



**Auditor of State
Betty Montgomery**

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**COURT-APPOINTED ATTORNEY FEES PAID BY
LICKING AND FAIRFIELD COUNTIES**

**SCHEDULE OF COUNTY OFFICIALS AND RELATED INDIVIDUALS
As of September 30, 2002**

Fairfield County Commissioners

Jon D. Meyers

Alan Reid¹

Judith K. Shupe

Fairfield County Prosecutor

David Landefeld

Licking County Commissioners

Jay N. Baird

Marcia J. Phelps

Albert O. Ashbrook

Licking County Prosecutor

Robert Becker

Law Offices of Kristin Burkett

J. Kristin Burkett

David Stansbury

Adam Sanderson

Melanie Spangler

Meredith Greenberg

Corrie Thomas

Shanda Behrens

¹ Mr. Reid's term expired December 31, 2002. Michael Kiger replaced Mr. Reid.

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Auditor of State Betty Montgomery

INDEPENDENT ACCOUNTANTS' REPORT

The Honorable Marcia J. Phelps
The Honorable Albert O. Ashbrook
The Honorable Jay N. Baird
Licking County Commissioners

The Honorable Robert Becker
Licking County Prosecutor
Don D. Hill County Administration Building
20 S. Second Street
Newark, Ohio 43055

The Honorable Judith K. Shupe
The Honorable Michael Kiger
The Honorable Jon D. Myers
Fairfield County Commissioners
210 East Main Street
Lancaster, Ohio 43130

The Honorable David Landefeld
Fairfield County Prosecutor
201 South Broad Street
Lancaster, Ohio 43130

At the request of David Landefeld, Fairfield County Prosecutor, with concurrence from Robert Becker, Licking County Prosecutor, we have conducted a special audit of the court-appointed attorney fees paid to the Law Offices of Kristin Burkett ("Law Offices") by performing the procedures enumerated in the attached Supplement to the Special Audit Report for the period October 1, 2001 through September 30, 2002 ("the Period"), solely to:

- Identify the amounts paid to the Law Offices by Licking and Fairfield Counties.
- Identify the court cases closed during the Period for which the Law Offices received payment.
- Determine whether payments to the Law Offices were supported by documented attorney billings.

This engagement was conducted in accordance with consulting standards established by the American Institute of Certified Public Accountants. The procedures and associated findings are detailed in the attached Supplement to the Special Audit Report. A summary of our procedures and significant results is as follows:

1. We obtained a vendor history report and identified the payments issued to the Law Offices by Fairfield and Licking Counties during the Period.

Significant Results –During the Period, Fairfield County paid the Law Offices \$109,821 for services related to 232 cases, and Licking County paid \$359,781 for services related to 797 cases.

2. We obtained the Motion, Entry, and Certification for Appointed Counsel Fees ("Motion") and the Itemized Fee Statements supporting payments issued during the Period and identified cases closed prior to October 1, 2001, and payments for which services were provided prior to the Period. The remaining payments to the Law Offices were subjected to our audit procedures, described in Result 3.

Significant Results – During the Period, Fairfield and Licking Counties issued payments to the Law Offices for cases closed prior to October 1, 2001, totaling \$2,570 and \$12,653, respectively. Additionally, payments from Fairfield and Licking Counties totaling \$19,640 and \$39,019, respectively, were issued during the Period for open cases in which services were provided prior to October 1, 2001.

88 E. Broad St. / P.O. Box 1140 / Columbus, OH 43216-1140
Telephone: (614) 466-4514 (800) 282-0370 Fax: (614) 466-4490
www.auditor.state.oh.us

Our audit reviewed 225 cases paid by Fairfield County, totaling \$87,611, and 762 cases paid by Licking County, totaling \$308,109, for which services were provided by the Law Offices on open cases during the Period.

3. We compared the hours identified on the Itemized Fee Statements to the Law Offices' supporting documentation and determined whether the hours identified as worked and the related expenses agreed to the Law Offices' supporting documentation.

Significant Results – On January 27, 2004, we proposed Findings for Recovery against the Law Offices totaling \$11,924 for unsupported time billed, unallowable fees incurred by non-attorneys, duplicate billings, billing errors, and billings for cases in which the Law Offices were not the appointed attorney of record. Of that amount, \$4,409 was in favor of Fairfield County and \$7,515 was in favor of Licking County.

Ms. Burkett's February 18, 2004 response to our proposal provided additional explanation and documentation supporting \$8,465 of the proposed Finding for Recovery. Of that amount, \$3,635 was related to Fairfield County and \$4,830 was related to Licking County. Since documentation was provided to support \$8,465, a Finding for Recovery will not be issued. Attached to Ms. Burkett's responses was documentation supporting payments issued to Fairfield and Licking Counties totaling \$774 and \$2,685, respectively, which we considered as Findings for Recovery Repaid under Audit.

We issued 1 Noncompliance Citation against both Fairfield and Licking Counties' Clerk of Courts, Juvenile Courts, and Municipal Court Offices for failure to maintain a complete record of the courts' dockets. We also issued 3 Management Comments related to various internal control weaknesses.

4. In addition to the noncompliance and internal control weaknesses noted in Result 3, above, we issued 3 Management Comments. These comments should be considered to ensure that transactions are completely and accurately recorded and monitored.
5. On March 2, 2004, we held an Exit Conference with the following individuals representing Fairfield County:

Judy Shupe, County Commissioner
Mike Kiger, County Commissioner
Barbara Curtiss, County Auditor

Jon Myers, County Commissioner
David Landefeld, County Prosecutor
Ed Laramée, Chief Deputy Auditor

On March 4, 2004, we held an Exit Conference with the following individuals representing Licking County:

Marcia J. Phelps, County Commissioner
J. Terry Evans, County Auditor
Michael Smith, Commissioner's Clerk

Jay N. Baird, County Commissioner
William Bell, Finance Director

The attendees were informed that they had five business days to respond to this Special Audit Report. We received responses from Licking County dated March 22, 2004 and April 15, 2004. No response was received from Fairfield County. These responses were evaluated and modifications were made to the attached Supplement to the Special Audit Report as we deemed appropriate.

This report is intended solely for the information and use of the Counties and is not intended to be and should not be used by anyone other than these specified parties. However, reports by the Auditor of State are a matter of public record and use by other components of state government or local government officials is not limited.

A handwritten signature in black ink that reads "Betty Montgomery". The signature is written in a cursive, flowing style.

Betty Montgomery
Auditor of State

January 27, 2004

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Supplement to the Special Audit Report

Background

Ohio Rev. Code Sections 120.06, 120.13, and 120.33 provide guidelines for the Ohio Public Defender Office, County Public Defender Commissions, and court-appointed attorneys providing legal assistance to indigent offenders. Ohio Rev. Code Sections 120.18, 120.28, and 120.33 provide guidance for reimbursement for services rendered by each of these agencies. Neither Fairfield nor Licking County operated a County Public Defender's Office. Instead, the Common Pleas, Juvenile and Municipal Court judges appointed local attorneys to represent indigent defendants in accordance with Ohio Rev. Code Section 120.33.

A Motion was submitted to the respective court to obtain payment for services rendered either on a periodic basis or at the final case disposition. When received, the judge reviewed the Motion for accuracy and reasonableness. The Judgment Entry portion of the Motion was signed and dated by the presiding or administrative judge. The entry also identified the amount of payment due to the court-appointed attorney and whether extraordinary fees were granted. The approved Motion was submitted by the approving judge to the respective County Auditor for payment.

At month's end, both Licking and Fairfield County submitted a request for reimbursement from the Ohio Public Defender's Office (OPD). The request included copies of the approved Motions paid by the County. Upon receipt of the request, OPD recorded the data in its computer system, reviewed it for any duplicate or excessive payments, and prepared a monthly report² for payment. OPD reimbursed the Counties 38% of actual costs³ incurred. Reimbursement was processed via electronic funds transfers.

On October 2, 2002, OPD's County Outreach/Reimbursement Department ("Department") sent correspondence to representatives of Licking and Fairfield Counties expressing concerns of potential over-billings by 3 attorneys from the Law Offices. The Department suggested each County review the attorneys' billings in question and resolve any potential over-billings. The Department also indicated it would not reimburse either County for cases submitted for services rendered by the Law Offices until the billing situation had been resolved.

On October 10, 2002, David Landefeld, Fairfield County Prosecutor, contacted the Auditor of State with the concerns provided by OPD and requested a preliminary review of OPD's allegations. Following discussions with Prosecutor Landefeld, we contacted Robert Becker, Licking County Prosecutor, and he concurred with Prosecutor Landefeld's concerns. We performed our preliminary review on October 17, 2002, and on October 23, 2002, the Auditor of State's Special Audit Committee voted to initiate a Special Audit of the court-appointed attorney fees paid by Fairfield and Licking Counties, for the period October 1, 2001 through September 30, 2002.

² The monthly report included a listing of the individual cases submitted, the County warrant used to pay the Law Offices, and the amount of OPD's reimbursement. Any discrepancies were explained in a comments section of the monthly report.

³ The reimbursement rate was established each year by the legislature in accordance with Ohio Rev. Code Section 120.33.

Supplement to the Special Audit Report

Issue No. 1 – Review of Court-Appointed Attorney Fees
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We identified the total paid to the Law Offices and closed cases for which the Law Offices received payments during the Period, and we determined whether the remaining payments to the Law Offices were supported by documented attorney billings.

PROCEDURES

1. We obtained a vendor history report for the Period identifying the amounts paid to the Law Offices by Licking and Fairfield Counties.
2. We obtained the Motions and Itemized Fee Statements maintained by the Licking and Fairfield County Auditors to identify the cases closed prior to October 1, 2001, and payments for which services were provided prior to and during the Period.
3. We compared the hours identified on the Itemized Fee Statements to the Law Offices' supporting documentation and determined whether the hours identified as worked and the related expenses agreed to the Law Offices' supporting documentation.

RESULTS

1. During the Period, the Fairfield County Auditor's Office paid \$109,821 to the Law Offices for services related to 232 cases. The Licking County Auditor's Office paid \$359,781 for services rendered on 797 cases.
2. Of the total amounts documented in Result No. 1, above, payments to Fairfield and Licking Counties of \$22,210 and \$51,672, respectively, were considered outside the scope of our Special Audit because these amounts represented cases which had been closed prior to October 1, 2001, or open cases in which the services had been performed prior to October 1, 2001, as illustrated by the following table:

	Fairfield County		Licking County	
	Number of Cases	Amount	Number of Cases	Amount
Total Amounts Paid During the Period: ⁴	232	\$109,821	797	\$359,781
Less:				
Cases Closed Prior to October 1, 2001 :	<u>(7)</u>	(2,570)	<u>(35)</u>	(12,653)
Services Rendered on Open Cases Prior to October 1, 2001, and Paid During the Period by County:		<u>(19,640)</u>		<u>(39,019)</u>
Payments subject to Special Audit:	<u>225</u>	<u>\$87,611</u>	<u>762</u>	<u>\$308,109</u>

⁴ This amount does not include services rendered during the Period but paid after September 30, 2002.

Supplement to the Special Audit Report

3. We did not identify any instances where an attorney employed by the Law Offices billed more than 24 hours worked in a single day; however, based on the comparison of the hours documented on the Itemized Fee Statements to the Law Offices' supporting daily logs, court dockets and court case files, we noted the following discrepancies:

Fairfield County

Unsupported Billings

Of the \$87,611 which Fairfield County paid to the Law Offices, we identified 54.7 out-of-court hours totaling \$2,188 and 2.9 in-court hours totaling \$145 which were not supported by either an individual attorney log or the billing history by case. We also identified \$170 which was billed as in-court time but was not supported by the court docket. On January 27, 2004, we proposed a Finding for Recovery against the Law Offices for \$2,503. Attached to Ms. Burkett's February 18, 2004 response to our proposed Finding for Recovery was additional explanation and documentation for all but \$112 of the unsupported charges identified in our proposed Finding for Recovery. On February 18, 2004, the Law Offices repaid Fairfield County \$112. We will consider the \$112 a Finding for Recovery Repaid under Audit.

Unallowable Fees

The Law Offices billed 7.5 hours totaling \$300 at the attorney rate for out-of-court services provided by an individual who had completed law school; however, per the Ohio Supreme Court, did not have a valid intern certificate nor had the individual passed the bar exam as required by Governing Bar Rule I, Section 1, and Rule II, Section 2. Therefore, the hours worked could not be billed as being performed by an attorney and would not be considered allowable. On January 27, 2004, we proposed a Finding for Recovery against the Law Offices for \$300. In response to our proposed Finding for Recovery, Ms. Burkett repaid Fairfield County \$300 on February 18, 2004. We will consider the \$300 a Finding for Recovery Repaid under Audit.

Duplicate Billings

During the course of our fieldwork, Ms. Burkett identified 19 instances totaling \$928 which she stated were duplicate hours in the billing registers.

Based on Ms. Burkett's assertion, on January 27, 2004, we proposed a Finding for Recovery against the Law Offices for \$928. In Ms. Burkett's February 18, 2004 response to our proposed Finding for Recovery, she indicated her initial identification of the hours totaling \$928 was incorrect. Based on further review of her files, Ms. Burkett determined only \$346 was charged for duplicate billings. Ms. Burkett provided additional supporting documentation for \$126 and we were unable to confirm whether the remaining \$456, originally identified by Ms. Burkett, was the result of duplicate billings because her billing register did not identify start and completion times. Ms. Burkett repaid \$346 to Fairfield County on February 18, 2004, and we will consider the \$346 a Finding for Recovery Repaid under Audit.

Services Billed for Cases Not Appointed

There were 3 cases in which court records did not identify who was the appointed attorney; however, the Law Offices charged for services and received payments totaling \$100 for these cases.

On January 27, 2004 we proposed a Finding for Recovery against the Law Offices for \$100. Ms. Burkett responded with documentation supporting her firm's appointment to these 3 cases.

Incorrect Billings

During the course of our fieldwork, Ms. Burkett identified 11 instances totaling \$438 which were billed for more hours than what was documented and 8 instances totaling \$140 that were marked "error." Although Ms. Burkett stated these hours were billed incorrectly, she did not provide any documentation to support the incorrect billings.

Supplement to the Special Audit Report

On January 27, 2004, we proposed a Finding for Recovery against the Law Offices for \$578 based on Ms. Burkett's evaluation of her case files. Ms. Burkett's February 18, 2004 response to our proposed Finding for Recovery indicated she reviewed each of the files further and determined the original time recorded was properly billed for all but \$16. Due to the fact that Ms. Burkett did not have any supporting documentation for her original identification of incorrect billings, we were unable to confirm whether the remaining instances were correctly billed. On February 18, 2004, Ms. Burkett repaid \$16 to Fairfield County. We will consider the \$16 as a Finding Repaid under Audit.

Licking County

Unsupported Billings

Of the \$308,109 which Licking County paid to the Law Offices, there were 118.9 out-of-court hours, or \$4,162, and 14 in-court hours, or \$625, which were not supported by either an individual attorney log or the billing history by case. We also identified \$338 billed as in-court services which was not supported by the docket. On January 27, 2004, we proposed a Finding for Recovery against the Law Offices for \$5,125. Attached to Ms. Burkett's February 18, 2004 response to our proposed Finding for Recovery was additional explanation and documentation supporting all but \$476 of the amount identified in the proposed Finding for Recovery. On February 18, 2004, Ms. Burkett repaid Licking County \$476 for unsupported hours billed. We will consider the \$476 a Finding for Recovery Repaid under Audit.

Unallowable Fees

The Law Offices billed 60.2 hours totaling \$2,107 at the attorney rate for out-of-court services provided by an individual who had completed law school; however, per the Ohio Supreme Court, did not have a valid intern certificate nor had the individual passed the bar exam as required by Governing Bar Rule I, Section 1, and Rule II, Section 2. Therefore, the hours worked could not be billed as being performed by an attorney and would not be considered allowable. On January 27, 2004, we proposed a Finding for Recovery against the Law Offices for \$2,107. Ms. Burkett repaid Licking County \$2,107 on February 18, 2004. We will consider the \$2,107 a Finding for Recovery Repaid under Audit.

Incorrect Billings

There were 9 cases where fees were paid in excess of the established fee schedule totaling \$242. Additionally, there were 17 cases which were billed at an incorrect rate, resulting in an overpayment of \$41. On January 27, 2004, we proposed a Finding for Recovery against the Law Offices for \$283. Ms. Burkett's February 18, 2004 response provided documentation supporting \$181. On February 26, 2004, Ms. Burkett paid Licking County \$102. We will consider the \$102 a Finding for Recovery Repaid under Audit.

Additionally, Ms. Burkett identified another 4.5 in-court hours which were billed at the wrong rate resulting in a \$45 overpayment. Ms. Burkett paid \$45 to Licking County on February 18, 2004.

FINDINGS FOR RECOVERY REPAID UNDER AUDIT– Fairfield County

Unsupported Billings, \$112

Ohio Rev. Code Section 2941.51 (A) states, "Counsel appointed to a case or selected by an indigent person under division (E) of section 120.16 or division (E) of section 120.26 of the Revised Code, or otherwise appointed by the court, except for counsel appointed by the court to provide legal representation for a person charged with a violation of an ordinance of a municipal corporation, shall be paid for their services by the county the compensation and expenses that the trial court approves." This section is included in Appendix G of the Ohio Public Defender Standards and Guidelines for Appointed Counsel Reimbursement, which was distributed by the Ohio Public Defender Commission to those serving as court-appointed attorneys each time the manual was updated. In addition, Ohio Public Defender Standards and Guidelines for Appointed Counsel Reimbursement, Section 1F, states, "Attorneys are also required to prepare and maintain time records for each appointed case showing the date of service, nature of services rendered, and hours worked."

The Law Offices provided detailed billing records by case and billing journals for each attorney showing by date each client for which services were provided, the nature of the services provided, and the amount of time of the service. We compared the hours billed on the Itemized Fee Statements to the Law Offices' billing journals for each attorney.

Supplement to the Special Audit Report

On January 27, 2004, we proposed a Finding for Recovery against the Law Offices of \$2,503 for unsupported billings. Ms. Burkett's February 18, 2004 response provided additional explanation and documentation for all but \$112. On February 18, 2004, Ms. Burkett repaid Fairfield County \$112. We consider the \$112 a Finding for Recovery Repaid under Audit.

Unallowable Fees, \$300

The Law Offices billed 7.5 hours totaling \$300 at the attorney rate for out-of-court services provided by an individual who had completed law school, and per the Ohio Supreme Court, did not have a valid intern certificate nor had the individual passed the bar exam as required by Governing Bar Rule I, Section 1, and Rule II, Section 2. Therefore, the hours worked could not be billed as being performed by an attorney and would not be considered allowable.

We proposed a Finding for Recovery for \$300 against the Law Offices on January 27, 2004. Ms. Burkett repaid Fairfield County \$300 on February 18, 2004. We consider the \$300 a Finding for Recovery Repaid under Audit.

Duplicate Billings, \$346

Nineteen instances totaling \$928 were recorded as duplicate hours on the billing registers.

Based on Ms. Burkett's assertion, on January 27, 2004, we proposed a Finding for Recovery against the Law Offices for \$928. In Ms. Burkett's February 18, 2004 response to our proposed Finding for Recovery, she indicated her initial identification of the hours totaling \$928 was incorrect. Based on further review of her files, Ms. Burkett determined only \$346 was charged for duplicate billings. Ms. Burkett provided additional supporting documentation for \$126 and we were unable to confirm whether the remaining \$456, originally identified by Ms. Burkett, were the result of duplicate billings because her billing register did not identify start and completion times. Ms. Burkett repaid \$346 to Fairfield County on February 18, 2004, and we consider the \$346 a Finding for Recovery Repaid under Audit.

Incorrect Billings, \$16

During the course of our fieldwork, Ms. Burkett identified 11 instances totaling \$438 which were billed for more hours than what was documented and 8 instances totaling \$140 that were marked "error." Although Ms. Burkett stated these hours were billed incorrectly, she did not provide any documentation to support the incorrect billings.

On January 27, 2004, we proposed a Finding for Recovery against the Law Offices for \$578 based on Ms. Burkett's evaluation of her case files. Ms. Burkett's February 18, 2004 response to our proposed Finding for Recovery indicated she reviewed each of the files further and determined the original time recorded was properly billed for all but \$16. Due to the fact that Ms. Burkett did not have any supporting documentation for her original identification of incorrect billings, we were unable to confirm whether the remaining instances were correctly billed. On February 18, 2004, Ms. Burkett repaid \$16 to Fairfield County. We consider the \$16 as a Finding Repaid under Audit.

FINDINGS FOR RECOVERY REPAID UNDER AUDIT- Licking County

Unsupported Billings, \$476

Ohio Rev. Code Section 2941.51 (A) states, "Counsel appointed to a case or selected by an indigent person under division (E) of section 120.16 or division (E) of section 120.26 of the Revised Code, or otherwise appointed by the court, except for counsel appointed by the court to provide legal representation for a person charged with a violation of an ordinance of a municipal corporation, shall be paid for their services by the county the compensation and expenses that the trial court approves." This section is included in Appendix G of the Ohio Public Defender Standards and Guidelines for Appointed Counsel Reimbursement, which was distributed by the Ohio Public Defender Commission, each time the manual was updated, to those serving as court-appointed attorneys. In addition, Ohio Public Defender Standards and Guidelines for Appointed Counsel Reimbursement, Section 1F, states, "Attorneys are also required to prepare and maintain time records for each appointed case showing the date of service, nature of services rendered, and hours worked."

Supplement to the Special Audit Report

The Law Offices provided detailed billing records by case and billing journals for each attorney showing by date each client for which services were provided, the nature of the services provided, and the amount of time of the service. We compared the hours billed on the Itemized Fee Statements to the Law Offices' billing journals for each attorney.

On January 27, 2004, we proposed a Finding for Recovery against the Law Offices of \$5,125 for unsupported billings. Ms. Burkett's February 18, 2004 response provided additional explanation and documentation for all but \$476 of the amount identified in the proposed Finding for Recovery. On February 18, 2004, Ms. Burkett repaid Licking County \$476. We consider the \$476 a Finding for Recovery Repaid under Audit.

Unallowable Fees, \$2,107

The Law Offices billed 60.2 hours totaling \$2,107 at the attorney rate for out-of-court services provided by an individual who had completed law school, and per the Ohio Supreme Court, did not have a valid intern certificate nor had the individual passed the bar exam as required by Governing Bar Rule I, Section 1, and Rule II, Section 2. Therefore, the hours worked could not be billed as being performed by an attorney and would not be considered allowable.

On January 27, 2004, we proposed a Finding for Recovery for \$2,107 against the Law Offices. Ms. Burkett repaid Licking County \$2,107 on February 18, 2004. We consider the \$2,107 a Finding for Recovery Repaid under Audit.

Incorrect Billings, \$102

We noted 9 cases in which \$242 were requested and paid to the Law Offices in excess of the fee schedule established by Licking County. The docket and case file were searched to determine if a motion to exceed was filed granting the court-appointed counsel the right to bill beyond the established fee schedule; however, no motion could be located or was indicated on the docket for the 9 cases. Thus, the fees paid in excess of the fee schedule were improperly paid to the Law Offices. Additionally, there were 17 cases which were billed at an incorrect rate, resulting in an overpayment of \$41.

On January 27, 2004, we proposed a Finding for Recovery against the Law Offices for \$283. Ms. Burkett's February 18, 2004 response to our proposal provided documentation supporting \$181. Ms. Burkett repaid Licking County \$102 on February 26, 2004. We consider the \$102 a Finding for Recovery Repaid under Audit.

SUMMARY - FINDINGS FOR RECOVERY REPAID UNDER AUDIT

	Fairfield County	Licking County
Unsupported Billings	\$112	\$476
Unallowable Fees	300	2,107
Duplicate Billings	346	0
Not Appointed Attorney	0	0
Incorrect Billings	16	102
Total	<u>\$774</u>	<u>\$2,685</u>

Supplement to the Special Audit Report

NONCOMPLIANCE CITATIONS – Fairfield and Licking Counties

Court Dockets

Ohio Rev. Code Section 2303.08 provides, “The clerk of the court of common pleas shall indorse on each pleading or paper in a cause filed in the clerk’s office the time of filing, enter all orders, decrees, judgments, and proceedings of the courts of which such individual is the clerk, make a complete record when ordered on the journal to do so and pay over to the proper parties all moneys coming into the clerk’s hands as clerk.”

Ohio Rev. Code Section 2152.71(A)(1) provides, “The juvenile court shall maintain records of all official cases brought before it, including but not limited to, an appearance docket, a journal, and in the cases pertaining to an alleged delinquent child, arrest and custody records, complaints, journal entries, and hearing summaries. The court shall maintain a separate docket for traffic cases and shall record all traffic cases on the separate docket instead of on the general appearance docket.”

Ohio Rev. Code Section 1901.31(E) provides, “...The [municipal court] clerk shall prepare and maintain a general index, a docket, and other records that the court, by rule requires, all of which shall be the public records of the court. ... The Clerk also shall enter all reports, verdicts, orders, judgments, and proceedings of the court, clearly specifying the relief granted or orders made in each action.”

During our review of the court dockets to support in-court time billed by court-appointed counsel in Fairfield County, we noted 42 cases where in-court time was not supported by activity in the dockets but was supported by documentation in the case file. Of these 42 cases, 11 related to Common Pleas Court, 3 related to Juvenile Court, and 28 related to Municipal Court.

In Licking County, the computerized docket for Court of Appeals did not list the date the attorney was appointed. The attorney appointment date is only listed on the internet docket of the original case being appealed. As a result, the Appeals Court case docket does not contain all of the information related to the case.

The dockets should be updated for all court activity. An incomplete docket hinders access to all relevant court activity for a particular case. Additionally, an incomplete docket can cause confusion when reconciling attorney billings with court activities. Therefore, we recommend the courts take steps to ensure the dockets are updated for each activity.

MANAGEMENT COMMENTS – Fairfield and Licking Counties

Establishing County or Joint County Public Defender’s Office

Ohio Rev. Code Section 120.13 (A) states, “The County Commissioners in any county may establish a county public defender commission.” Furthermore, Ohio Rev. Code Section 120.23 (A) states, “The Boards of County Commissioners in two or more adjoining or neighboring counties may form themselves into a joint board and proceed to organize a district for the establishment of a joint county public defender commission.” Finally, Ohio Rev. Code Section 120.14 (A)(1) states, “Except as provided in division (A)(2) of this section, the county public defender commission shall appoint the county public defender...”

During the Period, Fairfield County spent \$421,350, and Licking County spent \$733,806, in public defenders fees for court-appointed counsel. Establishing a County or Joint County Public Defender’s Office could reduce these fees by eliminating the paperwork and time spent on the reimbursement to the court-appointed counsel and could allow the County the ability to control the billable time spent on each case.

We recommend Fairfield and Licking Counties conduct a cost benefit analysis in consideration of establishing a County or Joint County Public Defender’s Office.

Supplement to the Special Audit Report

Fees Paid in Excess of the Fee Schedule

Ohio Rev. Code Section 120.33 (A) (4) states, in part, “No court shall approve compensation and expenses that exceed the amount fixed pursuant to division (A) (3) of this section. Ohio Rev. Code Section 120.33 (A) (3) provides, “The board of county commissioners shall establish a schedule of fees by case or on an hourly basis to be paid to counsel for legal services provided pursuant to a resolution adopted under this section.” Section H of the *Standards and Guidelines for Appointed Counsel Reimbursement*, published by the Ohio Public Defender, states, “The actual fees paid to the attorney by the county are determined by each board of county commissions pursuant to Section 120.33 of the Ohio Rev. Code.”

The Law Offices submitted Motions for 9 cases in Fairfield County and 76 cases in Licking County requesting payments of \$1,115 and \$14,340, respectively, in excess of the fee schedule approved by the County Commissioners. In each of these cases, the County identified the excess and did not reimburse the Law Offices in excess of the fee schedule.

If the Law Offices are requesting reimbursement in excess of the approved fee schedule, the Law Offices should, as provided in Section II Part G of the *Standards and Guidelines for Appointed Counsel Reimbursement*, clearly document the reason for the extraordinary fees and the fees must be approved by the judge hearing the case prior to payment.

We recommend that the judges review each Motion to ensure that the amount does not exceed the fee schedule. If the amount exceeds the fee schedule, the judge should sign a motion approving fees in excess of the fee schedule or reduce the amount to be paid to the approved rate.

Appeals Court Rate

On November 30, 1999, the Licking County Commissioners established a fee schedule for payments to Appointed Counsel providing services to indigent defendants effective January 1, 2000. Section II Paragraph D of the schedule establishes an hourly rate of \$35 per hour for Court of Appeals cases.

The Motion requesting payment for 16 of 26 Appeals Court cases which we reviewed listed an incorrect rate of \$45 for in-court time. If the County Auditor or court employees had not corrected this error, the County would have paid fees which were not in accordance with the fee schedule.

We recommend both Licking and Fairfield Counties provide written expectations to its court-appointed attorneys to instruct them to review the Motion prior to submission to the court, for compliance with the approved fee schedule. We also recommend the judges and the County Auditor’s Office continue to review the Motion prior to signing to ensure the correct rates were charged by the court-appointed attorney based on the type of case.

Supplement to the Special Audit Report

Additional Internal Control Weaknesses

Although not a direct result of our audit procedures, we noted the following additional internal control weaknesses that we wanted to bring to your attention:

MANAGEMENT COMMENTS – FAIRFIELD AND LICKING COUNTIES

Use of Signature Stamps

In Fairfield County, there were 24 instances where a signature stamp was used to approve Motion. In Licking County, there were 101 cases where a stamp was used to approve the Motion. As a result, it was impossible to determine whether the form was reviewed by the judge. The use of a rubber stamp could result in Motion being approved without the judge's knowledge.

We recommend the judges discontinue the use of the rubber stamp and initial and date the Motion. Alternatively, the judges should consider limiting the authorization to use the stamp and require the individual to write his or her initials and the date beside the stamp. This will ensure the Motion has been approved.

Incorrect Dates and Case Numbers

There were 74 cases in Fairfield County and 56 cases in Licking County in which the judge did not date the Motion, and 84 cases in Fairfield County and 111 cases in Licking County where the Motion or Affidavit appointing the attorney did not have the date the judge approved the Motion. Consequently, the Motions only document the filing date, which, due to the nature of court activity, is not always the same as the date of the appointment.

Additionally, there were 89 cases in Fairfield County and 163 cases in Licking County where the appointment date on the Motion did not agree to the appointment date on the judges' Motions appointing the attorney. On 21 occasions in Fairfield County and 30 occasions in Licking County, the docket date did not agree with the disposal date listed on the Motion.

In addition, there were 7 cases in Fairfield County and 15 cases in Licking County in which the case number listed on the Motion did not match the case number on the corresponding docket and/or case file and 1 case which was billed to the wrong county. Furthermore, we noted 1 case in Fairfield County and 4 cases in Licking County wherein the case number and/or the defendant's name on the Motion did not match any corresponding case numbers for the defendant name but was approved by the judge for payment.

Lack of reviewing the Motion submitted could allow court-appointed counsel to be paid erroneously for services not performed and for cases to which it is not appointed. We recommend the judges closely review the Motion submitted by court-appointed counsel for errors, improper billings, or inaccuracies before certifying the payment.

Attorney Listings on Fee Statements

The attorney listed on the Itemized Fee Statement did not agree to the attorney appointed by the court for 13 cases in Fairfield County and 18 cases in Licking County. Additionally, 100 cases in Fairfield County listed the Law Offices rather than an appointed attorney. The Ohio Public Defender has published *Standards and Guidelines for Appointed Counsel Reimbursement* to be followed by the court-appointed attorneys. Those standards require the attorney's name be provided on the Itemized Fee Statement.

We recommend both Licking and Fairfield Counties review the Itemized Fee Statements for the attorney's name, and not issue payment for fees requested without this information.

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**Auditor of State
Betty Montgomery**

88 East Broad Street
P.O. Box 1140
Columbus, Ohio 43216-1140

Telephone 614-466-4514
800-282-0370

Facsimile 614-466-4490

COURT APPOINTED ATTORNEY FEES PAID BY LICKING AND FAIRFIELD COUNTIES

LICKING COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
MAY 4, 2004**