

RULE 88.7 | RETAINED CRIMINAL DEFENSE ATTORNEYS

(a) Retained criminal defense attorneys are expected to make financial arrangements satisfactory to themselves and sufficient to provide for representation of each defendant until the conclusion of the defendant's case at the trial level. Failure of a defendant to pay sums owed for attorney's fees, or failure of counsel to collect a sum sufficient to compensate him for all the services usually required of defense counsel, will not constitute good cause for withdrawal after arraignment. Every defendant, of course, has a right to appeal from any conviction.

(b) All notices of permanent appearance in the District Court, and motions for substitution of counsel, shall state whether the appearance of counsel is for trial only or for trial and appeal.

(c) At arraignment, the Magistrate Judge will inquire of each defendant and counsel whether counsel has been retained for trial only or for trial and appeal. Where counsel indicates that he or she has been retained only for trial, the defendant will be notified that it is the defendant's responsibility to arrange for counsel for any necessary appeals.

(d) In cases where the defendant moves the Court to proceed in forma pauperis on appeal, or for appointment of Criminal Justice Act appellate counsel, the Court will consider, in passing upon such applications, factors such as

- (i) the defendant's qualified Sixth Amendment right to counsel of choice, recognizing the distinction between choosing a trial lawyer and choosing an appellate lawyer;
- (ii) the contract between the defendant and trial counsel;
- (iii) the defendant's present financial condition and ability to have retained only trial counsel;
- (iv) retained counsel's appellate experience;
- (v) the financial burden that prosecuting the appeal would impose upon trial counsel, in view of the fee received and the professional services rendered; and



(vi) all other relevant factors, including any constitutional guarantees of the defendant.

(e) In assessing whether the legal fees previously paid to defense counsel should reasonably encompass appellate representation, the Court is to apply the provisions of Rule 4-1.5 of the Rules Regulating The Florida Bar. The Court is to consider the following factors as guides in determining the reasonableness of the fee:

(i) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service proffered;

(ii) the likelihood that the acceptance of the particular employment precluded other employment by the lawyer;

(iii) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;

(iv) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

(v) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

(vi) the nature and length of the professional relationship of the client; and

(vii) the experience, reputation, diligence and ability of the lawyer or lawyers performing the service and the skill, expertise or efficiency of efforts reflected in the actual providing of such services.

In determining a reasonable fee, the time devoted to the representation and the customary rate of fee are not the sole or controlling factors; nor should the determination be governed by fees or rates of fee provided under the Criminal Justice Act. All factors set out in this Local Rule and in the Rules Regulating The Florida Bar should be considered, and may be applied, in justification of a fee higher or lower



than that which would result from application of only the time and rate factors.

(f) Those parts of proceedings undertaken pursuant to paragraphs (d) and (e) of this Local Rule that involve confidential or privileged information or communications shall be held in camera, ex-parte, and under seal.

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011; December 2, 2013; December 1, 2015.

Authority

(1993) New added at the request of the Eleventh Circuit.

