

FILED
Mar 18, 2015
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

IN RE:)
)
ADOPTION OF AMENDED PLAN)
GOVERNING REIMBURSEMENT OF)
APPOINTED PRO BONO COUNSEL)
)
)
_____)

GENERAL ORDER NO. 558

This General Order supersedes General Order 510 in its entirety. Additionally, this General Order supersedes General Orders 154, 230, 259 and 377 to the extent they address reimbursement of pro bono counsel for indigent civil litigants.

The United States District Court for the Eastern District of California hereby adopts the following plan governing reimbursement of pro bono counsel appointed in indigent pro se civil cases. An attorney acting as appointed pro bono counsel for indigent pro se civil litigants may petition the Court for reimbursement from the Court’s Non Appropriated Fund (Fund) of certain expenses incurred. Such reimbursement shall be governed exclusively by the provisions of this General Order.

Section 1. General Provisions

A. All requests for reimbursement from the Fund shall be filed with and approved by the judge before whom a case is proceeding.

B. Except for good cause shown, requests for reimbursement may only be submitted during the pendency of the case in question or up to thirty (30) days following the entry of final judgment in the case.

C. When an attorney appointed as pro bono counsel for a pro se civil litigant is permitted to withdraw from representing the party in the case and the attorney wishes to seek payment of incurred expenses which may be reimbursable under this order, said attorney shall file a request for reimbursement within thirty (30) days of the entry of the order allowing the withdrawal. Except for good cause shown, the Court shall not allow reimbursement of expenses where the request was filed more than thirty (30) days after the entry of the order of withdrawal.

Section 2. Procedures for Requesting and Approving Reimbursement

A. *Approval of certain expenses before they have been incurred:* Counsel seeking reimbursement of any single out-of-pocket expense costing \$501 or more, and subject to Section 2(C), shall submit to the judge before whom a case is proceeding the form entitled “Request for Authority to Incur Costs” (available on the Court’s website) prior to incurring any such expense. Except for good cause shown, the judge before whom a case is proceeding will only authorize such requests for reimbursement before such expenses have been incurred by pro bono counsel.

1) After judicially-approved expenses have been incurred, counsel seeking reimbursement shall submit to the judge before whom a case is proceeding the form entitled “Request for Payment of Pro Bono Expenses” (available on the Court’s website). The Court shall consider reimbursing counsel upon receipt of this properly completed and submitted form, upon review of whether the claimed expenses conform to those previously approved.

B. *Approval of certain expenses after they have been incurred:* Subject to the exceptions in Sections 2(C), 4(A)(3) and 4(A)(5)(ii) below, counsel requesting reimbursement of

any out-of-pocket expense costing \$500 or less shall submit to the judge before whom a case is proceeding the form entitled “Request for Payment of Pro Bono Expenses” (available on the Court’s website) within the timeframe stated in Section 1 above.

1) The judge before whom a case is proceeding may authorize reimbursement for these costs for good cause, even if the “Request for Payment of Pro Bono Expenses” form is submitted by pro bono counsel without previously submitting the “Request for Authority to Incur Costs” form and obtaining prior approval to incur the expenses from the judge before whom the case is proceeding as described in Section 2(A).

C. *Category-based exceptions:* Counsel reimbursed \$501 or more under Section 2(B) for multiple expenses from the same general category (e.g., travel expenses) shall request advance approval and reimbursement for all subsequent expenses from that category incurred for that particular case in accordance with the procedures outlined in Section 2(A).

D. *Documentation requirements:* Counsel seeking reimbursement under this section must support all claimed expenses by attaching invoices, receipts or similar documentation to the submitted “Request for Payment of Pro Bono Expenses” form. Canceled checks do not constitute an acceptable form of documentation for this purpose.

Section 3. Procedures for Reimbursing the Fund

A. If at any time it appears that the indigent litigant is able to afford private counsel or otherwise elects to be represented by other counsel or to proceed in propria persona, the Court’s appointment of pro bono counsel shall terminate on the motion of the Court or of the appointed attorney. The attorney and the litigant may then agree upon a fee arrangement for continued representation. The litigant is required to notify the judge before whom a case is proceeding of

any change in his or her financial condition that may affect his or her ability to afford private counsel. If court appointment is thus terminated because of a change in the litigant's financial condition that resulted in the litigant being able to afford private counsel, the Court may require the litigant to repay to the Court any sums originally received as reimbursement for costs under this General Order.

B. In the event of settlement or other successful resolution of the case which results in a monetary award to the indigent litigant equal to or exceeding the reimbursed costs under this section, the indigent litigant through counsel shall reimburse the Fund for such out-of-pocket expenses allowed and reimbursed under this section. Counsel shall reimburse the Fund within thirty (30) days of settlement or judgment. Counsel shall ensure that such reimbursement occurs prior to any disbursement of judgment or settlement funds to counsel, plaintiff or any other person.

Section 4. Costs and Expenses Eligible for Reimbursement

A. Subject to the preceding sections and approval of the judge before whom a case is proceeding, the following costs and expenses are eligible for reimbursement from the Fund:

1) *Costs of photocopies, photographs, and telephone toll calls:* Counsel may request reimbursement for expenses incurred for photocopying, photographs used in furtherance of a client's case, toll calls, and other similar expenses not including overhead charges. Counsel may only request reimbursement for costs incurred outside of counsel's office space and necessary to the preparation of a client's case.

2) *Certain deposition and transcript costs:* In accordance with the provisions of Section 5(A)(5) below and California Business and Professions Code Section 8030.2, the costs of transcripts or depositions must be borne initially by the State of California's Transcript Reimbursement Fund (TRF). Counsel may request reimbursement from the Fund for such

transcript or deposition costs that exceed the maximum allowed from the TRF. The Court's Pro Bono Program Director is available to assist pro bono counsel with the process of requesting reimbursement through the TRF.

3) *Expert and non-expert witness costs:* Counsel may request reimbursement for costs of retaining expert and non-expert witnesses whose services are necessary in preparing their client's case. Except for good cause shown, all such services require prior approval of the judge before whom a case is proceeding before they may be purchased, regardless of their cost.

4) *Costs for service of papers:* Counsel may request reimbursement of fees for service of papers that are not otherwise avoided, waived or recoverable.

5) *Costs of travel:* Attorneys may request reimbursement of costs and expenses incurred for travel related to a client's case, subject to the following:

i. Travel by privately owned automobile may be claimed at the rate currently authorized for federal judiciary employees who use a private automobile to conduct official business, plus parking fees, tolls and similar expenses. Applicable mileage rates may be found at www.gsa.gov.

ii. Travel other than by privately owned automobile requires prior approval by the Court. Travel information may be obtained from the Pro Bono Program Director.

iii. Costs of lodging and meals and incidentals (M&IE) shall not exceed the per diem rates authorized by the U.S. General Services Administration (GSA). When expenses of lodging are expected to exceed the GSA maximum lodging rate for the location, the Court may preauthorize the attorney reimbursement for the actual cost of lodging plus the applicable GSA locality M&IE allowance, provided that the total does not exceed 150 percent of the applicable GSA locality per diem rate. GSA rates may be found at www.gsa.gov.

6) *Other costs and expenses:* Counsel may request reimbursement for expenses other than those described in this section. Such reimbursement requests must comply with the requirements of previous sections, and request forms submitted to the judge before whom a case is proceeding shall include a detailed description of the expenses incurred.

Section 5. Costs and Expenses Not Eligible for Reimbursement

A. Except for good cause shown and subject to the preceding sections, the following costs and expenses are not eligible for reimbursement from the Fund:

- 1) *Attorneys' fees:* Attorneys' fees may not be reimbursed from the Fund.
- 2) *Printing of briefs:* Costs incurred printing briefs, regardless of the printing method used, may not be reimbursed from the Fund.
- 3) *Proceedings covered by the Criminal Justice Act (CJA):* Costs incurred in proceedings where expenses are reimbursable under the CJA (18 U.S.C. § 3006A) may not be reimbursed from the Fund. Such expenses shall be reimbursed in accordance with CJA guidelines only.
- 4) *Computer assisted legal research:* Costs incurred conducting computer assisted legal research may not be reimbursed from the Fund.
- 5) *Certain deposition and transcript costs:* In accordance with the provisions of Section 4(A)(2) above and California Business and Professions Code Section 8030.2, initial costs incurred producing transcripts or depositions may not be reimbursed from the Fund and must be borne by the TRF. The Pro Bono Program Director is available to assist pro bono counsel with the reimbursement process through the TRF.
- 6) *General office overhead and related expenses:* Costs incurred for general office operations, including personnel costs, rent, telephone services, secretarial assistance, office

photocopying equipment and any other general overhead expenses may not be reimbursed from the Fund.

7) *Statutorily recovered fees:* Expenses that may be statutorily recovered may not be reimbursed from the Fund.

8) *Costs or fees taxed against the party:* Costs or fees taxed against the indigent litigant or his or her pro bono counsel may not be reimbursed from the Fund.

Date: March 18, 2015


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT