

New Legislative Restriction on Payment of Late Bills

Section 88 of the FY2010 state budget **prohibits CPCS from paying** private counsel bills received more than 90 days after either the conclusion of a case or the end of a fiscal year, absent a finding by the Chief Counsel "that the delay was due to extraordinary circumstances beyond the control of the attorney."*

Late bills received on or after October 1, 2009 will be subject to presumptive non-payment under section 88. In keeping with established policy, old bills are subject to pre-payment review by CPCS's Audit and Oversight Department.

* The full text of section 88 follows:

SECTION 88. Chapter 211D of the General Laws is hereby amended by striking out section 12, as so appearing, and inserting in place thereof the following section:

Section 12. The committee shall establish policies and procedures to provide fair compensation to private counsel, which shall include a remedy for an attorney aggrieved by the amount of payment. The committee shall also establish an audit and oversight department to monitor billing and private attorney compensation. All invoices shall be processed for payment within 30 days of receipt by the chief counsel. Bills shall be submitted to the committee within 60 days of the conclusion of a case or, if the case is pending at the end of the fiscal year, within 30 days after the end of such fiscal year. The amount of payment for invoices received by the chief counsel more than 60 days but less than 90 days after the final disposition of the case or more than 30 days but less than 90 days after the end of the fiscal year shall be reduced by 10 per cent. Bills submitted after such date need not be processed for payment within 30 days. For all bills not submitted to the committee within 90 days after the conclusion of a case or, if the case is pending at the end of the fiscal year, within 90 days after the end of the fiscal year, those bills so submitted after such date shall not be processed for payment; provided, however, that the chief counsel may authorize the payment of such bills either in whole or in part upon a determination that the delay was due to extraordinary circumstances beyond the control of the attorney. The committee may further prescribe such policies and procedures for payment as it deems appropriate; provided, however, that the committee may impose interest and penalties, where appropriate, upon overpayment of the private attorney bills recovered from private attorneys.

Committee for Public Counsel Services
Assigned Counsel Manual
Policies and Procedures

II. General Policies Applicable to All Assigned Counsel

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1. [Attorney Cooperation with Monitoring](#)

Attorneys must cooperate with monitoring, performance evaluations and investigations of any complaints, including billing discrepancies, by the Committee for Public Counsel Services or its designee.

2. [Office, Telephone, and E-mail](#)

The attorney must maintain an office easily accessible to the courts in which s/he provides assigned representation, as well as a means for regularly receiving collect telephone calls from clients.

The attorney must also maintain a working e-mail account as a means of receiving information from and providing information to CPCS. The attorney must keep CPCS apprised of her or his work telephone number and postal and e-mail addresses.

3. [Notice of Complaints or Potential Conflicts](#)

An attorney certified or approved to take assignments in CPCS cases, whether through the Private Counsel Division, the Children and Family Law (CAFL) Division, the Public Defender Division, the Youth Advocacy Department, or the Mental Health Litigation Unit, shall notify the appropriate Deputy Chief Counsel (Deputy) or Director within three business days of learning of any of the following:

- a. The attorney has been charged in any criminal complaint or indictment.
- b. A complaint has been opened in a CPCS assigned case by the Office of Bar Counsel (OBC) of the Massachusetts Board of Bar Overseers (BBO) or

a petition for discipline has been filed in any case by the OBC or the attorney licensing authority of any other state or jurisdiction.

- c. The attorney is the subject of disciplinary action before any non-attorney professional licensing board or agency.
- d. The attorney's license to practice law has been suspended or terminated for any reason, including for administrative reasons such as non-payment of bar dues.
- e. The attorney is certified to provide representation in CAFL cases, and either of the following is true:
 - (i) He or she is or applies to become involved with the Department of Children and Families (DCF), other than in his or her professional capacity as counsel.
 - (ii) His or her child is the subject of a child in need of services petition or an application for such a petition.

For purposes of paragraph e(i) above, "is or applies to become involved with DCF" includes but is not limited to the following situations: serving or applying to serve as a foster parent or pre-adoptive parent of a child in DCF custody; applying to serve as a guardian or adoptive parent of a child in DCF custody; serving as a DCF-subsidized guardian or DCF-subsidized adoptive parent of a child; having an open administrative case with DCF (including a case open for voluntary services); being subject to an investigation under G.L. c. 119, § 51B; and being a respondent in a care and protection or similar judicial proceeding.

- f. A court or an administrative agency has found that the attorney has engaged in conduct which is subject to mandatory reporting under Rule 8.3 of the Massachusetts Rules of Professional Conduct.
- g. Any condition or circumstance exists that renders the attorney unable to comply with applicable CPCS Performance Standards or policies.
- h. Any conduct that constitutes a violation of any of the attorney's ethical duties.

The obligations set forth above apply independently of each other and without regard to either the jurisdiction in which the proceedings are instituted or take place, or whether any portion of said proceedings are otherwise considered to be private or confidential.

With regard to a complaint opened or petition for discipline filed by the Massachusetts BBO or the attorney licensing authority of any other state or jurisdiction, in addition to the notification required by paragraph (b) above, the attorney shall, within three business days of learning of such complaint or disciplinary action, provide a copy of the complaint or petition to the appropriate Deputy or Director. The attorney shall also provide to the

appropriate Deputy or Director a copy of his or her answer to the complaint or petition within one week after its filing. Finally, within one week after the disposition or resolution of a complaint or disciplinary action before the BBO or the attorney licensing authority of any other state or jurisdiction, including a disposition or resolution under which imposed discipline does not take effect immediately, the attorney shall provide to the appropriate Deputy or Director a copy of any order, agreement, or other document which sets forth the disposition or resolution of the matter.

The requirements of this section shall apply regardless of whether the complaint or other disciplinary action, including the final disposition or resolution of the complaint or disciplinary action, is treated as a public or private matter by the BBO or other licensing authority. This section shall be effective as of November 1, 2009.

Except as permitted by G.L. c. 211D or other statute, court rule, court order, or similar mandate, the Committee and its staff shall keep confidential all information involving allegations that an attorney has engaged in misconduct or that an attorney's physical or mental condition may adversely affect his or her ability to practice law and shall maintain information reported under this section exclusively for the performance of the Committee's responsibilities under G.L. c. 211D or court rule. Such information shall not be disseminated to any person or organization for any other purpose without the prior written consent of the attorney or until the matter otherwise becomes public.

4. Professional Relationship

The attorney must treat the client in a courteous and professional manner. Romantic or sexual contact between attorney and client, or between a supervising attorney and supervisee, is strictly prohibited.

5. Compensation

The attorney shall not accept any compensation or other consideration for assigned representation except through the Committee for Public Counsel Services. This rule applies to both indigent cases and marginally indigent cases.

6. Privately Retained Counsel on Related and Unrelated Cases

For guidelines and policies regarding clients wishing to retain assigned counsel on related and unrelated cases, see Chapter V of this Manual.

7. Certification Requirements

Attorneys accepting cases for which they are not certified will not be paid for those cases.

8. Use of Interpreters

Courts are required to provide all hearing-impaired clients (G.L. c. 221, § 92A) and all non-English speaking clients (G.L. c. 221C) with the services of a court-certified or professional interpreter at all in-court proceedings, regardless of the language skills of counsel. It is the responsibility of assigned counsel to make sure that the court provides such interpreter services for his or her client. It is the responsibility of the court to pay for in-court interpreter services.

For out-of-court pre-trial preparation, including client interviews, the attorney representing the hearing-impaired or non-English-speaking client should obtain the services of a court-certified or professional interpreter, unless counsel is fluent in the client's language. It is the responsibility of assigned counsel to insure the provision of a court-certified or professional interpreter for these purposes, by moving the Court to approve funds pursuant to G.L. c. 261, §§ 27A-27G. CPCS will pay for out-of-court interpreter services upon presentation of the allowed Motion and appropriate billing. See Chapter VI of this Manual.

9. Use of Associates and Paralegals

No prior permission is required to obtain the services of an associate or qualified paralegal. Assigned attorneys may not delegate to associates or paralegals the handling of continuances, hearings, or any part of a trial or oral argument. The delegation of prohibited tasks to associates or paralegals is a violation of the CPCS Performance Guidelines and Standards. Attorneys may not delegate any associate or paralegal tasks to an attorney suspended by CPCS. For further information regarding the use of Associates and Paralegals, and the process for receiving reimbursement for their services, see Chapter V of this Manual.

10. Liability Insurance

Every attorney accepting assignments to represent indigent persons pursuant to G.L. c. 211D must maintain professional liability (malpractice) insurance with a coverage amount of not less than either \$100,000/\$300,000 or \$250,000/\$250,000, and with a deductible of not more than \$10,000. Attorneys who do not provide proof of insurance upon request are ineligible to receive new assignments and to receive payments, and may have their existing cases reassigned.

11. Panel Participation

Service on CPCS panels is at the discretion of the Chief Counsel.

12. Publication of Policies of the Committee for Public Counsel Services

All attorneys receiving case assignments through the Committee for Public Counsel Services must regularly review the CPCS website, www.publiccounsel.net, for updates of CPCS policies, procedures, and guidelines. New and revised policies are posted on the website continuously. Notice of new and revised policies and procedures are also posted periodically on E-Bill.

All attorneys receiving case assignments through CPCS will receive the CPCS Criminal Training Bulletin and/or the Children and Family Law Newsletter. Attorneys are expected to apprise themselves of all CPCS rules and policies published in this Manual, in the Training Bulletin and CAFL Newsletter, and on the CPCS website, www.publiccounsel.net. Attorneys are also responsible for apprising themselves of the information contained in notices posted on E-Bill.