

**RULES OF PRACTICE
OF THE
COURT OF COMMON PLEAS**

STATEMENT OF PURPOSE

Delay in criminal and civil cases in the Courts of Common Pleas throughout the state of Ohio is a serious problem in the administration of justice. Constitutional courts were created to serve the litigants and the interest of the public at large, not for the convenience or benefit of judges and lawyers. Unnecessary delay erodes the public's confidence in the judicial system.

It is the obligation of the judges of the Court of Common Pleas, Franklin County, Ohio, to operate the Court in a manner that is lawful, fair, just, and efficient for the benefit of the citizens of Franklin County and all other litigants that come before it. To that end, the following rules are designed (1) to expedite the disposition of both criminal and civil cases in this Court, while at the same time safeguarding the rights of litigants to the just processing of their cases; (2) to expedite and make consistent the disposition of cases in the general branch of the Court; and (3) to serve the public interest which mandates the prompt disposition of all cases before this Court.

Local Rule 77 – Indigent Defendants

Local Rule No. 77.01 / Counsel for Indigent Defendants.

Unless otherwise represented, the Public Defender shall represent alleged indigent defendants in arraignments. The Duty Judge or Magistrate shall make appointment of either the Public Defender or private counsel from the Master Appointment List [Local Rule 78] maintained by the Franklin County Court of Common Pleas – General Division. Appointments of private counsel, at the option of the Duty Judge, shall be made on a random basis, from a court appointment list unless the case is one that requires the attorney to have specialized experience.

Local Rule No. 77.02 / Indigency Status.

Before counsel is appointed, each alleged indigent defendant must file an affidavit of indigency setting forth the facts in support.

Assigned counsel will be appointed for defendants who become indigent during the course of their case. Payment to assigned counsel under these circumstances will be limited to those costs incurred during the period of indigency. A copy of the “Entry of Appointment” signed by the Assigned Judge and filed, must be attached to the fee application submitted to the Finance Department.

It is permissible for the Assigned Judge to appoint the same attorney to an on-going case on which the attorney has received compensation as privately retained counsel, only if that attorney can demonstrate that the defendant’s financial status has changed and that the defendant is in fact indigent. Prior to appointment, the attorney must disclose to the appointing Judge all compensation for fees and expenses that was received from the defendant. The attorney will not be reimbursed for any fees and expenses prior to the date the defendant is deemed indigent. The attorney is required to submit a “Prior Services and Compensation Affidavit” to the appointing Judge and must attach this affidavit to the fee application submitted to the Court’s Finance Department.

Local Rule No. 77.03 / Indigency Unaffected by Status of Family Members.

No applicant shall be denied assigned counsel based on the financial status of a member of the indigent defendant's household when that household member has no legal duty to support the indigent defendant or when that household member refuses to pay for the indigent defendant's legal representation.

Local Rule No. 77.04 / Appointments at or after Arraignment.

At arraignment, the Public Defender shall prepare all requests for appointment of counsel, leaving the name of counsel blank. The arraignment clerk shall note on the master arraignment list those defendants who need counsel appointed. The Duty Judge or Magistrate will generally appoint the Public Defender or private counsel for indigent defendants at a ratio of three (3) Public Defender appointments to one (1) private counsel attorney appointment from a Master Appointment List. However, the Duty Judge or Magistrate has the discretion to assign either the Public Defender or private counsel if the Duty Judge or Magistrate determines that the circumstances of the case warrant an alternative appointment. The Duty Judge or Magistrate shall not appoint an attorney to whom he/she, or the Judge to whom the Magistrate is assigned, is related (applies to family members as defined in Judicial Canon 7a).

Local Rule No. 77.05 / Notice of Appointment.

The Clerk of Courts shall notify the Public Defender or private counsel of an appointment.

Local Rule No. 77.06 / Required Filings of Appointment.

A copy of the appointment entry shall be filed with the Criminal Division of the Clerk and with the Assignment Commissioner, and a copy of this appointment entry must be attached to the fee application submitted to the Finance Department of the Court.

Local Rule No. 77.07 / Payments to Assigned Counsel.

Assigned counsel seeking to be paid for fees and expenses from the Court shall correctly complete, within the designated time frame as defined in Local Rule 77.19:

- All forms prescribed in Section 1 (E) and (F)1, and will maintain an "Attorney Time Log" as prescribed in Section 1 (F)2 of the Ohio Public Defender's STANDARDS AND GUIDELINES FOR APPOINTED COUNSEL REIMBURSEMENT, current edition;
- The original "Affidavit of Indigency" entry; and,
- All applicable entries, signed by the Assigned Judge, as required by Local Rule 77.

Local Rule No. 77.08 / Filing Requests for Reimbursement of Fees and Expenses.

Assigned counsel shall file a request for fee and/or expense reimbursement ("Motion, Entry, and Certification For Appointed Counsel Fees" and all other applicable forms as prescribed in Local Rule 77.18) with the Finance Department of the Court within (30) days of the final disposition of the case.

It is the responsibility of the assigned attorney to correctly submit completed fee applications with all associated forms and/or entries within (30) days after the case disposition date, even if the Court returns this application to the attorney because the application was completed inaccurately or was missing information. All fee applications submitted more than (30) days after the case disposition date will be reduced by 50%. A request for reinstatement of a portion of, or the entire fee amount must be submitted in writing, with justification, and be signed by the Assigned Judge, or if she or he is not available the Administrative Judge.

The case disposition date is defined as:

- The date the defendant is found not guilty; or,
- The date the defendant is sentenced; or,
- The date when a capias is issued because defendant fails to appear; or,
- The date the Court declares a mistrial; or,
- The date the Court accepts a request to dismiss charges.

The assigned attorney may not bill for in or out of court hours occurring after the case disposition date unless the attorney requests approval of the additional hours in writing, to include detailed justification of the in and/or out of court hours, for review by the Assigned Judge. However, under no circumstances can in or out of court hours be billed related to post conviction proceedings. All in and out of court hours for post conviction hearings must be submitted on a separate fee application form that designates the post conviction hearing(s).

Local Rule No. 77.09 / Signature of the Indigent Defendant.

Appointed counsel shall obtain the signature of the indigent defendant on the “Financial Disclosure/Affidavit of Indigency” form required by the State Public Defender (Form: OPD-206R) as prescribed in Section 1(E)1 of the Ohio Public Defender’s STANDARDS AND GUIDELINES FOR APPOINTED COUNSEL REIMBURSEMENT, current edition. If the indigent defendant is not available to sign the form, assigned counsel shall obtain the signature from the Assigned Judge, certifying the indigency of the defendant.

If Appointed Counsel is providing representation for services after the original disposition date, the attorney shall submit a new, updated “Financial Disclosure/Affidavit of Indigency” form.

Local Rule No. 77.10 / Representing an Indigent Defendant on Multiple Charges, Counts, and/or Cases; and Representation of Co-Defendants.

- A) An assigned counsel attorney is entitled to one fee for a single client with charges or counts arising from a single incident or a series of related incidents if those charges or counts are dealt with simultaneously or are disposed of at the same time.
- B) In cases involving multiple charges where only one fee is payable, the fee maximum shall be based on the highest degree of offense charged.
- C) An assigned counsel attorney representing multiple clients who are charged with conduct arising from a single incident shall submit only one “Motion, Entry, and Certification for Appointed Counsel Fees” (OPD Forms: OPD-1026R and OPD 1027R, when applicable) form for the case. The attorney shall list all clients and their respective case numbers on one “Motion, Entry, and Certification for Appointed Counsel Fees” (OPD Forms: OPD-1026R and OPD 1027R, when applicable) form.

- D) Time billed on one “Motion, Entry, and Certification for Appointed Counsel Fees” (OPD Forms: OPD-1026R and OPD 1027R, when applicable) form cannot be billed on any other form for which payment or reimbursement is being requested.
- E) When one client is charged with multiple offenses, irrespective of whether those charges or counts arise from the same incident, that are: assigned at the same time; and/or, dealt with simultaneously; and/or, disposed of at the same time, the assigned counsel attorney shall submit only one “Motion, Entry, and Certification for Appointed Counsel Fees” (OPD Forms: OPD-1026R and OPD 1027R, when applicable) form. The maximum fee shall be based upon the highest degree of offense charged.

Local Rule No. 77.11 / Expenses.

Assigned counsel seeking reimbursement for expenses must provide receipts for all expenses in excess of \$1.00. The Assigned Judge’s approval is not required for expenses up to \$100; however, counsel may not fractionalize expenses to circumvent the \$100 cap. Prior approval by the Assigned Judge is required before incurring expenses between \$100 and \$2,500, and expenses in excess of \$2,500 require prior approval by the Assigned Judge and the Administrative Judge. All entries approving expenses shall include a statement of aggregate expenses approved for this case to date (refer to example affidavit “Affidavit Authorizing Expenses” provided by the Court).

When assigned counsel is requesting expenses over \$2,500, counsel must submit to the Assigned Judge:

- 1)
 - Detailed cost information (e.g., hourly rate, deliverables);
 - Description of the services to be rendered; and,
 - Justification for these services.
- 2)
 - Justification why additional expenses are required if the Assigned Judge previously approved similar expenses. Failure to submit this information will result in the denial of the request for the reimbursement of expenses.

Local Rule No. 77.12 / Reimbursable Services.

With prior approval of the Assigned Judge, services reasonably necessary for the proper representation of an indigent defendant charged with a felony are reimbursable. Any request for reimbursement must comply with the Ohio Public Defender guidelines as prescribed in Section 1,(P) of the Ohio Public Defender’s STANDARDS AND GUIDELINES FOR APPOINTED COUNSEL REIMBURSEMENT, current edition.

Services include but are not limited to:

- (1) Investigators
- (2) Interpreters
- (3) Experts
- (4) Photo copies
- (5) Psychological Exams
- (6) Polygraph
- (7) Transcripts

(8) Other services, reasonably related and necessary to the defense of an indigent defendant.

Local Rule No. 77.13 / Non-Reimbursable Expenses.

Assigned counsel will not be reimbursed for travel time, mileage or parking. In addition, no allowance will be approved for fixed office overhead, daily copies of transcripts, or depositions.

Local Rule No. 77.14 / Factors for Consideration for Approval of Expenses.

Factors for consideration of the approval of the reimbursement of expenses by the Assigned Judge and Administrative Judge:

- (1) the necessity of the service to the defendant's proper representation at trial; and
- (2) the availability of a less expensive alternative which would achieve the same objective as the services sought.

Local Rule No. 77.15 / Hourly Rate & Maximum Allowable Fees.

Unless otherwise provided by law or an order of the Court, payment for assigned counsel shall be paid as follows:

\$60 per hour for time spent in Court, and
\$50 per hour for time spent out of Court,

up to the following maximum amounts for the following offense classifications and/or other proceedings:

Capital Murder*:

For one attorney:	Maximum fees of:	\$25,000
For more than one attorney:	Maximum fees of:	\$50,000

*applies to all capital cases including juvenile bindovers

Aggravated Murder / Murder:

Maximum fees of:	\$5,000
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All Other Felonies:

Felonies 1, 2 & 3:	Maximum fees of:	\$3,000
Felonies 4 & 5:	Maximum fees of:	\$2,500

Post Conviction Proceedings (with or without evidentiary hearing):

Maximum fees of:	\$500
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Revocation Hearings:

Maximum fees of:	\$500
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Habeas Corpus and All Other Proceedings Not Elsewhere Classified:

Maximum fees of: \$300

Local Rule No. 77.16 / Complex Case Defined.

A complex case is defined as:

- a) a case involving multiple counts dealing with multiple separate incidents which will require an extraordinary amount of trial preparation time, of which is documented on the Ohio Public Defender Form: "Attorney Time Log, OPD-1028" as referenced in Section 1,(F) of the Ohio Public Defender's STANDARDS AND GUIDELINES FOR APPOINTED COUNSEL REIMBURSEMENT, current edition, or;
- b) a trial which continues beyond the following periods:

	<u>Trial Length</u>
(1) Aggravated Murder (with death specifications):	20 days
(2) Aggravated Murder (without death specifications):	13 days
(3) Murder:	8 days
(4) Any other felony:	5 days

Local Rule No. 77.17 / Extraordinary Fees.

Fees in excess of those specified in 77.15 are classified as extraordinary fees and are allowable only for complex cases as defined in 77.16, and only when prior approval of the Assigned Judge is obtained.

The Assigned Judge may authorize extraordinary fees in one of the following two manners:

- Authorization of extraordinary fees in an amount not to exceed a total fee authorization of two times the fee set forth in 77.15.
- Authorize the fee set forth in 77.15 plus additional fees in an amount not to exceed an additional fee equal to the number of hours of trial time in excess of that provided in 77.16 at the rate of \$60 per hour.

Example:

Case: Aggravated Murder case
Maximum fee amount = \$5,000

Option (1):

Assigned Judge can authorize an additional maximum fee amount of \$5,000,

Aggravated murder, maximum allowable base fees: \$5,000

Additional fees: \$5,000

Total Authorized Fee, two times the fee set forth in 77.15: \$10,000

(or)

Option (2):

Assigned Judge can authorize amount equal to the number of hours of trial (In-Court hours) in excess of average trial time referenced in 77.16.

Aggravated murder, average trial time per 77.16:	13 days
Actual trial time, 4 weeks:	20 days
Maximum additional fee amount authorized:	7 days
7 days (x) 6 hours per day (est.*) (x) \$60/hr.:	\$2,520

*should be actual time spent in court each day

Total Authorized Fee, equal to the number of hours of trial time in excess of that provided in 77.16 at the rate of \$60 per hour:

\$7,520

\$5,000 – base fees

\$2,520 – extraordinary fees

Local Rule No. 77.18 / Forms Required for Request for Reimbursement of Fees & Expenses.

Assigned counsel seeking reimbursement shall complete all forms required by the Ohio Public Defender’s Office and/or supplemental information or forms requested by the Court.

The forms required by the Ohio Public Defender’s Office include the following, as prescribed in Section 1,(E) of the Ohio Public Defender’s STANDARDS AND GUIDELINES FOR APPOINTED COUNSEL REIMBURSEMENT, current edition:

<u>Form No.</u>	<u>Form Name / Description</u>
OPD 1026R (& 1027R, if applicable):	Motion, Entry, and Certification For Appointed Counsel Fees
OPD 206R:	Financial Disclosure / Affidavit of Indigency

Additional forms required by the Ohio Public Defender’s Office and/or the Court include, but are not limited to, the following:

<u>Form Description</u>	<u>When Applicable</u>
Affidavit of Indigency / Clerk of Courts..... (Original affidavit from arraignment that declares defendant indigent and appoints counsel to the case.)	Submitted with all fee applications.
Entry*.....	Requesting payment of Extraordinary Fees.
Entry*.....	Requesting reimbursement of expenses in an amount greater than \$100.
Entry*.....	Appointing new counsel during a case.
Entry*.....	Authorizing withdraw of current counsel.
Copies of Receipts	Requesting payment of expenses greater than \$1.00.
Attorney Time Log, OPD 1028	Log is prepared for each case, but only submitted upon request of the Assigned Judge, or Administrative Judge. <u>Log shall also include the following:</u> The attorney shall certify that the number of hours expended, the work performed, the name of the attorney performing the work (if supervised attorneys are utilized) and actual expenses

incurred. Further, the certification shall include a statement that no compensation has been received or promised from any other source for the same case; and, that hours billed for this case have not been, nor will be, billed for payment on any other related, or non-related, cases.

Supreme Court of Ohio –
Appointment of Trial Counsel

In Capital Cases Counsel appointed to a capital case.

* All entries must be signed by the Assigned Judge, or if he or she is unavailable the Administrative Judge, and must be filed with the Clerk of Courts – Criminal Division.