after the beginning of the next immediate fiscal year.

Attachment A-Rate Changes Recommended by the Judicial Council

Rule 48 revised to read (in pertinent part):

(2) Fees. Maximum compensation is limited as follows:

(a) Time properly chargeable to case: ~~\$90~~125 per hour. The paralegal hourly rate shall not exceed \$40.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case, \$150 per hour for major crime cases (capital murder, homicide, aggravated felonious sexual assault, felonious sexual assault first degree assault, class A felony robbery, felony arson, and any offense punishable, as charged, by life imprisonment).

Rule 48-A revised to read (in pertinent part):

(2) Fees. The provisions of this rule shall only apply to proceedings within the original jurisdiction of the circuit courts, in which guardians ad litem are appointed, and the party responsible for payment is indigent, and parental notification cases under RSA 132:34.

Maximum guardian ad litem compensation as authorized by the administrative justice shall be limited as follows:

(a) Time properly chargeable to case: ~~\$90~~125 per hour. Travel time to and from court hearings and to or from meetings with a juvenile or an incapacitated person shall be a compensable event. Travel time shall not count toward the maximum fees set forth below.