

Effective November 12, 2019

**POLICIES AND PROCEDURES FOR
APPOINTMENT AND PAYMENT OF COUNSEL
IN FAMILY COURT CIVIL CASES**

APPOINTMENTS (OTHER THAN ATTORNEYS UNDER CONTRACT)

Each judge appointing private counsel to represent an indigent litigant in a civil case (other than attorneys under contract) must promptly send a copy of the appointing order to the Family Court shared mailbox FC.Appointed.Attorneys@delaware.gov. Each order of appointment must show the name of counsel, the name of the party being represented, a description of the nature of the representation and the reason the appointment is necessary, *e.g.* unavailability of all contract attorneys. The order must also clearly indicate that it is a civil case.

COUNSEL FEES AND EXPENSES (OTHER THAN ATTORNEYS UNDER CONTRACT)

The following procedures will apply to requests for payment for counsel fees and expenses for all appointed counsel (other than attorneys under contract) in civil cases in Family Court:

1. All attorneys appointed in such civil cases should be made aware of the rate at which they will be compensated for fees (not to exceed \$70 per hour) and at the time of their appointment should sign an agreement stating that they understand the rate and that only extraordinary expenses will be reimbursed. Routine, expected out-of-pocket administrative expenses will not be reimbursed. Form 537B – Appointment to Represent Civil Case should be used for purposes of appointment. Form 537B contains information for attorneys on proper billing procedures.
2. Each judge who receives an application for the payment of counsel fees or for the reimbursement of extraordinary expenses in an amount equal to or less than \$2,000 may approve the request as long as the total request for payment of counsel fees and expenses in an individual case does not exceed \$2,000 per case¹ per attorney. Once the \$2,000 threshold has been reached in a case for a specific attorney appointment, all requests for payment of counsel fees and expenses in

¹ Case is defined as a petition and appointment of a specific attorney. Each attorney appointed to the petition would have his or her own threshold.

excess of \$2,000 per case require the prior written approval of the Chief Judge of the Family Court. This applies to both counsel fees and any request for reimbursement of extraordinary out-of-pocket expenses.

3. The State Court Administrator has the authority to increase the threshold limit, with advance notice to the Family Court judges, in reasonable increments, based upon inflationary increases.

4. Each judge must forward an order authorizing payment, in conformity with Form 647 – Order Authorizing Payment attached hereto, together with the billing and documentation to the Family Court shared mailbox FC_AttorneySubmission@delaware.gov. Orders authorizing payment for counsel fees or reimbursement of extraordinary expenses in excess of the \$2,000 threshold per case per attorney will not be processed without the written approval of the Chief Judge of the Family Court.

5. Applications for counsel fees and expenses may be submitted before completion of the representation. If applications for counsel fees are submitted before completion of the representation, each Family Court judge should track the amounts submitted for payment to ensure that the necessary approvals are sought when the cumulative total counsel fees and expenses for an individual case exceed \$2,000. Fiscal Services in Family Court will track the total payments in each case to confirm that the necessary approval from the Chief Judge of the Family Court is obtained prior to giving final approval and processing payments beyond \$2,000 per case.

6. Each approval for payment submitted must include a statement that the appointing judge concurs in the reasonableness of the time spent (at a rate not to exceed \$70 per hour) and the extraordinary expenses incurred. Only extraordinary out-of-pocket/administrative expenses of private attorneys are eligible for reimbursement.

ANCILLARY SERVICES (ALL APPOINTED ATTORNEYS, INCLUDING CONTRACT ATTORNEYS)

All requests from appointed counsel and contract attorneys for permission to obtain transcripts or medical, forensic, investigatory services, or other ancillary services in all civil cases in the Family Court should be reviewed and given **careful consideration** by the judge assigned to the case. Each judge to whom the request is made should review the request critically and only the most crucial services at a reasonable rate should be approved. If a less costly alternative to providing the necessary services is available, that option should be used. In cases where payment for ancillary services does, or is expected to, exceed \$2,000 total per case, counsel must provide an explanation detailing the critical need for those services, what other alternatives have been explored, and why no other less expensive option is feasible.

The following procedures will apply to requests for payment for ancillary services for all civil cases (involving appointed and contract attorneys) in Family Court:

1. Counsel must obtain approval **before** expenses are incurred. Expenses incurred without a judge's pre-approval will not be reimbursed.
2. Each judge who pre-approves a request from appointed counsel for permission to obtain transcripts, or medical, forensic or investigatory services at State expense, shall promptly send a copy of the order to the Family Court shared mailbox FC_AttorneySubmission@delaware.gov. Each such order must show the name of requesting counsel, the name of the party being represented, a description of the nature of the representation, the name and address of the service provider, a maximum amount allowed for the service, and an explanation for the appointment consistent with the above.
3. Each judge who receives an application for payment for transcripts, or medical, forensic, or investigatory expenses in an amount **within** the \$2,000 cap per case for indigent services may approve the request and forward an order authorizing payment in conformity with one of the following:

Form 647 – Order Authorizing Payment to Attorney, attached hereto, must be utilized if costs for ancillary services are to be reimbursed to the attorney/law firm. A copy of the paid invoice must be included with the completed form.

Form 645 – Order Authorizing Payment to Ancillary Service Provider, attached hereto, must be utilized if payment is to be made directly to the Service Provider.

A copy of the provider's invoice to be paid must be included with the completed form.

The appropriate form together with the billing and documentation shall be promptly sent to the Family Court shared inbox FC_AttorneySubmission@delaware.gov. In order for payment to be made for transcripts, we must have the actual invoice and not an estimate of the cost.

4. Each judge who receives an application for payment for transcripts, or medical, forensic or investigatory services *in excess of* the \$2,000 cap per case for indigent services must obtain the written approval of the Chief Judge of the Family Court before issuing an "Order Authorizing Payment" form.

5. All approvals for payment submitted, regardless of amount, must include a statement that the judge approving payment concurs in the reasonableness of the expenses incurred and that the services are consistent with the original authorizing order.



The Family Court of the State of Delaware

In and For New Castle County Kent County Sussex County

_____ ,)	File No(s):	_____
_____ ,)		_____
_____ ,)		_____
Petitioner(s))	Petition No(s):	_____
v.)		_____
_____ ,)		_____
_____ ,)		_____
_____ ,)		_____
Respondent(s))		_____

ORDER AUTHORIZING PAYMENT TO ATTORNEY

For services rendered as a court-appointed attorney in representing _____
in the above civil action,

IT IS HEREBY ORDERED:

That the sum of _____ be paid to:

Attorney: _____

Address: _____

City: _____ State: ____ Zip: _____

FED EIN No.: _____ Or SSN: _____

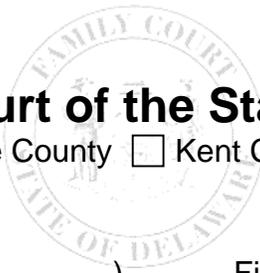
I concur in the reasonableness of the time spent (at a rate not to exceed \$70.00 per hour) and, if applicable, the extraordinary nature of the expenses incurred.

The fees and expenses incurred in this case have exceeded \$2,000. Accordingly, approval is requested from the Chief Judge for payment.

_____	_____
Date	Judge / Commissioner

Approved Not approved

_____	_____
Date	Chief Judge Michael K. Newell



The Family Court of the State of Delaware

In and For New Castle County Kent County Sussex County

_____ ,)	File No(s):	_____
_____ ,)		_____
_____ ,)		_____
Petitioner(s))	Petition No(s):	_____
v.)		_____
_____ ,)		_____
_____ ,)		_____
_____ ,)		_____
Respondent(s))		_____

ORDER AUTHORIZING PAYMENT TO SERVICE PROVIDER IN CIVIL ACTION

For ancillary services (e.g., psychiatric, investigative transcripts) upon prior application of attorney,

_____ representing _____ ,

IT IS HEREBY ORDERED:

That the sum of: _____ be paid to:

Service Provider: _____

Type of Service: _____

Address: _____

City: _____ State: _____ Zip: _____

FED EIN No.: _____ Or SSN: _____

I concur in the reasonableness of the expenses incurred and that the services are consistent with the original authorizing order.

The fees and expenses incurred in this case have exceeded \$2,000. Accordingly, approval is requested from the Chief Judge for payment.

Date

Judge/Commissioner

Approved Not approved

Date

Chief Judge Michael K. Newell