

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DEC 19 2007

MATTHEW J. DYKMAN
CLERK

IN THE MATTER OF:
THE ADMINISTRATION AND OPERATION
OF THE FEDERAL BENCH AND BAR FUND

MISC. NO. 91-09

AMENDED ADMINISTRATIVE ORDER

On January 25, 1991, the Court established guidelines and procedures for the administration and operation of the Bench and Bar Fund. It now appearing to the Court that there is a need to amend the original order to further refine the guidelines and procedures and further delineate the proper use of monies deposited in the Federal Bench and Bar Fund ("Fund"), and pursuant to the Guide to Judiciary Policies and Procedures, Vol. I. Ch. VII, Part M, the Court hereby adopts the following general principles and guidelines for administration and expenditure of the Fund:

A. General Guidelines. Monies deposited in the Fund are to be used only for purposes which inure to the benefit of the bench and the bar in the administration of justice. This money constitutes non-appropriated funds derived from annual dues collected from federal bar members in the District of New Mexico and from the interest accruing on such balances, and as a result, it may not be used to supplement appropriated funds and may not be used to pay for materials, services or supplies available from statutory appropriations.

B. Bench and Bar Fund Committee. The Court will appoint by majority vote of the active district judges of the court a Bench and Bar Fund Committee and its chairman to advise the Court and the custodian with respect to the administration and operation of the Fund. The committee will be composed of four attorneys who are admitted to practice in

the United States District Court for the District of New Mexico and the United States District Court Clerk (standing member). Each member will serve without compensation. The committee will transact business by majority vote, four members will constitute a quorum, and will exercise authority in recommending individual disbursements from the Fund. Once the Civil Pro Bono Committee assigns a case to a pro bono panel attorney, \$2,500 will be set aside to cover expenses as authorized by the Civil Pro Bono Plan. In a calendar year, no more than \$10,000 will be transferred from the bench and bar fund account to the pro bono fund account.

C. **Custodian.** The Clerk will act as custodian of the Fund and will administer the Fund in accordance with legal standards applicable to trustees.

1. **Responsibilities and Duties.**

- a. Receive, safeguard, deposit, disburse and account for all funds as prescribed in this Plan and in pertinent laws.
- b. Secure a bond to be paid from assets of the fund if required by the Court.
- c. Establish a checking and deposit account and an accounting system for the fund and maintain proper records of receipts and disbursements. A separate checking and deposit account will be maintained for the Civil Pro Bono program.
- d. Ensure that financial statements and operating reports are prepared at least yearly and sign same, certifying that the statements and reports accurately represent the financial condition of the fund.

- e. Invest monies from the fund with the advice and direction of the Bench and Bar Fund Committee.
- f. Sign checks drawn from the fund and appoint additional signatories, if appropriate.
- g. Perform other duties as the Court may direct.

D. Successor Custodian. When a successor custodian is appointed, the outgoing custodian will prepare and sign a statement of operations, showing receipts and disbursements during the period since the last statement of operations, and a statement of assets and liabilities, showing the balances in all Fund accounts as of the date of transfer to the successor custodian. The successor custodian will execute a receipt of all assets of the Fund after being satisfied as to the accuracy of the statements and records provided by the outgoing custodian. Acceptance may be conditioned upon audit and verification when circumstances warrant.

E. Protection of the Fund. The custodian will deposit all receipts in interest bearing accounts in federally insured banks or savings institutions. The custodian will invest funds in excess of those needed for current operations in United States government securities to maximize the return on investment consistent with the requirements of safety and convenience. Funds held by the custodian must be segregated from all other monies in the custody of the Court.

F. Audits. The Fund is subject to audit by the Administrative Office of the United States Courts. Further, the Court may appoint an outside auditor or disinterested person to conduct such additional audits as the Court determines may be necessary or

appropriate. The written results of such audits will be provided to the Court and to the Bench and Bar Fund Committee. Reasonable compensation may be provided from Fund assets if the auditor is not a government employee acting in an official capacity. A final audit should be performed prior to the dissolution of the Fund, and a written accounting rendered to the Court.

G. Appropriate Uses of Monies Deposited in the Fund. Consistent with the General Guidelines set forth above, monies deposited in the Fund may be spent on the following matters:

1. Expenditures that Benefit the Bench and Bar

- a. Attorney admission proceedings, including expenses reasonably incurred by admissions committees and for admissions ceremonies.
- b. Attorney disciplinary proceedings, including expenses reasonably incurred by investigating counsel for disciplinary enforcement, travel expenses and witness fees in disciplinary proceedings.
- c. Expenses in connection with ceremonies and receptions open to the public for a court or bar function. Examples of appropriate court ceremonies and receptions are: unveiling of judges' portraits; investitures for new judges; the taking of senior status or retirement of judges; memorial ceremonies; naming of a courthouse; open house for a new or remodeled courthouse or courthouse annex; receptions honoring judges or members of the bar; and receptions for conferences to which members of bar committee(s) are invited.

Examples of bar receptions are: dedication of attorney lounge facility; and a federal bar reception.

- d. Periodicals and publications for the Court library that cannot be purchased with appropriated funds as coordinated with and approved by the Circuit Librarian.
- e. Lawyer lounge facilities, including local telephone service and convenience equipment such as a refrigerator, microwave oven and utensils.
- f. Duplication, copying and facsimile equipment for use only by attorneys and not available for use by court employees or the public.
- g. Legal research equipment and facilities for use only by attorneys preparing for trial and not available for use by court employees or the public.
- h. Computer equipment for use only by attorneys preparing for trial and not available for use by court employees or the public, and services for use by attorneys preparing for trial.
- i. Purchase of photographs and portraits for historical and other non decorative purposes which cannot be purchased with appropriated funds, including photographs of judges and court dignitaries and portraits of senior-status Article III Judges.
- j. Sponsorship of continuing legal education programs for members of the federal bar related to federal jurisdiction cases, including

- administrative expenses for federal bar and judicial conferences.
- k. Ancillary administrative expenses for training members of the federal bar, for which the use of appropriated funds is not legally permissible.
 - l. Refreshments or souvenirs, etc., associated with Law Day Programs.
 - m. Refreshments or souvenirs, etc., associated with educational programs for law students.
 - n. Sponsorship of programs, projects, publications and acquisitions designed to enrich the historical record of the Court.
 - o. Expenses for printing and disseminating court rules to members of the federal bar by making a blanket distribution, at one time, and not for individual requests.
 - p. Reimbursement for reasonable expenses incurred by attorney members of advisory committees pertaining to the administration and operation of the Fund.
 - q. Fees for services rendered by outside auditors in auditing the Fund.
 - r. Support staff for the Bar Association of the United States District Court for the District of New Mexico to coordinate the activities of the association and to coordinate programs that are instituted for the benefit of the bench and the bar. Any individual receiving payment from the fund may not be an employee of the court and are not entitled to any federal benefits. The Bench and Bar Fund is required to observe all payroll withholding requirements. It is advisable to

arrange for services from a contract agency in order to avoid payroll withholding requirements.

- s. Other expenses related to the operation and administration of the Fund for which the use of appropriated funds is not legally permissible.

2. **Expenditures that Promote the Administration of Justice**

- a. Reimbursement of costs and out-of-pocket expenses necessarily incurred in representing pro se litigants under the Court's pro bono plan up to \$2500, or additional amounts for good cause shown, for which the use of appropriated funds is not legally permissible; also, certain investigative costs, including expert fees in malpractice cases under the plan, incurred by an attorney before accepting appointment to represent a pro se litigant, may be allowed up to \$750 as part of the total available \$2500 reimbursement. (These reimbursement provisions supplement those in the Order governing the Civil Pro Bono Plan of the United States District Court for the District of New Mexico, Misc. No. 95-189, filed October 13, 1995.) Eligible costs and expenses will be reimbursed only upon counsel's application approved by the trial judge and will typically be payable at the conclusion of the case. Applications for interim reimbursements will be considered. Review of applications will include consideration of the balance available in the pro bono fund. Counsel compensated

from the pro bono fund may not accept duplicate payments from a client or other source. If counsel is compensated from a client or other source, the pro bono fund must be reimbursed. No provision herein is intended to preclude a statutory or other lawful fee award.

- b. Reimbursement in an amount not to exceed \$50.00 per case for out-of-pocket expenses incurred by court-appointed attorneys representing indigents in criminal cases to: (i) recover, pack and ship client property to family or other person(s) designated by the client; (ii) pay client transportation expenses not otherwise subject to payment or reimbursement by the U.S. Marshal pursuant to 18 U.S.C. § 4285; and (iii) purchase clothing or other necessities incidental to appropriate representation in court. All such expenses will be reimbursed only upon approval of the trial judge.
- c. Jury expenses for which the use of appropriated funds is not legally permissible.
- d. Expenses for projects and programs that interest or benefit the bar or which enhance the quality of advocacy in the Court.
- e. Other expenses that promote the administration of justice for which the use of appropriated funds is not legally permissible.

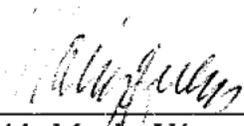
H. Inappropriate Uses of Monies Deposited in the Fund. Consistent with the General Guidelines set forth above, monies deposited in the Fund may not be spent on the following matters:

1. Supplementation of the salary of any Court officer or employee.
2. Salaries for part-time Court personnel.
3. Purchase of library materials that can be purchased with appropriated funds.
4. Purchase of office supplies and business cards for Court personnel.
5. Purchase of computer equipment and services primarily for the use of the Court.
6. Social events limited to Court personnel.
7. Seminars limited to Court staff or judges' law clerks.
8. Purchase of convenience items, such as refrigerators or microwave ovens, for the exclusive use of Court personnel.
9. Purchase of artwork or decorative items for non-public areas of the Court, including Judges' chambers.
10. Purchase of computer equipment, software and services primarily for the use of Court personnel.

I. Expenditure Procedures. Requests for expenditures from the Fund will be submitted to the Court for approval and will be permitted by majority vote of the Bench and Bar Fund Committee, with the exception of expenditures associated with the Civil Pro Bono program. The administrative procedures and forms required to expedite this process will be determined by the Court.

J. Dissolution of the Fund. The Court may dissolve the Fund after taking care to insure that all outstanding obligations have been liquidated, including any obligations

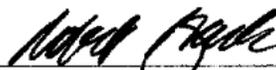
resulting from the required final audit. In such event, the Court will endeavor to dispose of the assets of the Fund in ways which fulfill the purpose of the Fund.



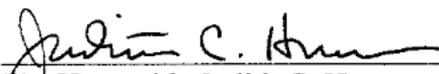
The Honorable Martha Vázquez, Chief
United States District Judge



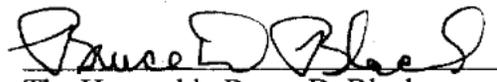
The Honorable M. Christina Armijo
United States District Judge



The Honorable Robert C. Brack
United States District Judge



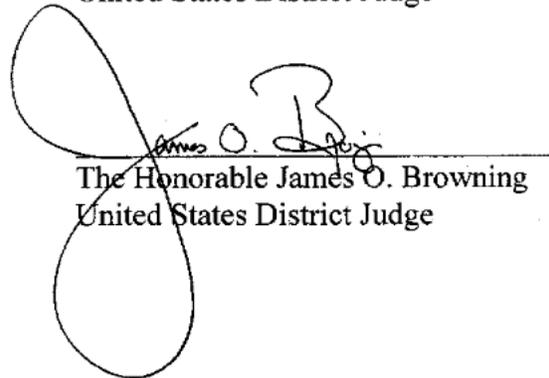
The Honorable Judith C. Herrera
United States District Judge



The Honorable Bruce D. Black
United States District Judge



The Honorable William P. Johnson
United States District Judge



The Honorable James O. Browning
United States District Judge