Davidson County Pilot Project

Findings and Recommendations Concerning the Use of
Contracts for the Delivery of Indigent Representation in Child
Support Enforcement Actions

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Prepared by the

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The Davidson County pilot project involving contracts with attorneys to represent indigent parties in child support contempt cases will end on June 30. The court authorized this project to assess the feasibility of using contracts for attorney representation rather than hourly billing in these cases because this type of cases are all very similar and present similar issues. They had also been identified in the study that was done for the general assembly as one type of case for which contracts might be preferable to and less costly than hourly fees. The results of the project are encouraging, for several reasons.

Once the 15 attorneys who were going to participate had been identified, they were placed into groups of five and assigned to each of the three courts that handle child support enforcement actions (Please refer to the Project Diary, below, for a discussion of the process to select the attorneys). These teams developed a rotation for attorneys to appear and accept appointments on Wednesdays, as well as to appear at settlement dates for numerous clients on Tuesdays. Each lawyer could get more accomplished for more clients with less down time this way. This turned out to be the single most valuable lesson we learned from this project: that costs to the indigent fund can be reduced in a meaningful amount if the time spent by appointed lawyers travelling to and from, and then waiting in court, can be minimized. The pilot project attorneys accomplished this by assigning one of their team members to a specific day in court, and setting all of that member's cases on a single docket. That way, instead of multiple attorneys Waiting for their single case to be called, or for their chance to talk to a child support enforcement attorney about a single client's case, the same attorney efficiently utilized his or her time in court working on behalf of multiple clients in succession. The following chart summarizes the payments made to attorneys during fiscal year 2012-2013.

<u>Participating Attorneys and Payments Made</u>

Name		Cases	Total
Urquhart,	Mike	103	$22,145
Cardwell,	C. Michael	89	$19,135
Collins, Jr.	William C.	65	$13,975
Darby,	Rachel	101	$21,715
Frasier,	Charles	101	$21,715
Griffith,	William	97	$20,855
Huddleston,	Scott	83	$17,845
Lewis, Jr.	Robert	70	$15,050
Mader,	Susan	119	$25,585
Nordhoff,	Dennis	85	$18,275
Wilhoite,	Elijah	68	$14,620
Willoughby,	Amy	81	$17,415
Wooten,	Julie	88	$18,920
	TOTAL	**1150**	**$247,250**
	AVG.		$19,019

By way of comparison, fee claims for these same cases in Davidson County in FY 2011-2012 averaged $321. The indigent fund saved $106.00 per case, or a total of $121,900 for services on cases during the year covered by the pilot project. This represents a 33% savings.

Conclusions

The fact that the pilot attorneys were paid a flat fee per case is largely irrelevant, as the reduction of waiting time can be accomplished no matter what compensation framework is applied. Less time means lower fees, and "dead" time, spent sitting and waiting for one case to be called, is not time that benefits a client. It is simply a waste for all concerned. The AOC believes that similar savings can be achieved in other courts in other types of cases. The typical practice of assigning a case or two to a private attorney during a general sessions docket call or a trial court arraignment docket results in a very inefficient use of attorney time, particularly in court and in time spent travelling to and from court.

To give an example, if 10 private attorneys are each appointed to represent a single defendant in general sessions court during a docket call, each of the 10 will wait his or her turn to speak to the D.A. handling the cases. The D.A. will have a discussion with one of these attorneys while the other nine wait. A typical fee claim from an attorney representing a client in general sessions court will contain time entries of approximately twenty minutes talking to the D.A., twenty minutes talking to their client, and at least an hour and a half to two hours in court waiting. 10 claims like this will result in 2.2 to 2.7 hours claimed per attorney (22 to 27 total hours) for that day in court. One attorney handling all 10 cases would submit fee claims totaling not more than the time court was actually in session and the D.A. was available to discuss resolution of cases, usually not more than four hours, but in some extreme cases perhaps as many as seven or eight. Splitting those cases between two attorneys would still result in substantial savings.

Attorneys who do not resolve their client's case at the first court appearance will need to return at a future date. Each of them will bill the indigent fund for their time spent travelling to subsequent court appearances and waiting time at each appearance (plus mileage). Similar duplicate time entries will increase the overall costs to the indigent defense fund. Travelling and waiting are not legal skills that benefit the clients represented by the attorneys, and the team approach that developed in this pilot project can serve as a useful model in other courtrooms with high utilization of private attorneys.

Comments from Project Participants

Overall, comments from attorneys and magistrates participating in the project have been positive. There were some attorneys who received fewer cases than others who felt that there should have been a more even distribution of cases. The number of cases on a particular docket

in a particular courtroom on any given day cannot be predicted or controlled; however, if the program continues, we will explore ways to ensure more even case assignments.

The Pilot Program was instituted beginning July 1, 2012. Over the past two years I have appreciated the continuity and consistency of counsel appearing before me. The appointed attorneys have a good working relationship with the State's Attorney and I have no concerns regarding the quality of their representation as a result of their contractual arrangement with the State of Tennessee.

- Magistrate Julie Ottman

Under the contract system scheduling is much more efficient. Additionally, the respondents receive zealous representation.

- Attorney Amy Willoughby Bryan

The attorneys in my court are very pleased with the program and I'm pleased with the quality of representation. The attorneys are well-prepared and appear to have good rapport with their respective clients. Very seldom are there disagreements with the pleas, indicating that the attorneys have fully discussed all options with the clients

-*Magistrate Paul Robertson*

Recommendation

Most of the attorneys involved in the Davidson County pilot project have expressed a desire to continue the arrangement, and the AOC recommends that the order establishing the project be amended to allow for this kind of fee arrangement in these types of cases on a permanent basis. Additionally, and consistent with the findings of the indigent fund study for the general assembly, the AOC recommends that Rule 13 be amended to allow for contracts with attorneys handling judicial hospitalization cases in the counties where these cases are filed[1]. A proposed Order making these changes to Rule 13 is attached.

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[1] Another obscure, but important, benefit to the flat fee per case approach is that the Fiscal Division had to process and audit 1150 fewer fee claims, and could pay for these cases based on a simple invoice, which included a notation from the magistrate in each case that the work had been performed and the case was concluded. Most invoices listed multiple cases. Attorneys were paid much quicker as a result. (If judicial hospitalization cases are added to the equation, fee claims could be reduced by an additional 10,000 per year).