THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

SPECIAL PROCEDURES FOR REVIEWING ATTORNEY COMPENSATION REQUESTS IN DEATH PENALTY CASES

Consistent with the request of the Judicial Conference of the United States, the Judicial Council of the Fifth Circuit adopts the following amendment to its existing procedures to review requests for attorney compensation in excess of $100,000 in state death penalty habeas corpus cases. This policy shall apply to requests for attorney compensation in federal capital prosecutions under Title 18 or 21 of the United States Code as well as death penalty habeas corpus cases brought into federal court under 28 U.S.C. § 2254 or 28 U.S.C. § 2255.

1) In federal capital prosecutions -

   any request for compensation in excess of $100,000 at the district court level or $50,000 at the appellate level is presumptively excessive.

   In 28 U.S.C. § 2254 or § 2255 cases -

   any request for compensation in excess of $35,000 at the district court level or $15,000 at the appellate level is presumptively excessive.

2) Attorneys' fees billed at a rate in excess of $160 per hour are presumptively excessive.

3) Any attorney's fees request which is presumptively excessive, either because of the hourly rate or the total amount requested, must be justified by the requesting attorney in a written submission filed with the presiding judicial officer in the district court, or in the case of an appeal, to the senior active member of the panel or designee who is an active member of the panel.

4) The judge receiving the request for excess payment will forward the request to the chief judge of the circuit, or designee, with a brief statement recommending approval or denial of the request.

5) The amount of fees to be awarded to the attorney shall be determined by the chief judge of the circuit or his/her designee.

As amended: February 1, 2005[1]

---

[1]Increase from $125 to $160 in the maximum hourly compensation rate pursuant to Consolidated Appropriations Act, 2005 (118 Stat. 2809).