

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 8:03-cr-77-T-30TBM

**SAMI AMIN AL-ARIAN,
GHASSAN ZAYED BALLUT,
and SAMEEH HAMMOUDEH,**

Defendants.

REPORT AND RECOMMENDATION

THIS MATTER is before the court on **Defendant Sami Al-Arian's Counsel's In Camera Ex Parte Motion for Monthly Interim Payment of Compensation and Expenses and For Waiver of Maximum Amounts (Doc. 136)** and **Defendant Ghassan Ballut's Counsel's Ex Parte Motion for Monthly Interim Payment of Compensation and Expenses and For Waiver of Maximum Amounts (Doc. 127)**, as adopted by Defendant Sameeh Hammoudeh. By these motions, counsel seek an order of the court permitting interim payments and a waiver of statutory maximum compensation amounts.

The 121 page Indictment accuses these Defendants and others in a total of 50 counts. The allegations include conspiracy to commit racketeering in violation of 18 U.S.C. § 1962; conspiracy to murder maim or injure persons outside the United States, contrary to 18 U.S.C. § 1956; conspiracy to provide material support to designated terrorists organizations, contrary to 18 U.S.C. § 2339B; conspiracy to make and receive

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contributions of funds to or for the benefit of specially designated terrorist organizations, contrary to 50 U.S.C. § 1701 et seq., 18 U.S.C. § 371; and travel in interstate or foreign commerce or use of the mail or other facility of interstate or foreign commerce with intent to commit crimes of violence or to promote and carry on specified unlawful activity in violation of 18 U.S.C. § 1952. The racketeering conspiracy alleged in Count One of the Indictment alleges criminal activity beginning in about 1984 and continuing to the date of the Indictment in February 2003. The volume of Rule 16 discovery as described by the government in discovery conferences can only be described as exceptional, containing as it does, thousands of hours of intercepted communications and thousands of pages of documents and other tangible exhibits. Discovery is complicated by the fact that most of the intercepted conversations and much of the tangible discovery is in Arabic or Hebrew and must be interpreted before counsel may use it effectively in these proceedings.

While Dr. Al-Arian has not, at present, waived his right to speedy trial, the remaining Defendants have done so and suggest a minimum of eighteen months is necessary to prepare for trial. The government does not disagree and estimates the trial of this cause will take from six to twelve months. Defense counsel, who are appointed pursuant to 18 U.S.C. § 3006A and this district's CJA plan, are sole practitioners or practice in small firms. Given the nature of these proceedings and the expected duration of the case, these attorneys would bear a considerable hardship should they not be allowed compensation until the end of the trial.

Attached hereto is a proposed order which I recommend the court sign and forward to the Chief Judge of the Eleventh Circuit Court of Appeals or his designate for further consideration.

Respectfully submitted on this
2nd day of June 2003.


THOMAS B. McCOUN III
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

Failure to file written objections to the proposed findings and recommendations contained in this report within ten days from the date of its service shall bar an aggrieved party from attacking the factual findings on appeal and a *de novo* determination by a district judge. 28 U.S.C. § 636(b)(1); M.D. Fla. R. 6.02.

Copies to:
United States District Judge
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

CASE NO.: 8:03-cr-77-T-30TBM

SAMI AL-ARIAN,
GHASSAN ZAYED BALLUT, and
SAMEEH HAMMOUDEH,

Defendants.

ORDER

THIS CAUSE is before the court on **Defendant Sami Al-Arian's Counsel's In Camera Ex Parte Motion for Monthly Interim Payment of Compensation and Expenses and for Waiver of Maximum Amounts (Doc. 136)** and **Defendant Ghassan Ballut's Counsel's Ex Parte Motion for Monthly Interim Payment of Compensation and Expenses and for Waiver of Maximum Amounts (Doc. 127)**. Defendant Sameeh Hammoudeh adopts these motions (Doc. 41). Upon consideration, these motions are **GRANTED**. Because of the nature and expected duration of this case and the anticipated hardship on counsel in undertaking representation for such a period without compensation, pursuant to paragraph 2.30 A of the Guidelines for the Administration of the Criminal Justice Act, the following procedures for interim payments shall apply during the course of defense counsels' representation in this case:

1. Submission of Vouchers

Counsel shall submit to the court clerk once each month, an interim CJA Form 20, "Appointment of and Authority to Pay Court Appointed Counsel." Compensation earned and reimbursable expenses incurred from the first to the thirty-first day of each month shall be claimed on an interim voucher submitted no later than the tenth day of each month or the first business day thereafter. The first interim voucher submitted shall reflect all compensation claimed and reimbursable expenses incurred from the date of appointment to June 1, 2003, and shall be submitted no later than June 10, 2003; thereafter, the vouchers shall be submitted once each month according to the schedule outlined above. Counsel shall complete Item 19 on the form for each interim voucher. Each interim voucher shall be assigned a number when processed for payment. Interim vouchers shall be submitted in accordance with this schedule even though little or no compensation or expenses are claimed for the respective period. All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter II, Part C, of the Guidelines for the Administration of the Criminal Justice Act outlines the procedures and rules for claims by CJA attorneys and should be followed regarding each voucher.

The Court will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for two-thirds of the approved number of hours. This compensation will be determined by multiplying two-thirds of the approved number of hours by the applicable rate. The Court will also authorize for payment all reimbursable expenses reasonably incurred.

Beginning January 15, 2004, and at the conclusion of each six-month period thereafter, until the conclusion of the representation, counsel shall submit a cumulative interim voucher

seeking payment of the outstanding one-third balance withheld from all earlier interim compensation paid out during the preceding six-month interval, as well as payment for representation provided during the last interim period of the interval. The cumulative interim voucher shall be labeled as such and shall set forth in detail the time and expenses claimed for the entire interval, including all appropriate documentation. Counsel should reflect all compensation and reimbursement previously received on the appropriate line of the cumulative interim voucher, as well as the net amount remaining to be paid at the end of the interval. After reviewing the cumulative interim voucher, I will submit it to the chief judge of the circuit, or his delegate, for review and approval. At the conclusion of the representation, each counsel shall submit a final cumulative voucher seeking payment of the one-third balance withheld from the interim vouchers processed during the final interval, as well as payment for representation provided during the last interim period of the interval.

2. Reimbursable Expenses

Counsel may be reimbursed for out-of-pocket expenses reasonably incurred incident to the representation. While the statute and applicable rules and regulations do not place a monetary limit on the amount of expenses that can be incurred, counsel should incur no single expense item in excess of \$300.00 without prior approval of the Court. Such approval may be sought by filing an *ex parte* application with the Clerk stating the nature of the expense, the estimated dollar cost, and the reason the expense is necessary to the representation. An application seeking such approval may be filed *in camera*, if necessary. Upon finding that the expense is reasonable, I will authorize counsel to incur it. Recurring expenses, such as telephone toll calls, photocopying, and photographs, which aggregate more than \$50.00 on one or more interim vouchers are not considered single expenses requiring Court approval.

With respect to travel outside of the county of Hillsborough for the purpose of consulting with the client or interviewing witnesses, etc., a \$300.00 rule should be applied in the following manner. Travel expense, such as mileage, parking fees, meals, and lodging, can be claimed as itemized expenses. Therefore, if the reimbursement for expense relating to a single trip will aggregate an amount in excess of \$300.00 the travel should receive prior approval of the Court.

The following additional guidelines may be helpful to counsel:

- a. Case related travel by privately owned automobile should be claimed at the rate of 36½ ¢ per mile, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than privately owned automobile should be claimed on an actual expense basis. Air travel in “first class” is prohibited. Counsel and persons providing service under the CJA are encouraged to contact the clerk for air travel authorization at government rates.
- b. Actual expenses incurred for meals and lodging while traveling outside of the city of Tampa in the course of this representation must conform to the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations. For specific details concerning high cost areas, counsel should consult the clerk.
- c. Telephone toll calls, telegrams, photocopying, and photographs can all be reimbursable expenses if *reasonably* incurred. However, general office overhead, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature. In addition, expenses for service of subpoenas on fact witnesses are not reimbursable, but rather are governed by Rule 17, F.R. Crim. P. and 28 U.S.C. § 1825.

3. Further Questions or Guidance

Answers to questions concerning appointment under the Criminal Justice Act can generally be found in (1) 18 U.S.C. § 3006A; (2) the Plan of the United States District Court for the Middle District of Florida, available through the clerk, and (3) Guidelines for the Administration of the Criminal Justice Act, published by the Administrative Office of the U.S. Courts, also available through the clerk. Should these references fail to provide the desired clarification or direction, counsel should address their inquiry directly to me or my staff.

With respect to counsels' request to exceed the fee cap, this case will be extended and complex and may require greater compensation than normal to provide fair compensation. Accordingly, the Court recommends that the Chief Judge of the Eleventh Circuit waive the statutory compensation maximum provided by the Criminal Justice Act.¹

Done and Ordered in Tampa, Florida, this ___ day of June 2003.

JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

APPROVED:

Chief Judge of the United
States Court of Appeals for
the Eleventh Circuit

DATE: _____

¹This approval does not override the review of vouchers for reasonableness as required by the Criminal Justice Act

Date Printed: 06/02/2003

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