



**Office of the Ohio Public Defender**

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**MEMORANDUM**

**TO:** Judges, Clerks of Court, County Commissioners, County Public Defenders, County Treasurers, and County Auditors

**FROM:** David Bodiker, State Public Defender *DAB*

**DATE:** April 28, 2006

**SUBJECT:** Changes made to the \$25 Application Fee in H.B. 530, Budget Corrections

House Bill 530, the Budget Correction Bill, contained changes to R.C. 120.36, the Indigent Application Fee law. The changes were made to help clarify the provisions of the law, and in response to issues raised by the Clerks of Courts, Public Defenders, Judges, and other interested parties regarding implementation of the application fee. The changes are described below, and are followed by a copy of the amended law that shows the changes.

**1. Adding “public defender” and “assigned counsel” as entities where the affidavit of indigency may be filed.**

In counties that have public defender offices, the county public defender receives the affidavit of indigency and financial disclosure form. Some courts also have the appointed counsel receive the application of indigency forms. The new law recognizes this and begins the seven day payment period at the time the affidavit is filed with the court, public defender, or other counsel appointed by the court.

Regardless of who receives the affidavit of indigency, the law is specific that the fee is to be paid to the Clerk of Court. Public defenders and court-appointed attorneys should not be accepting or processing application fees.

**2. Contempt Proceedings in Domestic Relations and Probate Court**

The way the law was previously written, there was uncertainty whether the application fee applied to cases in domestic relations and probate courts, particularly with regard to contempt proceedings where there was a possibility of jail time. The new law includes these cases and

expands the definition of clerk of court to include clerks for probate and domestic relations courts.

### **3. Municipal Ordinances**

The changes clarify that the application fee applies in municipal ordinance cases. This is true even if the county and municipality do not have a contract for provision of services in such cases.

### **4. Community Control Violations and Post-Release Control Violations**

The change clarifies that community control and post-release control violations are subject to the fee except when the actions resulting in the violation(s) also result in a new and separate criminal case. In such instances, the person should be charged the application fee only for the new case, and not both the community control/post-release control violation and the new case.

### **5. Guardian Ad Litem**

The new law also excludes assessing the fee against a child where a guardian ad litem is appointed, or where the court appoints an attorney for the child at the request of a guardian ad litem.

### **6. Bindover/Transfer Cases**

This change addresses cases that are bound over or transferred from one court to another, and where the client has not paid the application fee in the initial court. When a case is bound over or transferred, and the client has not paid, the new law provides that the transferring court should remove the assessment, and the court where the case was transferred to shall assess the fee. This allows the transferring court to clear its books of the case. We have also provided a second Clerk of Court Reporting Form that facilitates reporting transferred cases separately. A copy of the revised form is attached, and can also be accessed at [www.opd.ohio.gov](http://www.opd.ohio.gov). Use of the new form is **optional**. Clerks may continue using the original version of the reporting form. Please note, this is a different, and hopefully easier, format than the revised form we circulated previously.

### **7. Definition of a case**

The new language uses the same definition of a case as is used when compensating counsel appointed to represent indigent clients, and subsequently reimburse the counties for the costs. The definition is as follows:

“For purposes of assessing the application fee, a case means one complete proceeding or trial held in one court for a person on an indictment, information, complaint, petition, citation, writ, motion, or other document initiating a case that arises out of a single incident or a series of related incidents, or when one individual is charged with two or more offenses that the court handles simultaneously.”

Persons should be assessed the application fee based on this definition, not by number of charges, counts, case numbers assigned, or other definitions used by a particular court.

## **8. Blanket Waivers**

While courts have the ability to waive the application fee when it is determined that an individual cannot pay the fee without undue hardship, it was not contemplated that courts would give blanket waivers to all individuals requesting counsel. The new language clarifies that waivers may be granted, but must be on an individual case-by-case basis.

## **9. Timeliness for the County Auditor to remit funds to the State Public Defender**

The new law specifies that the County Auditor is to remit 20 percent of the funds collected by the last day of the month, and that the funds remitted are those collected in the previous month. For example, by August 31, remit funds collected in July.

## **10. Reporting Requirements**

The original law required the Clerk of Court to report only once per year to the Ohio Public Defender and the State Auditor. As a matter of practice, most clerks expressed a preference for filing the reports monthly, and many began doing so voluntarily. The new law requires that beginning February 2007, each Clerk of Court shall report monthly by the 20<sup>th</sup> day of each month. The reports cover data collected for the previous month. For example, the February 2007 submission covers data for January 2007.

There is also a temporary law provision in the bill (Section 701.03) requiring each clerk to submit an annual report for Calendar Year 2006 by February 20, 2007.

The requirement that the reports be filed with the State Auditor was removed. The Ohio Public Defender can provide the State Auditor copies of the reports upon request.

H.B. 530 As Enrolled

Sec. 120.36.

(A) If (1) Subject to division (A)(2), (3), (4), (5), or (6) of this section, if a person who is a defendant in a criminal case or a party in a case in juvenile court requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court, the court in which the criminal case is initially filed or the juvenile court, whichever is applicable, shall assess, unless the application fee is waived or reduced, a non-refundable application fee of twenty-five dollars.

The court shall direct the person to pay the application fee to the clerk of court. The person shall pay the application fee to the clerk of court at the time the person files an affidavit of indigency or a financial disclosure form with the court, a state public defender, a county or joint county public defender, or any other counsel appointed by the court or within seven days of that date. If the person does not pay the application fee within that seven-day period, the court shall assess the application fee at sentencing or at the final disposition of the case.

~~If a case involving a felony that was initially filed in a municipal court or a county court is bound over to the court of common pleas and the defendant in the case failed to pay the application fee in the municipal court or county court, the court of common pleas shall assess the application fee at the initial appearance of the defendant in the court of common pleas. If a case involving an alleged delinquent child is transferred to the court of common pleas for prosecution of the involved child as an adult and if the involved child failed to pay the fee in the juvenile court, the court of common pleas shall assess the application fee at the initial appearance of the child in the court of common pleas.~~

(2) For purposes of this section, a criminal case includes any case involving a violation of any provision of the Revised Code or of an ordinance of a municipal corporation for which the potential penalty includes loss of liberty and includes any contempt proceeding in which a court may impose a term of imprisonment.

(3) In a juvenile court proceeding, the court shall not assess the application fee against a child if the court appoints a guardian ad litem for the child or the court appoints an attorney to represent the child at the request of a guardian ad litem.

(4) The court shall not assess an application fee for a postconviction proceeding or when the defendant files an appeal.

(5)(a) Except when the court assesses an application fee pursuant to division (A)(5)(b) of this section, the court shall assess an application fee when a person is charged with a violation of a community control sanction or a violation of a post-release control sanction. (b) If a charge of violating a community control sanction or post-release control sanction described in division (A)(5)(a) of this section results in a person also being charged with violating any provision of the

Revised Code or an ordinance of a municipal corporation, the court shall only assess an application fee for the case that results from the additional charge.

(6) If a case is transferred from one court to another court and the person failed to pay the application fee to the court that initially assessed the application fee, the court that initially assessed the fee shall remove the assessment, and the court to which the case was transferred shall assess the application fee.

(7) The court shall assess an application fee pursuant to this section one time per case. ~~An appeal shall not be considered a separate case for the purpose of assessing the application fee~~ For purposes of assessing the application fee, a case means one complete proceeding or trial held in one court for a person on an indictment, information, complaint, petition, citation, writ, motion, or other document initiating a case that arises out of a single incident or a series of related incidents, or when one individual is charged with two or more offenses that the court handles simultaneously. The court may waive or reduce the fee for a specific person in a specific case upon a finding that the person lacks financial resources that are sufficient to pay the fee or that payment of the fee would result in an undue hardship.

(B) No court, state public defender, county or joint county public defender, or other counsel appointed by the court shall deny a person the assistance of counsel solely due to the person's failure to pay the application fee assessed pursuant to division (A) of this section. A person's present inability, failure, or refusal to pay the application fee shall not disqualify that person from legal representation.

(C) The application fee assessed pursuant to division (A) of this section is separate from and in addition to any other amount assessed against a person who is found to be able to contribute toward the cost of the person's legal representation pursuant to division (D) of section 2941.51 of the Revised Code.

(D) The clerk of the court that assessed the fees shall forward all application fees collected pursuant to this section to the county treasurer for deposit in the county treasury. The county shall retain eighty per cent of the application fees so collected to offset the costs of providing legal representation to indigent persons. ~~Each~~ Not later than the last day of each month, the county auditor shall remit twenty per cent of the application fees so collected in the previous month to the state public defender. The state public defender shall deposit the remitted fees into the state treasury to the credit of the client payment fund created pursuant to division (B)(5) of section 120.04 of the Revised Code. The state public defender may use that money in accordance with that section.

(E) On or before the ~~first day of March of each year~~ twentieth day of each month beginning in February of the year 2007, each clerk of court shall provide to the state public defender and the state auditor a report including all of the following:

(1) The number of persons in the previous ~~calendar year~~ month who requested or were provided a state public defender, county or joint county public defender, or other counsel appointed by the court;

(2) The number of persons in the previous ~~calendar year~~ month for whom the court waived the application fee pursuant to division (A) of this section;

(3) The dollar value of the assessed application fees assessed pursuant to division (A) of this section in the previous ~~calendar year~~ month;

(4) The amount of assessed application fees collected in the previous ~~calendar year~~ month;

(5) The balance of unpaid assessed application fees at the open and close of the previous ~~calendar year~~ month.

(F) As used in this section:

(1) "Clerk of court" means the clerk of the court of common pleas of the county, the clerk of the juvenile court of the county, the clerk of the domestic relations division of the court of common pleas of the county, the clerk of the probate court of the county, the clerk of a municipal court in the county, the clerk of a county-operated municipal court, or the clerk of a county court in the county, whichever is applicable.

(2) "County-operated municipal court" has the same meaning as in section 1901.03 of the Revised Code.

## **TEMPORARY LAW**

### SECTION 701.03.

On or before February 20, 2007, each clerk of court, as defined in section 120.36 of the Revised Code, shall provide to the State Public Defender a report including all of the following for the calendar year 2006:

(A) The number of persons who requested or were provided a state public defender, county or joint county public defender, or other counsel appointed by the court;

(B) The number of persons for whom the court waived the application fee pursuant to division (A) of section 120.36 of the Revised Code;

(C) The dollar value of the application fees assessed pursuant to division (A) of section 120.36 of the Revised Code;

(D) The amount of assessed application fees collected;

(E) The balance of unpaid assessed application fees at the open and close of the calendar year.