

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO)	CASE NO. CR 12 562482
)	
<i>Plaintiff,</i>)	JUDGE JOHN P. O'DONNELL
)	
vs.)	
)	
JASON R. HLABSE)	<u>JOURNAL ENTRY</u>
)	
<i>Defendant.</i>)	

John P. O'Donnell, J.:

On October 31, 2012, the court held a hearing on the May 31, 2012, motion by attorney Charles Feuer for approval of payment of appointed counsel fees and expenses. This entry follows.

The evidence at the hearing showed that defendant Jason Hlabse informed the court at his initial appearance on May 14, 2012, that he was unable to afford counsel. Because of that, the court appointed attorney Charles Feuer to represent Hlabse at the expense of the State.

Hlabse's next hearing was set for Monday, May 21. Sometime after May 14 and before May 21 -- probably on Saturday, May 19 -- the defendant met with and retained attorney Michael Shaughnessy to represent him.

Shaughnessy then appeared with Hlabse for the May 21 conference. At that conference, Shaughnessy discussed the case with the prosecuting attorney Robin Belcher and another pre-trial conference was set for June 6.

Hlabse does not recall ever meeting Feuer. Shaughnessy and Belcher do not recall Feuer appearing for the May 21 conference; however, the court's entry from that conference states that Feuer was present. Although it is not shown on the entry, it is almost certain that upon Feuer's appearance the court's bailiff informed him that Shaughnessy had been retained and his services as assigned counsel were no longer needed.

On May 31, Feuer submitted his motion for approval of assigned counsel fees. That motion includes the following time that, by his signature, Feuer certified was spent representing Hlabse:

<u>Date</u>	<u>Out-of-Court Total</u>	<u>Pre-Trial Hearings</u>	<u>In-Court Total</u>	<u>Daily Total</u>
May 14	1 hour			1 hour
May 15	2 hours			1 hour ¹
May 20	1 hour			1 hour
May 21	1 hour	3 hours	3 hours	4 hours
May 23	0.5 hour			0.5 hour
Total =	5.5 hours	3.0 hours	3.0 hours	8.5 hours

The motion does not include any claim for travel expense or other expenses including postage, telephone or photocopying.

Based on the evidence at the hearing, the court finds that Feuer's claim is not credible and denies the motion.

First, the evidence showed that Feuer never requested or received written discovery. Because of that, it is highly unlikely that Feuer spent four hours (including one hour on May 20, a Sunday) working on this case before going to court for the May 21 pre-trial conference. Second, because Feuer did not submit a claim for postage or introduce into evidence at the

¹ On May 15, Feuer claimed an out-of-court total of 2 hours and a daily total of 1 hour. Because the total hours he claimed is 8.5, it appears that the mistake in that row is in the daily total column, not the out-of-court total column.

hearing any letters sent to the defendant, and based on Hlabse's testimony that he did not remember Feuer, it appears unlikely that Feuer ever even corresponded with the defendant, much less before May 21. Therefore, while the court has no doubt that some time was spent setting up an office file for this case, it is excessive to charge four hours over three separate days for that effort.

As to Feuer's attendance at the May 21 pre-trial conference, the court accepts his claim that he traveled to the courthouse. However, there is no reason to believe that it took a total of three hours for Feuer to learn that Hlabse had retained counsel and that his assigned representation was ended.

Finally, Feuer charged 30 minutes to prepare and submit the motion for approval of payment of his fees and expenses. As an initial matter, the court notes that Local Rule 33.0 of the Cuyahoga County Court of Common Pleas pertaining to assignment and compensation of counsel to defend and represent indigent criminal defendants is silent on the subject of whether time spent preparing a bill is compensable. However, Local Rule 33 does allow a level of minimum compensation, suggesting that counsel's administration of a case -- setting up a file, checking for conflicts, making appropriate docket entries and introductory communications to the client, and closing the file -- is recognized by the court as a necessary element of an attorney's services and is, therefore, compensable under the rule.

Nevertheless, it strains believability to claim that the bill in this case took half an hour to complete. This is primarily because Feuer did not undertake an interview with Hlabse to establish, and list, his assets and liabilities. Instead, the defendant's financial disclosure section of the motion is a list of zeroes and sections VIII through XII of the application are completely blank.

For all of these reasons, the court finds Feuer's application for payment to be not credible. Although Feuer would normally be entitled under Local Rule 33 to a level of minimum compensation, as a sanction for submitting an inflated bill the court orders that no such minimum compensation be paid in this case.

IT IS SO ORDERED:

Judge John P. O'Donnell

Date: _____

SERVICE

A copy of this journal entry was sent by email this 21st day of November, 2012, to the following:

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Judge John P. O'Donnell