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"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."
Griffin v. Illinois, 351 U.S. 12 (1956)

EMERGENCY GUIDELINES

RE: Submission of Vouchers for Services and Claims for Payment of Fees and Reimbursement of Expenses under the provisions of Section 13a of Article 21 of Chapter 29 of the West Virginia Code, W. Va. Code §29-21-13a.

ISSUED: December 18, 2015.

EFFECTIVE DATE: These emergency guidelines shall apply to legal services provided on or after the date of January 18, 2016.

1. Introduction.

Public Defender Services requires a supplemental appropriation to pay the fees for services and requests for reimbursement of expenses set forth in vouchers that have been or will be received by the agency on or after the date of September 16, 2015. However, the State of West Virginia's revenue collections are substantially below the original projections for Fiscal Year 2016. Simply, the State of West Virginia will not have sufficient revenue to fund a supplemental appropriation in an amount that is sufficient to pay, under the agency's current guidelines, the anticipated claims for fees for services and requests for reimbursement of expenses during the remainder of Fiscal Year 2016. Accordingly, the following guidelines are being implemented to enable the agency to continue to process and pay in an equitable manner the vouchers of panel attorneys once a supplemental appropriation is made in whatever amount is available for this purpose from the State of West Virginia's revised revenue projections.

The new guidelines shall apply to legal services provided, and expenses incurred, on or after the date of January 18, 2016. Again, services on dates before January 18, 2016, will be processed under the current guidelines while services on dates on and after January 18, 2016, will be processed under these emergency guidelines, even if the services are set forth in the

same voucher. Vouchers which do not comply with these guidelines will, as the circumstances warrant, either be revised to comply with the emergency guidelines or will be returned to the submitting attorney for revision.

2. **Guidelines.**

2.1. **Mileage Reimbursement**. No reimbursement will be made for mileage relating to the use of personal vehicles by attorneys, paralegals, or investigators. Reimbursement to experts for the personal use of vehicles will be paid if the approving judge so orders.

2.2. **Compensation for Travel Time.** The time that is spent traveling by an attorney or investigator in the performance of legal or investigative services in a matter shall be compensated as "work performed out of court" or investigative services at the rate of twenty (20) dollars per hour. Walking or bicycling shall not be treated as "travel" in any circumstance. For any entry of time that is traveling for an attorney, paralegal or investigator, an "Explanation/Description" shall be required that sets forth the original point of departure and the original point of arrival and an indication whether the travel time is allocated entirely to one matter or is allocated to different matters – the number of which shall be specified. A round trip is to be billed as two separate entries, indicating on the return trip the point of departure and the point of arrival.

2.3. **Administrative Tasks.** The following tasks shall not be compensable legal services on behalf of a client, but, instead, shall be non-compensable administrative tasks: opening a file, closing a file, file maintenance, file setup, set up file, and preparing a voucher. Any tasks that are similar in description or that are otherwise administrative in nature shall not be compensated. The attorney must provide upon entry of time for a task an "Explanation/Description," if required below, that is clearly not administrative in its nature or purpose; otherwise, the service will not be compensated.

2.4. **Waiting in Court.** The "waiting in court" time code classification shall only be used for the period of time commencing when the hearing, trial, or other proceeding was scheduled to begin and ending when the hearing, trial, or other proceeding actually begins. The entry of time for "waiting in court" will require an "Explanation/Description" that includes the actual period of time covered by the entry; otherwise, the time will not be considered compensable. Any other time expended in a courthouse or tribunal in the performance of legal services shall be compensable only at the rate of compensation for "attorney's work performed out of court" and not at the higher rate of compensation for "attorney's work performed in court."

2.5. **Required "Explanation/Description."**

If entries of time have the following time code classifications, an "Explanation/Description" must be provided as follows in order for the time to be compensable:

2.5.1. "Conferences with client/witness" shall include as an "Explanation/Description" the person with whom the attorney conferred. Clients may be referred to generally as "client" and witnesses may referred to by initials if necessary for purposes of privacy or confidentiality. Conferences with a co-counsel, prosecutor, or judge, or representatives of the foregoing, should be entered with the time code classification "Other," which always requires a general "Explanation/Description."

2.5.2. "Research, Preparation of Pleading" shall include as an "Explanation/Description" the subject matter of the research or the nature of the pleading with sufficient detail to enable the approving judge and the agency to determine the reasonableness of the period of time that is entered.

2.5.3. "Investigation" shall include as an "Explanation/Description" the effort that constitutes the investigation into the matter, such as reviewing discovery, visiting the scene, taking witness statements, or undertaking similar tasks that are actually performed by the attorney, and not by a paralegal or investigator, with sufficient detail to enable the approving judge and the agency to determine the necessity of the service that was provided and the reasonableness of the period of time allocated to the performance of the service.

2.5.4. "Other (Must specify)" shall include as an "Explanation/Description" the service that was provided with sufficient detail to enable the approving judge and the agency to determine the necessity of the service that was provided and the reasonableness of the time allocated to the performance of the service.

2.5.5. Time that is entered with the time code classification of "Preliminary Hearing," "Hearing," "Arraignment/Plea," "Motions," or "Trial" shall include as an "Explanation/Description" the actual period of time during which the tribunal was in session and for "Hearing" and "Motions" shall additionally include a general description of the purpose of the proceeding.

2.6. **Statutory Limits on Compensation.** For any matter in which the statutory limit on compensation for fees or reimbursement of expenses is exceeded, the attorney submitting the voucher to the court for approval shall include with the voucher a written statement as to why the compensation for legal services or the reimbursement for expenses is in excess of the statutory limit. The approving judge must then enter the order with the finding of "good cause" for the payment of an amount in excess of the statutory limit. The written statement is to be delivered to Public Defender Services together with the voucher upon the entry of the order approving the payment of the fees and reimbursement of expenses set forth in the voucher.

3. **Conclusion.**

These emergency guidelines shall remain in effect until repealed by Public Defender Services in a document that is published on the agency's website at www.pds.wv.gov. All other guidelines set forth on the agency's website that are not altered or amended by these emergency guidelines shall remain in effect.

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Date: December 18, 2015

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