Text as published on gao.gov, https://www.gao.gov/products/b-155823, archived 2026-07-17. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-155823, May 21, 1965, 44 Comp. Gen. 749

Number: B-155823

Date: 1965-05-21

B-155823, MAY 21, 1965, 44 COMP. GEN. 749

COURTS - COSTS - GOVERNMENT LIABILITY - INDIGENT PERSONS ALTHOUGH A COURT ORDER AUTHORIZING AN INDIGENT DEFENDANT TO ACCOMPANY HIS ATTORNEY OVERSEAS TO TAKE DEPOSITIONS OF FOREIGN NATIONALS DOES NOT COME WITHIN THE SPECIFIC TERMS OF RULE 15 (C) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, TITLE 18, U.S.C., AUTHORIZING EXPENSES OF COUNSEL, THE DEFENDANT'S PRESENCE AT THE DEPOSITION MAY BE SO NECESSARY TO HIS DEFENSE TO BE CONSIDERED AS PART OF THE ADEQUACY OF HIS REPRESENTATION BY COUNSEL UNDER RULE 15 (C) AND, THEREFORE, ACCEPTANCE OF RULE 15 (C) AS AUTHORITY FOR PAYMENT OF THE DEFENDANT'S TRAVEL EXPENSES REQUIRES SUCH EXPENSES TO BE PAID FROM APPROPRIATIONS OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS RATHER THAN THE APPROPRIATIONS OF THE DEPARTMENT OF JUSTICE. 39 COMP. GEN. 133.

TO THE ATTORNEY GENERAL, MAY 21, 1965:

BY LETTER OF APRIL 5, 1965, THE DEPUTY ATTORNEY GENERAL REQUESTED OUR OPINION CONCERNING THE INTERPRETATION OF RULE 15 (C) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE AND OUR DECISION AT 39 COMP. GEN. 133.

ON FEBRUARY 12, 1965, THE FEDERAL DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, IN THE CASE OF UNITED STATES V. JOHN A. WYLIE, HERMAN GODEL AND JAMES LOFTIS, ISSUED AN ORDER PURSUANT TO RULE 15 (C) AUTHORIZING DEFENDANT GODEL AND COUNSEL TO TAKE DEPOSITIONS OF CERTAIN FOREIGN NATIONALS IN SAIGON, VIETNAM. THE COURT ALSO ORDERED THAT THE UNITED STATES PAY FOR THE EXPENSES OF DEFENDANT AND COUNSEL.

RULE 15 (C) PROVIDES AS FOLLOWS:

"IF A DEFENDANT IS WITHOUT COUNSEL THE COURT SHALL ADVISE HIM OF HIS RIGHT AND ASSIGN COUNSEL TO REPRESENT HIM UNLESS THE DEFENDANT ELECTS TO PROCEED WITHOUT COUNSEL OR IS ABLE TO OBTAIN COUNSEL. IF IT APPEARS THAT A DEFENDANT AT WHOSE INSTANCE A DEPOSITION IS TO BE TAKEN CANNOT BEAR THE EXPENSE THEREOF, THE COURT MAY DIRECT THAT THE EXPENSES OF TRAVEL AND SUBSISTENCE OF THE DEFENDANT'S ATTORNEY FOR ATTENDANCE AT THE EXAMINATION SHALL BE PAID BY THE GOVERNMENT. IN THAT EVENT THE MARSHAL SHALL MAKE PAYMENT ACCORDINGLY.'

IN 39 COMP. GEN. 133, WE HELD THAT THE EXPENSES FOR TRAVEL AND SUBSISTENCE OF AN ATTORNEY IN CONNECTION WITH ATTENDANCE AT A DEPOSITION EXAMINATION UNDER RULE 15 (C) FOR A DEFENDANT WHO CANNOT BEAR THE EXPENSES ARE PROPERLY PAYABLE FROM APPROPRIATIONS OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS. THE DEPUTY ATTORNEY GENERAL STATES THE VIEW THAT UNDER THIS RULING THERE IS NO DISTINCTION BETWEEN EXPENSES FOR A DEFENDANT OR DEFENSE COUNSEL AND THAT THE

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS IS AUTHORIZED TO EXPEND WHAT IS REQUIRED BY THE COURT ORDER. HE FURTHER STATES THAT THE ADMINISTRATIVE OFFICE TAKES THE VIEW THAT IT IS AUTHORIZED TO PAY ONLY FOR THE EXPENSES OF DEFENSE COUNSEL AND THAT THE DEPARTMENT OF JUSTICE SHOULD PAY FOR THE DEFENDANT'S EXPENSES. WE HAVE BEEN REQUESTED TO CLARIFY THE MATTER.

RULE 15 (C) AUTHORIZES THE COURT TO DIRECT THAT THE EXPENSES OF TRAVEL AND SUBSISTENCE OF THE DEFENDANT'S ATTORNEY FOR ATTENDANCE AT A DEPOSITION SHALL BE PAID BY THE GOVERNMENT. THE RULE DOES NOT AUTHORIZE THE COURT IN SPECIFIC TERMS TO DIRECT PAYMENT BY THE GOVERNMENT OF SUCH EXPENSES ON BEHALF OF THE DEFENDANT. WHILE IT MIGHT THEREFORE BE ARGUED THAT THE RULE SERVES ONLY TO PRESERVE DEFENDANT'S RIGHT TO COUNSEL AND IS UNCONCERNED WITH THE DESIRABILITY OR NEED FOR DEFENDANT TO ACCOMPANY HIS COUNSEL FOR THE PURPOSE OF TAKING DEPOSITIONS, THERE IS NEVERTHELESS SOME BASIS FOR CONCLUDING, AS THE COURT APPARENTLY DID IN THIS CASE, THAT IN CERTAIN SITUATIONS DEFENDANT'S PRESENCE AT THE DEPOSITION TAKING IS SO NECESSARY TO HIS DEFENSE AS PART OF THE ADEQUACY OF HIS REPRESENTATION BY COUNSEL AS TO BE WITHIN THE PURVIEW OF RULE 15 (C) AUTHORIZING PAYMENT BY THE UNITED STATES. IN OUR VIEW SUCH AN APPROACH IS NOT CLEARLY UNREASONABLE. THEREFORE, IN THE ABSENCE OF ANY NEGATIVE COURT DECISIONS ON THE MERITS OF DEFENDANT'S RIGHTS OR THE COURTS' PREROGATIVE IN THIS REGARD UNDER RULE 15 (C), WE ARE INCLINED TO THE VIEW THAT WE SHOULD NOT QUESTION THE APPROPRIATENESS OF THE COURT'S ORDER IN THE INSTANT CASE.

HAVING THUS CONCLUDED THAT THERE IS SUFFICIENT BASIS FOR ACCEPTING RULE 15 (C) AS PROPER AUTHORITY FOR THE ORDER THAT THE UNITED STATES PAY DEFENDANT'S EXPENSES, IT WOULD SEEM TO FOLLOW THAT THE EXPENSES SHOULD BE PAID FROM APPROPRIATIONS OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS UNDER THE RATIONALE OF OUR DECISION AT 39 COMP. GEN. 133, SINCE IT IS ONLY BY RELATION TO AUTHORITIES FOR THE PAYMENT OF EXPENSES OF COUNSEL THAT THE PAYMENT HERE INVOLVED CAN BE VIEWED AS AUTHORIZED IN THE FIRST INSTANCE.

A COPY OF THIS LETTER IS BEING FURNISHED TO THE DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.