

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No.
)
,)
)
 Defendant.)

ORDER

Pending before the Court is the motion of defendant _____ for the appointment of counsel pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. Defendant seeks the appointment of counsel, _____. On May 25, 1995, the Grand Jury returned a superseding indictment charging defendant _____ and another defendant with additional crimes which could subject defendant _____ to the imposition of the death penalty. The government is presently seeking certification from the Attorney General to seek the death penalty for defendant _____. Up until this time, Mr. _____ has represented defendant _____ as retained counsel. Defendant _____ now argues that he has exhausted his financial ability to compensate Mr. _____ and, with the change in circumstance of the charges which he now faces, seeks the appointment of Mr. _____.

It is typically not the practice nor policy of this Court to appoint counsel pursuant to the Criminal Justice Act once retained counsel has entered an appearance. The policy of appointment in keeping with the intent of the Criminal Justice Act does not provide pay for counsel who originally accept employment in a criminal case. Any attorney

accepting private employment will therefore be expected to render full legal services including trial with full understanding that there will be no subsequent CJS appointment or pay for their services. However, the Court finds that at the time Mr. _____ was retained, the substance and nature of the charges which defendant _____ faced, together with the potential penalty, were significantly different than those he now faces. As a result, the circumstances at the time of defendant _____'s retention of Mr. _____ did not contemplate the circumstances defendant _____ now faces.

Defendant _____ has submitted to the Court, under oath, information about his present financial ability to continue to compensate Mr. _____. Based on this information, the Court finds that defendant _____ does not have the present financial ability to continue compensation of Mr. _____ for representation on the charges contained in the May 25, 1995, superseding indictment. For these reasons, an exception to the Court's policy of not appointing counsel after the entry of appearance of retained counsel should be made. It is therefore

ORDERED that as of the date of this order, _____. is appointed, pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A to represent defendant _____. It is further

ORDERED that the following categories of people shall be allowed to record time in this case and to seek and receive, through appointed counsel, _____, compensation pursuant to the Criminal Justice Act:

- (a) [appointed counsel].;
- (b) Associate lawyers employed by the law firm of [appointed counsel]; and,

(c) Paralegals under the employ of [appointed counsel]. This Order is entered to permit Mr. _____'s law firm the maximum flexibility in dealing with this cause, with the understanding that the firm will judiciously avoid unnecessary or duplicate billing in this matter. It is further

ORDERED that any issues regarding the rate and timing of compensation be temporarily deferred until further order of this Court. It is further

ORDERED that [appointed counsel] may claim for compensation under the Criminal Justice Act time and expenses expended by him or by others listed above if it is in lieu of time or expenses that he would otherwise have spent. Double billing of time and expenses is not allowed under this order. However, if certification to seek the death penalty is received by the United States and additional counsel is appointed under the Criminal Justice Act pursuant to the certification, the question of appropriate double billing by appointed counsel may be reexamined. It is further

ORDERED that the provisions of this order shall apply from the original date of appointment of _____ as counsel for defendant _____.

Chief United States Magistrate Judge