

**RULES OF PRACTICE
OF THE
FRANKLIN COUNTY
COURT OF COMMON PLEAS
GENERAL DIVISION**

RULE 77 – INDIGENT DEFENDANTS

77.01 Counsel for Indigent Defendants.

- A. Unless otherwise represented, all defendants requesting legal representation will be screened for eligibility by the public defender and represented at arraignment for purposes of bond. Defendants may also be referred for eligibility screening at any other point in their case, including possible appeal.
- B. The duty judge or magistrate shall make appointment of either the public defender, or of 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 lawyers on the Master Appointment List unless the case is one that requires the attorney to have specialized experience.

77.02 Indigency Status; Appointment of Investigators and Experts.

- A. Before private counsel or the public defender is appointed, each alleged indigent defendant must complete under oath an affidavit of indigency setting forth the facts in support.
- B. Assigned counsel will be appointed for defendants who become indigent during the course of their case on the active docket. Payment to assigned counsel under these circumstances will be limited to those approved fees and litigation 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 Court’s Finance Department.
- C. 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, but 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 assigned judge all compensation for fees and expenses received from the defendant. The attorney retained will not be reimbursed for any fees or expenses incurred prior to the date

the defendant is documented as indigent. The attorney is required to submit a “Prior Services and Compensation Affidavit” to the assigned judge and must attach this affidavit to the fee application submitted to the Court’s Finance Department.

D. Privately retained counsel may seek indigency status as to litigation expenses for a defendant on the active docket if it can be factually demonstrated that the defendant has become indigent and cannot reasonably afford necessary investigation or other out-of-pocket expenses to fairly defend their case. An affidavit of indigency must be submitted to and approved by the assigned judge before any such litigation expenses are incurred.

E. Investigators and Experts

1. Whenever private counsel seek to retain an investigator using public funds (either for defendants with privately retained counsel who have become indigent, or for cases in which indigent status justified appointment of private counsel by the court from the outset of the case), a proposed budget and good faith estimate of investigation work reasonably deemed necessary must be prepared, and discussed *in camera* with the assigned judge. No investigative work or expert fees may be incurred without prior approval by the court; retroactive reimbursement will not be permitted. Counsel shall also comply with Crim.R. 42 in seeking to retain experts in capital or post-conviction cases covered by that Rule.
2. Only attorneys of record may submit proposed Entries for approval to retain investigators or experts and setting a tentative budget for such fees; private investigators and experts may not submit such Entries utilizing the name and bar number of an attorney.
3. Counsel are responsible for monitoring work, and the accuracy of billings submitted by or for investigators and experts. Counsel must review fee statements before they are submitted to the court for payment and certify in writing (using the Form attached as #1AA) that to the best of their knowledge all work shown on the billing was actually done, necessary to the case, and reasonable in amount of time claimed.
4. To facilitate resolving any inquiries that may arise over the reasonableness and necessity for work billed by investigators and experts, such persons must keep written, contemporaneous time records, in increments of no less than ¼ hour, with a reasonably detailed description of work done, persons interviewed, and the like.

Block billing or summary statements (i.e., “worked on file 2.5 hours”) will not be compensated by the court. In addition to contemporaneous time records, investigators and experts are strongly urged to prepare file memoranda summarizing work done, and the dates it was performed, to further substantiate fee submissions if questions arise.

5. Ordinarily, since billings are not submitted until a matter is concluded, memoranda or contemporaneous time records will not disclose work product, or otherwise interfere with proper representation of a defendant. If necessary for interim billing while a case remains open, counsel shall submit redacted records, or tender an order to the assigned judge *in camera* that the billing materials be kept under seal at the court until completion of the case.

77.03 Appropriate Work by Investigators.

- A. “Counsel Only” discovery material received from a prosecutor may not be shared with anyone, except as permitted in Crim.R. 16(C) or with explicit prior approval by the assigned judge or counsel for the state. Defense counsel shall assure that agents or employees receiving such material understand legal restrictions on use.
- B. Public funds may not be used to compensate investigators or experts for work ordinarily expected to be performed by the office staff of a private attorney. For instance, downloading discovery from a prosecutor’s portal, or legal research on a motion are not proper “investigator” work and may not be billed by the investigator.

77.04 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.

77.05 Appointments at or after Arraignment.

At arraignment, all defendants requesting counsel will be screened for eligibility, or referred to the public defender for screening. 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 the Master Appointment List. However, the duty judge or magistrate has discretion to assign either the public defender or private counsel if they determine that the circumstances of a 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).

77.06 Notice of Appointment.

The Clerk of Courts shall notify the public defender or private counsel of an appointment.

77.07 Required Filings of Appointment.

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

77.08 Payments to Assigned Counsel.

- A. Assigned counsel seeking fees and expenses from the Court shall correctly complete and submit the following documents, within the time frame defined in Section 77.09:
1. All forms and an "Attorney Time Log" as prescribed in Section 1 of the Ohio Public Defender's *Standards and Guidelines for Appointed Counsel Reimbursement*, current edition;
 2. The original "Affidavit of Indigency"; and,
 3. All applicable entries, signed by the assigned judge, as required by Local Rule 77.

77.09 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) with the Court's Finance Department within thirty (30) days of the final disposition of the case.

It is the responsibility of the assigned counsel to submit complete and accurate fee applications with all associated forms and/or entries within thirty (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 thirty (30) days after the case disposition date will be reduced by 50%. A request for reinstatement of a

portion, or the entire fee amount, must be submitted in writing, with justification, and be approved by the assigned judge, or if they are not available the administrative judge.

The case disposition date is defined as:

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

The assigned counsel may not bill for in or out of court hours occurring after case disposition unless the attorney requests approval of the additional hours in writing, to include detailed justification of such work, for prior review by the assigned judge. Under no circumstances can hours be billed for post-conviction proceedings. All work on post-trial hearings must be submitted on a separate fee application form that designates the post-trial hearing(s).

77.10 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 of the assigned judge, certifying the indigency of the defendant.

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

77.11 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 representing multiple clients 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 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.

77.12 Expenses.

- A. Assigned counsel seeking reimbursement for expenses must provide receipts for all individual expenses in excess of \$1.00. The assigned judge’s prior approval is not required for expenses totaling less than \$100; however, counsel may not fractionalize expenses to circumvent the \$100 cap. Other than capital cases or post-conviction proceedings governed by Crim.R. 42, prior approval by the assigned judge is required before incurring total expenses between \$100 and \$2,500, and total expenses in excess of \$2,500 require prior approval of both the assigned judge and the administrative judge. All entries approving expenses shall be submitted *ex parte* and *in camera* and shall include a statement of aggregate expenses previously approved for the case, to date.
- B. When assigned counsel seeks reimbursement for total expenses over \$2,500, counsel must submit to the assigned judge:
 - 1. Detailed cost information (e.g., hourly rate and work produced); and,
 - 2. Justification for these services.
 - i. If the assigned judge previously approved similar expenses, justification why

additional expenses are required.

Failure to submit this information may result in the denial of some or all reimbursement of expenses.

77.13 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 exams
7. Transcripts of court hearings

77.14 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.

77.15 Factors for Consideration for Approval of Expenses.

Factors considered as to the reimbursement of expenses by the assigned judge and administrative judge include:

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.

77.16 Hourly Rate & Maximum Allowable Fees.

Unless otherwise provided by law or an order of the Court, payment for assigned counsel shall be at the hourly rates set forth for capital cases or post-conviction proceedings in such cases by the Capital Case Attorney Fee Council, pursuant to R.C. 120.33(D); and by the Franklin County Board

of Commissioners in all other cases, pursuant to R.C. 120.33(A)(3). Current rates for non-capital cases covered by R.C. 120.33(A)(3) are:

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

Payment will be made up to the following maximum amounts for the following offense classifications and/or other proceedings:

<u>Offense Classification</u>	<u>Maximum Fees</u>	
Aggravated Murder/Murder	\$5,000	
All Other Felonies		
Felonies 1, 2, and 3	\$3,000	
Felonies 4 and 5	\$2,500	
Post-Conviction Proceedings (Other than capital cases)	\$500	With or without evidentiary hearing
Revocation Hearings	\$500	

77.17 Complex Case Defined.

A. A complex case is defined as:

1. A case involving multiple counts dealing with multiple separate incidents which will require an extraordinary amount of trial preparation time, 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,

2. A trial which continues beyond the following periods:	<u>Trial Length</u>
i. Aggravated Murder (without death specifications)	13 days
ii. Murder	8 days
iii. Any other felony	5 days

77.18 Extraordinary Fees.

A. Fees in excess of those specified in 77.16 are classified as extraordinary fees and are allowable only for complex cases as defined in 77.17, and only when prior approval of the assigned judge is obtained.

1. Authorization of extraordinary fees in an amount not to exceed a total fee authorization

of two times the fee set forth in 77.16.

2. Authorize the fee set forth in 77.16 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 then-current hourly rate for trial time.

Example

Case: Aggravated Murder case Maximum fee amount - \$5,000
(without death specifications)

Option 1

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

Aggravated murder, maximum allowable base fees:	\$ 5,000
Additional fees	<u>\$ 5,000</u>
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 77.17.

Aggravated murder, average trial time per 77.17	13 days
Actual trial time, 4 weeks	20 days
Maximum additional fee amount authorized	7 days
7 days x 6 hours* per day x \$60/hr	\$2,520

*This is estimated, 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 77.17 at the rate of \$60/hr	<u>\$7,520</u>
	\$5,000 – base fees
	\$2,520 – extraordinary fees

77.19 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> OPD 1026R (& 1027R, if applicable):	<u>Form Name / Description</u> 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.
Certification for Expert Expenses	All fee applications for expert or investigator fees
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

* 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.

Amendment Dates: 8-20-19 (emergency adoption, final approval 1-21-20)



Franklin County Court of Common Pleas - General Division

Certification of Expert Expenses

I am appointed or retained counsel for one or more cases before the Common Pleas Court - General Division. I hereby certify that:

- The services listed on the attached invoices were rendered;
- All expenses listed are accurately depicted (i.e., hours and rate);
- The Order/Entry approved by the assigned Judge authorizing these expenses is attached; and
- The services listed were rendered in association with case number(s):

Printed Name

Signature

Date