



MEMORANDUM
COUNTY EXECUTIVE OFFICE
ADMINISTRATION
County of Placer

TO: Board of Supervisors
FROM: Todd Leopold, County Executive Officer
By: Bekki Riggan, Deputy County Executive Officer
SUBJECT: Appointed Counsel Fees for Indigent Defense

DATE: July 6, 2021

ACTION REQUESTED

Introduce and waive oral reading of an ordinance amending Placer County Code Chapter 2, Section 2.124.060, subsections (c) and (d), Indigent Public Defense Program Fees, to increase hourly rates for private counsel appointed by Placer Superior Court to represent indigent individuals.

BACKGROUND

Pursuant to Penal Code Section 987.2 and Probate Code Sections 1470 and 1472 the County of Placer is responsible for compensation of private appointed counsel in the event the Public Defender and secondary/tertiary defense have declared a conflict of interest in a criminal case, or in the event that a party is unable to pay in certain civil matters.

The aforementioned code sections state that the Court shall determine reasonable compensation for private counsel, however, the current hourly rate of pay is based on classifications established through an agreement between the Court and County. The classifications and compensation for appointed counsel were established in Placer County Code section 2.124.060 Indigent Public Defense Program Fees effective December 31, 2004 and have not been adjusted since.

Due to the non-competitive reimbursement being offered for these cases, the Court is currently down to only two private attorneys that will regularly accept appointments. The Court and County Executive Office staff reviewed compensation rates for appointed counsel in nearby counties (Attachment 1) as well as defense counsel contracting with the County of Placer (Attachment 2) in order to determine appropriate levels of compensation. Upon review it was found that current pay rates for Placer County appointed counsel are significantly lower than nearby counties and costs for defense counsel contracting with the County.

It is believed that more competitive pay rates will increase the number of private attorneys willing serve as appointed counsel. Therefore, the following increases are proposed:

Table with 4 columns: Classification, Case Type(s), Current Pay Rate, Proposed Pay Rate. Rows include Class 1A, Class 1B, Class 2, Class 3, Probate, and Class 4.

Many attorneys practicing locally have offices in Sacramento, thus the proposed rates are slightly higher than Sacramento County to encourage attorneys to travel to assist in Placer. This proposal also anticipates that surrounding counties will increase their rates in the future, given that several surrounding counties' rates have been in place since at least 2018.

FISCAL IMPACT

As a result of this action, costs for court appointed counsel fees are anticipated to increase approximately \$60,000 per year. Funds are included in the Criminal Justice Other Programs Cost Center FY 2021-22 Recommended Budget.

ATTACHMENTS

- Attachment 1 – Review of Neighboring Counties Appointed Counsel Rates
- Attachment 2 – Review of Placer County Indigent Defense Contract Attorney rates
- Attachment 3 - Ordinance

Attachment 1 – Review of Counsel Rates in Surrounding Counties

Nevada County (as of 09/15/2020)		
Classification	Case Type(s)	Hourly Rate
Tier 1	All crimes listed in Penal Code §667(e)(2)(C)(iv)	\$125
Tier 2	Felonies not in Penal Code §667, those w/ max sentence >=10 years	\$85
Tier 3	All felonies not in Tiers 1&2 and/or misdemeanors requiring sex offense registration	\$75
Tier 4	All other cases not defined by Tiers 1,2 & 3	\$70

El Dorado County (as of 10/30/2018)		
Classification	Case Type(s)	Hourly Rate
	All appointed counsel	\$70
	Complex homicide cases	\$100-150 w/ judicial approval

Yolo County (as of 11/01/2018)		
Classification	Case Type(s)	Hourly Rate
	Private Panel Attorney	Determined by judicial officer
	Contracted Conflict Attorney	~\$92.60*
*Attorneys paid \$10,804 monthly with expectation of ~1,400 hours worked annually		

Sacramento County (as of 07/01/2018)		
Classification	Case Type(s)	Hourly Rate
Class A1	Death penalty (lead attorney & Keenan counsel)	\$150
Class A2	Penal Code §38, 187, 205, 206, 209/209.5, 218, 219, 269, 273ab, 667.51(d), all state prison cases except in A1, and life without possibility of parole	\$108.24
Class B	Penal Code §38, 182/182.5, 191.5, 192, 203, 207, 211, 215, 217.1, 220, 261, 262, 264.1, 285, 286, 288/288(a), 289, 451, 455, 459 (1st degree), 667.6(a)/(b)/(c)/(d), 1026,/1026.5, 1606, Mental Health hearings, W&I 6600, witness representation, 3rd strike cases	\$97.42
Class C	All felonies except those in A & B, municipal court appeals, Writs of Habeas Corpus	\$86.59
Class D	All misdemeanors	\$75.78
Probate	Adult & juvenile guardianships & conservatorships	\$84.89

Attachment 2 – Review of Rates for Placer County Public Defender & Conflict Firms

Placer County Public Defender

Contract requires 30 attorneys at \$7,657,500 per year for an average annual cost of \$255,250 per attorney. Using 2,000 hours per year, this results in an average hourly compensation of \$127.63 per attorney hour.

Conflict Firm

Contract requires 9 attorneys at \$1,939,642 per year for an average annual cost of \$215,516 per attorney. Using 2,000 hours per year, this results in an average hourly compensation of \$107.76 per attorney hour.

Note: County contracts include funding for investigations whereas panel attorneys will receive additional funding for this service.

Before the Board of Supervisors County of Placer, State of California

In the matter of: An Ordinance amending Placer County Code Chapter 2, Section 2.124.060, subsections (c) and (d) Indigent Public Defense Program Fees

Ordinance No.: _____

The following Ordinance was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held on _____ 2021, by the following vote:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chair, Board of Supervisors

Attest:

Clerk of said Board

THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER, STATE OF CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Subsections (C) and (D) of Section 2.124.060, Chapter 2 of the Placer County Code is hereby amended to read as follows:

- C. Indigent Public Legal Defense Defendant Reimbursement Fees.

- ~~1. Class 1 All non capital homicides and offenses having a maximum sentence of life or life without the possibility of parole, or in the discretion of the courts, an aggregate state prison sentence of thirty (30) years or more seventy five dollars (\$75.00) per hour.~~
- ~~2. Class 2 All crimes for which the maximum term of punishment is five years or more but a lesser term than Class 1 sixty dollars (\$60.00) per hour.~~
- ~~3. Class 3 All other felonies and juvenile matters sixty dollars (\$60.00) per hour.~~
- ~~4. Class 4 Misdemeanors and civil cases fifty dollars (\$50.00) per hour.~~

1.

<u>Class 1A</u>	<u>Capital punishment</u>	<u>\$155</u>
<u>Class 1B</u>	<u>Non-capital, max. life sentence</u>	<u>\$110</u>
<u>Class 2</u>	<u>All crimes w/ punishment >5 years < life sentence</u>	<u>\$100</u>
<u>Class 3</u>	<u>All other felonies & juvenile delinquency allegations</u>	<u>\$90</u>
<u>Probate</u>	<u>Conservatorships & guardianships</u>	<u>\$90</u>
<u>Class 4</u>	<u>Misdemeanors & misc. civil</u>	<u>\$80</u>

~~D. These fee modifications shall be effective December 31, 2004.~~

* * *

Section 2: This ordinance shall take effect and be in full force thirty (30) days after the date of its passage. The Clerk is directed to publish this ordinance, or a summary thereof, within fifteen (15) days in accordance with Government Code Section 25124.