

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

UNITED STATES OF AMERICA, )  
 )  
vs. )  
 )  
ERIC ROBERT RUDOLPH, )  
 )  
Defendant. )

Case No. CR-00-S-422-S *WFB*

**ENTERED**

**JUN - 3 2003**

**ORDER APPOINTING COUNSEL**

This matter came before the court for appointment of counsel under the Criminal Justice Act, 18 U.S.C. § 3005,<sup>1</sup> as well as the special provisions of 21 U.S.C. § 848(q)(4)(A), relating to cases in which the penalty of death is a possibility.<sup>2</sup> The court is satisfied that defendant is eligible and qualified for the appointment of more than one attorney under these provisions and, accordingly, it is ORDERED that Richard S. Jaffe and William M. Bowen, Jr., be, and the same hereby are,

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<sup>1</sup> 18 U.S.C. § 3005 reads as follows:

Whoever is indicted for treason or other capital crime shall be allowed to make his full defense by counsel; and the court before which the defendant is to be tried, or a judge thereof, shall promptly, upon the defendant's request, assign 2 such counsel, of whom at least 1 shall be learned in the law applicable to capital cases, and who shall have free access to the accused at all reasonable hours. In assigning counsel under this section, the court shall consider the recommendation of the Federal Public Defender organization, or, if no such organization exists in the district, of the Administrative Office of the United States Courts. The defendant shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosecution.

<sup>2</sup> 21 U.S.C. § 848(q) provides, in pertinent part, that:

Notwithstanding any other provision of law to the contrary, in every criminal action in which a defendant is charged with a crime which may be punishable by death, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time . . . before judgment . . . shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with paragraphs (5), (6), (7), (8), and (9).

21 U.S.C. § 848(q)(4)(A)(i).

appointed as counsel for Eric Robert Rudolph in all further proceedings herein.<sup>3</sup> It is further ORDERED that such attorneys be allowed free access to the accused at all reasonable hours.

Messrs. Jaffe and Bowen shall each be compensated for their services at the rate of \$150.00 an hour, plus all reasonable expenses incurred. In view of the anticipated length and complexity of these proceedings, and the concomitant hardship upon counsel in undertaking representation of defendant without regular compensation for their services, it is further ORDERED, pursuant to the provisions of paragraph 2.30B of the *Guidelines for the Administration of the Criminal Justice Act*, that the following procedures for interim payments shall apply:

**A. Submission of Vouchers**

Compensation earned and reimbursable expenses incurred during each calendar month shall be claimed on an interim CJA Form 20 (“Appointment and Authority to Pay Court Appointed Counsel”) voucher submitted to Chief Magistrate Judge T. Michael Putnam no later than the twentieth (20<sup>th</sup>) day (or the first business day thereafter) of the next succeeding month. Each voucher shall clearly identify the time period covered. Interim vouchers shall be submitted in accordance with this schedule even though little or no compensation may be claimed for the covered period. All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter VI, as well as the applicable provisions of Chapter II, Part C, of the *Guidelines for the Administration of the Criminal Justice Act* outlines the procedures and rules for claims by CJA attorneys, and should be followed regarding each voucher.

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<sup>3</sup> The magistrate judge initially recommended the appointment of the Honorable David S. Luker as attorney for defendant, but this court overruled that recommendation, and instead appoints Richard S. Jaffee.

The magistrate judge will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will submit a recommendation regarding payment for the number of hours claimed and for all reimbursable expenses reasonably incurred.

Within forty-five (45) days of the conclusion of representation, counsel shall submit a final voucher, which should be noted as such, seeking payment for representation provided during the final interim period. The final voucher shall also describe in detail the time and expenses claimed for the entire case, including all documentation, and it shall reflect all compensation and reimbursement previously received on the appropriate line of the final voucher.

**B. Reimbursable Expenses**

Counsel may be reimbursed for out-of-pocket expenses reasonably incurred incident to representation of defendant. While the statute and applicable rules and regulations do not place a monetary limit on the amount of expenses that can be incurred, counsel should incur no single expense of more than \$1,000.00 without prior approval of court. Such approval may be sought *ex parte*, stating the nature of the expense, the estimated dollar cost, and the reason the expense is deemed necessary. An application seeking such approval may be filed under seal, if necessary, and upon approval by the court, counsel will be authorized to incur the expense. Recurring expenses, such as telephone, postage, and photocopying, which aggregate more than \$500.00 on one or more interim vouchers are not considered single expense items requiring prior court approval.

The \$1,000 limit on expenditures without prior court approval applies to travel for the purpose of attending court proceedings, interviewing witnesses, consulting with defendant or his former counsel, or otherwise investigating and preparing the defense in this case. Although travel expenses, such as airfare, mileage, parking fees, meals, and lodging, can be claimed as itemized

expenses, if reimbursement for total expenses relating to a single trip likely will aggregate an amount in excess of \$1,000, prior approval of the court should be sought and obtained.

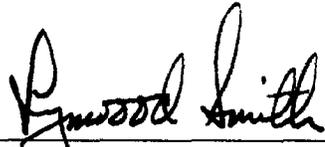
Case-related travel by privately owned automobile should be claimed at the rate of thirty-six cents (\$0.36) a mile, plus parking and toll fees. Transportation by means other than privately owned automobile should be claimed on an actual expense basis. Air travel in other than "coach" class is not reimbursable.

Actual expenses incurred for meals and lodging must conform to the prevailing limitations placed on travel and subsistence expenses of non-judicial federal judiciary employees in accordance with existing government travel regulations.<sup>4</sup>

Telephone calls, photocopying, and photographs can all be reimbursable expenses if reasonably incurred. General office overhead, however, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature. In addition, expenses for service of subpoenas on fact witnesses are not reimbursable, but are governed by Rule 17 of the *Federal Rules of Criminal Procedure* and 28 U.S.C. § 1825.

Expenses for expert witnesses and other services of a specialized nature must be approved by the court prior to being incurred. Approval may be sought *ex parte* and under seal, if necessary. A separate voucher will be issued to record the time and expenses of experts approved by the court, and the expenses of such experts should not be included as an expense item on counsel's voucher.

DONE this the 3rd day of June, 2003.

  
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United States District Judge

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<sup>4</sup> Expenses for meals and lodging in connection with travel of 100 miles or less, round-trip, are not reimbursable.