

Good morning,

In May of this year, the District Judges had an occasion to discuss whether the fixed fee rates in indigent defense cases were to be followed or if there was some judicial discretion allowed. The enclosed email from Judge Oldner makes it clear that the prior “discretionary” language was amended by stating that the fixed fee schedule was to be followed without exception. I believe that the later adopted amendment controls.

Judge Ray Wheless

366th District Court
Collin County, Texas 75071
972-548-4574

From: Judge Ray Wheless

Sent: Tuesday, September 08, 2015 9:57 AM

To: Judge Angela Tucker; Judge Benjamin N. Smith; Judge Cyndi Wheless; Judge Jill Willis; Judge John Roach Jr.; Judge Mark Rusch; Judge Oldner; Judge Ray Wheless; Judge Scott Becker

Subject: FW: Enrique Acosta

It is clear that all of us, and specifically Judge Oldner, agreed as recently as May 25, 2015, that the fixed fee schedule was to be followed. The language now being cited by Judge Becker at our recent meeting was previously rejected in favor of the later amendment cited below.

Judge Ray Wheless

366th District Court
Collin County, Texas 75071
972-548-4574

From: Judge Oldner

Sent: Tuesday, May 26, 2015 9:23 AM

To: Judge Angela Tucker

Cc: Judge Ray Wheless

Subject: RE: Enrique Acosta

In all felony cases, except as hereafter provided, counsel shall be paid according to the following fee schedule, without exception:

PLEAS:

Death Penalty:	\$150.00 per hour
Capital, non-death penalty:	\$100.00 per hour
First Degree Felony:	\$1,000.00
Second Degree Felony:	\$750.00
Third Degree & State Jail Felonies:	\$500.00
Additional cases:	\$250.00 (per case at discretion of the judge)

TRIALS:

Pre-Trial preparation:	\$1000.00
Trial, per ½ day:	\$500.00

APPEALS:

Appeal from trial:	\$3,500.00
Other appeal:	\$2,000.00

DISCRETIONARY ADJUSTMENT

Per case adjustment, not to exceed:	\$1,000.00
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Child Advocacy Center cases and all cases with a minimum 15 year sentence:

Per case adjustment, not to exceed:	\$3,000.00
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Cases involving serious mental illness, competency or mental defect under the direction of the mental health program managing attorney:

Per case adjustment, not to exceed:	\$1,750.00
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Our fee schedule, which is attached to the FDA plan and incorporated in it, says without exception. The degree to which this is followed, I do not know. The language in the plan is:

4.01. Attorney Fee Schedule

A. The District Judges adopt, pursuant to Article 26.05 Tex. Code of Crim. Proc., a fee schedule for appointed attorneys, attached hereto as "Fee Schedule for Appointed Attorneys."

B. Payment can vary from the fee schedule in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

This language seems to have more flexibility, but I recall our agreement was to strictly follow the fee schedule. We removed the language that permitted a BODJ appeal, but the plan does not specifically prohibit it.

This may not be much help, but I would not object to this being brought to the BODJ to remove the pressure she is putting on you. Likewise, if you wanted to say "appeal to Judge Murphy," that is fine with me, too.

Judge Chris Oldner
416th Judicial District Court
2100 Bloomdale, Ste. 20030
McKinney, TX 75071
(972)548-4520
(972)548-4525 fax
http://www.co.collin.tx.us/district_courts/index.jsp

NOTE: All email correspondence relating to pending cases will be filed with the District Clerk for inclusion in the record of the case. Any communication to the Court or staff via email must comply with Rules 21 and 21a, T.R.C.P., and to do so by the fastest means available to the other affected parties or counsel. The provisions of Canon 3B.(8) of the Code of Judicial Conduct should be carefully reviewed before any person connected with a case attempts any communication with the judge or court personnel.

-----Original Message-----

From: Judge Angela Tucker
Sent: Tuesday, May 26, 2015 8:32 AM
To: Judge Ray Wheless; Judge Oldner
Subject: FW: Enrique Acosta

Judges:

Darlina has been emailing me for over a week and she has come to my office regarding this pay sheet. I told her I would submit it to the BODJ via email at her request. You suggested I send her the new pay sheet appeal info from Judge Murphy, which I did. After giving her that information, I received the following email. Before I respond-- I want to make sure I have a clear understanding of the process:

1. Ray pointed out that our internal appeal process was no longer in the plan.
2. We pay on the flat fee scale with the discretionary amounts listed in the plan.
3. Any amount over the flat fee and approved discretionary amounts are appealed to Judge Murphy.

Is that correct?

Angela Tucker
Judge, 199th Judicial District Court
Collin County Courthouse

2100 Bloomdale Road, Suite 10030
McKinney, Texas 75071
972-548-4415
972-548-4465 (Fax)

-----Original Message-----

From: Darlina Crowder [<mailto:crowderlawfirm@gmail.com>]
Sent: Friday, May 22, 2015 2:51 PM
To: Judge Angela Tucker
Cc: Leila Olivarri; Debbie Blackshear
Subject: Re: Enrique Acosta

Judge:

Forgive me, am I understanding that the district judges are now having to disapprove any pay sheets that are above the maximum limit set for felonies and have no discretion to increase the fee?

I just want to be clear.
Thank you.

Warm regards,

Darlina Crowder

The Crowder Law Firm P.C.
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> On May 22, 2015, at 1:59 PM, Judge Angela Tucker <atucker@co.collin.tx.us> wrote:

>

> Darlina:

>

> Last week, Region 1 Judges voted on the attached appeal process. Paysheet Appeals are no longer submitted to the BODJ. The appeal is submitted to Judge Murphy. When I submitted your request to the BODJ, they made me aware of the new process. I apologize for the misinformation.

>

> Please see the attached. Let me know if you need anything additional. Yes, you did send the information below to me and you discussed it with me in chambers.

>

>

> Angela Tucker

> Judge, 199th Judicial District Court

> Collin County Courthouse

> 2100 Bloomdale Road, Suite 10030
> McKinney, Texas 75071
> 972-548-4415
> 972-548-4465 (Fax)

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> -----Original Message-----
> From: Darlina Crowder [<mailto:crowderlawfirm@gmail.com>]
> Sent: Friday, May 22, 2015 1:49 PM
> To: Leila Olivarri; Debbie Blackshear; Judge Angela Tucker
> Subject: Enrique Acosta

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> Judge:

>
> I don't believe I stated nor explained in the detailed paysheet the reason I am asking for an amount above the fixed fee.

>
> I mentioned it to you. However, I believe it's important.

>
> My client was indicted for 2 cases. Aggravated Assault with deadly weapon and kidnapping.

>
> I believe I set it for trial early on and filed a Motion for Speedy Trial. After explaining the issues in the states case they refused to dismiss the cases and they were set for trial. I had an investigator appointed. The investigator and myself worked together to resolve this case in the best way possible to present case in trial.

>
> On our first pre-trial hearing I was told we were the only case set that following Monday and the state was ready to go. We also had a Motion for Speedy Trial filed.

>
> On that day I presented the assistant district attorney with evidence to dismiss these cases. I had explained to them the issues prior but they wanted to go forward. After they reviewed what I presented they agreed to dismiss the Aggravated Assault with Deadly Weapon and reduced the Kidnapping to a misdemeanor.

>
> I would like the board of judges to know that given the severity of a lot of criminal offenses we are appointed to defend it is IMPOSSIBLE for a lawyer to work hard and spend the amount of time needed to represent these indigent defendants.

> I do not even like to mention "effective assistance" of counsel. To me that is not enough.

> Given the fact that defendants have been found indigent they deserve the same attention and hard work as anyone else. I understand there is a budget.

>
> However, if a case is prepared for trial and in numerous of circumstances the prosecutors either dismiss cases or lower the recommendations a lawyer should still be compensated.

>
> More importantly the fees for a felony trial do not compensate for the time a good lawyer spends on a case.

> I'm certain this has caused good lawyers to get off the wheel or unfortunately to have lawyers plea a case just for the small fee.

>
> I know these issues have been addressed for years. However, I wanted you'll to know my thoughts for whatever it's worth.

> Thank you for your consideration in this matter.

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>
> Warm Regards,

>
> Darlina Crowder

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> The Crowder Law Firm P.C.

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> <1st-admin-rules-for-appealing-court-appointed-attorneys-fees.pdf>