



COUNTY ADVISORY BULLETIN

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Published by: County Commissioners Association of Ohio

209 East State Street • Columbus, Ohio 43215-4309

Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

BULLETIN 2011-03

OCTOBER, 2011

CORONER WITNESS FEES IN CIVIL CASES

APPLICABLE LEGISLATION: Am. Sub. H.B 153

REVISED CODE SECTIONS EFFECTED: Amends ORC Sections 2335.05 and 2335.06; and Enacts ORC 2335.061

SPONSORS: Amstutz

Reps. J. Adams, Batchelder, Beck, Blair, Blessing, Boose, Buchy, Burke, Combs, Dovilla, Duffey, Grossman, Hackett, Hall, Hollington, Maag, McClain, Newbold, Rosenberger, Ruhl, Slaby, Sprague, Stebelton, Uecker,

Sens. Bacon, Beagle, Coley, Daniels, Faber, Gillmor, Hite, Jones, LaRose, Lehner, Manning, Niehaus, Schaffer, Wagoner, Widener

EFFECTIVE DATE: September 29, 2011

COUNTY TO BE COMPENSATED FOR CORONER'S EXPERT TESTIMONY IN A CIVIL MATTER

HB 153, the fiscal years 2012/2013 state biennial budget bill, provides that a county is to receive compensation for the time its coroner or deputy coroner spends preparing and providing "expert testimony" in a civil matter. This compensation is to be paid by the party to the civil litigation that subpoenaed the coroner and is to be deposited into the general fund of the county. The budget bill amended ORC Sections 2335.05 and 2335.06 and enacts ORC 2335.061. These sections of the Ohio Revised Code are attached as Exhibit 1.

EXPERT VS. FACT TESTIMONY

There is a critical distinction made between "expert testimony" and "fact testimony." Expert testimony, in which the coroner acts as an expert witness pursuant to law and the Rules of Evidence, is to be compensated. Fact testimony, in which the coroner simply presents the

information gathered and the process followed by the coroner in the performance of the coroner's statutory duties, is not compensated. (ORC 2335.061(A)(4) and (5))

If the parties dispute the nature of the testimony sought from the coroner, the court determines whether the testimony sought is expert testimony or fact testimony. (ORC 2335.061(E))

PROCEDURE FOR OBTAINING THE CORONER'S TESTIMONY

In order for the coroner to be required to testify, a party to the civil matter must subpoena a coroner or deputy coroner by filing with the court a notice that includes the name of the individual being subpoenaed, a brief statement of the issues upon which the party seeks expert testimony from the witness, and an acknowledgment that the party will comply with all of the requirements of the law including the payment of compensation as determined by the coroner. The failure of a party to file an appropriate subpoena request prohibits the party from having a coroner or deputy coroner testify unless the party can show good cause as to why the coroner was not served with a subpoena. (ORC 2335.061(B) and (D))

After the conclusion of the coroner's testimony, the coroner is required to file a statement with the court and serve a copy on each of the parties indicating the fee due and how the fee was calculated. The party deposing the coroner or calling the coroner as a witness at trial or hearing is required to reimburse the county in which the coroner or deputy coroner holds office or is appointed or employed within 30 days after receiving the fee statement. The fee is deposited into the county general fund. (ORC 2335.061(C))

CALCULATING COMPENSATION DUE THE COUNTY

The "hourly rate" of compensation reimbursable to the county is calculated based upon the Class 8 Salary (w/o Private Practice), established in ORC Sections 325.15 and 325.18, divided by 2080 hours. Currently this salary amount is \$121,323 and when divided by 2080 yields an hourly rate of \$58.33. (ORC 2335.061(A)(6))

If the coroner provides expert testimony in a deposition the county is to receive a "deposition fee." The deposition fee is calculated by multiplying the hourly rate by the number of hours spent preparing for and giving expert testimony at a deposition. (ORC 2335.061(A)(2))

If the coroner is called as a witness at trial or a hearing the county is to receive a "testimonial fee." The testimonial fee is calculated by multiplying the hourly rate by the number of hours spent preparing for and giving expert testimony at the trial or hearing and then multiplying the product by a factor of six. The current hourly rate when multiplied by six yields a rate of \$349.97 per hour for a testimonial fee. (ORC 2335.061(A)(7))

EXHIBIT 1 ORC SECTIONS 2335.05, 2335.06 and 2335.061

Sec. 2335.05. In all cases or proceedings not specified in sections 2335.06 and 2335.08 of the Revised Code, except as otherwise provided in section 2335.061 of the Revised Code, each person subpoenaed as a witness shall be allowed one dollar for each day's attendance and the mileage allowed in courts of record. ~~When~~ If not subpoenaed each person called upon to testify in a case or proceeding shall receive twenty-five cents. Such fee shall be taxed in the bill of costs, and if incurred in a state or ordinance case, or in a proceeding before a

public officer, board, or commission, the fee shall be paid out of the proper public treasury, upon the certificate of the court, officer, board, or commission conducting the proceeding.

Sec. 2335.06. ~~Each~~ (A) Except as otherwise provided in section 2335.061 of the Revised Code, each witness in civil cases shall receive the following fees:

~~(A)(1)~~ (1) Twelve dollars for each full day's attendance and six dollars for each half day's attendance at a court of record, mayor's court, or before a person authorized to take depositions, to be taxed in the bill of costs. Each witness shall also receive reimbursement for each mile necessarily traveled to and from the witness's place of residence to the place of giving testimony, to be taxed in the bill of costs. The board of county commissioners of each county shall set the reimbursement rate for each mile necessarily traveled by a witness in a civil case in the common pleas court, any division of the common pleas court, a county court, or a county-operated municipal court. The rate shall not exceed fifty and one-half cents for each mile.

~~(B)(2)~~ (2) For attending a coroner's inquest, the same fees and mileage provided by division ~~(A)(1)~~ (1) of this section, payable from the county treasury on the certificate of the coroner.

~~(C)(B)~~ (B) As used in this section, "full day's attendance" means a day on which a witness is required or requested to be present at proceedings before and after twelve noon regardless of whether the witness actually testifies; "half day's attendance" means a day on which a witness is required or requested to be present at proceedings either before or after twelve noon, but not both, regardless of whether the witness actually testifies.

Sec. 2335.061. (A) As used in this section:

(1) "Coroner" has the same meaning as in section 313.01 of the Revised Code, and includes the following:

(a) The coroner of a county other than a county in which the death occurred or the dead human body was found if the coroner of that other county performed services for the county in which the death occurred or the dead human body was found;

(b) A medical examiner appointed by the governing authority of a county to perform the duties of a coroner set forth in Chapter 313. of the Revised Code.

(2) "Deposition fee" means the amount derived by multiplying the hourly rate by the number of hours a coroner or deputy coroner spent preparing for and giving expert testimony at a deposition in a civil action pursuant to this section.

(3) "Deputy coroner" means a pathologist serving as a deputy coroner.

(4) "Expert testimony" means testimony given by a coroner or deputy coroner as an expert witness pursuant to this section and the Rules of Evidence.

(5) "Fact testimony" means testimony given by a coroner or deputy coroner regarding the performance of the duties of the coroner as set forth in Chapter 313. of the Revised Code. "Fact testimony" does not include expert testimony.

(6) "Hourly rate" means the compensation established in sections 325.15 and 325.18 of the Revised Code for a coroner without a private practice of medicine at the class 8 level for calendar year 2001 and thereafter, divided by two thousand eighty.

(7) "Testimonial fee" means the amount derived by multiplying the hourly rate by six and multiplying the product by the number of hours that a coroner or deputy coroner spent preparing for and giving expert testimony at a trial or hearing in a civil action pursuant to this section.

(B)(1) A party may subpoena a coroner or deputy coroner to give expert testimony at a trial, hearing, or deposition in a civil action only upon filing with the court a notice that includes all of the following:

(a) The name of the coroner or deputy coroner whose testimony is sought;

(b) A brief statement of the issues upon which the party seeks expert testimony from the coroner or deputy coroner;

(c) An acknowledgment by the party that the giving of expert testimony by the coroner or deputy coroner at the trial, hearing, or deposition is governed by this section and that the party will comply with all of the requirements of this section;

(d) A statement of the obligations of the coroner or deputy coroner under division (C) of this section.

(2) The notice under division (B)(1) of this section shall be served together with the subpoena.

(C) A party that obtains the expert testimony of a coroner or deputy coroner at a trial, hearing, or deposition in a civil action pursuant to division (B) or (D) of this section shall pay to the treasury of the county in which the coroner or deputy coroner holds office or is appointed or employed a testimonial fee or deposition fee, whichever is applicable, within thirty days after receiving the statement described in this division. Upon the conclusion of the coroner's or deputy coroner's expert testimony, the coroner or deputy coroner shall file a statement with the court on behalf of the county in which the coroner or deputy coroner holds office or is appointed or employed showing the fee due and how the coroner or deputy coroner calculated the fee. The coroner or deputy coroner shall serve a copy of the statement on each of the parties.

(D) For good cause shown, the court may permit a coroner or deputy coroner who has not been served with a subpoena under division (B) of this section to give expert testimony at a trial, hearing, or deposition in a civil action. Unless good cause is shown, the failure of a party to file with the court the notice described in division (B)(1) of this section prohibits the party from having a coroner or deputy coroner subpoenaed to give expert testimony at a trial, hearing, or deposition in a civil action or from otherwise calling the coroner or a deputy coroner to give expert testimony at a trial, hearing, or deposition in a civil action.

(E) In the event of a dispute as to the contents of the notice filed by a party under division (B) of this section or as to the nature of the testimony sought from or given by a coroner or a deputy coroner at a trial, hearing, or deposition in a civil action, the court shall determine whether the testimony sought from or given by the coroner or deputy coroner is expert

testimony or fact testimony. In making this determination, the court shall consider all of the following:

(1) The definitions of "expert testimony" and "fact testimony" set forth in this section;

(2) All applicable rules of evidence;

(3) Any other information that the court considers relevant.

(F) Nothing in this section shall be construed to alter, amend, or supersede the requirements of the Rules of Civil Procedure or the Rules of Evidence.