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National Center for State Courts

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NCJRS

MEMORANDUM

By: Tracy Savage
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MAY 22 1980

Re: Court-Appointed Counsel Fees

ACQUISITIONS

Ref. No. RIS 79.170

Since the U. S. Supreme Court's mandate that defendants have a constitutional right to counsel in all cases involving deprivation of liberty, the several states have ensured representation for indigents in a number of ways. The most pervasive practice is the utilization of publicly financed defender procedures. However, until recently, private attorney appointments were the primary and often single means of making counsel available to indigents. Moreover, appointed counsel, because of cost-efficiency or lack of governmental organization, still prevails to some extent in almost every state.

Attempting to remedy an absence of information concerning compensation for court-appointed attorneys, the National Center for State Courts' Research and Information Services compiled results from a cursory, but at least a 50-state telephone survey to state bar association leaders and/or state court administrators.

Each respondent was asked essentially the following questions:

- a) Do you have a fee schedule or fixed guidelines for compensating court-appointed attorneys?
- b) Do the rates specify a maximum per case?
- c) Do the rates vary within the state?
- d) Does the state use a public defender system?

The great majority of parties contacted were cooperative and generally enlightening. In some instances, respondents cited statutory provisions that clearly delineate the nature and compensation rates of an appointed counsel system. In other instances, neither the state bar office nor the state court administrator's office was able to provide definitive information about court-appointed counsel. In these cases, inquiries were referred to

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others who were less knowledgeable of statewide procedures for indigent defense, or who were only familiar with procedures of specific courts within a jurisdiction. Whenever possible, telephone information was verified or supplemented with published sources, such as the National Legal Aid and Defender Association's Guidelines for Legal Defense Systems in the United States--Report of the National Study Commission on Defense Services (Final Report, 1976).

The information obtained demonstrates that practices can vary widely from state to state, from county to county, and, in some cases, from court to court. Procedures and fees lack uniformity because private counsel is often a supplement to an extensively employed public defender system. For example, some rural areas have concrete and comprehensive fee schedules because the appointment of private counsel plays a more significant role than the public defender system that is usually common to more densely populated areas. However, some courts in rural areas, for the same reason, provide no fee guidelines, leaving the determination of compensation to individual judges or local custom. Moreover, several aspects of the appointed attorney process are in a state of flux in many areas. Judicial systems at all levels are presently evaluating compensation policies, general defense service funding, the determination of indigency and the nature and extent of attorney participation.

Thus, this survey provides a generalized overview of compensation for appointed counsel. More detailed information can be obtained only through an intensive investigation of an area offering less than definitive data.

The foregoing memorandum was prepared by the Research and Information Service of the National Center for State Courts. We would appreciate acknowledgment of our contribution if this material is to appear in any publication by your organization. We solicit your comments as to the usefulness and impact of this information on the criminal or civil justice system.

ALABAMA

<u>Rate</u>	<u>Maximum</u>
\$10/hr. out-of-court	Trial \$ 500
20/hr. in-court	Trial, appeal & post-conviction hearings 1000
	Post-Conviction proceedings 300

Each court-appointed attorney submits a claim for reimbursement to the appropriate court. The Code of Alabama enumerates rates and maximums per case, and specifies that attorneys may receive compensation for reasonable expenses in addition to the hourly rates for all proceedings except post-conviction.

ALASKA

<u>Rate</u>	<u>Maximum</u>	
\$40/hr.	Trial	No Trial
	felony:	\$2500 \$1250
	misdemeanor:	500 250
	appeal:	1500

Fees are paid for the attorney's time and standard trial preparation. "Extraordinary" expenses such as investigation, travel, expert witnesses, etc. are treated separately upon the request of the attorney. These rates were established on July 1, 1979 to accommodate conflicts of interest with the public defender system which handles all criminal defense in Alaska. (Public Defender Act of 1968).

ARIZONA

<u>Rate</u>	<u>Maximum</u>
\$ 20/hr.-no trial	No maximum
150/day-trial	

Fees apply to all kinds of cases arising from all courts, including the Justices of the Peace. Nonetheless, there is marked variation among the different counties and municipalities; some appoint by contract bid, others use a public defender system. The state public defender provides most indigent representation, except in city traffic courts where local attorneys are contracted on bid. The average salary for public defender counsel is higher than that offered by comparable systems in most other states.

ARKANSAS

<u>Rate</u>	<u>Maximum</u>
No fee schedule	\$300/case (\$50/case minimum)

Attorneys for those lower court cases carried to the appellate level commonly avoid the \$300 maximum by requesting from the court "permission to file without a fee", which allows the lawyer reimbursement beyond the stated maximum. Municipal courts generally avoid appointment of counsel. Arkansas' public defender system, which presently functions in two of the larger metropolitan areas, is rapidly growing and eventually is expected to replace the private appointment procedure across the state.

CALIFORNIA

<u>Rate</u>	<u>Maximum</u>
No fee schedule	No maximum

The California Penal Code specifies that each court determines appropriate compensation for appointed counsel, and the general funds of the county provide compensation. The judge considers customary fees received by attorneys in the community for similar services, time invested in the case, the difficulty of the defense, the uncertainty of the law upon which the decision in the case depends, and the professional character and ability of the appointed attorney when determining fees.

COLORADO

<u>Rate</u>	<u>Maximum</u>	
\$25/hr. out-of-court		
35/hr. in-court	felony: Class 1	Trial No Trial \$3000 \$1500
25/hr. appellate counsel	Class 2	1500 750
	Class 3-5	1000 500
	misdemeanor	200 100
	juvenile	1000 500
	guardian ad litem	200 100

Fees are applied by Supreme Court Order throughout the state of Colorado, which also supports a state public defender system.

CONNECTICUT

<u>Rate</u>	<u>Maximum</u>
\$75/day	No maximum

The \$75 per day rate generally applies to most in-and out-of-court services. Public defender offices have been established in the eleven judicial districts of Connecticut and provide defense for the majority of indigents. However, attorneys are appointed in unusual or capital cases. Juvenile or probate defendants can also be represented by court-appointed counsel.

DELAWARE

<u>Rate</u>	<u>Maximum</u>
\$25/hr. out-of-court	\$500
35/hr. in-court	

The above fees for family court generally apply to other courts as well. However, most civil cases employ community legal aid programs, appointing attorneys from the Family Law Committee of the Delaware Bar only in conflict of interest situations. All criminal cases are handled by a statewide public defender system.

FLORIDA

<u>Rate</u>	<u>Maximum</u>
Not applicable	No maximum

Florida's statewide public defender service pays generally high salaries, in comparison to other state defenders. In conflict of interest cases, attorneys are selected from a defender office located elsewhere in the state. In exceptional situations, appointment fees are determined on a per-case basis by individual judges.

GEORGIA

<u>Rate</u>	<u>Maximum</u>	
\$20/hr. out-of-court	felony	\$1000
30/hr. in-court	misdemeanor	25

On March 9, 1979, the Georgia legislature approved the Georgia Indigent Defense Act. The Act establishes a Georgia Indigent Defense Council as a separate agency within the judicial branch to promulgate guidelines for indigent defense programs. Among other things, these guidelines will set a rate of compensation and schedule of allowable expenses to be paid for indigent defense services. Those jurisdictions with existing local programs that elect not to participate under this act are governed by the provisions of the Georgia Criminal Justice Act. This Act provides for indigent defense services through court-appointed attorneys, legal aid agencies or public defender offices. The county governing authority recommends attorney fee limits for the several courts in the county. The trial court determines the amount of compensation for assigned counsel within these limits; however, in extraordinary circumstances, the court may approve payment of additional compensation in excess of the limits.

HAWAII

<u>Rate</u>	<u>Maximum</u>
No fee schedule	felony (sentence=20 yrs.+) \$1500
	(minimum 250)
	(sentence<20 yrs.) 750
	(minimum 50)
	other cases \$ 300
	(minimum 50)
	appeal \$1500
	(minimum 250)

Additional reimbursement above the maximum for extra litigation expenses (expert witnesses, travel, etc.) may be requested by attorneys. Also, compensation is increased in the instance of a collateral attack or a mistrial. Hawaii employs an extensive dual assigned counsel/public defender system which administers the above maximums for appointed attorneys.

IDAHO

<u>Rate</u>	<u>Maximum</u>
No fee schedule	No maximum

Individual judges determine appropriate compensation for court-appointed attorneys. Average customary fees vary among Idaho's seven judicial districts. The state also contracts with a public defender system for all types of cases.

ILLINOIS

<u>Rate</u>	<u>Maximum</u>
\$20/hr. out-of-court	felony \$1000
30/hr. in-court	misdeameanor 150

"Extraordinary circumstances" entitle the attorney to reimbursement in excess of the maximum, if the amount is approved by the chief judge of the circuit. Separate statutory provisions authorize additional compensation for expert witnesses and general trial expenses in heavily populated areas.

The office of Public Defender is used in all counties with a population of over 35,000; counties may combine their populations, in order to establish an office. The Public Defender therefore serves over 80% of Illinois' counties, except in conflict cases. The enabling statute also provides for a separate State Appellate Defender Office.

INDIANA

<u>Rate</u>	<u>Maximum</u>
\$20-25/hr. out-of-court	maximum \$ 500
30-35/hr. in court	appeal 1500

The court ordinarily refrains from imposing the \$500 maximum. There is marked variation in fees from county to county, and no statewide guidelines have been established for the lower courts. Indiana's Public Defender Office handles all "pauper counsel" and the above figures are used by the Supreme Court only, when the county office cannot provide counsel, or when there is a conflict of interest.

IOWA

No information is available

KANSAS

<u>Rate</u>	<u>Maximum</u>	Trial	No trial
\$ 20/hr. out-of-court	felony (sentence=		
30/hr. in-court	25 yrs. +)	\$9000	
150/case appellate	other criminal cases	1000	\$500
counsel	civil cases	500	

At the court's discretion, the maximums for felonies that go to trial and the fee for appellate counsel may be avoided upon request. These figures are applied consistently in all Kansas counties. Three public defender offices supplement the private appointed counsel system, and regularly turn to appointed attorneys, using the appropriate fee schedule, whenever a conflict of interest arises.

KENTUCKY

<u>Rate</u>	<u>Maximum</u>
No fee schedule	No maximum

Kentucky determines compensation for private appointed counsel on a case-by-case basis. The attorney requests a fee by filling out a form itemizing time spent and trial preparation activities. The court evaluates the request, and if not excessive, orders payment. Indigent defendants are commonly required to contribute to the compensation with whatever amount can be afforded.

LOUISIANA

Rate

Maximum

No fee schedule

No maximum

Louisiana has no provisions, fee schedules, or guidelines for court appointed attorneys. Each lawyer submits request forms and vouchers, and payment is determined by individual judges on a case-by-case basis.

MAINE

Rate

Maximum

No fee schedule
(\$35/hr. average)

No maximum

Maine requests each appointed attorney to file vouchers for reimbursement of professional services. This procedure is followed with all types of cases in all counties, and for both in-court and out-of-court time. Although each fee is determined by individual judges, the average amount paid is \$35 per hour. In the near future, the Maine Supreme Court is expected to institute at least one county project to study all aspects of court-appointed counsel procedures.

MARYLAND

The majority of indigent criminal defendants are represented by statewide, state-funded public defender services. When necessary, however, the public defender may assign cases to private counsel who work for a fee. The amount of the fee depends on the nature of the proceeding; a complete fee schedule was unavailable. Additionally, "Judicare" a federally funded program provides indigent defense in civil matters in areas where the Legal Aid Bureau does not have branch offices.

MASSACHUSETTS

<u>Rate</u>	<u>Maximum</u>
Superior Court:	No maximum
\$25/hr. out-of-court	
35/hr. in-court	
District Court: Jury	
\$25/hr. out-of-court	
35/hr. in-court	
No jury	
\$10/hr. out-of-court	
15/hr. in-court	

Juvenile Court in Massachusetts pays at a slightly lower rate than does the Superior Court. The rates also vary somewhat among the different counties. Pursuant to a court reorganization act in 1978, the Supreme Judicial Court is reviewing compensation for indigents' counsel.

MINNESOTA

<u>Rate</u>	<u>Maximum</u>
No fee schedule	No maximum

Judges determine compensation rates for court appointed attorneys on a per case basis. The state has not established guidelines for any type of case at any stage of the proceeding. The state's public defender is responsible for indigents' appeals and post-conviction proceedings. Judges can appoint county and district level public defenders.

MISSISSIPPI

<u>Rate</u>	<u>Maximum</u>
No fee schedule	felony \$500
	misdemeanor 100

No fixed hourly rates for court-appointed attorneys operate within the state. The maximum per case does not include out-of-pocket expenses incurred by appointed attorneys. Recent information suggests no formalized public defender systems operate at state or county levels.

MISSOURI

<u>Rate</u>	<u>Maximum</u>
\$15/hr. out-of-court 20/hr. in-court	No maximum

The Public Defender Law of Missouri enables the court to appoint attorneys for indigents' cases, and to provide compensation for counsel. A depleted annual state allotment for reimbursement can prevent attorneys from receiving compensation until the beginning of the next fiscal year.

MONTANA

<u>Rate</u>	<u>Maximum</u>
\$475/month, based on 32 hrs. of service 15/hr. after 32 hours	No maximum

Appointed attorneys in some judicial districts are paid \$475 plus expenses each month, for the first 32 hours of service. In other districts, the judge determines fees on an individual case basis. Each county may establish and fund its own public defender office.

NEBRASKA

<u>Rate</u>	<u>Maximum</u>
No fee schedule	No maximum

There are no fixed patterns of compensation for court-appointed attorneys in the state and no statutory provisions for maximum reimbursement per case. An attorney submits a claim for payment to the presiding judge. Public defender services are available at the county and district levels. The state funds district defenders; county defenders are funded locally. Approximately 80% of criminal cases are heard within county courts that utilize county defenders.

NEVADA

Rate

Maximum

No fee schedule

No maximum

The state legislature allocates \$20,000 annually for appointed counsel compensation. County defenders and state defenders for counties without formalized defender systems are financed by counties.

NEW HAMPSHIRE

Rate

Maximum

\$ 25/hr. out-of-court	felony	\$1500
35/hr. in-court	misdemeanor	200
(200/day maximum)	juvenile case	500

An opinion in the case of Smith v. State, 118 New Hampshire ____, 394 A.2d 834 (1978) issued rules concerning maximum compensation for appointed counsel. Attorneys must submit invoices itemizing the amount of time invested in each case. Overhead expenses may not be included. Maximum fees can be exceeded under exceptional circumstances but must be approved by the trial judge.

NEW JERSEY

Rate

Maximum

\$ 15/hr. out-of-court	No maximum
for first 35 hrs.	
10/hr. out-of-court for	
hrs. exceeding 35	
135/day or \$22.50/hr. in-	
court	

For non-indictable cases heard in municipal court, the judge may appoint counsel who is not reimbursed for services. The Public Defender can employ private attorneys in multiple defendant cases or if extraordinary skills or experience justify utilization of "pool attorneys". The Public Defender's funds provide compensation for private attorneys, according to the above fee schedule. Most indigent parties are represented by the Public Defender System that functions throughout the state.

NEW MEXICO

Rate

Maximum

Not applicable

Not applicable

The legislature appropriates funds for public defender services throughout the state. Courts have not appointed counsel for indigent defense within the past three years.

NEW YORK

Rate

Maximum

Paid by local court:
\$15/hr. out-of-court
25/hr. in-court
Paid by state court:
\$10/hr. out-of-court
15/hr. in-court

felony - local court \$750
juvenile and other
state cases 500

The two-tiered compensation schedule set by statute for court-appointed attorneys differentiates state from local court services. The majority of cases utilizing appointed counsel are heard in local courts. A county based public defender system operates throughout the state.

NORTH CAROLINA

Rate

Maximum

No fee schedule

felony (sentence=<10 yrs.) \$ 500
(sentence=10 yrs.+) 1000
misdemeanor (sentence=<6 mos.) 100
(sentence=6 mos.+) 150
juvenile hearings 50

By action of the Conference of Superior Court Judges and the Conference of District Court Judges, hourly rates of compensation for appointed counsel were abandoned in 1977. The maximum allowance per case can be exceeded under unusual or exceptional circumstances.

NORTH DAKOTA

Rate

Maximum

\$35/hr. flat fee

No maximum

OHIO

<u>Rate</u>	<u>Maximum</u>
No fee schedule	\$300 plus overhead expenses, maximum for first filing in Supreme Court
	\$300 plus overhead expenses, maximum if case is heard on merits

The only fee schedules for appointed attorneys apply to Supreme Court cases. At the trial court level, fee structures and amounts vary among counties.

OKLAHOMA

<u>Rate</u>	<u>Maximum</u>
No fee schedule	capital case \$2500 felony 500 misdemeanor 500

The state issues no guidelines for hourly fees paid to court-appointed attorneys. Maximum fees per case are statutorily determined.

OREGON

<u>Rate</u>	<u>Maximum</u>
\$30/hr. out-of-court	felony \$2000
40/hr. in-court	misdemeanor or other proceedings 1000

Legislation enacted in the session ending 7/4/79 determined the minimum hourly rates for appointed counsel. Most counties within the state do not have a formalized defender system. Three trial level public defenders are county based and one state public defender provides services at the appellate level.

PENNSYLVANIA

<u>Rate</u>	<u>Maximum</u>
\$25-40/hr. in-court	No maximum

Attorneys must petition the court for compensation at all stages of the proceeding. Although fees vary among counties, the traditional range is from \$25 to \$40 per hour. County based and financed defender systems operate throughout the state.

RHODE ISLAND

<u>Rate</u>	<u>Maximum</u>
\$15/hr. in-court	No maximum

The customary \$15 per hour fee is generally restricted to family and district court cases. No maximum per case and no established fee schedule are applicable to other courts within the state. The state defender's office provides services for all counties and is funded by the General Assembly.

SOUTH CAROLINA

<u>Rate</u>	<u>Maximum</u>
\$10/hr. out-of-court	No maximum
\$15/hr. in-court	

The state legislature is expected to double the current fee schedule for appointed counsel. County based defender systems operate in thirty-two of the forty-six counties in the state. Funds for assigned counsel and public defenders are appropriated by the state.

SOUTH DAKOTA

<u>Rate</u>	<u>Maximum</u>
\$20/hr. out-of-court	No maximum
30/hr. in-court	

The statutorily determined fee schedule for appointed attorneys applies to all types of cases. The State Bar expects that current compensation rates will be increased to \$30/hour for out-of-court services and \$40/hour for in-court services. Although the state does not finance a public defender system, a limited number of counties have established defender offices.

TENNESSEE

<u>Rate</u>	<u>Maximum</u>
\$20/hr. out-of-court	juvenile cases: \$ 50/day, \$500 Total
30/hr. in-court	adult felonies: 100/day, 500 Total
	capital cases: 150/day, no Total

The predominant system for providing counsel to indigents in criminal cases is through court-appointed counsel. The fee schedule and maximums for appointed counsel are administered by the Office of the Supreme Court. Public defender systems are established in 3 of Tennessee's 95 counties.

TEXAS

<u>Rate</u>	<u>Maximum</u>
\$ 50/day in-court	Investigation and expert
250/day in-court for capital cases	testimony \$500
500/case (appellate counsel, capital case)	
350/case (appellate counsel)	

The Texas Code of Criminal Procedure defines the minimum fees for appointed attorneys throughout the state. The general funds of the county where the prosecution originates provides attorney compensation. A limited number of public defender offices operate on a county basis.

UTAH

<u>Rate</u>	<u>Maximum</u>
\$25/hr. flat fee for in- digent cases	No maximum
No fee schedule for con- flict of interest cases	

Attorneys are appointed on a rotating basis to defend indigents in criminal cases in rural areas of the state, and are compensated at rates determined by state statute. Recently established defender systems are responsible for indigents' defense in urban counties. In conflict of interest cases, fees are determined by district court judges.

VERMONT

<u>Rate</u>	<u>Maximum</u>
\$15/hr.: non-trial cases only	Trial cases only:
	felony (penalty=death or life imprisonment) \$1500
	felony (other) 500
	misdemeanor 300

There is no distinction between in-court and out-of-court fees, and no provision for extra expenses. Maximums are dictated by Supreme Court order, and are followed by all counties in Vermont.

VIRGINIA

<u>Rate</u>	<u>Maximum</u>
No fee schedule	felony (sentence= 20 yrs.+ or death) \$400
	felony (sentence< 20 yrs.) 200
	misdemeanor 100

According to state statutes, fees for appointed counsel in criminal cases are paid from state funds if the state initiates prosecution, or by county, city or town funds if prosecution is initiated in those courts. Additionally, public defender offices operate in densely populated areas.

WASHINGTON

<u>Rate</u>	<u>Maximum</u>
No fee schedule	No maximum

Trial judges determine appropriate reimbursement rates for each case employing appointed counsel. The clerk of the Supreme Court determines reimbursement for cases on appeal. Most indigent defendants are represented by attorneys from defender systems that operate at the state and county levels.

WEST VIRGINIA

<u>Rate</u>	<u>Maximum</u>
\$20/hr. out-of-court	\$1000
25/hr. in-court	extra expenses 500

The customary fees and limits per case for appointed attorneys do not apply to conflict of interest cases.

WISCONSIN

<u>Rate</u>	<u>Maximum</u>
No fee schedule	No maximum

No fixed rates apply to appointed attorneys' services throughout the state. Individual county courts report that a maximum of \$40 per hour has been paid for in-court and out-of-court services. State and county public defender systems provide services for some indigent defendants.

WYOMING

<u>Rate</u>	<u>Maximum</u>	
No fee schedule	trial	\$1500
	no trial	500

Statutory maximums apply to the limited number of cases that utilize appointed counsel. The attorney submits an invoice to court, enumerating hours invested in the case and explaining its complexities. The judge determines compensation on an individual case basis. A variety of defender systems operates throughout the state. In conflict of interest cases, the state public defender requests non-private counsel from another district's program.

DISTRICT OF COLUMBIA

<u>Rate</u>	<u>Maximum</u>	
\$20/hr. out-of-court	felony	\$1000
30/hr. in-court	misdemeanor	400
	appeal	1000

Court-appointed attorneys submit a time-detailed voucher for expenses beyond the stated maximum. The presiding judge passes the voucher to the chief judge for evaluation and approval. Court appointment procedure in the District is governed by statute: P.L. 93-412, U.S.C., Title 18.

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