

REMINDER: ARE YOU PAYING A FLAT AMOUNT PER APPEAL, HEARING, OR OTHER CASE?

Every year it seems we learn a participating county has begun (or continued) to compensate an attorney a flat amount of money per appeal. This article serves as a reminder that flat fee payments to attorneys based upon a per case (such as per appeal or per misdemeanor) or per hearing (such as \$50 for a status hearing) arrangement are not allowable compensation schemes.

Indiana Code states that the county's comprehensive plan shall provide for one of three compensation schemes: 1) salaried attorneys via a county office (I.C. § 33-40-7-5(a)(1)); 2) contractual (I.C. § 33-40-7-5(a)(2)); or 3) hourly via a panel of qualified attorneys (I.C. § 33-40-7-5(a)(3)).

So, if the statute allows for contractual compensation, why can't you just contract with an attorney for a flat amount per case? Standard G answers that question, stating:

The compensation of contractual public defenders shall be substantially comparable to the compensation provided to deputy prosecutors in similar positions with similar experience in the office of the prosecuting attorney.

Since prosecutors are not paid a flat amount per case, public defenders may not be paid that way based on the standard. Furthermore, the Guidelines to Standard G reiterate that if there are no substantially comparable county prosecutorial positions (such as is typically the case for public defenders that exclusively handle appeals) the compensation required is currently \$60,350 for a full-time caseload and \$30,175 for a half-time caseload (or, in other words, a sliding scale based upon the \$60,350 amount).¹

Does this mean the county has to pay \$60,350 or \$30,175 for an appellate lawyer? Absolutely not! The sliding scale works such that you could pay \$6,000 for approximately 10% of a full-time appellate caseload, \$12,000 for 20%, etc. Even better, your county could simply pay \$90/hour which rewards the attorney for their hours actually worked on the appeal instead of an annual contracted amount.

The approved compensation schemes are designed to attract high-quality lawyers to a historically low-compensation profession by assuring attorneys that they will be paid a full, comparable salary plus benefits; a fair hourly rate for the work the attorney puts in; or an annual contract amount that contains a maximum number of cases the attorney can handle during the year. Theoretically, an annual contract that is exactly 100% utilized could be comparable to a flat fee arrangement (\$60,350 for 20 appeals is approximately \$3,000/appeal) but this exact usage is rare. Under the Commission's Standards a contract public defender should know exactly how much money they are going to be paid for an entire year of public defense work while also knowing that their caseload will never exceed a set number of cases.

¹ Remember, public comment on the change of this amount from \$60,350 to \$80,000/\$40,000 remains open until November 18, 2021! See our website's homepage for more details: <http://www.in.gov/publicdefender>