

Rost, Tamara

From: Dugger, Brian
Sent: Wednesday, February 12, 2020 2:30 PM
To: Rost, Tamara
Subject: FW: Appointed counsel caps

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Email chain

From: Jimmy Flint <jflint@senecacountyohio.gov>
Sent: Thursday, January 09, 2020 11:45 AM
To: Dugger, Brian <BDugger@wtol.com>
Subject: Re: Appointed counsel caps

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Thanks for these clarifications and for your points of view, Brian.

You bringing this forward to our commissioners was the first time they had heard about it. We just weren't aware of it being an issue because we hadn't heard from a county resident, a judge or an attorney about it being a problem. I genuinely want to thank you for bringing this to us, because it's opened our eyes to it. I'm not sure we would have explored it without you bringing it to us.

I will pass this information on to the commissioners and to the judges I talk to and hopefully, it will factor into their decision on this issue.

From everyone I have talked to, I am unaware of a situation where these caps were upheld in Seneca County. I do understand the argument that the additional paperwork needed could deter attorneys from coming forward to try to waive the cap. I just don't have any evidence that this has been the case. Did you find any examples in Seneca County of what you are talking about? All I'm saying is that we are unaware of any of them. It would change the calculus if we were aware this was happening.

I'm a peon over here, but in my opinion, I agree that there shouldn't be a cap if they are just getting waived anyway. I stated that in my last e-mail and also have told that to everyone I've talked to about this issue.

We are working on it and I'm hoping we will have something to report to you in the next month or so. I'll keep you updated :)

From: Dugger, Brian <BDugger@wtol.com>
Sent: Thursday, January 9, 2020 11:20 AM
To: Jimmy Flint <jflint@senecacountyohio.gov>
Subject: Re: Appointed counsel caps

When I was referring to Seneca County, I was referring to the cap on aggravated murder, which is \$3,500 in Seneca County and the lowest in the state. The caps in most categories were the lowest. Honestly, it's even worse when the hourly rates are higher and the caps are low. If an hourly rate is \$55, an attorney would hit a \$3,500 cap in about 65 hours. Some counties have a \$60 rate but a \$10,000 cap. That would be 167 hours of work. Most lawyers work until they get the job done, but in Lucas County, I pulled case after case where people would go right up to the cap or just below it. You might argue that, well, the cap must be right because they spend just about at that level. But I would guess some lawyers say, I'm not wasting my time once I get past point "x."

I had an agg murder case where an attorney spent 7 hours investigating it. They put on NO defense in court and the guy is spending life in prison and claims he's innocent. Well, out of court work had pushed him close to the cap.... Did he just say, screw it, I'm not getting paid? It sure seems like it.

And lawyers have told me, if judges are going to approve extraordinary expenses, what's the point of a cap?

In my opinion, the hourly rate matters to attorneys. You are going to get better lawyers at \$75, than \$45 or \$50. One study showed a starting practice has \$42 an hour in overhead expenses. So at \$50, lawyers are working at \$8 an hour! Another oPD study study it was more than \$60, I think.

So higher hourly rates will attract attorneys and benefit young attorneys coming in. Lucas County is also planning to reform by saying, "if you take x number of cases, we will pay for x number of continuing education." So the new rate really benefits young lawyers and allows for continuing education.

But in my opinion, higher caps benefit defendants. Why bring human nature into it by wondering if a lawyer will just stop at \$3,500 versus having a cap of \$15,000? Sure, you could get a lousy defense if your lawyer spends 15,000, but I think there is a greater chance of them taking extra steps with that wiggle room - without having to file more paperwork for extraordinary expenses. That is my thought:) Thanks for giving me your thoughts. Brian

Sent from my iPhone

On Jan 9, 2020, at 9:25 AM, Jimmy Flint <jflint@senecacountyohio.gov> wrote:

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Hey Brian,

Maybe you can help me understand this. I reached out to the Ohio Public Defender's office and they referred me to a new tool that shows the indigent defense hourly fees and maximums. It does not appear that Seneca County is the lowest hourly rate in the state, like you claim. Here is that

tool: https://analytics.das.ohio.gov/t/PUBPUB/views/OhioFeeSchedules_15753250984270/Dashboard?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display_count=no&:showVizHome=no&:render=true&:toolbar=no

Here is one example I found. Our county pays \$55 an hour for in-court work and \$45 an hour for work outside of the courtroom. According to the Ohio Public Defender's Office, In Hancock County for trials, in-court work is \$50 an hour and out of court is \$40 per hour.

I roughly counted 22 counties with lower hourly rates than we have, although it seems there are some differences between the rates for appellate, juvenile and trial work in some counties.

On the caps, one thing I found interesting is that both of our common pleas court judges claim they have never upheld these caps. Both of them and an attorney who takes indigent defense cases told me they could not recall a time when those fee caps were upheld. This is contradictory to what you claimed in your November piece, although maybe you were referring to Lucas County and not our county.

Nonetheless, I've been working on some research and have presented some of what I've found to each of the commissioners individually. We've also asked our county judges to do some research on the issue and after a conversation I had with one of our judges, I think it's possible they may have a recommendation for us to make some changes to our fee caps and our hourly rates. I am hoping this will occur within the next month or so and I will let you know as soon as I have more information.

My recommendation to the commissioners is going to be that we set the fee caps at the state average since according to our judges, they have not been making a difference anyway. My argument is: What's the point of having a low cap if we are always waiving that cap? For hourly rates, I will await the recommendation from our judges, but we seem to be about \$5 lower than most of our surrounding counties, so I hope that is taken into consideration.

Thanks for bringing this issue to our attention. The general mindset at the beginning was that our commissioners were not aware this was a problem because we had not heard from a resident, a local attorney or a judge on it. We are not involved in the day-to-day operations of the courts. This is partially why it has taken a while for me to complete research on the topic and become educated on this issue.

Thanks, Brian, I hope you have a great day,
Jimmy

From: Dugger, Brian <BDugger@wtol.com>
Sent: Friday, January 3, 2020 4:08 PM
To: Jimmy Flint <jflint@senecacountyohio.gov>
Subject: RE: Appointed counsel caps

Jimmy, just so you know. Lucas County boosted hourly rates to \$75 this morning. They are going to have group meetings with judges, lawyers, clerks to decide on rates to set the caps for the individual cases. That will be voted on by March. But the new rate is retro to \$75. Soo...Seneca County is squarely at the bottom in the state now!;) Brian

From: Jimmy Flint <jflint@senecacountyohio.gov>
Sent: Tuesday, December 17, 2019 4:36 PM
To: Dugger, Brian <BDugger@wtol.com>
Subject: Re: Appointed counsel caps

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I will pass this along to the commissioners so they are aware of the change in Lucas County.

From: Dugger, Brian <BDugger@wtol.com>
Sent: Tuesday, December 17, 2019 4:33 PM

To: Jimmy Flint <jflint@senecacountyohio.gov>

Subject: RE: Appointed counsel caps

Thanks for the info. Lucas County is preparing to bump theirs after the first of the year. I was told their goal is to be in the 90th percentile of hourly rates and caps. They were one of a handful of counties in the same range as you guys.

From: Jimmy Flint <jflint@senecacountyohio.gov>

Sent: Tuesday, December 17, 2019 3:51 PM

To: Dugger, Brian <BDugger@wtol.com>

Subject: Re: Appointed counsel caps

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Sorry for getting back to you late, Brian.

Since the last time we chatted, the commissioners have not had any significant discussion about the indigent defense counsel caps. The issue was briefly brought up to the county judges, and at this point, we are awaiting a recommendation from them while also attempting to glean information from other sources.

I will let you know when I hear more about it. This is what I know, as of now!

Thank you.

From: Dugger, Brian <BDugger@wtol.com>

Sent: Tuesday, December 17, 2019 3:32 PM

To: Jimmy Flint <jflint@senecacountyohio.gov>

Subject: RE: Appointed counsel caps

Jimmy:

So, any movement on appointed counsel schedules?

From: Jimmy Flint <jflint@senecacountyohio.gov>

Sent: Monday, December 16, 2019 2:47 PM

To: Dugger, Brian <BDugger@wtol.com>

Subject: Re: Appointed counsel caps

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Brian,

Thanks for reaching out. I am out of the office today, but will circle back with you tomorrow.

Thanks.

From: Dugger, Brian <BDugger@wtol.com>
Sent: Monday, December 16, 2019 2:41:46 PM
To: Jimmy Flint <jflint@senecacountyohio.gov>
Subject: Appointed counsel caps

Hi Jimmy:

I hear Lucas County is getting ready to bump their caps and hourly rates after our investigation. Anything in the works yet in Seneca County? Thanks.

BRIAN DUGGER

Lead Investigator

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