

**IN RE: BOARD OF COUNTY COMMISSIONERS...RESOLUTION NUMBER 39-11
ADOPTING REVISED FEE SCHEDULE FOR APPOINTED LEGAL
COUNSEL REIMBURSEMENT...11-0412-002...ADOPTED**

Moved by Mr. Proud, seconded by Mr. Wilson, that the Board of County Commissioners approve the following recommendation:

Recommendation of David L. Spinney, County Administrator, to adopt **Resolution Number 39-11** resolving to adopt a revised fee schedule for appointed legal counsel reimbursement to reflect revisions in attorney fees, in accordance with the prescribed State Maximum Fee Schedule for Appointed Counsel Reimbursement established by the Ohio Public Defender Commission, which fees herein adopted shall be applicable to all appointments of assigned counsel by Courts of appropriate jurisdiction effective **05/01/11** and thereafter, pursuant to Section 120.33(A)(3) of the Ohio Revised Code.

Upon roll call on the foregoing motion, the vote was as follows:

Mr. Proud, Yea; Mr. Wilson, Yes; Mr. Humphrey, Aye.



BOARD OF COUNTY COMMISSIONERS
CLERMONT COUNTY, OHIO

ROBERT L. PROUD EDWIN H. HUMPHREY ARCHIE WILSON

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Upon roll call on the foregoing motion, the vote was as follows:

Mr. Proud, Yea; Mr. Wilson, Yes; Mr. Humphrey, Aye.

I, Judith Kocica, Clerk of the Board of the Clermont County Commissioners, do hereby Certify the above to be a true and exact excerpt from the minutes of the Regular Session of the Board of County Commissioners, Clermont County, Ohio, on April 13, 2011.

ATTEST:

Judith Kocica, Clerk of the Board
April 13, 2011

RESOLUTION NO. 39 -11

This Board of County Commissioners of Clermont County, Ohio, met in regular session on the 13th day of April, 2011, with the following members present:

Edwin Humphrey, President

Robert L. Proud, Vice President

Archie Wilson, Member

Mr. Proud moved for the adoption of the following Resolution:

RESOLUTION ADOPTING REVISED FEE SCHEDULE FOR APPOINTED LEGAL COUNSEL REIMBURSEMENT TO REFLECT REVISIONS IN ATTORNEYS FEES.

WHEREAS, pursuant to Section 120.33 (A)(3) of the Ohio Revised Code, the Board of County Commissioners is required to adopt by resolution a schedule of fees for payment of the appointed legal counsel appointed by a court of competent jurisdiction and to have the schedule on file with the office of the Public Defender; and

WHEREAS, the Board of Commissioners, upon recommendation of the Clermont County Bar Association, has reviewed the schedule of fees for appointed counsel and determined that the schedule has not been revised in keeping with other cost increases to adequately reflect the expense of said appointed counsel.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Clermont County, Ohio with at least two-thirds of its members thereto concurring as follows:

SECTION I

That upon review and consideration of the recommendation of the Clermont County Bar Association, the Board of County Commissioners determines that a revision of the fee schedule is appropriate and do hereby adopt the State Maximum Fee Schedule for Appointed Counsel Reimbursement as established by the Ohio Public Defender Commission.

SECTION II

That reimbursement for representation at trial level cases will be made based upon the maximum rate of \$50.00 per hour for out-of-court services and \$60.00 per hour for in-court services.

SECTION III

That the Board of Commissioners hereby adopt the prescribed maximum fees permitted in trial level proceedings as established by the State Maximum Fee Schedule for Appointed Counsel Reimbursement contained in the attached Exhibit "A", incorporated herein by reference, as established by the Ohio Public Defender Commission. The maximum fees adopted are those set forth in Article B entitled "Trial Level Proceedings"; Article C entitled "Juvenile Court Proceedings"; Article D entitled "Appellate Level Proceedings"; and Article E entitled "Post-Conviction and Habeas Corpus Proceedings".

SECTION IV

That the Board of Commissioners determines to adopt the hourly fee schedule with the established maximums as set forth in Exhibit A attached hereto and incorporated by reference as specific outlined in the immediately preceding paragraph and does not choose to establish a flat fee or minimum fee basis.

SECTION V

That the Board of Commissioners hereby determines that there are from time to time cases which because of extraordinarily complex issues, multiple offenses, lengthy trials or other reasons that cannot be anticipated that appropriate compensation may exceed the maximum set forth herein. The Board of Commissioners determines that said extraordinary fees may be

allowable in the event that the fees are clearly documented in the appropriate sections on the appropriate Motion, Entry and Certification forms by appointed counsel and that the presiding Judge responsible for the case indicates approval of the extraordinary fee by appropriate Entry in the form provided by the Ohio Public Defender's Office and that said approval is submitted to the Board of Commissioners for their review and approval and adopted by resolution by the Board of County Commissioners prior to payment.

SECTION VI

The Board of Commissioners reserves that right to review and revise the fee schedule contained herein in keeping with future modifications of the legal requirements and classifications of criminal penalties or upon the amendment of the Ohio Public Defender Schedule as appropriate.

SECTION VII

That the Clerk of the Board is hereby directed to certify a copy of this resolution and attached Exhibit as the latest and complete Appointed Counsel Fee Schedule of Clermont County to the office of the Public Defender for retention by that office.

SECTION VIII

That the revised fees contained in this resolution and attached Exhibit "A" shall be applicable to all appointments of assigned counsel by Courts of appropriate jurisdiction effective May 1, 2011 and thereafter.

SECTION IV

That the Board of County Commissioners hereby finds and determines that all formal actions relative to the passage of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board and its Committees, if any, which resulted in formal action, were taken in meetings open to the public, and full compliance with all applicable legal requirements including Section 121.22 of the Ohio Revised Code.

Mr. Wilson seconded the motion and on roll call, the vote resulted as follows:

Mr. Humphrey Aye

Mr. Proud Yea

Mr. Wilson Yes

This Resolution was duly passed on the 13th day of April, 2011.

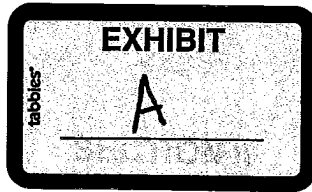
ATTEST:

Judith Kocica
JUDITH KOCICA, CLERK
Clermont County Board of Commissioners

Dated: April 13, 2011

This Resolution was prepared and approved as to form by the Office of the Prosecuting Attorney of Clermont County, Ohio
By: David J. Frey
David J. Frey, Assistant Prosecuting Attorney

Date: 3/25/11



STATE MAXIMUM FEE SCHEDULE FOR APPOINTED COUNSEL REIMBURSEMENT

A. General Provisions

1. The *Ohio Public Defender State Maximum Fee Schedule for Appointed Counsel Reimbursement* contains the hourly rates and maximum amounts that the Ohio Public Defender will reimburse counties for representation of indigents in criminal cases.
2. Pursuant to Section 120.33(A)(3) of the Ohio Revised Code, to receive reimbursement, a board of county commissioners must adopt a resolution to pay counsel appointed by the court, and must establish a fee schedule. The county is responsible for filing an up to date fee schedule with the Office of the Ohio Public Defender. Reimbursement will be based on the latest fee schedule filed with the Ohio Public Defender.
3. Reimbursement to the counties shall be based on the most serious offense with which the defendant is charged and will be made at up to 50 percent of either the state or county rate, whichever is lower. Reimbursement shall not exceed the established hourly or maximum rates unless otherwise provided for by statute.

B. Trial Level Proceedings

1. Reimbursement for representation in trial level cases not involving a death penalty specification 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. Reimbursement for representation in trial level cases involving a death penalty specification will be made based on the maximum rate of \$95.00 per hour for both in-court and out-of-court services.
2. The prescribed maximum fees permitted in trial level proceedings are:

<u>Offense/Proceeding</u>	<u>Fee Maximum</u>
Aggravated Murder (w/specs) per O.R.C. 2929.04(A) and 2941.14(B)	* \$75,000

* Ohio Supreme Court Rule 20 of the Rules of Superintendence for the Courts of Ohio requires the appointment of two (2) attorneys in capital offense cases. This fee is the maximum that will be paid on the combined bills of both attorneys appointed to the case.

Aggravated Murder (w/o specs)	\$ 8,000 /1 attorney \$ 10,000 /2 attorneys
Murder	\$ 5,000

<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.

F. Flat Rate Fee Resolutions and Guaranteed Minimum Fees

1. A county board of commissioners may choose to adopt a fee schedule which compensates attorneys at a flat rate instead of at an hourly rate for certain types of offenses. Flat rate fee schedules are subject to the following:
 - a. Schedules incorporating flat rate fees must be approved by the Ohio Public Defender.
 - b. Requests for reimbursement must include a completed Itemized Fee Statement section on form OPD-1026R regardless of the use of flat rates. Incomplete forms will be returned to the county for completion.
 - c. The box indicating that a flat rate fee has been used must be clearly checked on the front of the form.
2. Beginning with appointment dates of January 1, 2000 or later, reimbursement based on guaranteed minimum fees schedules is no longer permitted. Counties who continue to use guaranteed minimum rates may still receive reimbursement, however, reimbursement will be based on the amount calculated from multiplying the hours worked by the applicable hourly rate(s), plus approved expenses. Fees paid to attorneys beyond those supported by actual hours worked are not reimbursable.

G. Extraordinary Fees

Cases eligible for extraordinary fees are ones which, because of extraordinarily complex issues, multiple offenses, lengthy trials, or other reasons, warrant compensation at a rate which exceeds the maximums established by a county or the Ohio Public Defender. Reimbursement to the county for extraordinary fees is subject to the following requirements:

1. Counties must provide for extraordinary fees in their fee resolution adopted pursuant to R.C. 120.33(A)(3).
2. Extraordinary fees must be clearly documented in the appropriate sections on the Motion, Entry, and Certification form.
3. The Judge hearing the case must indicate approval of the extraordinary fees by checking the "Extraordinary Fees Granted" box in the Judgment Entry section on the front of the form, and a copy of the journal entry must be attached.

H. Amendments to the Fee Schedule

The Ohio Public Defender may amend this fee schedule at any time. Whenever the schedule is amended or revised, the Ohio Public Defender will give notice to the appropriate county offices including, but not limited to: county commissioners, auditors, judges, and clerks of courts.