

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA**

**ATTORNEY ADMISSION PLAN  
FOR THE ADMINISTRATION OF THE DISTRICT COURT  
ATTORNEY ADMISSION AND PRO BONO FUND**

**1. Overview**

**1.1 Creation of the Fund:**

- a. Every attorney admitted to practice before this Court shall pay to the Clerk of the District of South Dakota a fee of \$250. The amount of \$176 collected from every attorney admitted to practice shall be deposited in the Treasury of the United States pursuant to 28 USC §1914.
- b. The amount of \$74 collected from every attorney admitted pursuant to subparagraph (a) above and the entire fee for those admitted on a *pro hac vice* basis shall be deposited in the District Court Fund to be used in accordance with the "Plan for the Administration of the District Court Fund."

**1.2 The Judicial Conference's prescribed attorney admission fee (distinct from local attorney admission funds)**

Attorneys admitted to practice before the United States district court for the District of South Dakota must pay a first-time admission fee to the clerk of court. The first-time attorney admission fee is set by the Judicial Conference of the United States in the Schedule of Additional Fees under 28 USC §§1913, 1914, and 1926. The clerk of court deposits part of that amount into the special fund created under 28 USC §1931 and the balance into the Treasury of the United States as miscellaneous receipts. See P.L. No. 104-317, §404(a); 28 USC §751(e), 31 USC §3302. **The Conference-prescribed attorney admission fee does not become part of a court's attorney admission fund.**

**1.3 The court's local attorney admission funds**

The Attorney Admission and Pro Bono Fund established under this plan is comprised of attorney admission fees collected by the court that are in addition to the first-time attorney admission fees prescribed by the Judicial Conference under 28 USC §§1913, 1914, and 1926. The amount of these additional fees is set by court order. A special fee to appear *pro hac vice* is also required by

this court. All such fees shall be maintained by the court as non-appropriated funds.

Attorney admission funds shall be segregated from all other monies in the custody of the court, and shall contain only attorney admission fees, plus any interest income accrued on such fees. Except as provide in Sections 2.6, the court shall not place into its attorney admission fund monies from other sources, including but not limited to: contempt fines, proceeds of sales of local rules, unclaimed funds, undistributed interest on registry accounts, gifts or bequests of cash or copying fees.

#### **1.4 Authority to maintain attorney admission fund**

In 1950, the Judicial Conference resolved that the courts of appeals' attorney admission fees, collected under authority of F.R.A.P. 46(a), were not monies received for the use of the United States and, therefore, need not be deposited into the Treasury. In 1951, the Comptroller General of the United States announced that there would be no objection to the practice of the courts of appeals' retaining these local attorney admission funds. Comp. Gen. Opinion No. B-56200, June 8, 1951. The Comptroller General later extended this opinion to cover attorney admission funds maintained by the United States district courts, the United States Court of Claims, the Court of Customs and Patent Appeals, and the United States Court of Military Appeals. See the opinions No. B-56200 issued respectively on March 31, 1959; May 4, 1965; July 6, 1965; and September 13, 1976. See also *Laughlin v. Clephane*, 77 F. Supp. 103 (D.D.C. 1947), which held that fees paid by applicants for admission to the bar are the property of the court and not of the United States Treasury. In September 1997, the Judicial Conference issued a formal policy clarification stating that pro hac vice attorney admission fees and periodic admission renewal fees may also be retained in the courts' local attorney admission funds.

## **2. Policies for Expenditure of the Fund**

Attorney admission funds shall be used only for the benefit of the members of the bench and the bar in the administration of justice. Examples of proper common uses of attorney admission funds include, but are not limited to, the following:

- 2.1 Attorney admission proceedings, including expenses of admission committees and admission ceremonies.
- 2.2 Attorney discipline proceedings, including, but not limited to, expenses of investigating counsel for disciplinary enforcement, stenographers, meeting room rentals, postage, travel expenses and fees of witnesses.

- 2.3 Furnishings, equipment and amenities for lawyer lounges that may not be purchased or funded from appropriations. Examples: furniture; photocopiers and fax machines; beverage supplies or service; microwave, refrigerator and other appliances; television, telephone and Internet service. Also courtroom equipment for use by lawyers and computer research equipment and duplicating facilities for use by lawyers during trial.
- 2.4 Surety bond for the custodian of the fund. The bond may only cover monies in the fund.
- 2.5 Fees for services rendered by outside auditors or accountants in auditing the fund.
- 2.6 Reimbursement of pro bono counsel for out-of-pocket expenses, payment of compensation to pro bono counsel, and payment of witness fees and other expenses on behalf of indigent pro se civil litigants. In the event of an award of attorney's fees or costs to pro bono counsel in the course of such litigation, the court may order return to the fund of any payments made from the fund to counsel for fees and expenses in an amount equal to the award.

In a civil case where an attorney is appointed to represent an indigent party, the judge to whom the case is assigned may authorize certain payments. These payments may consist of reasonable out-of-pocket expenses and payment of attorney's fees. Attorney's fees will be billed at the current rate for attorneys appointed under Criminal Justice Act, 18. U.S.C. § 3006A. This amount shall not exceed \$10,000 without the prior written approval of the presiding judge on the case. The fee paid shall be offset by the amount of fees recovered from other sources.

In the event the party represented is ultimately successful on the merits and is awarded costs and attorney's fees, the out-of-pocket expenses allowed pursuant to this paragraph will be deducted from such award and redeposited into the District Court Fund.

- 2.7 Reimbursement by district court to jurors for lost or damaged personal property incident to their jury service, when compensation is not available under a statute such as the Federal Tort Claims Act.
- 2.8 Hospitality items, such as food, beverages and mementos, for which appropriated funds may not be used, including meals and beverages for judges and employees attending a bench/bar meeting or similar event at their official duty station in a non-official capacity.

- 2.9** Cash donations to law-related educational or charitable organizations, such as an historical society, law school or bar association, for purposes that advance the administration of justice in the courts. In considering such donations, care should be exercised to avoid the appearance of impropriety, undue favoritism, conflicts of interest and other concerns under the Codes of Conduct for United States Judges and Judicial Employees.
- 2.10** Expenses of circuit judicial conferences, to the extent permitted by the policy of the Judicial Conference of the United States. Expenditures may be paid from either a district court or court of appeals attorney admission fund.
- 2.11** Expenditures related to communications between the bench and the bar.
- 2.12** Expenditures related to the District of South Dakota Historical Society and to matters of general historical interest within the district, including ceremonial proceedings for judges such as investitures, assuming senior status and memorial services for judges to which members of the bar are invited to attend.
- 2.13** Expenditures related to refreshments for receptions held at programs, proceedings, ceremonies or seminars authorized by these guidelines, and to formal dinners held in connection therewith which members of the bench and bar attend.
- 2.14** Expenditures for seminars and training of library personnel and for dues of the American Association of Law Librarians paid in the name of the library.
- 2.15** Expenditures for training seminars (if approved by the Chief Judge) for law clerks and other support personnel who are not otherwise reimbursed by government funds, including expenditures for a law clerk orientation program and receptions and meals incident to the program.
- 2.16** Expenditures for expenses of a district committee to inquire into actual or perceived gender bias in the courts, and, if any is found, to make recommendations to eliminate gender bias in the courts.
- 2.17** The expenses incurred by the custodian in performing his/her duties under the plan, including the expense of a surety bond covering monies in the fund;
- 2.18** Expenses incurred by members of the court's Federal Practice Committee not to exceed \$500; including, but not limited to, attending the Eighth Circuit Judicial Conference.

**2.19** Any other purpose for which appropriated funds may not legally be used that will benefit the bench and the bar in the administration of justice. Approved expenditures include, but are not limited to kleenex, hand sanitizer and drinking cups for the courtroom. See Section 3, following.

**2.20** Donations to organizations that provide legal representation, advice, or assistance to unrepresented litigants in federal civil matters, including representation for settlement conferences or other alternative dispute resolution activities, provided that such organizations use the donations for no other purpose.

### **3. Limitations on Use of Attorney Admission Fund**

#### **3.1 Rule against augmentation of appropriations**

With the exception of 3.1.1 below, attorney admission funds shall not be used to pay for goods or services for which appropriations may legally be used, even if the appropriated funds are exhausted or otherwise not available, that is, because an expenditure would exceed a judiciary spending limit. Use of attorney admission funds for any purpose for which appropriated funds may legally be used constitutes an impermissible augmentation of appropriations.

##### **3.1.1 Exception for library books and periodicals**

Notwithstanding the rule against augmentation, attorney admission funds may be used to purchase books, periodicals and other resource materials for court libraries for which appropriated funds may also be used. This exception was recognized by the General Accounting Office (now Government Accountability Office) in the opinions cited above in paragraph 1.4.

#### **3.2 Salary or personal benefit**

Attorney admission funds shall not be used to supplement the salary of any judge or court employee, or provide a personal benefit to any judge or court employee, or his or her family member. As a limited exception, a judge or court employee, or his or her family member, may receive a *de minimis* personal benefit incidental to a proper expenditure from the attorney admission fund, that is, meals, refreshments or hospitality items provided under section 2.8.

### **3.3 Official or personal travel**

Attorney admission funds shall not be used to pay for official or personal travel by a judge or court employee or by his or her family member.

**3.3.1** As a limited exception, attorney admission funds may be used to pay for local transportation of a judge or court employee to attend bench/bar events or law school functions.

### **3.4 Printing of local rules**

Attorney admission funds shall not be used to pay for the printing of local rules.

### **3.5 Unreasonable accumulation of funds**

The court shall avoid unreasonable accumulation of attorney admission funds. What constitutes "unreasonable" will be determined by the court based on past practices and its upcoming needs. If a court finds its fund balance is too high the court may reduce or eliminate the local fee collections until the balance is in line with needs.

## **4. Court Responsibilities**

The district court shall:

- 4.1** Adopt a written plan for the administration and operation of the fund and determine the means by which policy is to be set and expenditures are to be authorized.
- 4.2** Appoint a custodian of the fund. The Clerk of this Court is the custodian of the District Court Fund. In the event of the death, retirement or resignation of the Clerk, the Chief Deputy Clerk or such other person as the Chief Judge designates, shall become the custodian until such time as the next Clerk assumes office.
- 4.3** Provide for an accounting by the custodian to be rendered to the court at least annually, and for audits of the fund as deemed necessary.
- 4.4** There shall be an advisory committee to advise the Court on matters of policy relating to the administration of the fund. The committee shall consist of the Chief Judge, all active District Judges and the Clerk of Court. Members of the committee shall serve without compensation.

**5. Duties of the Custodian**

The custodian of the fund shall:

- 5.1 Receive, safeguard, deposit, disburse and account for all monies in the fund in accordance with any pertinent laws, this Plan and the policies established by the court. The court requires the countersignature of one other person for the expenditure of funds. This person shall be the Chief Judge or the District Judge designated by the Chief Judge.
- 5.2 Secure a bond, to be paid for from the fund, if required by the court.
- 5.3 Establish an accounting system as required by the court.
- 5.4 Ensure that financial statements and operating reports are prepared in a timely fashion and sign these statements, thereby certifying that the statements and reports accurately present the financial condition of the fund. It is recommended that the reports be prepared at least quarterly and state the following:
  - 5.4.1 Beginning balance of assets;
  - 5.4.2 Revenue during reporting period: collections, investment;
  - 5.4.3 Disbursements during reporting period, listed by major classifications called for in the court's attorney admission fund plan;
  - 5.4.4 Ending balance of assets (bank balances and undeposited collections);
  - 5.4.5 Obligations, accounts payable or known future expenditures; and
  - 5.4.6 Available balance.
- 5.5 Deposit or invest monies of the fund in accordance with the provisions of this Plan.
- 5.6 Perform such other functions as the court may direct.
- 5.7 Duties Upon Appointment of a Successor Custodian

When a successor custodian is appointed, the outgoing custodian should prepare and sign the following statements in conjunction with an exit audit or inspection conducted by an auditor or disinterested person as designated by the Chief Judge:

- 5.7.1 A statement of assets and liabilities;
- 5.7.2 A statement of operations or of receipts and disbursements covering the period since the last statement of operations and net worth, up to the date of transfer to the successor custodian; and
- 5.7.3 A statement of the balance in any fund accounts as of the date of transfer to the successor custodian.

The successor custodian will execute a receipt for all funds after being satisfied as to the accuracy of the statements and records provided by the outgoing custodian. Acceptance by the successor custodian may be conditioned upon audit and verification when the circumstances warrant.

## **6. Maintenance of Funds**

### **6.1 Deposits**

The attorney admission fund shall be deposited only in federally insured banks or savings institutions. Whenever practical and feasible, all substantial sums should be placed in interest-bearing accounts, government securities or money market funds invested in government obligations, at the direction of the advisory committee. Efforts should be made to maximize the return on investments consistent with the requirements of convenience and safety. The custodian shall segregate the attorney admission fund from all other monies in the custody of the court, including other non-appropriated funds, if any.

### **6.2 Audits**

Attorney admission funds are subject to audit by the Administrative Office of the United States Courts. The Chief Judge may appoint an outside auditor or disinterested person (who may be a government employee) to conduct such additional audits as the court determines may be necessary or appropriate. The custodian shall provide the written results of such audits to the members of the advisory committee, each district judge and may make them available upon request to members of the bar of the court. The auditor may receive reasonable compensation from the attorney admission fund, if the auditor is not a government employee acting in an official capacity.

### **6.3 Procedures for Dissolution of the Fund**

The court may dissolve its attorney admission fund. A final audit shall be performed and a written accounting rendered to the court before dissolution of the fund. The custodian shall ensure that all outstanding obligations are

liquidated before dissolution of the fund, including any expenses resulting from the required final audit. The court shall dispose of the remaining monies in ways that fulfill the purposes of the attorney admission fund.

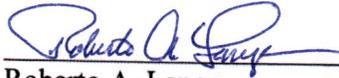
This Plan is approved effective this 16<sup>th</sup> day of October, 2017.



Jeffrey L. Viken  
Chief Judge



Karen E. Schreier  
United States District Judge



Roberto A. Lange  
United States District Judge