

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

02-CR-53-S

ALI M. AL-MTIR,

Defendant.

On July 2, 2002, defendant filed his first motion for designation of his case as extended and complex (dkt. #16). The motion was filed in order to removed appointed counsel's uncertainty as to whether she would be fully compensated for the work she deems necessary in this unusual and time-consuming case. I denied the motion without prejudice on July 19, 2002 (dkt. #20). Since then, things have only gotten stranger, so counsel has filed a second motion to designate this case as extended and complex (dkt. # 69).

In the subsequent fourteen months, this case still is not resolved, having taken several unexpected (and time-consuming) twists and turns due to Al-Mtir's oscillation between legal competence and incompetence and the government's before-the-buzzer introduction of provocative evidence regarding Al-Mtir's alleged wish and potential to become a terrorist martyr. No one involved in this case, including the court, has had previous occasion to use the arcane competency statutes and procedures that apply to Al-Mtir. There is little doubt that this case required—and continues to require—extended and complex representation as that term is used in 18 U.S.C. § 3006A(d)(3). This petty fraud prosecution already has

absorbed disproportionate and significant judicial, prosecutorial, defense and BOP time and resources, and we are not even done yet: the applicable federal competency statutes mandate a state civil commitment proceeding either in Minnesota or Wisconsin. We still are sorting out in which state to commence the action.

All this being so, pursuant to § 3006A(d)(3), it is the district judge's prerogative in a felony criminal case to determine whether a case required extended and complex representation and if so, how much of counsel's claim to certify for payment to the chief judge of the circuit. It is not Judge Shabaz's practice to pre-certify cases under § 3006A(d)(3).

Accordingly, the court will stay any action on defendant's motion pending submission of counsel's claim for payment. As we have discussed several times previously, counsel should continue to represent her client as efficiently as circumstances allow. When counsel finally submits her claim (which, given the recent developments, might be several more months), it is critical that she support it with a detailed brief explaining why specific actions (and the time spent on them) actually were necessary in this case.

Entered this 29th day of September, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge