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TN court-appointed attorneys paid less than in most states, study finds

Court-appointed lawyers say hourly compensation, caps hurt low-income defendants

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The Tennessean

Being a low-income criminal defendant in Tennessee can often mean having disappointing legal representation, according to a recent study.

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A study released by the National Association of Criminal Defense Lawyers found that Tennessee pays court-appointed attorneys one of the lowest rates in the country.

The study, tied to the 50th anniversary of Gideon v. Wainwright, the U.S. Supreme Court decision that entitled poor people charged with crimes to court-appointed attorneys, suggested that states with low compensation and pay caps hinder poor defendants. It discourages experienced attorneys from taking court-appointed cases and creates an incentive for attorneys to resolve charges quickly, often with guilty pleas, according to the study.

Court-appointed attorney pay in felony cases

- Tennessee: \$40/hour out of court; \$50/hour in court with \$1,500 cap.
- Kentucky: \$100/hour with \$2,500 cap (proposed).
- Alabama: \$70/hour with \$4,000 cap.
- Arkansas: Up to \$90/hour with no cap.
- Florida: Flat rate that varies with \$2,500 cap.

Tennessee pays court-appointed attorneys \$50 an hour for in-court work and \$40 an hour for work completed outside the courtroom. Those rates are capped at \$1,500 for felony cases, \$1,000 for misdemeanor cases.

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Connecticut pays court-appointed attorneys in felony cases \$75 an hour. And in Alabama, attorneys are paid \$70 an hour. The national average is about \$65 an hour.

Tennessee's rates allow for about a week to work on a felony case, which can easily consume several weeks, even months, in certain instances.

Michele Wojciechowski, spokeswoman for the state Supreme Court, which set the

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compensation rules, said it is the court's intention to pay attorneys fairly, but it is limited by budget constraints.

She said the court paid criminal defense attorneys \$17.6 million in 2012, which is a 72 percent increase from 2004. All told, criminal defense expenditures represent nearly half of the state court system's budget.

Still, Nashville-area criminal defense attorneys echoed the study's concern that low pay and caps can yield unfavorable results for poor defendants. Rather than mounting a thoughtful defense, many court-appointed attorneys are forced to negotiate guilty pleas, so as not to exceed the hourly limit.

"Our compensation rates are outrageous and unconscionable," said defense attorney Patrick McNally. "It makes attorneys want to move cases and move them fast. That incentive to conclude cases is not good for defendants."

A limited pool

The new study also found that pay caps limit the pool of attorneys willing to represent indigent defendants, prompting more experienced attorneys to steer clear of court-appointed arrangements. Consequently, it found, less-seasoned attorneys wind up representing defendants in complicated cases that call for a more advanced expertise.

States set compensation rates by a state rule, on a case-by-case basis, or by a contract with a private firm. Most states set rates by a state rule, as Tennessee does, and about half of all states put a lid on maximum compensation.

Private defense attorney Richard McGee said Tennessee's pay caps pit a client's interests against an attorney's. Once an attorney reaches the maximum number of billable hours without resolving a case, it "becomes an incredible personal sacrifice," he said.

"A system that grossly underpays attorneys and makes them lose money every time they represent a poor person is not fair," McGee said. "The state has a responsibility to adequately compensate those attorneys."

For defendants, underfunded systems chip away at "equal justice under the law," a condition expected to worsen if hourly rates and maximum fee caps are left unaddressed, according to the study.

"Even simple cases can take a significant amount of time," said defense attorney Ben Raybin. "When you consider the investigation, hiring experts and other cost, an appointed case often means money straight out of an attorney's pocket."

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