

IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA

IN RE:           PROCEDURE FOR DETERMINING  
                  COMPENSATION OF COURT-APPOINTED  
                  COUNSEL IN EXCESS OF FLAT FEE  
                  RATES ESTABLISHED BY THE FLORIDA  
                  LEGISLATURE

ADMINISTRATIVE  
ORDER  
NO: 2.33  
- Amended -

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**WHEREAS**, in 1998, the voters of the State of Florida passed Revision 7 to Article V of the Constitution of the State of Florida, requiring that funding for certain essential elements of the state courts system, including funding for court-appointed counsel, be provided from state revenues appropriated by general law; and

**WHEREAS**, in 2007, the Florida Legislature amended Florida Statute § 27.5304, so as to provide that compensation for court-appointed counsel shall be in accordance with specific flat fee amounts established annually in the General Appropriations Act; and

**WHEREAS**, the 2007 amendments to Florida Statute § 27.5304 provided a statement indicating that the intent of the Florida Legislature is that the flat fees comprise the full and complete compensation for court-appointed counsel; and

**WHEREAS**, the Florida Legislature further acknowledged in the 2007 amendments to Florida Statute § 27.5304 that there are rare occasions in which court-appointed counsel may receive a case that requires extraordinary and unusual effort; and

**WHEREAS**, the 2007 amendments to Florida Statute § 27.5304 provided a specific procedure by which court-appointed counsel may seek compensation in excess of the established flat fee by filing a motion with the Chief Judge of the circuit; and

**WHEREAS**, the current procedures under the 2012 legislative revisions to Florida Statute § 27.5304 require that an evidentiary hearing be held by the Chief Judge or a single

0000069

designee, or in multicounty circuits, two designees, and, in granting a motion, that the Chief Judge or designee enter a written order detailing findings and identifying the extraordinary nature of the time and efforts of counsel that warrant exceeding the established flat fee;

**NOW, THEREFORE**, by the authority vested in the Chief Judge by Fla. R. Jud. Admin. 2.215, and by the authority granted to the Chief Judge by Florida Statute § 27.5304(12) to name two designees to preside over motions filed by court-appointed counsel seeking compensation in excess of the established flat fee, it is **ORDERED** as follows:

1. The original of all motions by court-appointed counsel seeking compensation in excess of the established flat fee shall be filed in the underlying case with the respective Clerk of Court of the county in which the case is pending, and counsel shall be responsible for providing a courtesy copy of the motion, accompanied by a cover letter, to the Chief Judge, to the appropriate designee, as described below, and to the Administrative Office of the Courts, attn. General Counsel, 1700 Monroe Street, Fort Myers, FL 33901.

2. The Chief Judge hereby makes the following designations:

a. **Lee County and Charlotte County cases:** As it relates to all Lee County and Charlotte County cases, the Honorable Nicholas R. Thompson, Circuit Judge in Lee County, is designated by the Chief Judge to preside over the motions.

b. **Collier County, Hendry County, and Glades County cases:** As it relates to all Collier County, Hendry County, and Glades County cases, the Circuit Administrative Judge for Collier County is designated by the Chief Judge to preside over the motions.

3. In accordance with Fla. Stat. § 27.5304(12), prior to filing any motion seeking compensation in excess of the established flat fee, counsel must deliver a copy of the intended billing, together with supporting affidavits and all other necessary documentation to the Justice Administrative Commission (JAC). The JAC then has the opportunity to object by written communication to counsel. Counsel may thereafter file the motion, specifying whether the JAC

objects to any portion of the billing or the sufficiency of documentation, and shall attach the JAC's letter stating its objection. An evidentiary hearing is only to be held after counsel has complied with this prerequisite.

4. If the designated judge finds that counsel has complied with this prerequisite to filing the motion, the statute then requires that the judge hold an evidentiary hearing. The JAC may participate in the hearing by use of telephonic or other communication equipment, unless otherwise ordered by the designated judge, or may contract with other public or private entities or individuals to appear before the court. The fact that the JAC has not objected to any portion of the billing or to the sufficiency of the documentation is not binding on the judge.

5. Acknowledging that the Twentieth Judicial Circuit is the largest circuit in geographic area and comprised of five counties, and further acknowledging the limitations placed upon the Court by the Legislature's decision to limit multi-county circuits to the use of only two designees, and, finally, acknowledging the expense and inconvenience upon counsel and witnesses who must travel from Charlotte, Hendry, and Glades counties to appear before the designees in Lee County and Collier County, upon motion, the designees in Lee County and Collier County will use discretion in liberally granting telephonic appearances by counsel and witnesses from a county other than Lee or Collier. However, to the extent that evidence or testimony may be presented, counsel shall be responsible for ensuring that it is presented appropriately and in accordance with the rules of evidence, even if that requires an appearance from a remote location in the presence of a person with the authority to administer the proper oath, or a personal appearance in Lee County or Collier County.

6. At the evidentiary hearing, the statute requires that counsel prove by competent and substantial evidence that the case required extraordinary and unusual efforts. The designated

judge is to consider criteria such as the number of witnesses, the complexity of the factual and legal issues, and the length of trial, if any. The fact that a trial was conducted in a case does not, by itself, constitute competent substantial evidence of an extraordinary and unusual effort. In a criminal case, as per statute, relief may not be granted if the number of work hours does not exceed seventy-five (75) or the number of the state's witnesses deposed does not exceed twenty (20).


7. After having conducted the evidentiary hearing, if the motion is granted, the statute requires that the designated judge enter a written order detailing the findings and identifying the extraordinary nature of the time and efforts of counsel which warrant exceeding the flat fee set by the Legislature. If the designated judge finds that counsel has proven by competent and substantial evidence that the case required extraordinary and unusual efforts, the judge is to order the compensation to be paid to counsel at a percentage above the flat fee rate, depending upon the extent of the unusual and extraordinary effort required. However, the percentage may be only the rate necessary to ensure that the fees paid are not confiscatory under common law, and may not exceed 200 percent of the established flat fee, absent a specific finding that 200 percent of the flat fee in the case would be confiscatory. If the designated judge determines that 200 percent of the flat fee would be confiscatory, the judge is to order the amount of compensation using an hourly rate not to exceed \$75.00 per hour for a noncapital case and \$100.00 per hour for a capital case. However, as per statute, the compensation calculated by using the hourly rate may be only that amount necessary to ensure that the total fees paid are not confiscatory.

8. To the extent that any provision of this Administrative Order may be construed as being in conflict with any law, statute, or rule, the law, statute, or rule shall prevail.

00000072

9. The amendment to paragraph 2.a of this Administrative Order shall be effective immediately upon execution of this order, even as it relates to motions which may have been filed prior to execution.

**DONE AND ORDERED** in chambers in Fort Myers, Lee County, Florida, this 23<sup>rd</sup> day of May, 2018.

  
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Michael T. McHugh  
Chief Judge

0000073

History. – Administrative Order 2.33 (September 15, 2011); Administrative Order 2.33 (May 18, 2012); Administrative Order 2.33 (August 14, 2013); Administrative Order 2.33 (October 4, 2013); Administrative Order 2.33 (December 17, 2014).

STATE OF FLORIDA, COUNTY OF LEE  
FILED FOR RECORD  
This 23 Day of May 2018 Recorded in Circuit  
Book 61 Page 9-13 and Record Verified.  
LINDA DOGGETT By [Signature]  
Clerk Circuit Court Deputy Clerk

I certify this document to be a true and correct copy of the record on file in my office, Linda Doggett, Clerk Circuit/County Court, Lee County, FL.  
Dated: 5/23/18  
By [Signature]  
Deputy Clerk

