

## **CHAPTER 12 APPOINTED COUNSEL, FEES, COSTS**

### **Rule 8.12.1**

#### **Representation of Patients in Mental Health Court**

If the patient has not retained private counsel, the Public Defender is appointed to represent patients in the Mental Health Court in accordance with the authorization of the Board of Supervisors. When the Public Defender has a conflict in representing a patient, then the Alternate Public Defender will be appointed. If the Alternate Public Defender cannot represent the patient, then the Office of Assigned Counsel will designate counsel to represent the patient. If the Office of Assigned Counsel is unable to appoint counsel, then the Mental Health judge will appoint counsel.

(Adopted 7/1/2006; Rev. 1/1/2017)

### **Rule 8.12.2**

#### **Private Conflict Counsel**

**A. Services Subject to Compensation.** In any case where counsel has been appointed to represent a person in Mental Health Court proceedings, and where payment of attorney fees will be made by the County of San Diego through the Office of Assigned Counsel, the determination of which attorney services are to be compensated, and the amount of reimbursement, will be made by the Office of Assigned Counsel, consistent with the policies and procedures of the Office of Assigned Counsel effective at the time such services are rendered.

**B. Costs Subject to Reimbursement.** In those cases where costs incurred by appointed counsel, including mileage, will be reimbursed by the County of San Diego through the Office of Assigned Counsel, the determination of which costs are subject to reimbursement, and the amount of reimbursement, will be made by the Office of Assigned Counsel.

**C. Notice of Termination of Contract.** Where an attorney appointed to represent a patient in the Mental Health Court pursuant to policies and procedures of the Office of Assigned Counsel discontinues providing such services, notice must immediately be served by such attorney on the Public Conservator and the Office of Assigned Counsel. Proof of service and a copy of the notice must be filed at the Mental Health Desk and the Office of the Public Defender. (Adopted 7/1/2006; Rev. 1/1/2017)

### **Rule 8.12.3**

#### **Patient Reimbursement of Appointed Counsel's Fees and Costs**

**A. Determination.** In those cases where counsel has been appointed to represent the patient, and it is believed that the patient has sufficient funds to pay attorneys' fees and costs, the Mental Health Court judge, upon a timely request by counsel and notice to the conservatee, will determine which legal services and costs, and the amounts, are to be reimbursed by the patient.

**B. Stipulation.** Reimbursement to the County for fees and costs can be ordered based on the stipulation of the parties.

#### **C. Procedural Requirements - Notice to Patient**

**1.** Payment of attorney fees and reimbursement for attorney costs will not be ordered paid by conservatee unless the conservatee, and the conservator for the estate or the conservatee's personal representative, if any, have been notified in writing of the possibility that fees and costs may be ordered to be paid by the conservatee.

**2.** It is the duty of the office of the Public Conservator, or such agency or individual as may file the initial petition for permanent conservatorship, to include on the face thereof written notice of the possibility that the conservatee's estate may be held liable for the payment of attorney fees and reimbursement of costs incurred for services rendered relative to any mental health law proceedings that take place after the filing of said petition and during the pendency of the conservatorship.

#### **D. Request for Conservatee to Pay Fees and Costs**

**1.** Counsel appointed for the conservatee may submit a request to the Mental Health Court judge that the conservatee pay legal fees and/or reimburse the counsel for costs. Appointed counsel (a) may make the request in open court at the time of the subject hearing in the presence of the conservatee, or (b) may submit a separate noticed petition for same, and calendar a hearing with proper notification to the conservatee and the conservator in accordance with the established notice procedures as stated in "Notices" of these rules. In the notice, counsel for the conservatee must specify the amount of the attorney fees and costs being requested and sufficient details to show the reasonableness of the requests.

**2.** Counsel appointed for the conservatee has the burden of proving: (a) that the conservatee has sufficient funds to pay the requested amount of attorney fees and costs, and (b) the reasonableness and accuracy of the amounts requested.

**3.** In ruling on the request, the Mental Health Court judge will (a) determine whether the conservatee has sufficient funds, and (b) set the amount of fees to be paid and the amount of costs to be reimbursed. The judge will consider the amount customarily awarded in routine cases.

(Adopted 7/1/2006)