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IN THE COURT OF APPEALS OF IOWA  
CLERK SUPREME COURTBREKKEN, DEPPE and JAMES,  
Attorneys at Law,

Petitioners,

v.

RUSSELL J. HILL, Judge of the  
District Court In and For Hamilton  
County, Iowa,

Respondent.

Filed November 10, 1977

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2-59227

Certiorari to Hamilton District Court - Russell J. Hill, Judge.

Original certiorari proceeding asserting that respondent exceeded its jurisdiction or otherwise acted illegally in fixing the amount of attorney fees to be allowed petitioners as court appointed counsel for parents in a juvenile proceeding. Writ sustained in part and cause remanded.

Brekken, Deppe and James, of Story City, for petitioners.

Richard C. Turner, Attorney General, Raymond W. Sullins, Assistant Attorney General, and Russell J. Hill, for respondent.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

This is an original certiorari proceeding asserting that the respondent exceeded its jurisdiction or otherwise acted illegally in fixing the amount of attorney fees to be allowed petitioners as court appointed counsel for parents in a juvenile court proceeding seeking termination of parental rights. The statute authorizing such appointment is section 232.28, The Code. Attorneys appointed by the court in these situations are entitled to "reasonable compensation" from the public treasury. See Ferguson v. Pottawattamie County, 224 Iowa 516, 278 N.W. 223 (1938).

In the present case petitioners initially filed with their application for fees a sworn itemized statement detailing 86.25 hours of out-of-court time and 9.5 hours of court time expended in the representation of their clients. They also itemized out-of-pocket expenses incurred in the sum of \$215.78. Subsequently, and before the respondent acted on the fee application it was supplemented so as to include a claim for an additional 3.5 hours of out-of-court time and additional out-of-pocket expenses of \$5.55.

In their application petitioners claimed compensation at the rate of \$20 per hour for out-of-court time and \$35 per hour for time in court. This results in a total claim for fees and expenses of \$2343.83. The respondent, subsequent to receiving the fee application, allowed the total sum of \$1221 on the claim.

In reviewing the respondent's fee order on a writ of certiorari, we exercise a very limited review of the respondent's discretion; only to the extent of determining if there has been an abuse thereof. Furey v. Crawford County, 208 N.W.2d 15, 19 (Iowa 1973). In applying this standard to the record in the present case our task is hampered by the fact that in the return made by respondent to the writ there is no way of determining even a rough generalization of how the fee which was actually allowed was computed. The return recites that in fixing the amount of compensation respondent took into consideration "the experience of counsel, time spent, difficulty and importance of issues, and the guidelines as established by the judges of the Second Judicial District."

The difficulty which we face in evaluating this response is that it provides no explanation of how the consideration of these several factors yields a fee of approximately half the amount claimed. If inadequacy of the return were the only problem facing us we would not be inclined to presume an abuse of trial court

discretion. But there are certain matters which are included in the return which suggest that the respondent applied an improper standard in fixing petitioners' fee. In the return to the writ respondent recites:

The final factor was the fee schedule promulgated by the Second Judicial District. Plaintiffs were put on notice that when public funds were involved, the court must be kept advised when large amounts are involved. At no time did Plaintiffs advise the court on the amount of time being spent on the case.

....

Perhaps attorneys commonly do not submit a statement to their clients until the litigation is completed, but legal ethics still require that counsel keep the "purse" advised as to the costs, especially when put on notice to do so.

The fee schedule referred to was promulgated by the chief judge of the second judicial district after petitioners' appointment as counsel in the particular juvenile proceeding. By its terms it applies to "criminal cases," although an hourly rate of \$20 for juvenile matters is provided for in the schedule. We can find no provision in this fee schedule requiring that the amount of time expended by the attorney be cleared in advance with the court in order to be compensable.

The district "fee schedule" purports to establish a \$1000 maximum fee for court appointed counsel in all criminal felony cases where the maximum punishment is less than life imprisonment. Petitioners argue that the respondent applied this maximum to the instant fee application because the total fee allowed comes within a few cents of equaling \$1000 plus their out-of-pocket expenses.

We find nothing in the record indicating that petitioners were on notice that they had to get court approval in advance for fee claims exceeding any particular sum. The respondent's conclusion that they needed to do so was not legally warranted. To the extent that it is inferred that such failure was an unethical act on the counsels' part we specifically reject any such contention. While we cannot say with certainty that respondent applied a \$1000 maximum in fixing petitioners' fee, the record is strongly suggestive that such was the case. We hold that to do so on the facts of the present case would constitute the application of an improper and inappropriate legal standard.

We further note that respondent failed to accord petitioners a hearing on their fee application of the type contemplated in *Furey v. Crawford County*, 208 N.W.2d 15, 18 (Iowa 1973). While such a hearing may not be necessary in every case where court

appointed counsel seek a judicial allowance of fees, it would seem to be essential in any instance where, as here, a trial court contemplates cutting the asking by nearly 50 per cent. This procedure has the advantage of giving the claimants an opportunity to present additional evidence on the reasonable value of their services. While trial courts are experts on reasonable attorney fees, they are clearly not the only experts.

For the reasons stated herein we hold that the respondent acted beyond his jurisdiction or otherwise illegally in the method of fixing petitioners' attorney fees. We therefore sustain the writ in part and vacate the order being reviewed. This cause is remanded and respondent shall reconsider the fee application without relying in any way upon the limitations contained in the district fee schedule. We express no opinion as to what the allowance should be, nor do we infer that the other factors relied upon by respondent in setting the fee were improper. We direct, however, that a written memorandum be filed by respondent giving sufficient explanation of how the amount allowed was arrived at. Because counsel have been invited to submit their applications in terms of time expended, this should be the norm in fixing compensation with other relevant factors expressed in terms of deviation or adjustments to claimed hourly compensation.

In conclusion, we observe that the instant case strikes us as being atypical in terms of the protracted period of time between initiation and disposition, apparently not as a result of any failures by petitioners. This factor, we believe, militates strongly against efficiency in time management by counsel in the representation of their client. We deem this factor to be another appropriate consideration in the determination of their compensation.

The writ of certiorari is sustained in part, the order under review is vacated, and the cause is remanded for further proceedings consistent herewith.

All judges concur except DONIELSON, J., who concurs specially.

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DONIELSON, J. (specially concurring)

Although I agree with the views expressed in the majority opinion, I wish to emphasize that in at least two areas of the law, criminal and land condemnation cases, the Iowa legislature has specifically determined that attorneys are to be awarded reasonable compensation, as determined by the trial court or land commission, respectively. See §§ 775.5 and 472.33, The Code.<sup>1</sup>

In the criminal context, it is clear that with the enactment of § 775.5, the legislature intended to remove the determination of attorneys fees from the sphere of legislative influence and entrust it to the sound discretion of the trial court upon a consideration of what constitutes reasonable compensation under the circumstances of the given case. This legislative intent is perhaps best manifested by the title of the legislation enacting the present version of § 775.5; "An Act to eliminate statutory fees for court-appointed attorneys and allow the court to establish each fee in consideration of the services performed." Regular Session of the 61st General Assembly, Chapter 449, § 1. See Furey v. Crawford County, 208 N.W.2d 15, 19 (Iowa 1973).

I am aware of no authority mandating a different analysis in the instant juvenile case than that employed in criminal or land condemnation cases. The authority to award attorney fees which is vested in the trial court is completely antagonistic to the type of fixed fee schedule at issue here.

A survey of the statutes and the supreme court's interpretation thereof forces me to conclude that the second judicial district was without authority to enact the instant fee schedule. See Exhibit F (attached). Any determination regarding attorneys fees must be made in light of the circumstances of each case. Furthermore, any dispute with regard to "reasonable compensation" in a given case should be resolved in the context of a judicial hearing as prescribed by the court in Furey v. Crawford County, supra, at 18.

<sup>1</sup> Although various fixed fee schedules regarding criminal cases are employed in several judicial districts in the state, I am not aware of any similar schedules in the land condemnation area. Such cases are apparently handled in strict accordance with the literal language of § 472.33, The Code. The difference in treatment accorded these two types of cases puzzles me, inasmuch as the statutes call for an identical approach to the determination of attorneys fees.

FOR FIXING COMPENSATION IN  
CRIMINAL CASES FOR APPOINTED COUNSEL.

Exhibit F

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PROCEDURAL MATTERS

MAGISTRATE COURT

FEE

- |    |                                                                                                    |          |
|----|----------------------------------------------------------------------------------------------------|----------|
| 1. | Trials of misdemeanors or evidentiary preliminary hearings in magistrate's court .....             | \$ 35.00 |
| 2. | Other appearances in magistrate's court; e.g. bond hearings or waiver of preliminary hearings..... | 20.00    |

DISTRICT COURT

- |    |                                                        |       |
|----|--------------------------------------------------------|-------|
| 1. | Arraignment and plea.....                              | 35.00 |
| 2. | Judgment and sentence.....                             | 35.00 |
| 3. | Motion to suppress, including evidentiary hearing..... | 50.00 |

TRIALS AND HEARINGS

- |    |                                                                                                                                                       |        |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 1. | Actual trial in district court for all offenses except indictable misdemeanors and those punishable by a maximum imprisonment of life - per diem..... | 150.00 |
| 2. | Actual trial for indictable misdemeanors-per diem.....                                                                                                | 100.00 |
| 3. | Actual time spent in court hearings on juvenile matters and parole revocation hearings - per hour.....                                                | 20.00  |

OTHER FEE CONSIDERATIONS

1. The above unitary schedule will ordinarily govern, but the Court may allow counsel additional compensation for out of court time. Such compensation shall not exceed \$20 per hour for such time as the Court determines was reasonably and necessarily expended in view of the nature of the charge, the complexity and intricacy of the particular case, and the experience of counsel.
2. The maximum limit for court-appointed counsel in a felony case shall be \$1,000.00.
3. The maximum limit for court-appointed counsel in an indictable misdemeanor case shall be \$500.00.
4. The maximum limit for court-appointed counsel for handling an appeal to the Iowa Supreme Court shall be \$1,000.00.
5. In cases where the maximum punishment is life imprisonment, defense counsel shall make arrangements in advance of performing services as to his compensation with the District Court Judge who makes the appointment.
6. The maximum limit for court-appointed counsel in a post-conviction remedy case shall be \$250.00..

EXPENSES.

1. Counsel shall be separately reimbursed for expenses actually incurred for long-distance calls, serving subpoenas and mileage for use of his automobile in the preparation for and trial of the case.
2. Any other item of expense will not be reimbursed, unless prior approval for the expenditure is first obtained from a District Court Judge..