

AUG 19 2004

JEANNE G. QUINATA
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

In Re:

ATTORNEY ADMISSION
FUND PLAN

GENERAL ORDER NO. 09-0008

1. Overview

1.1. Purpose of this General Order

This Plan sets forth the administration and operation of the Attorney Admission Fund and the means by which policy is to be set and expenditures are to be authorized. This Plan is issued pursuant to the policies approved by the Judicial Conference of the United States for the management and expenditure of attorney admission funds maintained by the District Court of Guam. These are non-appropriated funds held in trust by the courts and are sometimes called "library funds" or "bench-and-bar funds."

1.2. The Judicial Conference's Prescribed Attorney Admission Fee (Distinct from Local Attorney Admission Funds)

Attorneys admitted to practice before the District Court of Guam must pay a basic, first-time admission fee to the clerk of the court. The basic attorney admission fee is uniform and is set by the Judicial Conference of the United States in the Schedule of Additional Fees under 28 U.S.C. §§ 1913 and 1914. The clerk deposits part of that amount into the special fund created under 28 U.S.C. § 1931 and the balance into the Treasury of the United States as miscellaneous receipts. *See* P.L. No. 104-317, § 404(a); 28 U.S.C. § 751(c), 31 U.S.C. § 3302. **These fees do not become part of the District Court of Guam's Attorney Admission Fund.**

1 **1.3. The District Court of Guam's Local Attorney Admission Funds**

2 Attorney admission funds are non-appropriated funds that comprise attorney
3 admission fees collected by the court that are in addition to the original attorney
4 admission fee prescribed by the Judicial Conference under 28 U.S.C. §§ 1913 and
5 1914. The amount of these fees may be set by separate local rule or court order.
6 The court may also require attorneys to maintain their membership in the court's
7 bar through periodic fees, or may charge a special fee to appear *pro hac vice*. All
8 such fees must be maintained locally as non-appropriated funds.

9 Attorney admission funds shall be segregated from all other monies in the custody
10 of the court, and shall contain only attorney admission fees, plus any interest
11 income accrued on such fees. The court shall not place into its Attorney
12 Admission Fund monies from other sources, including but not limited to:

- 13 • contempt fines,
- 14 • proceeds of sales of local rules,
- 15 • unclaimed funds,
- 16 • undistributed interest on registry accounts,
- 17 • gifts or bequests of cash, or
- 18 • copying fees.

19 **1.4. Authority to Maintain Attorney Admission Fund**

20 In 1950, the Judicial Conference resolved that the courts of appeals' attorney
21 admission fees, collected under authority of F.R.A.P. 46(a), were not monies
22 received for the use of the United States and therefore need not be deposited into
23 the Treasury. In 1951, the Comptroller General of the United States announced
24 that there would be no objection to the practice of the courts of appeals' retaining
25 these local attorney admission funds. Comp. Gen. Opinion No. B-56200, June 8,
26 1951. The Comptroller General later extended this opinion to cover attorney
27 admission funds maintained by the United States district courts, the United States
28 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 14, 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.

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

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

33 **2.1.** Attorney admission proceedings (including expenses of admission committees
34 and admission ceremonies).

35 **2.2.** Attorney discipline proceedings (including, but not limited to, expenses of
36 investigating counsel for disciplinary enforcement, stenographers, meeting room
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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.
- 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.
- 2.7. Reimbursement 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 (e.g., food, beverages, mementos) for which appropriated funds may not be used.
- 2.9. Cash donations to law-related educational or charitable organizations, such as a 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.
- 2.11. 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. *See* paragraph 3, following.

3. Limitations on Use of Attorney Admission Fund

3.1. Rule Against Augmentation of Appropriations

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 (e.g., 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, e.g., 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.

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

Unreasonable accumulation of attorney admission funds shall be avoided. Upon the court's determination that the fund balance is too high, the court may reduce or eliminate the local fee collections until the fund balance is in line with needs.

4. Appointment of Custodian

The Clerk of the District Court of Guam is designated as the Custodian of the Attorney Admission Fund. The Custodian shall render to the court an accounting of the Fund, to include the status, balance and utilization of the Fund, on an annual basis, and at such other times as deemed necessary by the court. The Custodian shall further cause the Fund to be audited on an annual basis.

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 this Plan or as directed by the Chief Judge, and in accordance with all pertinent laws. All disbursements shall require the signature of the Custodian, or in her absence, the Chief Deputy, and shall be countersigned by the Chief Judge, or in her absence, the Magistrate Judge.

5.2. Secure a bond, to be paid for from the Fund, if required by the court.

5.3. Establish and maintain an accounting system that provides the records necessary for audit trail and recordation of all funds and disbursements.

5.4. Ensure that financial statements and operating reports are prepared in a timely

1 fashion and sign these statements, thereby certifying that the statements and
2 reports accurately present the financial condition of the fund. Reports shall be
prepared quarterly and shall state the following:

3 **5.4.1.** Beginning balance of assets;

4 **5.4.2.** Revenue during reporting period: collections, investment;

5 **5.4.3.** Disbursements during reporting period, listed by major classifications
called for in the court's attorney admission fund plan;

6 **5.4.4.** Ending balance of assets (bank balances and undeposited collections);

7 **5.4.5.** Obligations, accounts payable or known future expenditures; and

8 **5.4.6.** Available balance.

9 **5.5.** Deposit or invest monies of the fund as directed by the court.

10 **5.6.** Perform such other functions as the court may direct.

11 **5.7. Duties Upon Appointment of a Successor Custodian**

12 When a successor custodian is appointed, the outgoing Custodian shall prepare
13 and sign the following statements in conjunction with an exit audit or inspection
conducted by an auditor or disinterested person as designated by the court:

14 **5.7.1.** A statement of assets and liabilities;

15 **5.7.2.** A statement of operations or of receipts and disbursements covering the
16 period since the last statement of operations and net worth, up to the date
of transfer to the successor custodian; and

17 **5.7.3.** A statement of the balance in any fund accounts as of the date of transfer
18 to the successor custodian. The successor custodian shall execute a receipt
19 for all funds after being satisfied as to the accuracy of the statements and
20 records provided by the outgoing Custodian. Acceptance by the successor
custodian may be conditioned upon audit and verification when the
circumstances warrant.

21 **6. Maintenance of Funds**

22 **6.1. Deposits**

23 All monies of the Attorney Admission Fund shall be deposited in an interest-
bearing account at a local, federally insured, bank or savings institution.
24 Whenever practical and feasible, and at the direction of the court, all substantial
25 sums may be placed in government securities, time certificate of deposits, or
money market funds invested in government obligations. The Custodian shall
26 segregate the Attorney Admission Fund from all other monies in the custody of
the court.

27 **6.2 Audits**

28 With the approval of the Chief Judge, the Custodian may appoint an outside

1 auditor or disinterested person to conduct any additional audits as the court deems
2 necessary or appropriate. The Custodian shall provide the written results of such
3 audits to the court and may make them available upon request to members of the
4 bar of the court. The auditor may receive reasonable compensation from the
5 Attorney Admission Fund, if the auditor is not a government employee acting in
6 an official capacity.

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9 **6.3. Procedures for Dissolution of the Fund**

10 The court may dissolve its Attorney Admission Fund or any portion thereof. A
11 final audit shall be performed, and a written accounting rendered to the court,
12 before dissolution of the Fund. The Custodian shall ensure that all outstanding
13 obligations are liquidated before dissolution of the Fund, including any expenses
14 resulting from the required final audit. The court shall dispose of the remaining
15 monies in ways that fulfill the purposes of the Attorney Admission Fund.

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18 **IT IS SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Aug 19, 2009