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## Hein orders auditor to pay fees

by Lisa Gagnon

On Dec. 22, Darke County Commissioners approved the payment of \$7,229.50 from the Common Pleas Court's Special Projects fund for court-appointed attorneys.

In August, Common Pleas Court Judge Jon Hein issued a court order to county commissioners to increase the pay for court-appointed counsel for indigent defendants from \$50 per hour in court and \$40 out to \$65 per hour in or out of court.

Commissioners appealed the order, as reported in the Sept. 9 Daily Advocate. They said that Darke County's rate is the same as 42 of Ohio's 88 counties.

The \$7,229.50 is the difference between the \$40/\$50 per hour rate the attorneys received and the \$65 ordered by Hein since his court order was to be effective Sept. 1 through the end of October.

"We're paying the higher rate for cases appointed in September and October. At the end of October, the commissioners agreed to form a public defenders office, so the attorneys agreed to go back to the old rate to finish up," said Hein.

"There's nothing we can do," said Chairman Mike Rhoades.

He explained that the fund is discretionary, and Judge Jon Hein may spend it pretty much how he wishes.

"He (Hein) court-ordered me to pay these attorney fees," said Auditor Janice Anderson. She said that before the vouchers were paid, the Special Projects fund had \$54,457.85.

Hein said that issuing a court order to pay from a discretionary fund is just business as usual.

"Whenever I want money paid out of that special discretionary fund, I issue an order to pay it out of that special discretionary fund. This was basically an order to the auditor saying, 'Pay these bills,'" he remarked.

"Those expenses are kind of a discretionary fund for the judge. It doesn't come out of the general fund. It comes out of court costs and special court fees. By law, it's to be done by court order," said Darke County Prosecutor Richard Howell.

Howell said he'd advised Hein to issue an actual court order for the auditor to pay the fees.

In November, commissioners had refused to pay a bill submitted by attorney Mary Kay Felton at \$65 per hour.

Later that month, commissioners established a public defender commission. At that time, they said the action was spurred by Hein's order to raise indigent defenders' fees.

Hein argued that the county was having difficulty finding attorneys to provide indigent defense and that nine attorneys had resigned during the summer. The court had to delay appointing attorneys for 10 indigent defendants this summer because of that, he noted.

He said that his predecessor, Judge Lee Bixler, had attempted to increase fees, and Hein had made the same request each year since 1999.

The county spends about \$250,000 for prosecution each year but less than half that for defense, estimated Hein.

He added that it's unlikely additional amounts will be taken from the discretionary fund for indigent defense counsel fees unless a bill is submitted late.

"There never have been any raises for 18 years. Until the commissioners agreed to resolve that problem, the attorneys weren't going to work at 1986 rates. They're willing to work and help, but not forever," stated Hein.