

V. Policies and Procedures Governing Billing and Compensation

Revised November, 2011

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1. 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.

2. 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.

3. Prohibition From Being Privately Retained on the Previously Assigned Case

The attorney may **not** be privately retained in a case in which s/he was previously assigned. The purpose of this rule is to prevent the appearance of impropriety, conflict of interest, solicitation, or fraud upon the court.

A. Exceptions to this general rule are outlined below:

1. Non-Indigent Client - Bail-Only Assignment

If the client was originally found to be **not** indigent, but counsel was nevertheless assigned by the court at arraignment for bail purposes only, then the attorney may be privately retained by the client at the request of the client. In such cases, the attorney shall fully explain to the client that representation of the client on such matters may create the appearance of impropriety, solicitation, or overreaching by the attorney. If the client continues to request to retain the attorney privately on the case, the attorney shall obtain a written informed consent signed by the client, stating the client's understanding of his/her right to seek other counsel for the private case.

2. Originally Indigent Client - Intervening Determination of Non- Indigency

If the client was originally found indigent and the attorney was assigned by the court, but during the course of the representation, the court makes a

subsequent determination that the client is **not** indigent, then the attorney may be privately retained by the client at that time, at the request of the client; **provided, however, in proceedings pursuant to G.L. c. 111, §§ 94C and 94G; c. 123; c. 123A; and c. 190B** where a subsequent determination that the client is not indigent is made **prior to the commencement of a hearing**, the attorney may be privately retained by the client at the client's request, unless the court directs the attorney to continue to represent the client at public expense or, in proceedings under G.L. c. 190B, from the assets of the client or another party at a rate set by the court; and provided further, that where a subsequent determination that the client is not indigent is made **after the commencement of a hearing**, the attorney shall continue to represent the client at public expense or, in proceedings under G.L. c. 190B, from the assets of the client or another party at a rate set by the court. See also SJC Rule 3:10, § 5.

3. Care & Protection Assignment Prior to Indigency Determination

If a client in a Care & Protection case was assigned counsel upon filing of the petition before an indigency determination was made, and the court subsequently found the client to be not indigent and struck the appearance of counsel, then the attorney may be privately retained by the client, at the request of the client.

In such cases, the attorney shall fully explain to the client that representation of the client on such matters may create the appearance of impropriety, solicitation, or overreaching by the attorney. If the client continues to request to retain the attorney privately on the case, the attorney shall obtain a written informed consent signed by the client, stating the client's understanding of his/her right to seek other counsel for the private case.

B. The following matters are distinct from the underlying case and are not encompassed by the prohibition against being privately retained on a previously assigned case by the assigned client.

1. Parole Hearings

An attorney who was assigned to represent an indigent client on a criminal matter that resulted in conviction and incarceration, may at a later date be privately retained by the client to represent the client at the parole hearing.

2. SORB cases

An attorney who was assigned to represent an indigent client on a criminal matter involving a sex offense that resulted in conviction, and which later gives rise to a separate Sex Offender Registry Board case, may at a later date be privately retained by the client to represent the client in the

subsequent SORB matter if the client is no longer indigent, and the underlying assigned criminal case has concluded.

C. Erroneous assignment to cases not within the CPCS scope of services:

An attorney who was erroneously assigned by the court to an indigent client on a case that is beyond the CPCS scope of services may be privately retained by the client to represent the client in that case. In such cases, the attorney shall fully explain to the client that representation of the client on such matters may create the appearance of impropriety, solicitation, or overreaching by the attorney. If the client continues to request to retain the attorney privately on the case, the attorney shall obtain a written informed consent from the client, stating the client's understanding of his/her right to seek other counsel for the private case.

4. Representation of CPCS Clients on Unrelated Cases

After an attorney has been assigned to a client's Criminal, Juvenile Delinquency, Youthful Offender, Mental Health, SORB, SDP, or DYS Revocation of Grants of Conditional Liberty ("Revocation") case, if the client wishes to retain the attorney privately on a separate unrelated case, the attorney shall advise the client of his/her right to seek other counsel. The attorney shall fully explain to the client that representation of the client on such matters may create the appearance of impropriety, solicitation, or overreaching by the attorney. If the client continues to request to retain the attorney privately on the separate unrelated case, the attorney shall obtain a written informed consent from the client, stating the client's understanding of his/her right to seek other counsel for the private case.

In CAFL cases there is an additional requirement for the informed consent. The client must state that the attorney advised him or her that DCF regulations required the attorney to agree not to give copies of the DCF file to anyone who was not a party to the assigned counsel case. (110 CMR 12.09).

5. Collateral Representation

Occasionally, during the course of representation on an assigned case, an issue may come up that involves a collateral matter. As a general rule, CPCS's scope of services does not extend to collateral matters. However in some situations, the collateral issue may be integral to, and have a direct bearing upon the pending assigned case. In such circumstances, where the legal outcome of the assigned case is directly related to, and dependent upon, the resolution of the "collateral" matter, counsel must first receive authorization from CPCS to handle the "collateral" matter in order to be paid for that portion of his/her work. For example, a school expulsion hearing triggered by juvenile delinquency proceedings will likely have a substantial impact on the legal outcome of the delinquency case to which the attorney is assigned. The attorney may request authorization from CPCS to represent the client in the school hearing. Without specific authorization, counsel's representation on collateral matters must be pro bono.

A. Criminal, Juvenile Delinquency, Youthful Offender, Mental Health, SDP, and Revocation of GCL cases

While a Criminal, Juvenile Delinquency, Youthful Offender, Mental Health, SDP, or GCL case is open, if the attorney wishes to receive compensation for representing a client on a collateral matter (i.e., a related matter that is, based on the specific circumstances, actually integral to the pending assigned case), the attorney must seek permission from the appropriate Deputy Chief Counsel, Director of YAD, or the Director of Mental Health Litigation to provide such “collateral” representation under the same CPCS assignment. Such requests for permission to provide collateral representation should be made in writing to the appropriate Deputy Chief Counsel, Director of YAD, or Director of Mental Health Litigation. The specific circumstances of the original assignment and the nature of the related or collateral matters should be described in the written request. If the attorney’s request to provide collateral representation is approved by the Deputy Chief Counsel, Director of YAD, or Director of Mental Health Litigation, the attorney may then provide services, but s/he may not receive compensation from the client or any other source than CPCS for representation on the related case.

NOTE: If a juvenile client is found delinquent and committed to DYS, counsel assigned to represent the juvenile in the delinquency case at the trial level *shall continue* to provide zealous representation for the initial case conference (or “staffing”) at any classification proceedings and at any extension hearings. The trial attorney shall also continue to provide zealous representation in preparation for, and during the client’s RRT hearing. The trial attorney should continue to bill for this work under the original Notice of Assignment of Counsel number. Revocation Attorneys in GCL matters should refer to the Performance Standards for the Revocation Advocacy Panel, found in Chapter 4 of this Manual.

B. CAFL cases

While a CAFL case is open, if the attorney wishes to receive compensation for representing a client on a related case, the attorney should submit a request for collateral representation to the Deputy Chief Counsel, Children and Family Law Program. See Performance Standards Governing the Representation of Children and Parents in Child Welfare Cases, section 1.3(c) (“Collateral Representation”). If the attorney’s request to provide collateral representation is approved by the Deputy Chief Counsel, the attorney may then provide services, but s/he may not receive compensation from the client or any other source than CPCS for representation on the related case. After conclusion of a CAFL case, an attorney may represent the client in a related matter (see below).

- C. If the attorney’s request to provide collateral representation under paragraphs A or B, above, is not approved and the client wishes to retain the attorney on the collateral matter, the attorney must comply with the provisions of paragraph 4 above, “Representation of CPCS Clients on Unrelated Cases.”

6. CAFL Post-Disposition Related Matters

Upon the conclusion of a CAFL case and after the assigned attorney has closed the case, the attorney may, if the client so requests, be privately retained to represent the client on a related case. However the attorney shall advise the client of his/her right to seek other counsel. The attorney shall be aware that representation of the client on such matters may create the appearance of impropriety, solicitation or overreaching. The attorney shall obtain written informed consent from the client, indicating the client's understanding of his/her right to seek other counsel and further indicating that the client understands that DCF regulations require the attorney to agree not to give copies of the DCF file to anyone who was not a party to the assigned counsel case. (110 CMR 12.09). Examples of cases in which the attorney may be independently retained after closure of the CAFL case include enforcement of open adoption agreements, actions in paternity or divorce proceedings, petitions to remove a guardian, or special education proceedings.

7. Notices of Assignment of Counsel

a. General Information

A Notice of Assignment of Counsel (NAC) is issued by the court or by CPCS directly for each case in which CPCS provides representation. (See Chapter I of this Manual for CPCS Scope of Services.) A copy of the NAC is also provided to the client (and to CPCS if issued by the court). Each NAC includes a number that is unique to that assignment. For "C" NACs, even if your assignment information is not yet on file, you can and should submit E-Bills timely to avoid the statutory penalties for late bills. (See Section 12).

An attorney will receive a NAC each time s/he is assigned to an indigent client for a legal matter within the scope of CPCS services.

Attorneys should review each NAC for accuracy and completeness, and maintain a legible copy of the NAC in the case file.

If a case is transferred from one attorney to another, it is necessary for the court or CPCS to issue a new NAC to the new attorney. If an attorney withdraws, it is the responsibility of the attorney to notify the court or CPCS of his/her withdrawal so that a new NAC may be issued to successor counsel. It is the responsibility of successor counsel to obtain a new NAC from the court or CPCS.

b. Revocation of GCL Cases

For Revocation cases, attorneys must request and obtain sufficient blank NAC Forms from the Revocation Advocacy Coordinator *prior to* receiving assignments.

Upon being assigned to a Revocation case, the attorney is required to fill out the NAC himself or herself: The attorney must fill out the date of assignment, write "CPCS" under *Name of Assigning Judge*, provide the name of the person for whom counsel is assigned, check the box indicating this is a Juvenile case, write "GCL" under *CPCS code*, write "GCL" under *Description*, write "906-CPCS" under *Court Division*, check the box indicating that the attorney is Private Counsel, and completely fill in the attorney's BBO number, name, address, and telephone number in the corresponding box.

The NAC must be signed by an authorized party in order to be processed by CPCS. The attorney must retain a legible copy of the NAC (by making a photocopy of the first page, and/or by insuring that the goldenrod copy is legible); the attorney must retain the goldenrod copy (last sheet of the NAC) for his/her client file, and mail the rest of the completed NAC to the Revocation Coordinator at the following address:

Revocation Advocacy Coordinator
Youth Advocacy Department
10 Malcolm X Boulevard, Suite 210*
Roxbury, MA 02119*

*Please note that the YAD address is expected to change in January, 2012 to:
44 Bromfield Street
Boston, MA 02108

If you are uncertain as to which address to use, please call CPCS at (617) 482-6212 to determine the current YAD address at any time.

Attorneys are advised to send their completed NACs to the Revocation Advocacy Coordinator *as soon as possible* after the assignment date, to prevent processing delays in these time-sensitive cases.

The Revocation Advocacy Coordinator will sign and authorize the NAC and send the white copy to the Attorney Payment Department for processing so that the attorney may be compensated.

If the case is transferred from one attorney to another, it is necessary for the new attorney to fill out and submit a new NAC to the Revocation Advocacy Coordinator, as above.

It is the responsibility of the attorney to contact the Revocation Advocacy Coordinator to send the attorney more blank NAC Forms when his/her supply of NAC Forms is low. The attorney should not wait until s/he depletes her or his NAC supply before contacting the Revocation Advocacy Coordinator, as it will take some days for the Coordinator to mail NACs to the attorney.

8. Attorney Vendor Customer Instructions

Attorneys must have a state Vendor Customer (VC) number and a Taxpayer Identification Number (TIN) on file with the State Comptroller's office before assignments and bills can be processed.

A "TIN" is your Social Security number - or, if you work for and are paid by a firm, the firm's Federal Tax ID number. A 1099 for income earned will be issued under this number. Please note that your 1099 will reflect the name and address you list as your legal name and address on the W-9 form (see below).

B-Notice: If your taxes are filed under a name and/or address that differ from your TIN name and address, the IRS will issue a "B" notice requesting an explanation for the apparent discrepancy. Failure to respond to a "B" notice will result in an IRS suspension of payments from the state.

To obtain an attorney vendor customer number, forms a, b, and c (below) must be completed and submitted to the attention of:

Vendor Maintenance Department
The Committee for Public Counsel Services
44 Bromfield Street
Boston MA 02108

- a. Request for Verification of Taxation Reporting Information (required):

http://www.mass.gov/Aosc/docs/Forms/VendorCustomer/newMass_W9.doc
(This links to the form, including instructions)

- b. E-Bill Private Attorney PIN Agreement (required):

http://www.publiccounsel.net/Billing_Information/attorney_billing/pdf/PINAgreement.PDF

- c. Attorney Certification Information (required):

http://www.publiccounsel.net/Certification_Requirements/pdf/attorney_certification_information.PDF

Upon receipt of the correctly completed forms, we will forward your vendor information to the Comptroller. Once the Comptroller approves your request for a vendor code, you will be assigned (by the Comptroller) a random VC number. We will notify you of this number when we receive the information. The process takes approximately two weeks.

d. Electronic Funds Transfer (Direct Deposit)

Effective December 31, 2011, the State Comptroller will require that **all** state contractors receive payment for services via direct deposit.

Before you apply for direct deposit make sure that your bank will provide you with the detail of each payment contained in the deposit. To apply for direct deposit please visit this site (this site is also an excellent tool for tracking your checks or direct deposits):<https://massfinance.state.ma.us/>

Mass Finance/Vendor Web - Payment History

Mass Finance is a Commonwealth of Massachusetts web site. Vendor Web is the application through which vendors may view their payment transactions with the Commonwealth of Massachusetts. By accessing Scheduled Payments (information on payments that will be made) and Payment History (information on payments that have been made), attorneys and other vendors can reconcile their accounts. This information is available for viewing, printing or downloading 24 hours a day.

E-Bill

All attorneys' bills, both for legal services and expenses, must be filed using the E-Bill program. You can access the website, after entering your BBO number and your PIN number (see ¶ (b), above) from any computer location. The web address is: <https://www.cpcsebill.com>

For instructions on using the E-Bill program, please see "Billing Information" on the CPCS website at www.publiccounsel.net. In the "Billing Information" menu, follow the link to the E-BILL MANUAL.

9. Indigent Court Costs Vendor Record Keeping Requirements

All vendors paid via the Indigent Court Cost fund who provide services on cases assigned to an attorney pursuant to G.L. c. 211D, are subject to the CPCS General Billing Policies and Procedures, and must maintain adequate documentation to support their billings, including detailed time records of actual hours worked. The CPCS record-keeping requirements for Court Costs Vendors are the same as the CPCS record-keeping requirements for attorney vendors. In situations in which a Court Costs Vendor's bill represents hours worked by more than one individual, a separate time sheet is required for each individual. Required documentation also includes such items as receipts, canceled checks, and mileage records. Vendors must be able to adequately support their bills, and are subject to review and audit (See Chapter VII).

10. Attorney Certification Requirement

It is important to become familiar with CPCS certification requirements prior to accepting cases. (See Chapter 3 of this Manual.) Attorneys accepting cases for which they are not certified, or for which there is no right to counsel, will not be paid for those cases. See Chapter I of this Manual for CPCS Scope of Services.

11. Bail-Only Cases

An attorney assigned to a case for Bail-Only will be paid only for the arraignment and bail review, and not for the full case. CHINS Bail-Only Attorneys who are on the Children and Family Law Panel, the District Court Panel or the Juvenile Delinquency Panel, may be appointed for children in CHINS "Bail-Only" situations. An attorney with appropriate CHINS certification (certification for children and family law cases) must be assigned to represent the child in the underlying CHINS case.

12. Late Bills

All bills must be **received** by CPCS **within sixty days of the conclusion of the attorney's representation to be eligible for payment in full** (See Section 14, below, for the determination of the conclusion of the attorney's representation in various types of cases.) For case-closed bills, the last date of service billed is recognized as the date the case concluded. If a case-closed bill is received after 60 days, but before 90 days, it will be subject to a 10% reduction. If a case closed bill is received after 90 days, the bill will not be paid, absent a finding by the Chief Counsel "that the delay was due to extraordinary circumstances beyond the control of the attorney" pursuant to Section 88 of the FY 2010 state budget, as amended by Section 116 of the FY 2011 state budget.

For all cases open and pending at the end of the fiscal year (June 30th), bills must be received by CPCS no later than July 31st. Payment of year-end bills that are received from August 1st to August 31st will be reduced by 10%. End of the year bills received on or after September 1st will not be paid, absent a finding by the Chief Counsel "that the delay was due to extraordinary circumstances beyond the control of the attorney" pursuant to Section 88 of the FY 2010 state budget, as amended by Section 116 of the FY 2011 state budget.

Additionally, payment of late bills is dependent on available appropriation funding, and could be significantly delayed.

Pursuant to Section 88 of FY 2010 budget, as amended by Section 116 of the FY 2011 state budget, if E-Bill determines that a bill has been filed late, it will tell the attorney that s/he has missed a deadline, and it will either automatically process the bill at a **10% reduction, or else reject the bill altogether**, depending on the lateness of the bill, as required by the revised G.L. c. 211D, § 12.

E-Bill Vouchers for expenses incurred prior to 7/1/11, which are received on or after September 1st, cannot be paid pursuant to Section 116. The attorney has the ability to

appeal the denial of payment based on “extraordinary circumstances beyond the control of the attorney.”

13. Representation-Concluded Bills

Prior to filing a Representation-Concluded Bill, **all** matters under a single NAC number must have concluded. An attorney cannot file a Representation-Concluded bill if one or more of the matters on the NAC have been resolved, while other matters are still pending. The attorney must wait until all matters have been disposed of. Representation- Concluded bills must be received by CPCS within 60 days of the last service date billed.

If it is necessary to reopen a case, the attorney must submit a written request to reopen the NAC to the Private Attorney Payment Department of CPCS. The request should include the NAC number, client name, and an explanation as to why the case needs to be reopened. If a client is being surrendered on a case on which a Representation-Concluded Bill was filed, the NAC cannot be reopened; a new NAC must be obtained from the court by the attorney.

14. Determining When Representation Is Concluded

A. Criminal, Juvenile Delinquency, Youthful Offender, and SDP Proceedings

In criminal, juvenile delinquency, and youthful offender proceedings, representation is considered concluded for billing purposes as of the date of any of the following events:

1. date of default of client
2. date of disposition hearing*
3. date of plea hearing or trial*
4. date that attorney withdraws from case
5. date that attorney reports case to bar advocate program or CPCS for reassignment

* NOTE: Even if a client is placed on probation, or given a continuance without a finding, the conclusion of the case for billing purposes is the date of the hearing or court decision, not the date of the end of the probationary term.

If a juvenile in a juvenile delinquency or Youthful Offender matter is committed to DYS, assigned trial counsel must **continue to provide representation for the initial case conference (called the "staffing"), at any classification proceedings and Regional Review Team (RRT) Hearings, and at any extension hearings.**

B. Revocation Advocacy Proceedings (GCL)

In revocation advocacy proceedings, representation is considered concluded for billing purposes as of the date of the following events:

1. After an assigned youth signs the Notice of Counsel form indicating that they are declining counsel for the revocation process.

2. After cooperating with successor counsel in transferring the case to successor counsel, and upon request, and with permission of the client, providing successor counsel with the client's entire case file including work product, if the case is transferred to another revocation attorney.
3. After a closing conversation with the client following the revocation hearing, if the case does not advance to the RRT, and neither the client nor the caseworker decide to appeal the hearing decision.
4. After a closing conversation with the client following the RRT if neither the client nor the caseworker decide to appeal the hearing decision or the RRT decision.
5. After a closing conversation following the receipt of an appeal decision.
6. After notifying the Revocation Advocacy Coordinator, the Hearing Officer, and any other parties involved in scheduling the revocation hearings in the attorney's region if, during the course of representation, the client determines that he or she does not want legal representation for the revocation process.

C. Children and Family Law Proceedings

In children and family law proceedings, a case at the trial level is considered concluded for billing purposes in the following circumstances:

1. If you represent a parent or a child, upon the earliest of the following:
 - a. The child is adopted;
 - b. The child attains majority;
 - c. The only subject child, or the client, has died;
 - d. Counsel has withdrawn for all purposes (not for purposes of obtaining appellate counsel);
 - e. Counsel's appearance, or the appearance of the client, is struck, and no appeal has been filed regarding such action;
 - f. The case is dismissed, and no appeal has been filed;
 - g. The child is the subject of an allowed "permanent" (as opposed to temporary) guardianship petition, and no appeal has been filed; or
 - h. A dispositional order granting "permanent" custody of the subject child to a parent or third party (but not DSS), and no appeal has been filed.
2. In addition, if you represent a parent, upon the earliest of the following:
 - i. A petition to dispense with the parent client's rights has been allowed, and no appeal has been filed; or
 - j. Final resolution of appeal of a decree dispensing with consent, including withdrawal of the appeal.

In the event of an appeal of an order under (a) through (i) above, the case is considered concluded for billing purposes upon conclusion of briefing. Trial counsel who believes that ongoing work after briefing is necessary should contact the CAFL office with regard to keeping the assignment open. A case is not considered concluded because there has been no recent court activity on the case.

Cases that are inadvertently closed by the attorney during the billing process may be re-opened upon written request to and approval of the CAFL program. Forms for re-opening such cases are available on the CAFL section of the CPCS website. Cases cannot be re-opened, however, if there is no longer a right to counsel in the proceeding. (See Chapter I for a list of proceedings in which there is a right to counsel.) For example, there is no right to counsel in an action to enforce an open adoption agreement under G.L. c. 210, §§ 6C-E, or in an action to remove a guardian in cases where DSS is not a party.

D. Mental Health Proceedings

In mental health proceedings, representation is considered concluded for billing purposes as follows:

1. Civil Commitment (no judicial review ordered): After explaining the disposition and appellate rights to the client and, when requested to do so by the client, upon filing a Notice of Appeal.
2. Civil Commitment (judicial review ordered): Monthly billing is permissible until the judicial review takes place. Upon conclusion of the judicial review, the case is considered concluded for billing purposes.
3. Substituted Judgment (Rogers): Monthly billing is permissible until expiration of the order. Upon expiration of the order, the case is considered concluded for billing purposes.

E. Sex Offender Registry Board Proceedings

In Sex Offender Registry Board (SORB) matters, representation is considered concluded for billing purposes as of the date of any of the following events:

1. if client does not appear for administrative SORB hearing, date when attorney has not located client after due diligence;
2. date when client elects not to appeal SORB hearing examiner decision;
3. deadline by which SORB Superior Court review papers must be filed, if client cannot be located after due diligence;
4. date when client elects not to appeal Superior Court judge's decision reviewing the SORB hearing examiner's decision;

5. date when attorney has completed procedures for referring a SORB case to CPCS for appointment of appellate counsel;
6. date when attorney is informed by CPCS that the case has been reassigned.

F. Defaults

If a client defaults, CPCS must receive a bill from the attorney within sixty days of the default date, as this is the case concluded date (See Section 13 above). When and if the client reappears, the same attorney should resume representation, using the same Notice of Assignment of Counsel number. The attorney must also submit to CPCS a written request to re-open the case.

Immediately following the resumption of representation, the attorney should notify the CPCS Private Attorney Payment Department in writing (either by FAX or mail) that the case was reopened due to the reappearance of a defaulted client or for another appropriate reason.

G. Revocation of GCL Cases

In Revocation cases, representation is considered concluded for billing purposes:

- a. After a closing conversation with the client following the revocation hearing if the case does not advance to the RRT, and neither the client nor the caseworker decides to appeal the hearing decision.
- b. After a closing conversation with the client following the RRT if neither the client nor the caseworker decide to appeal the hearing decision or the RRT decision.
- c. After a closing conversation following the receipt of an appeal decision.

15. Probation Surrenders

Probation surrenders require a new assignment form from the court. The new NAC form is necessary in order for CPCS to maintain accurate records of probation surrenders of CPCS clients.

16. Caseload Limits

To assure both the equitable distribution of cases to qualified private counsel and the quality of representation, the Committee has adopted a weighted system of caseload limits, with a particular weight for each type of case assignment and an absolute limit of 250 cases per year. The weight accorded to each type of case is based upon its usual level of complexity, as follows:

ANNUAL

- District Court jurisdiction criminal cases..... (weight=1) (250)
- Superior Court jurisdiction criminal cases..... (weight=2) (125)

- Youthful Offender cases..... (weight=2) (125)
- Delinquency cases..... (weight=1.5) (165)
- Revocation Advocacy cases..... (weight=1) (250)
- Children and Family Law cases..... (weight=2) (125)
- CHINS..... (weight=1.5) (165)
- Mental Health cases..... (weight=2) (125)
- Sex Offender Registry Board cases..... (weight=1.5) (165)
- Sexually Dangerous Person cases..... (weight=2) (125)

Each category of cases represents 100 percent of an attorney's allowable caseload. Thus, during a fiscal year, if an attorney is assigned 125 District Court criminal cases, it would represent 50 percent of the number of cases which could be accepted. The attorney could accept 100 District court criminal cases, 50 Superior Court cases and 25 Mental Health cases in one year. Or the attorney could handle 100 Delinquency cases, 25 Care and Protection cases, and 50 District Court criminal cases in one year. Any combination of cases in each category with a weighted value adding up to the maximum caseload of 250 will represent a 100 percent caseload.

Some cases are so complex that additional limits are warranted. Thus, Care and Protection case assignments are limited to 75 open cases at any one time and all CAFL cases to 100 open cases at a time. In addition, although Superior Court criminal and Sexually Dangerous Person (SDP) cases are weighted at a value of 2 for the purpose of calculating a mixed caseload as described above, **no attorney may be assigned more than 100 new Superior Court criminal, or 100 Youthful Offender, or 20 new SDP cases in a year.**

If unusual circumstances indicate that the welfare of a client requires that these caseload limits be exceeded, the attorney seeking to exceed the limit may seek prior approval from the appropriate Deputy Chief Counsel or, for mental health cases, from the Director of Mental Health Litigation.

"Bail only" cases, "bail review" cases, and cases under G.L. c. 112, § 12S (petitions of minors seeking abortions), G.L. c. 123, § 12(e) ("warrants of apprehension"), and G.L. c. 123, § 35 (commitment for alcohol- or substance-abuse) will not count as a case.

Defaulted cases **do** count as a case; therefore, in the event that a defaulted client reappears at a later date, the client should be reassigned to the originally assigned attorney, under the same Notice of Assignment of Counsel.

Superior court and District court jurisdiction cases are determined by the severity of the charge, and not by the court of origin or disposition, see G.L.c.218 §26. Criminal cases in which the defendant is bound over from the District to the Superior court should be assigned to the same Superior Court-certified attorney under the same Notice of Counsel to avoid duplication of assignments.

Youthful Offender cases are determined by the type of charge, and not by the actual indictment or potential for indictment of a juvenile. Any case in which a **juvenile client of**

any age under 17 (including children under 14) is charged with an offense listed as a CPCS Presumptive Youthful Offender charge (see Chapter 3 of this Manual for the most recent list of the CPCS Presumptive YO charges) will count as a Youthful Offender case. Additionally, any juvenile case in which the prosecutor indicts the juvenile also counts as a Youthful Offender case, regardless of whether the offense is listed as a CPCS Presumptive YO charge.

It is each attorney's responsibility to keep track of his or her caseload. Attorneys who exceed the Committee's caseload limits without prior approval will not be compensated for cases that exceed the respective caseload limits. Case assignments in excess of the Committee's limits will be reassigned.

17. Billable Hours Limit Per Fiscal Year

CPCS sets an annual cap of billable hours per fiscal year. Effective in FY 2012, attorneys who have been licensed to practice law for less than two years, as of July 1st, will be limited to 1500 hours per year. All other CPCS certified attorneys may bill up to 1650 hours per year. Attorneys will not be paid for any time billed in excess of the annual limit of billable hours. The cap is intended: 1) to enhance the quality of representation provided to CPCS clients; 2) to achieve a more equitable distribution of assignments among CPCS-certified counsel; and 3) as an additional guard against over-billing.

It is each attorney's responsibility to keep track of his or her billable hours. Attorneys who reach 1350 hours prior to the end of the fiscal year shall not accept new case assignments for the remainder of the current fiscal year in accordance with section 36, below.

Attorneys who exceed the billable hour limit will not be compensated for hours billed in excess of the annual cap. To avoid prejudice to clients, and to fulfill one's ethical responsibility to provide fully competent representation to every client, attorneys must continue to zealously advocate on behalf of all clients for whom assignments have been accepted, despite having exceeded the cap on billable hours.

The hours that an attorney bills for work s/he performs as an associate on CPCS cases are included in, and count towards, the attorney's billable hours limit per fiscal year. An attorney who has billed in excess of the annual cap may not bill as an associate or paralegal, or for any other services on other CPCS case assignments. Further, an attorney who has billed in excess of the annual cap may not bill for an associate or paralegal to complete work on open cases.

18. Monthly Interim Billing

Effective for bills submitted on and after December 1, 2007, it is strongly recommended that attorneys submit E-Bills monthly.

CPCS will process monthly bills for payment in accordance with the following procedures:

- a) Monthly billing will be limited to one interim bill per NAC number per month. **Once an interim bill for a NAC is submitted, another interim bill cannot be submitted until the following month.**
- b) If dates for a particular month have been inadvertently omitted, those dates may be included with the following month's bill, as long as the dates do not cross fiscal years.
- c) Once a fiscal-year-end bill has been submitted, no additional dates or hours for that fiscal year can be billed.
- d) An attorney can file an interim bill, a case-closed, and a year-end bill on the same NAC in the same month, **but year-end bills may not be submitted prior to June 15.**
- e) All fiscal-year-end bills must be received by CPCS no later than July 31st, or be subject to an automatic 10% reduction, pursuant to G.L. c. 211D, § 12. End of year bills received by CPCS on or after September 1st shall not be processed for payment, pursuant to G.L. c.211D, §12, absent a finding by the Chief Counsel "that the delay was due to extraordinary circumstances beyond the control of the attorney" pursuant to Section 88 of the FY 2010 state budget, as amended by Section 116 of the FY 2011 state budget.

Additionally, all bills for cases in which your representation has concluded must be received by CPCS within **60 days** of the last billable date of service, or be subject to an **automatic 10% reduction**, pursuant to G.L. c. 211D, § 12. **Bills for cases in which your representation has concluded that are received by CPCS more than 90 days after the conclusion of the case shall not be processed for payment**, absent a finding by the Chief Counsel "that the delay was due to extraordinary circumstances beyond the control of the attorney" pursuant to Section 88 of the FY 2010 state budget, as amended by Section 116 of the FY 2011 state budget. See c. G.L. c.211D, §12.

- f) See Section 37 of this Chapter (Assigned Counsel Manual, Chapter 5) for the Attorney Payment Schedule.

The timing of all payments is subject to appropriation availability.

19. Eight-Hour Daily Billing Limit

Attorneys are limited to billing **actual and reasonable** time for legal services up to a presumptive maximum of eight billable hours per day. Bills submitted in excess of eight hours per day will be reduced to eight hours. The presumptive daily billing limit is twelve hours for dates the attorney was actually on trial and billed trial hours.

The eight-hour daily billing limit does not imply that all dates on which eight hours or less are billed are accepted by the Committee as accurate and allowance or reduction of a

request is not tantamount to an audit of the hours billed on the waiver date. Cumulative daily hours billed must represent the **actual and reasonable** time spent working, be properly documented, and be in conformance with all CPCS policies and procedures and hours billed are subject to later audit by CPCS.

An attorney may request a waiver of the presumptive eight-hour billing limit by submitting a Request for Waiver Form for each date the attorney wishes to be compensated for time in excess of eight hours, prior to billing for that date. Each date for which the attorney wishes to be compensated for more than eight hours requires a separate form. If the request for waiver is for time in excess of ten hours, the attorney must also fax a copy of the attorney's contemporaneous time records for each request to (617) 988-8350, or email the records to audit@publiccounsel.net.

The Request for Waiver is completed online [by clicking here](#). Once the form is completed, save or print the completed form prior to submitting it, otherwise the data may be lost. Next, click the "Submit by E-mail" button in the upper right-hand corner of the form. The completed waiver request will then be automatically sent to audit@publiccounsel.net. Attorneys should print a copy of the form for their records and should send any questions regarding waivers to the above e-mail address. Waivers must be submitted **after providing the services and before billing for more than eight hours for services performed on the requested waiver date.**

The Request for Waiver form must be submitted as early as possible - ideally, the day after the attorney concludes a workday on which s/he performed more than eight billable hours of service on assigned cases.

If the attorney submits bills exceeding eight hours at any time after submitting a waiver, but before the waiver is approved, the attorney will be limited to a maximum of eight billable hours on that date. CPCS will not make adjustments of data entry errors made by attorneys/vendors, however inadvertent. Attorneys must obtain approval of waivers promptly in order to allow time to submit their bills within the statutory deadlines (See Sections 12 and 19).

Attorneys will be advised of the decision on their request for a waiver by e-mail. Any questions regarding waivers should be addressed to audit@publiccounsel.net.

20. Two-County Limit

- A. Superior Court (Criminal), District Court (Criminal), Delinquency, and Youthful Offender (YO) Panels.

Attorneys may participate in no more than two county bar advocate programs. **The attorney's office(s) must be within geographic proximity to the courts in which s/he wishes to accept assignments.**

- B. CAFL, Mental Health, Sexually Dangerous Person (SDP), Sex Offender Registry (SOR), Revocation Advocacy, Murder, and Appellate Panels.

There is no limit on the number of counties applicable to members of these panels.

21. Bilingual Attorneys

A. Superior Court (Criminal), District Court (Criminal), Delinquency, and YO Panels.

The Committee for Public Counsel Services has adopted a policy to permit inter-county case assignments to bilingual attorneys, to improve access to justice for linguistic minorities. This policy waives the two-county limit on these panels to allow bilingual attorneys to receive additional individual case assignments to represent non- English speaking clients.

Attorneys will be certified as bilingual for these case assignments by submitting to the Committee for Public Counsel Services, Private Counsel Division Director of Supervision and Evaluation, information regarding their fluency in a language or languages spoken by significant numbers of the Committee's clients. A list of attorneys certified as bilingual will be circulated to all Bar Advocate Programs.

B. CAFL, Mental Health, SDP, SOR, Murder, and Appellate Panels.

Bilingual attorneys on these panels should submit to the appropriate CPCS Unit information regarding their fluency in a language or languages spoken by significant numbers of the Committee's clients. A list of bilingual attorneys will be maintained by the Unit and circulated to courts as appropriate.

This policy should be used in concert with case assignment policies to provide the best access to counsel and the best representation possible for our clients.

The Performance Guidelines published by the Committee for Public Counsel Services apply in all respects to special assignments to bilingual attorneys. The Committee expects counsel to meet regularly with the client, in a professional setting readily accessible to the client. The attorney is responsible for making her/himself available to the client, regardless of geographic distance.

22. Children and Family Law Cases: Pending Caseload Limit

The Committee has established the following maximum caseload limits for open Children and Family Law cases that an attorney may carry at one time. Open cases include cases that are both pre-judgment and post-judgment:

- Child Welfare Cases - 75.

A "child welfare" case is defined, for the purposes of the pending caseload limit, as care and protection petitions, including petitions filed in juvenile court under G. L. c. 119, § 24; petitions filed in the probate and family court pursuant to G.L. c. 119, § 23(C); petitions filed pursuant to G.L. c. 210, § 3; permanency hearings under G.L. c. 119, § 29B; where the case arises pursuant to G.L. c. 119, §23 (A); any other civil action in which a child or an

indigent parent is entitled to assignment of counsel pursuant to G.L. c. 119, § 29, or *Balboni v. Balboni*, 39 Mass. App. Ct. 210 (1995); and appeals of judgments in such cases; or

- CHINS cases - 100; or
- 100 combined CHINS and child welfare cases, provided that the number of child welfare cases does not exceed 75.

23. Children and Family Law Cases: Client Contact Certification

A Client Contact Certification form must be completed by all attorneys when submitting their bills through the E-Bill system on all Children and Family Law cases, including CHINS cases.

The certification should detail **in-person client contact only** and must include the client's name, and the date and location of the meeting. If the client is a child, the form should include the name of the substitute care provider. In the event that the attorney represents multiple child clients on the same NAC who are in separate placements, a separate client contact certification form must be provided for each child client. If no client contact is had within the billing period, the form should be completed and marked "No In-Person Client Contact" in the section of the form where contact should be detailed.

24. Submission of Bills and Record-Keeping Requirements

Attorneys and vendors who accept assignments through CPCS and who submit bills to CPCS are subject not only to performance evaluations, but also to audits of cases, caseloads and bills. On-site audits may be performed at the attorney's/vendor's home office and/or business office.

Attorneys/vendors **must** make available to the Audit and Oversight Department all case files and billing documentation. Failure to comply with the Audit and Oversight Department's request(s) for information will result in temporary suspensions as described in Section VII (I) of this Manual.

Attorneys may be subject to repayment of over-billings, as well as payment of interest and penalties for audits. See Section VII Appendix A of this Manual.

Do not submit bills to the courts.

All bills must be received by CPCS within sixty days of the conclusion of a matter in order to be eligible to be processed for full payment. (See section 14 of this Chapter, above, to determine when representation is concluded.) For ALL matters pending at the close of a fiscal year (June 30), bills for services rendered in that year must be received by CPCS by July 31st.

Effective for bills submitted on and after December 1, 2007, attorneys may submit interim monthly E-bills, in accordance with Section 18, above.

REMINDER: The Commonwealth's fiscal year runs from July 1 through June 30. Please submit separate bills for each fiscal year. End-of-year bills must be received no later than July 31st of that year to be eligible for full payment in accordance with Section 12, above.

NOTE: All bills (paid and unpaid) are subject to audit by the Committee and/or by the state auditor. Supporting documentation may be requested from attorneys/vendors or obtained from the court.

A. Tenth-Hour Increments.

Effective July 1, 2010, Attorneys are required to **bill** in tenth-hour increments. This means rounding off the amount of time actually spent working to the **nearest tenth of an** hour. You may **not** automatically round each separate task **up** to the next tenth hour.

For example:

- If you spend 5 minutes on a case, you may bill .1 hours. If you spend 8 minutes on a case, you may still bill only .1 hours.
- If you spend 8 minutes investigating a case, and 13 minutes interviewing a client, you may bill .1 hours for investigation and .2 hours for client interview.
- If you make four 3-minute telephone calls, you may bill a **total** of .2 hours. You may **not** bill .1 hours for each of the four separate telephone calls.
- If you perform only **one task during the entire day** for **all** your CPCS cases you may round this one task to a tenth-hour. For example, if you make only one 3-minute phone call and perform **no other services** on behalf of any CPCS clients the rest of the day, then you can bill .1 hours for that one telephone call. However, if you make a second 3-minute phone call on another CPCS client later in the day, you may not bill more than the original .1 hours. The combined time it takes to perform all tasks for CPCS clients in one day should be rounded to the nearest tenth-hour and billed accordingly.

Your bills should reflect the total actual time you spent on your cases each day. You may find you cannot bill for every single item of work you performed, since the tenth-hour increments would improperly inflate your billable hours.

B. Time Records:

Attorneys are required to maintain case files for all CPCS cases containing, among other things, billing forms, **contemporaneous time records**, motions, affidavits, memoranda, and other documents prepared in each case, whether or not filed with the court, and any other reports or documents prepared in each case. If legal research was performed, a

summary of the legal issues researched, including the materials obtained and/or reviewed, should be kept in the file. These files **must** also include a daily log or diary which records how much time the attorney spent working that day, where the attorney was, what clients s/he represented, together with a sufficiently specific description of services s/he performed.

Time records must minimally include the date of the activity, client name, actual amount of time expended, including both the starting clock time and the finishing clock time, to the maximum extent practical, as well as a description of each task performed. Descriptions of tasks and services must be sufficiently specific and detailed to enable one to understand the nature and extent of the service performed, **including, as to legal research, the specific issue(s) researched**. Each billable task must be segregated and described separately. Billing forms may not be used as time records. Billing form category headings should not be used on time records, as they are not sufficiently specific and detailed descriptions of services.

Attorneys should cross-reference their cases, so that on any given day, their bills for several clients will total the actual amount of time they spent working on cases that day.

Attorneys must record all the work they perform, in order to get paid for it and to document work performed in the event of an audit. If an attorney does research or prepares a case on a Sunday night, the time must be billed for that Sunday. Work performed on a specific date must be billed for that date, regardless of what day of the week it is, or what time of the day or night. Attorneys should record the starting clock time and the finishing clock time for all work performed, to the maximum extent practical.

Attorneys should continue to record the time they expend on work they perform for each service date **even if the hours exceed the presumptive billing** limit. Attorneys cannot be paid for any hours that exceed the presumptive daily billing limit, unless a prior waiver has been submitted and approved by the Director of Audit and Oversight (See section 19 above). Attorneys may not bill the excess hours to the next calendar or service date.

For example:

An attorney works 10.4 billable hours in one day, elects not to fill out a waiver form, and bills only 8 hours. The attorney's time sheet must include all 10.4 hours worked, not just the 8 hours billed. Attorneys are reminded that complete and accurate time records are the single most important method of documenting the services provided to your client.

A sample criminal time record and CAFL time record can be found at the end of this chapter at Appendix "A" and "B" respectively.

Attorneys are required to keep these contemporaneous time sheets, together with copies of their bills, in their client files for a period not less than seven (7) years after the date of submission.

Failure to document work performed in accordance with CPCS billing policies and procedures, or failure to provide documentation to auditors, may result in 1) the nonpayment of bills; 2) the reduction of amounts paid on bills; 3) repayment assessments for bills that have been paid, together with possible interest and penalties; 4) denial of access to the Committee's billing systems; 5) suspension or removal from assigned counsel panels; and 6) take any other appropriate action.

C. Non-compensable Activities.

Attorneys may not bill for routine law office administrative/ managerial tasks, nor can they bill for routine case administration tasks. (See also Section 26, Office-Related Expenses.) Routine law office or case administrative tasks include, but are not limited to, the following examples:

- time spent keeping time records, filling out billing forms, or submitting bills;
- notifying clients and/or courts of a change of address for your law office;
- activities considered to be legal training or education
- notifying court or other entities that you are not certified to accept Superior Court or other types of cases;
- time spent performing secretarial and/or clerical functions, such as: typing, preparing envelopes or labels; photocopying, printing, or faxing; preparing packages for mailing or parcel pick-up.
- opening/setting up files and closing files;
- time spent attending required CLE programs, effective December 1, 2008.

D. Waiting Time

Please note: In response to a request by the Patrick Administration for cost control measures, the Committee reduced the maximum number of hours that attorneys can bill per day for waiting time in court from three to one.

Attorneys may bill for **ACTUAL** time spent waiting **IN COURT** for **UP TO ONE HOUR** for each court date. Attorneys may **not** automatically bill one hour per court appearance. The time billed must accurately reflect ACTUAL time spent waiting, **not to exceed** one hour.

The one-hour daily waiting time limit does not imply that billing one hour or less of waiting time is automatically accepted as accurate. Cumulative waiting time hours billed must represent the actual time spent waiting in court that day up to one hour, be properly documented, and be in conformance with all CPCS policies and procedures.

Waiting time does not include time productively spent in court while waiting for a case to be called. In other words, waiting time does not include time spent talking to the client, witnesses, or the prosecutor; it does not include time spent looking at probation records, reviewing law, or preparing for argument. (Those tasks should be recorded on your contemporaneous time sheets and billed in the appropriate category on the E-bill form.)

Attorneys should bill their waiting time after they have billed for all other services that day. You may find that you cannot bill for waiting time, if the total number of hours billed for other services equals the actual in-court time worked that day.

For example:

- The attorney has two clients and waits a total of twenty minutes for the cases to be called. The attorney may bill a **total of .3 hours** of waiting time. The attorney can bill .2 hours on one client, and .1 hour on the other.
- The attorney has two clients and waits forty minutes for the cases to be called. The attorney may bill a TOTAL of .6 hours of waiting time. S/he may bill .3 hours to one client, and .3 to the second client.
- The attorney has two clients and waits one hour and fifteen minutes for the cases to be called. The attorney may bill a TOTAL of 1.0 hour of waiting time. S/he may bill .8 hours to one client and .2 hours to the second client; s/he can bill .6 hours to one client and .4 hours to the second client. The attorney can divide the total waiting time among her/his clients, as long as the total waiting time does not exceed actual time.
- The attorney has two clients and waits two hours for the cases to be called. The attorney may bill .5 hours per client, or a total of one hour.
- The attorney has one client with three separate cases (and three separate NACs) scheduled for hearing on the same court date. The attorney waits two hours. S/he may bill a maximum of one hour for that client.

25. Associates, Co-Counsel, and Paralegals

A. Associates

1. General Rules Regarding Associates

CPCS makes assignments to individual attorneys, not firms. While CPCS holds the individual attorney responsible for the case to which s/he is assigned, the assigned attorney may engage the services of an associate member of the bar when necessary to assist in the case.

2. Restricted Tasks

Associates are restricted to performing the following legal tasks: legal research, legal writing, investigation, review of discovery, drafting correspondence, and client interviewing. **Assigned attorneys may not delegate to associates the handling of continuances, hearings, or any part of a trial or oral argument.** Associates may not bill for negotiating with opposing counsel, waiting time, travel time and mileage, or expenses.

3. Use of Associates at Trial – Murder Cases

In murder cases, attorneys may use the services of an associate for assistance at counsel table during trial and at hearings. Permissible trial assistance includes taking notes, keeping track of exhibits and documents, conferring with the client, and keeping track of witnesses. Associates who provide assistance at counsel table may not examine witnesses, make arguments before the court at trial or at any hearing, or participate in the presentation of evidence. These in-court activities may only be performed by the assigned attorney. CPCS will reimburse the assigned murder attorney for the trial assistance services of not more than one associate at each court event.

4. Use of Associates at Trial – Non-murder Cases

Attorneys who wish to use the services of an associate to provide assistance at counsel table during trial and at hearings on civil and criminal assignments that are not murder cases must receive prior written approval from the appropriate Deputy Chief Counsel or Director of Mental Health Litigation. If prior written approval is granted, Associates are limited to providing the same types of services at trial in non-murder cases as those approved for Associates used at trial in Murder cases; see paragraph 3, above.

5. Record-Keeping Requirements

Associates must keep contemporaneous time records, itemizing each date, the time expended, and tasks performed on that date by the associate on the case, including both the starting clock time and the finishing clock time, to the maximum extent practical. The description of tasks and services should be sufficiently specific and detailed to enable one to understand the nature and extent of services provided.

6. Billing for Associates' Services

Bills for associate services must be submitted by the assigned attorney via E-Bill, using the E-Voucher/Associate option. The assigned attorney must attach to the E-Voucher a certification from the attorney and from the associate that the attorney has paid, and the associate has received, the amount billed. CPCS cannot pay an associate directly. See the E-Bill Manual for further instructions.

CPCS will reimburse for the services of an associate at the maximum rate of \$40.00 per hour. Attorneys must keep appropriate documentation of payments to associates.

CPCS will not reimburse for an associate's waiting time or travel time and mileage, nor will it pay for an associate's expenses.

CPCS will not reimburse for more than 8 hours per day of associate time.

The hours that an attorney bills for work s/he performs as an associate on any CPCS cases are included in, and count towards, the attorney's billable hours limit per fiscal year.

An attorney who has billed in excess of the annual hourly billing limit may not bill as an associate on other CPCS case assignments. Furthermore, an attorney who has billed in excess of the annual hourly billing limit may not bill for an associate to complete work on open cases.

7. Additional Rules Regarding Associates

Attorneys may not delegate associate tasks to attorneys suspended by CPCS, nor may attorneys delegate associate tasks to attorneys who have reached the Committee's presumptive daily or annual cap on billable hours. CPCS will not reimburse attorneys for associate services performed by suspended attorneys or by attorneys who have reached the Committee's cap(s) on billable hours. Delegation of prohibited tasks to associates is a violation of the CPCS Performance Guidelines and Standards.

B. Co-Counsel

Attorneys may request that CPCS assign qualified co-counsel to assist in the representation of clients in particularly complex cases. Such requests shall be made in writing to the appropriate Deputy Chief Counsel or the appropriate Director of YAD or Mental Health Litigation, and shall fully describe those unique and complex aspects of the case that indicate that the assignment of co-counsel is warranted.

C. Paralegals

The assigned attorney may engage the services of a paralegal when necessary to assist in the case. CPCS will reimburse for the services of paralegals at the maximum rate of \$18 an hour for the following tasks only: legal research, investigation, client interview, and trial assistance.

Paralegals may not handle hearings, trials, or oral arguments. Such tasks may only be performed by the assigned attorney. CPCS will not reimburse for the paralegal's waiting time, travel time and mileage, or the paralegal's expenses.

Bills for paralegal services must be submitted by the assigned attorney via E-Bill, using the E-Voucher/Paralegal option. Upon its completion, the paralegal E-Voucher must be printed, signed by both the paralegal and the attorney, and submitted to CPCS accompanied by the paralegal's detailed itemization of dates and tasks performed. The description of tasks and services submitted should be sufficiently specific and detailed to enable one to understand the nature and extent of services provided, including both the starting clock time and the finishing clock time, to the maximum extent practical.

CPCS cannot pay a paralegal directly. See the E-Bill Manual for further instructions.

CPCS will not reimburse for more than 8 hours of paralegal services per day.

Attorneys must keep appropriate documentation of payments to paralegals.

No person compensated for paralegal services may be a former client of the attorney. To qualify for compensation, a paralegal must possess either:

1. certification from an accredited paralegal education program, or
2. successful completion of at least one year at an accredited law school, or
3. prior approval of the appropriate Deputy Chief Counsel or the appropriate Director of YAD or Mental Health Litigation.

Attorneys must maintain a record of a paralegal's credentials.

An attorney who has billed in excess of the annual hourly billing limit may not bill as a paralegal on other CPCS case assignments. Furthermore, an attorney who has billed in excess of the annual hourly billing limit may not bill for a paralegal to complete work on open cases.

Attorneys may not delegate paralegal tasks to attorneys suspended by CPCS, nor may attorneys delegate paralegal tasks to attorneys who have reached the Committee's presumptive daily or annual cap on billable hours. CPCS will not reimburse attorneys for paralegal services performed by suspended attorneys or attorneys who have reached the Committee's cap(s) on billable hours. Delegation of prohibited tasks to paralegals may be a violation of the CPCS Performance Guidelines and Standards.

26. Office-Related Expenses

A. Routine Law Office Overhead

The Committee will **not** reimburse for routine law office expenses such as typing, secretarial services, faxing, internet services, or law books. The Committee will **not** reimburse for subscription costs, membership fees, or monthly service charges for online legal research tools such as Westlaw or LEXIS. Attorneys can, however, bill for their **time** spent performing necessary online legal research.

B. Photocopying and Postage

The Committee will reimburse for reasonably necessary, properly documented photocopying and postage expenses. An attorney's in-house photocopying will be reimbursed at a rate not to exceed ten cents per copy.

C. Telephone Bills

The Committee will reimburse for collect and toll calls which are reasonably necessary to the representation of a client, provided that the attorney submits copies of the telephone bills to the Committee with those calls highlighted (and other calls deleted if you wish).

27. Client Personal Expenses

CPCS generally does not reimburse for a client's personal expenses such as transportation or other services. If a client needs assistance of a personal nature, counsel must seek authorization from the appropriate Deputy Chief Counsel or Director of Mental Health Litigation, prior to filing a motion pursuant to G.L. c. 261, §§27A-27G, for such expenses. Counsel who seek authorization from the appropriate Deputy Chief Counsel or the Director of Mental Health Litigation, and who obtain a court-approved motion, pursuant to G.L. c. 261, §§ 27A-27G, may receive reimbursement for counsel's reasonable expenditures for an incarcerated client's appropriate courtroom attire for appearances at trial, not to exceed \$200.

28. Travel Expenses

PLEASE NOTE:

SPENDING REDUCTIONS ADOPTED BY CPCS

CPCS implemented an additional cost cutting measure on August 15, 2011. Billing for time spent travelling for case preparation is unchanged, but mileage reimbursements (formerly at \$.30 per mile) was eliminated for private counsel, as mileage may be a tax-deductible expense for private practitioners. Accordingly, the 2009 spending reductions adopted by CPCS have been amended as follows:

In response to the cost control measures requested by the Patrick Administration to be implemented in FY2009, the Committee has voted to **eliminate compensation for time for the first thirty miles of all trips to and from court**, absent a waiver by the appropriate Deputy Chief Counsel or Director of Mental Health Litigation based upon a compelling need for representation in a particular underserved court. This restriction applies to travel to and from court occurring on or after December 1, 2008; other case related travel (e.g., for client visits and investigations) continues to be fully compensable.

The thirty-mile exclusion of compensation for time is applicable to travel to and from court proceedings wherever conducted (e.g., courthouse, mental health facility, hospital). Please note that for billing purposes, the process of reduction of time is automatic. The E-Bill program will calculate the reductions based on the time that the attorney enters for traveling to court. Attorneys should not reduce their travel time to court prior to submitting their bills, or they will risk having their bills reduced a second time by the E-Bill program. Any request for a waiver must be resolved in advance of the travel and prior to submitting the E-Bill.

A. Travel Expenses Generally

1. Subject to ¶ C and ¶ D below, attorney *time* at the hourly rate of the case is compensable for all travel, including travel less than thirty miles round-trip, except

travel to and from court. See ¶ B, below, for travel policies for client-visits. See ¶ C, below for travel to and from court. See ¶ D, below, for travel billing procedure.

B. Travel Expenses for Client-Visits

Subject to ¶ D, travel for **client-visits outside of court** is compensable (time at the hourly rate of the case) even if the travel to visit the client does not exceed thirty miles round-trip.

Travel time to and from the court to meet a client on the day of court proceedings is excluded from compensation for the first thirty miles (See ¶ C, below.) See ¶ E, below, for travel billing procedure.

C. Travel To and From Court

No compensation for time **for the first thirty miles of all trips to and from court**, absent a waiver by the appropriate Deputy Chief Counsel or appropriate Director of YAD or Mental Health Litigation based upon a compelling need for representation in a particular under-served court. This restriction applies to travel to and from court occurring on or after December 1, 2009.

The thirty-mile exclusion of compensation for time is applicable to travel to and from court proceedings wherever conducted (e.g., courthouse, mental health facility, hospital).

D. Out-of-State Travel - Attorneys:

If out-of-state travel exceeds 150 miles round-trip, the attorney must submit a written request to the appropriate Deputy Chief Counsel or appropriate Director of YAD or Mental Health Litigation, and receive prior approval before incurring such expenses. If the time expended exceeds the presumptive daily billing limit, the attorney must also seek a waiver in accordance with Section 19 above.

E. Billing for Travel Expenses

“Assignment-related travel” includes, but is not limited to, the following:

1. travel to and from a court for court appearances, if the travel exceeds 30 miles;
2. travel to and from the scene of a crime; and
3. travel to and from other locations in order to interview witnesses, investigate and research a case.

The threshold distance of thirty miles for all assignment-related travel (except client-visits outside court) is measured from the attorney’s nearest office OR his/her home to his/her destination, whichever distance is shorter. A reminder: an attorney’s office must be within reasonable geographic proximity to the court(s) in which the attorney practices.

When billing for travel expenses in E-Bill (including client-visits), the date, the originating city or town, and the destination city or town, as well as the total miles traveled, must be noted for each occurrence.

Please note that for billing purposes, the process of reduction of time for travel to and from the court is automatic. The E-Bill program will calculate the reductions based on the time that the attorney enters for traveling to court. Attorneys should not reduce their travel time to court prior to submitting their bills, or they will risk having their bills reduced a second time by the E-Bill program. Any request for a waiver must be resolved in advance of the travel and prior to submitting the E-Bill.

For example, if an attorney has an office in Worcester, and s/he has a hearing before a Single Justice of the SJC in Boston (which is a distance greater than 30 miles round-trip) s/he would be able to:

Bill for compensation for **time** in the E-Bill system by recording the time spent traveling, to the closest one-tenth hour. All reasonable, compensable attorney travel time is compensable at the hourly rate of the case.

The E-Bill program will then automatically reduce the compensable time to and from court. Failure to record travel time in the foregoing manner may result in the delay or nonpayment of bill submissions for such travel time.

NOTE: Attorneys may not combine personal and case-related travel. CPCS will not reimburse attorneys for travel that is partially personal in nature.

E. Parking Expenses and Tolls:

The Committee will not reimburse for parking expenses and/or tolls, unless these expenses are *reasonable and necessary* and are incurred in connection with reimbursable travel expenses, as previously explained.

F. Out-of-State Witnesses

1. Expert Witnesses Traveling from Out-of-State

[See Chapter 6 of this Manual.](#)

2. Non-Expert Witnesses Traveling from Out-of-State

Prior to incurring costs, an attorney must submit a written request to incur extraordinary expenses to the attention of the appropriate Deputy Chief Counsel or Director of Mental Health Litigation, and file a motion with the court for out-of-state witness travel, pursuant to G.L. c.261, §§ 27A-G. Assigned counsel must also file with the motion an affidavit explaining why the witness's testimony is necessary.

29. Other Expenses

For unusual expenses by type or cost, including travel other than by automobile, authorization from the appropriate Deputy Chief Counsel or appropriate Director of YAD or Mental Health Litigation is required *prior to incurring costs*. Failure to seek prior approval may result in the Committee denying (or partially denying) a request for reimbursement and will affect the reimbursement process for such expenses.

30. Expenses: Documentation Required

The Comptroller of the Commonwealth requires that CPCS obtain complete documentation, including all receipts and an itemization of all expenses, prior to reimbursing attorneys for any expenditure. Legible receipts in the form of a canceled check, or other document that clearly indicates that the bill was paid, and indicating the date, amount of expenses, and name of vendor must be submitted with the attorney's E- Voucher. Attorneys must keep documentary support for E-Vouchers under \$50 for a period of at least 7 years. Attorneys need not submit such documentary support unless requested.

31. Expenses: Billing Instructions

All attorney bills, including expenses, must be filed through E-Bill. Expenses are filed using the E-Voucher option. Please see the E-Bill Manual for further information.

32. No-Case Duty-Days [Applies Only to Dates Assigned by County (Bar Advocate) Assignment Programs]

Duty attorneys who receive no case assignments of any sort (including arraignment only, bail only or bail review) on their assigned duty-day may be compensated for time spent on duty at the court. Thus if the attorney is on duty at the court for 6 hours without receiving any case assignment, s/he may be compensated for 6 hours; if the duty attorney is released earlier, s/he may be compensated for the lesser time actually spent on duty at the court. This time is compensated at the district court rate.

Attorneys must complete a No-Case Duty-Day form, provided by the county program that assigned the duty-day, in order to receive payment from the Committee for the compensable time. The form must be approved by the program administrator and submitted by the program directly to the Committee. The time for which the attorney is compensated is counted as billed hours by the Committee.

For purposes of this policy, a "case" includes assignments for arraignment only, bail only, arraignment and bail or 1 or more bail review(s). Thus, if an attorney is assigned to one case for bail only, the attorney may not seek compensation for a No-Case Duty-Day. The attorney may, however, bill for actual time spent representing the client on that assignment

and for actual time spent waiting, up to one hour. An authorized Notice of Assignment of Counsel form is required for such an assignment, as for all assignments.

33. Compensation Rates

The following represents the current payment structure for compensation of attorneys assigned through the Committee:

A. Matters Paid At \$60.00 Per Hour

Effective for services rendered on or after 7/1/05, the following types of legal services will be paid at the rate of \$60.00 per hour for in- court and out-of-court work:

- All cases that require a Superior Court certification, including Sexually Dangerous Person proceedings, wherever the case is heard (rate applies to trial and appeal). Rate does not apply to bail-only or arraignment-only assignments in the District court.
- All cases that require a Youthful Offender certification (rate applies to trial and appeal). If the case involves charges not included in the CPCS Presumptive Youthful Offender list (see Youthful Offender section of this Manual), but the juvenile was nevertheless later indicted as a Youthful Offender, then the delinquency portion of the case is compensable at \$50.00 per hour until the date of the indictment. The Youthful Offender portion of the case is compensable at \$60.00 per hour, from the date of the post- indictment arraignment until the conclusion of the case.
(Attorneys must submit copies of the indictment(s), together with copies of the NAC form, in such cases to CPCS, attention: Youthful Offender Trial Panel Oversight.)
The attorney should also get a new NAC for the case once the juvenile is indicted.
- Criminal felony charges that are within district court jurisdiction (G.L. c. 218, § 26) are called concurrent felonies because they are within the jurisdiction of both the district and superior courts. The required certification depends on the court in which the case is heard. These cases will be paid at \$50.00 per hour when heard in district court and \$60.00 per hour when heard in superior court.
- All post-conviction matters (other than murder convictions) in which the defendant was convicted in Superior Court or was convicted as a Youthful Offender.
- All mentors and/or Resource Attorneys.

- Bail Petitions heard in the Superior Court.

B. Matters Paid At \$50.00 Per Hour

Effective for services rendered on or after 7/1/05, the following types of legal services will be paid at the rate of \$50.00 per hour for in- court and out-of-court work:

- Bails and Bail Reviews on all cases in the District Court.
- All appeals from denial of motions for funds in District Court cases heard in the Appellate Division of the District Court.
- Writs of Apprehension (G.L. c. 123, § 12(e)).
- Commitment for Alcohol- or Substance-Abuse (G.L. c. 123, § 35).
- Criminal felony charges that are within district court jurisdiction (G.L. c. 218, § 26) are called concurrent felonies because they are within the jurisdiction of both the district and superior courts. The required certification depends on the court in which the case is heard. These cases will be paid at \$50.00 per hour when heard in district court and \$60.00 per hour when heard in superior court.
- Petitions for review of sex offender designation (G.L. c. 6, § 178M. [These are civil cases heard in Superior Court.]
- Children and Family Law cases, including CHINS.
- Mental Health cases.
- Minors Seeking Abortion (“Mary Moe”) cases (G.L. c. 112, § 12S, Offense Code 1005).
- Probate Contempt cases where a criminal complaint has been issued.
- All other criminal cases not listed above.

C. Matters Paid At \$100.00 Per Hour

Effective for services rendered on or after 7/01/05, First- and Second-Degree Murder trials and murder appeals will be paid at \$100.00 per hour.

SUMMARY (effective for services rendered on or after 7/1/05):

Murder Cases	\$100.00/hour
Cases Requiring Superior Court Certification	\$60.00/hour
Cases (Not Bail-Only Assignments) Requiring Youthful Offender Certification... ..	\$60.00/hour
Substantive Criminal Cases Heard in Superior Court	\$60.00/hour
Criminal Cases not requiring Superior Court Certification Heard in District Court	\$50.00/hour
Juvenile Delinquency Cases not requiring Youthful Offender Certification	\$50.00/hour
Bail-Only Assignments in District Court	\$50.00/hour
Bail-Only Assignments in Superior Court	\$60.00/hour
District Court Bail Reviews	\$50.00/hour
Bail Petitions in the Superior Court	\$60.00/hour
Mentors in all cases	\$60.00/hour
Petitions for Review of Sex Offender Designation	\$50.00/hour
Mary Moe cases (G.L. c. 112, § 12S)	\$50.00/hour
SDP Commitments & Reviews	\$60.00/hour
Writs of Apprehension (G.L. c. 123, § 12(e))	\$50.00/hour
Commitment for Alcohol- or Substance-Abuse (G.L. c. 123, § 35)... ..	\$50.00/hour
Concurrent felonies:	
If substantive case heard in Superior Court	\$60.00/hour
If substantive case heard in District Court	\$50.00/hour
Children and Family Law cases, including CHINS..	\$50.00/hour

Mental Health Cases..... \$50.00/hour

Other Criminal Cases not mentioned above.....\$50.00/hour

34. Docket Entry and Documentation Requirements

Attorney bills are subject to review by CPCS, and attorneys may be asked to provide docket sheets and other records on individual cases.

35. Continuing Legal Education

PLEASE NOTE: In response to a request by the Patrick Administration for cost control measures in FY09, the Committee voted to eliminate all compensation for attendance at required CLE programs.

36. 1350 Hour Rule

Pursuant to Chapter 211D § 11, any counsel who is appointed or assigned to represent indigents within the private counsel division is prohibited from accepting any new appointment or assignment to represent indigents after S/he has billed ~~1400~~ 1350 billable hours during any fiscal year.

37. CPCS Attorney Payment Schedule

All bills that have been received in good order by the 15th of the month will be processed and forwarded to the Office of the State Comptroller (OSC) for payment within 7 business days of the 15th. If the 15th falls on a Saturday, Sunday, or a holiday during the next transmission of bills to OSC, we will include all bills received in good order through 11:59 p.m. of the next business day.

All bills received in good order between the 16th and the last day of the month will be processed and forwarded to OSC for payment within 7 business days of the last day of the month. If the last day of the month falls on a Saturday, Sunday, or a holiday, during the next transmission of bills to OSC, we will include all bills received in good order through 11:59 p.m. of the next business day.

This policy does not change the monthly billing policy permitting no more than one interim bill per assignment number (NAC) per month, as specified in Section 18 of this chapter. If the date of expected CPCS transmission to OSC falls on a Saturday, Sunday, or a holiday, the bills will be transmitted before 5 p.m. of the next business day.

The timing of all payments is subject to appropriation availability.

[38. Appendix A: Sample Criminal Time Record](#)

[39. Appendix B: Sample CAFL Time Record](#)