

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 03-20192-01-cr-CM-DJW

DEMETRIUS HARGROVE,

Defendant.

**MEMORANDUM AND ORDER**

Defendant is charged in a multi-count indictment with murder and the government has filed notice of its intent to seek the death penalty. This Court appointed Frederick A. Duchardt, Jr., and John P. O'Connor to represent Defendant and subsequently set the rate of compensation at the maximum allowable: \$125 per hour for in court and out-of-court time. Pending before the Court is Defendant's Motion to Reset Compensation Limits for Appointed Counsel (doc. 132), raising the hourly compensation rate for counsel in this matter from \$125.00 to \$160.00 per hour. For the reasons stated below, Defendant's Motion will be granted.

On December 8, 2004, the President of the United States signed the 2005 Consolidated Appropriations Act, Public Law 108-447, which raised from \$125 to \$160 the maximum hourly compensation rate for attorneys appointed to represent persons financially unable to obtain adequate representation in capital cases pursuant to the Criminal Justice Act<sup>1</sup> and the Antiterrorism and Effective Death Penalty Act of 1996.<sup>2</sup> The new maximum capital attorney rate of \$160 per hour applies to work

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<sup>1</sup>18 U.S.C. § 3006A.

<sup>2</sup>Codified in part in 21 U.S.C. § 848(q).

performed on or after February 1, 2005. Where the appointment of counsel occurred before this effective date, the new maximum capital hourly rate applies to that portion of services provided on or after February 1, 2005.

As a preliminary matter, this Court recognizes the vigorous and extensive assistance required for counsel to represent an indigent defendant charged with crimes that authorize imposition of a sentence of death upon conviction. In addition, this Court recognizes that the trial experience of Defendant's appointed attorneys Frederick A. Duchardt, Jr. and John O'Connor, particularly in the area of capital litigation, far exceeds the minimum requirements set forth in 21 U.S.C. § 848(q)(5). In light of these circumstances, the Court finds Defendant's request to reset the hourly compensation rate for his attorneys at the new statutory ceiling of \$160 per hour is reasonable.

Accordingly, Defendant's Motion is granted and it is hereby ordered that the compensation for counsel be reset at the rate of \$160.00 per hour for in-court and out of-court time performed on and after February 1, 2005. Pursuant to 18 U.S.C. 3006A(1), this Court will continue to permit interim payments to counsel, as previously ordered by this Court (Doc. 21).

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 14<sup>th</sup> day of March, 2005.

s/ David J. Waxse  
David J. Waxse  
United States Magistrate Judge

cc: All counsel and *pro se* parties