

## BILLING GUIDELINES FOR PARALEGALS

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Several attorneys have admitted that the time of staff has been billed at the attorneys' rates. As noted in the last newsletter, this is improper and as the article was entitled, "This has to stop." It was noted, however, that attorneys are permitted by statute to seek reimbursement for the expenses associated with the employment of a paralegal in the representation of a client.

The agency is working on formal guidelines for the billing of paralegal's time by panel attorneys.

The following principles will be eventually reflected in the formal guidelines.

First, attorneys are encouraged to review the provisions of W. Va. Code §29-21-13a(d) in that the statute provides the foundation upon which these principles are constructed.

Second, the paralegal time is, by reason of the governing statute, a "reimbursable" expense of the attorney. Accordingly, if paralegal time is to be submitted, it must be treated as an expense. The agency will not accept direct expense vouchers from a paralegal, which means the expense must be included with an attorney's voucher. As with other expenses, the attorney must attach, essentially, an invoice detailing the time and the nature of the services of the paralegal in the same form that attorney time and services are detailed. The identity of the paralegal must be stated and a separate invoice must be prepared for each paralegal.

What is a paralegal? From the agency's perspective, a paralegal is any person who has the experience and knowledge to prepare documents that would otherwise have to be prepared by an attorney. Accordingly, a secretary or an administrative assistant or an unlicensed attorney can act as a paralegal, but only if their experience and knowledge enables them to perform legal tasks.

The real issue is, what is a paralegal task? Again, from the agency's perspective, a paralegal task is any task that, if performed by an attorney, could have been billed to a client as a legal service. Accordingly, copying, filing, or other purely administrative tasks that are common to any business are not paralegal tasks. Essentially, if the agency would not compensate an attorney for the task, the agency will not reimburse the attorney for the expense associated with a staff person's performance of the task. The reality is that not every hour of a secretary's or administrative assistant's time can be included as a reimbursable expense.

Third, the statute provides that the rate of reimbursement is the actual out of pocket expense incurred by the attorney for the paralegal's time, but cannot exceed \$20 an hour. The significance of this statement is that an attorney cannot simply bill the paralegal services at \$20 an hour. Instead, the attorney must either bill at the hourly wage paid to the paralegal or the equivalent amount calculated from the yearly salary. The office overhead associated with the staff person cannot be included in the hourly wage or salary calculation. The agency has created a chart for conversion of a salary into an hourly rate that will be posted to the agency's website. The chart provides for ranges of a salary so that a more standardized rate can be applied. Again, the payment of this amount is intended to be a

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“reimbursement” of the attorney for expenses related to the use of staff as paralegals, not as a “profit” to the attorney.

Notably, the agency will require the invoice of the staff person to set forth either his or her hourly wage or salary. The declaration on the attorney’s information page will provide the attorney’s verification of the accuracy of this information.

Fourth, the paralegal, by statute, cannot bill for “in court” time. Accordingly, if a staff person accompanies you to a trial, the time of the staff person cannot be billed at any amount.

Fifth, the agency will not pay for staff time that is described as a conference with an “attorney” or other “paralegal.” The agency will pay the compensation to the attorney for this time, but the accompanying staff time will not be a reimbursable expense.

So, an attorney has an opportunity to recoup certain expenses related to the performance of legal services for an indigent client. However, the attorney cannot bill this time at the attorneys’ rate of compensation and cannot transform administrative tasks into legal tasks for the sake of obtaining reimbursement.

Again, the agency is working on formal guidelines for the issues relating to paralegal time and will eventually incorporate the guidelines into its procedural rules, which are also currently being developed.

If you have any questions, you are encouraged to contact the agency and ask for Dana F. Eddy, Brenda K. Thompson or Sheila Coughlin.