

Lawyers' fees top \$218,000 in Ochoa case

Officials still won't release details of the settlement

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Legal fees paid to attorneys representing Santa Clara County in the controversial Rudy Ochoa case totaled a staggering \$218,600, according to figures released Wednesday by County Counsel Don Clark.

Despite a court order stating that details of the settlement can be made public, Santa Clara County officials were still refusing Wednesday to say how much the county must pay the family of the 13-year-old boy, who died of pneumonia in the county's Juvenile Hall in 1981.

Clark released a breakdown of the county's legal costs that shows:

✓ The county's attorney in the case, James Towery, will receive \$41,817 in fees and \$9,913 in costs.

Towery also is the campaign treasurer for board of supervisors' Chairwoman Susanne Wilson, but he said Wednesday that Wilson had no influence in his being selected to represent the county.

The attorney said he was picked because his law firm has represented the county in medical malpractice cases since 1964.

✓ The law firm of Ed Hinshaw, who represented the Juvenile Hall nurses involved in the case, will receive \$71,292.38 in fees and \$5,720 in costs.

✓ Bernard Allard, who represented the Valley Medical Center doctor assigned to the facility, will

be paid \$14,534 in fees and \$1,311 in costs.

✓ William Sturgeon, who had earlier represented the doctor, but was later dismissed by him, earned \$65,726.19 in fees and \$8,317.52 in costs.

Clark said details of the settlement cannot be released until the board of supervisors approves a resolution authorizing payment of the settlement. He said he would ask them to do that Tuesday.

Judge Peter Stone of Santa Clara County Superior Court, who earlier had sealed the order approving the settlement, said Tuesday that details may be made public.

He said his previous order did not prevent Santa Clara County, "its employees and agents from releasing such documents regarding the terms and conditions of that settlement as may be required under the Public Records Act and when such documents constitute public documents" under that act.

But Clark said Wednesday that the settlement cannot be made public yet because no county document exists — even though Clark and other county officials know the amount of money involved.

The out-of-court settlement in the dramatic case was reached April 22, one day before it was scheduled to go to trial. At that time, Stone sealed the settlement



Rudy Ochoa died of pneumonia, alone and unattended in an infirmary room in 1981, despite his mother's pleas that her son was critically ill.

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at the request of Towery and the family's lawyer, Jessie Serna.

However, Clark and County Executive Sally Reed later asked Stone to allow the settlement to be disclosed. Both said they were not sure why Towery had asked for the agreement to be sealed.

Normally, settlements involving a public body and taxpayers' money are released promptly.

The settlement ended Gloria and Raul Ochoa's \$13 million suit alleging medical malpractice and emotional duress in the death of their son.

He died of pneumonia, alone and unattended in an infirmary room in 1981, hours after Juvenile Hall officials and medical personnel had ignored his mother's pleas that her son was critically ill and needed intensive care.

During the next five years, the county first offered \$50,000, then \$75,000 and ultimately \$211,000 to settle out of court.

The family rejected each offer. Serna called the offers "ludicrous," vowing to take the county to court in a jury trial.

During the long legal battle, Serna successfully appealed to the

state Supreme Court to allow the family to sue the county for emotional duress suffered in the death. The high court's decision overturned a Santa Clara County Superior Court ruling that the family could sue for medical malpractice but not emotional duress.

Towery said Wednesday that the county did not settle the case earlier because the Ochoa family had been unwilling to accept a "reasonable figure" in an out-of-court settlement.

Serna has described the settlement as a "substantial amount."

Towery said the county decided to settle after it realized that testimony from expert witnesses, who were scheduled to testify on behalf of the Ochoa family, could have influenced a jury to reach a decision involving "a lot of taxpayers' dollars."

He called the settlement "a compromise on both sides."

Asked why the county had not come to that conclusion earlier, in the wake of reports issued in 1981 that the boy had died because of inadequate care, Towery said only that the testimony from the witnesses, under legal procedure, was made available to the county only a month before the scheduled start of the trial.

Towery did not name the witnesses nor discuss their testimony taken during pretrial depositions.

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