

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

RICHARD N. WATTS, ESQUIRE, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 JUSTICE ADMINISTRATIVE )  
 COMMISSION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

Case No. 2D13-2138

Opinion filed October 30, 2013.

Petition for Writ of Certiorari to the Circuit  
Court for Sarasota County; Andrew D.  
Owens, Jr., Judge.

J. Andrew Crawford of J. Andrew  
Crawford, P.A., St. Petersburg, for  
Petitioner.

Ana Cristina Martinez, General Counsel,  
and Christian D. Lake, Assistant General  
Counsel, The Justice Administrative  
Commission, Tallahassee, for  
Respondent.

ALTENBERND, Judge.

Richard N. Watts seeks certiorari review of an order awarding him  
attorney's fees in an amount less than he requested for his services as court-appointed  
counsel to a defendant in a criminal case. This proceeding is very similar to Watts v.

Justice Administrative Commission, 115 So. 3d 431 (Fla. 2d DCA 2013), in which we granted certiorari relief. We also grant relief in this case.

Mr. Watts was appointed to represent a defendant who was charged with capital sexual battery. His client entered into a negotiated plea the day before trial. Mr. Watts then submitted a billing to the Justice Administrative Commission (JAC), seeking \$20,752.50 for 276.70 hours at \$75 per hour. The matter was set for hearing before the circuit court.

At the hearing, Mr. Watts testified as to the work he performed and introduced his billing, which provided detailed information to substantiate the bill. The prosecutor agreed that the case was particularly difficult and complicated. Counsel for the JAC explained that, although the JAC had initially objected to the bill, it had done an audit and Mr. Watts had accepted their deductions. Thus, the JAC had no objection to the bill as presented to the trial court and agreed that it was reasonable. Mr. Watts explained that the basic operating expenses for his office, including staff salaries and other overhead, consumed \$50 of his hourly rate and that any rate lower than \$75 would be "confiscatory."<sup>1</sup> There was no evidence to the contrary.

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<sup>1</sup>A fee award may not exceed 200 percent of the statutory flat fee absent a specific finding by the court that double the flat fee would be confiscatory. See § 27.5304(12)(d), Fla. Stat. (2012). The parties and the court seem to be in agreement that the flat fee for this case was \$2000 under section 27.5304(5). The court further found that \$4000 would be considered confiscatory. Although the issue is not contested by the parties, we are unsure why the trial court used \$2000 as the base rate, which is the rate for representation on appeal and not reflective of any base rate at the trial level. See id. Moreover, capital sexual battery is a "capital felony" pursuant to section 794.011(2)(a), Florida Statutes (2012), but is not considered a "capital case" pursuant to section 27.5304(5)(a)(4). Capital sexual battery is not expressly covered by section 27.5304(5), but it is probably most comparable to a "life felony," which has a base rate of \$3000. See § 27.5304(5)(a)(3).

The justification behind exceeding the statutory flat fee is to ensure that indigent defendants are not receiving incompetent and ineffective representation due to low fee rates. See White v. Bd. of Cnty. Comm'rs of Pinellas Cnty., 537 So. 2d 1376, 1379-80 (Fla. 1989); Watts, 115 So. 3d at 432. Despite the seeming agreement as to the reasonableness of this bill in relation to the services provided, the trial court ruled that it would award \$15,000—200 hours at \$75 per hour.

We recognize that the trial court is not bound by the decision made by the JAC. See § 27.5304(3), Fla. Stat. (2012). It would not necessarily be a departure from the essential requirements of the law for the judge to reject a portion of the billing. Likewise, we do not believe that the judge is required to detail each and every item in the bill that he or she concludes to be excessive or unreasonable. But when it is uncontested that any hourly award less than \$75 would be confiscatory, the decision to reduce the billing from \$20,752.50 to \$15,000—a reduction of more than 25 percent—without any explanation would seem to be an arbitrary decision approaching a violation of due process.

We conclude that the reduced award without any explanation in the face of the evidence in the record departs from the essential requirements of the law. Accordingly, we grant the petition and remand for reconsideration of the fee motion.

Granted.

KHOUZAM and SLEET, JJ., Concur.