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2024-003

March 12, 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 Supreme Court Rules 47 and 48

Dear Justice Donovan and Members of the Rules Committee,

There is an ongoing shortage of qualified attorneys to take assigned counsel cases to represent indigent defendants. Despite the efforts of the three full-time staff members of the Case Conflict Administrator, as well as the Judicial Council, there is often a delay in assigning lawyers to cases. This problem is especially urgent when it comes to incarcerated defendants with serious charges. At any time, there are between 20-40 incarcerated defendants in New Hampshire without counsel (and over 100 non-incarcerated defendants without counsel). Depending on the court, some of these defendants wait for weeks or even over a month for counsel.

To help remedy this issue, the Judicial Council makes the following recommendations:

First, the Judicial Council recommends that all cases punishable by life be approved for an increased reimbursement rate of \$125 per hour and higher fee cap. The current rules do not adequately cover the increased number and types of serious cases that require representation by an experienced attorney. For example, the current rules provide an increased billing rate for first degree assault, a class A felony which is punishable by 7.5-15 years in prison. However, a drug enterprise leader charge under RSA 318-B:2, XII is punishable by up to life imprisonment. Counsel on a drug enterprise leader charge is only compensated at \$90 an hour, to a cap of \$5,500. This discrepancy makes locating qualified counsel for certain cases extremely difficult, and it also necessitates the filing of frequent motions to exceed the fee cap.

Increasing the reimbursement rate on these serious felonies is crucial in obtaining qualified counsel. A graduated billing schedule for serious cases is also consistent with the requirements of RSA 604-B:5, which requires that the Supreme Court "recommend a fee schedule which shall be graduated to reflect years of legal experience of such counsel." RSA 604-B:5. This proposed change was considered and recommended by the Judicial Council on January 26, 2024.

Second, the Judicial Council recommends that any juvenile charged with an offense that would qualify for increased billing as an adult be permitted to bill at the higher rate for a juvenile. This reflects the reality that juvenile cases have become more complex, require specific expertise and training, and carry potentially serious consequences for the juvenile. This change was recommended by the Judicial Council on January 26, 2024.

Finally, the executive director of the Judicial Council also recommends that the language between increased billing rates and capped fees be made consistent. Currently, the language provides for an increased billing rate for a certain set of enumerated, “major crime cases.” However, the list of crimes which have a higher fee cap does not match this list. For example, class A felony robbery is eligible for an increased billing rate, but not an increased cap. This discrepancy leads to confusion. It also leads to situations where an attorney who is billing at a higher rate will almost certainly have to file a motion to exceed the cap. The time spent in drafting and reviewing these motions to exceed is time that is better spent by both litigants and judges on substantive legal work. This change has not been reviewed by the entire council, but is recommended by the executive director, Chair and Vice Chair of the Judicial Council.

For the reasons outlined above, the Judicial Council makes the following specific recommendations (new language underlined, removed language struck through):

Rule 47 revised to read (in pertinent part):

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

(a) Time properly chargeable to case: \$125 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 per hour for Supreme Court appeals and \$90 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.

Rule 48 revised to read (in pertinent part):

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

(a) Time properly chargeable to case: \$90 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. \$125 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).

Thank you for considering this request.

Respectfully,



Jay Buckey
Executive Director, New Hampshire Judicial Council