

Memorandum

The hourly fee rate for indigent counsel varies by county throughout Ohio. The Ohio Public Defender authorizes up to \$95.00 per hour for counsel in capital appeals. In this case, Butler County pays only \$40 per hour for out of court work and \$50 per hour for in court work. As in every appeal, the work is done in reviewing the record, doing legal research, and writing and editing the briefs; in other words, the bulk of the work is done out of court. In such a situation, counsel is only being paid at \$40 per hour. The Butler County pay rate is among the lowest in the State of Ohio and out of the mainstream for pay in comparable cases nationwide as well.

The Joint Task Force to Review the Administration of the Death Penalty recently recommended uniform pay throughout the state to private counsel on indigent capital cases (See Recommendation #16; vote count 16-0) and the implementation of the ABA Guidelines (See Recommendation #11; vote count 12-2).

The ABA Guidelines for the Performance of Defense Counsel (2003) state that:

Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.

ABA Guideline 9.1(B).

It is helpful to understand the pay other jurisdictions have in indigent capital cases at the trial level. Work on appeals in this Court is certainly not less valuable.

About twelve years ago Alabama changed its rate of compensation to \$40 per hour out of court and \$60 per hour in court, plus an additional hourly sum for “office overhead expenses” that averages approximately \$30 per hour, thus bringing the hourly rates to \$70/\$90. Wright v. Childree, 972 So.2d 771 (Ala. 2006).

Louisiana, through the Louisiana Indigent Defense Assistance Board (now the Louisiana Public Defender Board), has created regional offices to handle capital cases – for conflict cases the state pays an hourly rate ranging from \$75 in Shreveport to \$110 in New Orleans.

Virginia pays court-appointed attorneys \$125 per hour with no limitations as to number of hours; Illinois, which abolished the death penalty on 3/10/11, was paying its capital attorneys \$145.39 per hour as of 2007; Idaho pays a range of \$90-150 per hour.

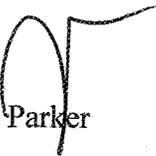
Mississippi now pays conflict counsel \$125 per hour without limitations to lead counsel and \$100 per hour to associate counsel.

The federal government pays private counsel \$180 per hour.

In this case, the appellant was represented by the Ohio Public Defender at his trial which was subject to this appeal. Thus, new private counsel were necessary to represent appellant to preserve any potential ineffective assistance of trial counsel claims. It is important that the court have experienced private counsel to act as qualified counsel under Sup R. 20. Counsel must be fairly compensated. The \$40 per hour is simply not equitable given the importance of the case for Mr. Davis and the community. Counsel were efficient in their representation in part because there was an intermediate appeal before the case reached the Ohio Supreme Court. Counsel has not milked the system dry and tried to bill for hours that simply were not necessary or reasonable. However, the hourly rate of \$40 is not reasonable and should be adjusted to no more than the Ohio Public Defender

maximum of \$95 per hour. The ABA Guidelines and this Court's Joint Task Force recognize that counsel must be paid fairly and equally throughout the State. Thus, counsel respectfully request an adjustment to the hourly pay rate in this case.

Respectfully submitted,


John P. Parker


Laurence E. Komp

Certificate of Service

I hereby certify that a copy of the foregoing document was mailed by regular U.S. Mail this 15th Day of July 2014 to Michael T. Gmoser, Butler County Prosecutor, Government Services Center, 315 High Street, Hamilton, OH 45011.


John P. Parker

OHIO PUBLIC DEFENDER

STANDARDS AND GUIDELINES FOR APPOINTED COUNSEL REIMBURSEMENT

Revised January 1, 2000



STATE MAXIMUM FEE SCHEDULE FOR APPOINTED COUNSEL REIMBURSEMENT

Revised June 24, 2003



COUNTY PUBLIC DEFENDER OFFICE REIMBURSEMENT STANDARDS

Revised January 1, 2000

Promulgated pursuant to Chapter 120 of the Ohio Revised Code

DAVID H. BODIKER
Ohio Public Defender



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<u>Offense/Proceeding (continued)</u>	<u>Fee Maximum</u>
Felony with Possible Life Sentence/Repeat Violent Offender/Major Drug Offender	\$ 5,000
Felonies (degrees 1-3)	\$ 3,000
Felonies (degrees 4 & 5)	\$ 2,500
Misdemeanors (degrees 1-4)	\$ 1,000
Contempt of Court	\$ 300
Parole, Probation, and all other proceedings not elsewhere classified	\$ 500

3. Reimbursement for guilty or no contest pleas will be made based on the maximum rate of \$50.00 per hour for out-of-court services and \$60.00 per hour for in-court services up to the prescribed maximums for each classification, or if selected by the board of commissioners, at a flat rate for non-homicide felonies, misdemeanors, and juvenile proceedings.

C. Juvenile Proceedings

1. Reimbursement for representation in juvenile proceedings will be made based on the maximum rate of \$50.00 per hour for out-of-court services and \$60.00 per hour for in-court services.
2. Beginning with appointment dates of January 1, 2000 and later, reimbursement will no longer be made for social workers (non-attorneys) appointed as guardian *ad litem*.
3. In abuse, dependency, and neglect cases, both the attorney and the guardian *ad litem* are entitled to bill the maximum fee allowed by the county for the initial dispositional hearing and each subsequent review hearing before the court.
4. The prescribed maximum fee permitted in juvenile proceedings, including guardian *ad litem* is \$1,000.

D. Appellate Level Proceedings

1. Reimbursement for representation in appellate level proceedings not involving a death sentence shall be made based on the maximum rate of \$50.00 per hour for out-of-court and \$60.00 per hour for in-court services.
2. Reimbursement for representation of appellate level proceedings involving a death sentence will be made based on the maximum rate of \$95.00 per hour for both out-of-court and in-court services.
3. The prescribed maximum fees permitted in appellate level proceedings are listed below. The rates apply to each level of appeal.

<u>Offense/Proceeding</u>	<u>Fee Maximum</u>
Aggravated Murder (death sentence imposed)	\$25,000*
Aggravated Murder (sentence other than death)	\$ 5,000
Murder with Life Sentence/Repeat Violent Offender/Major Drug Offender/Sexually Violent Predator	\$ 3,000
Felonies/S.B. 2 & H.B. 1 Appeals	\$ 1,500
Misdemeanors	\$ 1,000
Other/Juvenile	\$ 1,000

* Ohio Supreme Court Rule 21 of the Rules of Superintendence for the Courts of Ohio requires the appointment of two (2) attorneys in capital cases. This fee is the maximum that will be paid on the combined bills of both attorneys appointed to the case.

E. Postconviction and Habeas Corpus Proceedings

1. Reimbursement for postconviction and state habeas corpus proceedings not involving a death sentence will be made based on the maximum rate of \$50.00 per hour for out-of-court services and \$60.00 per hour for in-court services.
2. The prescribed maximum fees permitted in postconviction and habeas corpus proceedings not involving a death sentence are:

<u>Offense/Proceeding</u>	<u>Fee Maximum</u>
Postconviction Proceeding with Evidentiary Hearing	\$1,500
Postconviction Proceeding without Evidentiary Hearing	\$ 750
Habeas Corpus with Evidentiary Hearing	\$1,500
Habeas Corpus without Evidentiary Hearing	\$ 750

3. Reimbursement for postconviction and state habeas corpus proceedings involving a death sentence shall be made based on the maximum rate of \$95.00 per hour for both out-of-court and in-court services to a maximum of \$25,000 to be divided among services in the trial court, the Court of Appeals, and the Ohio Supreme Court.