

VII. Audit and Oversight Procedures

PREAMBLE

Pursuant to G.L. c. 211D, §12, the Audit and Oversight Department, hereinafter referred to as “The Department,” is responsible for monitoring the billings of private counsel who accept assignments through the Committee and vendors who provide services to CPCS clients. The Department reviews bills to insure that the services billed were provided to the client, that the bills submitted are reasonable in terms of both dollars charged and hours billed and that the attorney/vendor maintains his or her billing records and files in compliance with CPCS billing and record-keeping requirements.

AUTHORITY

The Committee shall have the authority through the Department and through its other administrative divisions, to examine, suspend, reduce, or decline payment of bills submitted, suspend the acceptance of assignments, reassign cases, and take any other action deemed necessary or appropriate.

The within chapter provides attorneys and vendors with general information regarding the specific audit types described herein and shall not be interpreted to limit or restrict the authority of the Committee to examine caseloads and bills. Further, these procedures may be used independently or in concert with other types of audits, reviews or supervision performed by the Committee’s various divisions.

I. AUDIT AND OVERSIGHT PROCEDURE – FULL AUDITS

The following procedure will be followed where irregularities with respect to billings come to the attention of CPCS staff and a full audit of the Attorney or Vendor’s caseload or bills is contemplated.

A. Preliminary Investigation

1. A preliminary investigation will be undertaken by Audit and Oversight Department staff to (i) ascertain whether the attorney or vendor erred in recording information submitted, over-billed for services provided or otherwise engaged in questionable practice(s), and (ii) determine whether or not there is a pattern of such practice(s) in other invoices.
2. Based upon the results of the preliminary investigation, a decision will be made by the Audit and Oversight Department as to whether or not an audit will be performed. The attorney or vendor will be mailed an “Audit Letter” advising that an audit is being performed.
3. The department may suspend the payment of any bill(s) pending review of same.

B. Audit Letter. Response. Timing

1. Respondent attorney/vendor shall cooperate with the Department’s request for information and shall have thirty (30) days, from date of receipt, to respond to the Audit Letter and provide documentation, including but not limited to contemporaneous time sheets, notes, file materials, and other documents requested by the Department.
2. Respondent attorney/vendor shall have one automatic fifteen (15) day extension to respond to the Audit Letter upon written request (not less than five days prior to the 30 day deadline) to the Audit and Oversight Department.

3. Respondent attorney/vendor shall have no further extensions of time to respond to the Audit Letter, except upon written notice of extraordinary circumstances (not less than five days prior to the 45-day deadline). Such requests should contain a description of the circumstances warranting the extension and should be forwarded to the Audit and Oversight Department. Such requests will be allowed at the discretion of the assigned Hearing Officer (see § [V. A.](#), below).

4. Respondent attorney/vendor's unclaimed correspondence of any kind shall be deemed received on the date of mailing.

C. Failure to Respond

An attorney/vendor who fails to respond to the Audit Letter shall be subject to temporary suspension from eligibility to accept assignments. In addition, the payment of bills shall be subject to suspension.

1. Suspension of Bill Payments

The Department shall notify the attorney/vendor in writing of its intention to suspend the payment of bills for failure to respond and the attorney/vendor shall have seven (7) days from the date of such notice to avoid suspension by submitting a complete response to the audit.

2. Suspension of Eligibility to Accept Assignments

A Committee member must approve a suspension from eligibility to accept new assignments for failure to respond. The Department shall notify the attorney/vendor in writing of its intention to seek such approval. The attorney/vendor shall be provided seven (7) days from the date of such notice to avoid such suspension by submitting a complete response to the audit.

3. Duration of Suspension

Any suspension for failure to respond shall remain in effect until a complete response to the audit is received.

4. Waiver

In the event the attorney/vendor fails to respond within thirty (30) days following the suspension date, the Department may proceed with the audit and the attorney/vendor shall be deemed to have waived his or her right to respond, to submit a written Rebuttal or to request a hearing as provided herein.

II. DISPOSITION RECOMMENDATION

At the conclusion of the audit process, Audit and Oversight Department staff shall prepare a written Disposition Recommendation containing findings and recommendations.

Recommendations may include:

- A. that no action be taken;
- B. that the bill(s) in question be disallowed;
- C. that the attorney/vendor be required to repay monies to the Commonwealth;

- D. that the attorney/vendor be suspended or removed from all Committee panels for a period of time or permanently;
- E. that the Committee submit the findings to the Board of Bar Overseers;
- F. that the Committee submit the findings to the Attorney General's or District Attorney's office;
- G. that the Committee pursue all available civil remedies for the recovery of overpaid funds; or
- H. other appropriate action.

III. RESPONSE TO DISPOSITION RECOMMENDATION

A. Respondent attorney/vendor who responded to the Audit Letter as provided in § (I)(B)(1) shall have ten (10) days from the date of receipt of the Disposition Recommendation to notify the Department in writing that he or she disputes the recommendation by filing a:

- (1) request for a hearing
- (2) notice of intent to submit a written Rebuttal; or
- (3) notice of intent to submit a written Rebuttal and request for a hearing.

B. Respondent attorney/vendor shall have thirty (30) days from the date of receipt of the Disposition Recommendation for submission of a Rebuttal.

C. Respondent attorney/vendor who fails to timely dispute the Disposition Recommendation as provided in (A) and (B) above shall be deemed to have waived that right.

D. Respondent attorney/vendor who failed to respond to the Audit Letter shall be deemed to have waived his or her right to submit a Rebuttal or request a hearing.

E. Respondent attorney/vendor's Rebuttal to the Disposition Recommendation shall be in the form of and limited to a written statement signed by the attorney/vendor specifically addressing the issues raised in the Disposition Recommendation. No other documentation or evidence shall be introduced.

F. The Disposition Recommendation and attorney/vendor's Rebuttal will be forwarded to the Hearing Officer for review. If a hearing has been requested the attorney/vendor will be notified in writing of the date, time and location of the hearing. If no hearing has been requested, the attorney/vendor will be notified of the Hearing Officer's decision, in writing, within sixty (60) days.

IV. SETTLEMENT OF CLAIMS

The Department and attorney/vendor may at any time discuss settlement of an audit. In the event that a settlement is negotiated, the parties shall submit a proposed decision in the appropriate form for the Hearing Officer's approval. The Hearing Officer may accept, reject or recommend modifications to the proposed agreement. Notwithstanding the agreement of the Department and the attorney/vendor, no settlement shall be binding upon either party until approved in writing by the Hearing Officer.

V. **HEARINGS**

A. **Hearing Officers**

Any of the fifteen (15) members of the Committee for Public Counsel Services may serve as a Hearing Officer.

B. **Scheduling of Hearings**

1. The Audit and Oversight Department shall schedule a hearing within sixty (60) days from receipt of the Respondent attorney/vendor's written request.

2. The Audit and Oversight Department and the Respondent attorney/vendor shall each have one automatic continuance of the hearing not to exceed 15 days from the scheduled hearing date: (a) upon written request to the Hearing Officer; (b) a copy to opposing party; and (c) not later than seven (7) days prior to the scheduled hearing.

3. The Audit and Oversight Department and the Respondent attorney/vendor shall have no further continuances of the hearing except in extraordinary circumstances: (a) upon written request to the Hearing Officer; (b) a copy to the opposing party; and (c) allowed by the assigned Hearing Officer.

C. **Burden of Proof**

At the hearing, the burden of proof shall be upon the Respondent.

D. **Standard of Review**

All hearings shall be conducted under the abuse of discretion standard of review.

E. **Evidence**

1. At the Hearing, the evidence shall consist of the: (a) Audit Letter(s); (b) Documentation and Response to Audit Letter(s); (c) Disposition Recommendation; and (d) Written Rebuttal.

2. Respondent attorney/vendor and Audit and Oversight Department Counsel or his or her designee shall each be limited to a 30-minute oral argument. Either party may waive oral argument.

3. Respondent attorney/vendor and Audit and Oversight Department Counsel or his or her designee shall limit oral argument to the issues raised in either the (a) Audit Letter(s); (b) documentation and response to Audit Letter(s); (c) Disposition Recommendation; and (d) Written Rebuttal.

4. The Respondent attorney/vendor and Audit and Oversight Counsel shall not introduce new evidence or documentation at the hearing.

5. Respondent attorney/vendor may be represented by counsel, but shall be limited to one oral argument.

F. Recording of Proceedings

The attorney/vendor may at his or her own expense hire a stenographer to record the proceedings provided: (1) the Department is sent written notice of such intent seven days prior to the hearing and (2) the attorney/vendor provides a copy of the transcript to the Department. No other form of recording shall be permitted.

VI. DECISIONS OF HEARING OFFICERS

A. The Hearing Officer may approve, reject, or modify the Recommendation, or take any other appropriate action.

B. The Hearing Officer shall have the discretion to decide any case by written decision with or without findings of fact. The parties may submit a proposed decision to the Hearing Officer.

C. The Hearing Officer shall present to the Executive Committee for approval and ratification on the record only that part of any decision which includes removal from Committee Panels or referral to the Board of Bar Overseers, Attorney General, or District Attorney

D. In the event of a decision that there has been a violation of a Disciplinary Rule or a criminal law, the Committee shall submit its findings with specific references to any pertinent disciplinary rule or criminal law to the Board of Bar Overseers; and its findings with specific references to any pertinent criminal law to the Attorney General or the appropriate District Attorney.

E. The Hearing Officer shall render a decision within sixty (60) days of receipt of the recommendation from the Department or hearing and forward that decision to the General Counsel for notification to the Respondent and the Department.

F. The decision of the Hearing Officer shall constitute the final decision of the agency.

VII. SUSPENSION, REMOVAL, FAILURE TO COMPLY AND RE-PAYMENT

A. The Audit and Oversight Department shall suspend from all panels, suspend the payment of all bills, and/or refer to appropriate agencies all attorney/vendors who fail to comply with the decision of the Hearing Officer. Prior to any such suspension and/or referral, the Department shall notify the attorney/vendor in writing of the particulars of non-compliance and the attorney/vendor shall be granted ten (10) days to remedy said non-compliance.

B. Any attorney/vendor suspended pursuant to a decision of the Hearing Officer or for failure to comply with such decision shall not be eligible for reinstatement until the amount then due and owing has been paid in full.

C. Any attorney/vendor removed from panels pursuant to a decision of the Hearing Officer shall not be eligible to apply for reinstatement until the amount assessed for over-billings has been paid in full.

D. The Committee makes assignments to individuals and not firms. However, the Committee makes payments to individuals or firms. In the event that the Committee has been over-billed, the individual and firm are jointly and severally liable for repayment of amounts over-billed.

VIII. CASELOAD AND BILLABLE HOURS AUDITS

(this Section VIII effective July 21, 2010)

A. In addition to the audits described above, the Department may perform “caseload and billable hours audits” of one or more bills/cases pre-payment or post-payment. The Department shall notify the attorney in writing that such an audit is being performed and the attorney shall respond to the Department’s request for time sheets, billing records, case files, and other documents within 21 days of receipt of such written request. Counsel may provide redacted documents as necessary to protect the interest of the client or as required by statute or rule.

B. In addition to and at the time the documents requested in (A) above are submitted, the attorney may provide any additional documents he or she desires as well as a written signed statement setting forth any facts or issues he or she believes are relevant to a fair review of the work performed and bill(s) submitted. The Department may request additional information as it deems necessary to complete its audit. It is incumbent upon and the duty of the attorney to provide all documents in reply to the Department’s request(s). The Department will not assume the existence of documents, relevant information or other facts or evidence not provided in accordance with paragraphs (A) and (B), and the attorney will not be permitted to provide additional documentation or evidence after the Department’s Disposition is complete. Failure to provide requested or additional documents, records, and case files constitutes a waiver of any objection to the sufficiency of the Department’s sample.

C. Attorneys are under a duty to cooperate and an Attorney who fails to timely respond shall be deemed to have waived the right to respond to the request for information and is subject to suspension from the list of attorneys eligible to accept assignments. See c. II s. 1 and c. VII s. I (C) (1), (2) & (3).

D. The attorney will be provided a written statement (Disposition) advising him or her of the results of the audit and any action(s) taken. These actions may include but are not limited to the following:

1. That the bills will be paid, reduced or disallowed and/or that further payments on the case will be reviewed/paid/reduced/audited
2. That the matter be closed without further action
3. That the Department recapture funds paid on the cases or bills selected for audit
4. That the Attorney be suspended from eligibility to accept new assignments.
5. That the terms under which the Attorney may accept assignments be modified and/or case load or billable hours conditions or limitations be imposed
6. That some or all of the Attorney’s existing CPCS cases be re-assigned
7. Other appropriate action

If the Disposition provides that some or all of the attorney's CPCS cases be reassigned, the Attorney may request, in writing, that he or she remain assigned to one or more of those cases if necessary to protect the interests of the client(s). Any such request shall be made to and addressed by the General Counsel in the same manner as a request for review under VIII (F) and (G).

E. Final Dispositions

The Department's disposition under VIII (D)(1) & (2) shall constitute the final decision of the agency.

F. Final Disposition Subject to Review by the General Counsel

The Department's disposition under VIII (D)(3) through (7) shall constitute the final decision of the agency unless the Attorney requests review by the General Counsel of CPCS.

G. Review of Disposition

In order to obtain review under VIII (F) , Counsel must send a letter ("Review Request") to the Department by certified mail, return receipt requested (or email by written agreement) within 14 days of the date of the Department's Disposition.

Failure to timely request review under VIII (F) shall constitute a waiver of that right and the disposition of the Department shall be deemed the final decision of the agency.

Counsel shall submit to the Department by certified mail (or email by written agreement) his or her written rebuttal within 30 days of the date of the Department's Disposition. The Department may reply to any issues raised in the rebuttal within 14 days.

H. Decision on the Record

If a review is requested under VIII (F), the General Counsel (or his or her designee) will render a decision based upon his or her review of the relevant records within 30 days. The General Counsel may approve, reject, or modify the Department's Disposition or take any other appropriate action. The decision of the General Counsel shall be the final decision of the agency. The applicable burden of proof and standard of review can be found at s. V (C)(D) herein.

No hearing will be held and the decision of the General Counsel will be communicated to the Department and Attorney in writing.

Failure to comply with the terms of the Disposition (final agency decision) may result in removal from all assigned counsel panels, non-payment of bills and denial of access to the Committee's billing systems.

The procedures provided in this section VIII are expressly limited to caseload and billable hours audits performed by the Department.

7 - 6

Appendix A

INTEREST RATE POLICY

1. The Committee for Public Counsel Services shall impose interest on all audit assessments that are not paid within 30 days of the Hearing Officer's decision.
2. The interest rate shall be 10% annually, calculated at the periodic rate of .008333% per month.
3. The interest rate shall be reviewed from time to time and adjusted upon approval by the Full Committee.
4. This policy shall take effect July 1, 1997 upon all audits commencing on or after that date.
5. The Committee for Public Counsel Services staff shall be authorized to develop and propose additional procedures for the implementation of this policy.
6. The Audit and Oversight Subcommittee shall review all proposed procedures and present them to the Full Committee for its prior approval.
7. Amounts assessed paid in full within 30 days of the Hearing Officer's decision will be amortized over a period not to exceed two years (24 months). However, the Hearing Officer(s) shall retain the right to modify the two-year amortization period.
8. Interest shall be computed on the remaining unpaid balance at the approved rate(s) of interest in effect at the time the Disposition Recommendation is dated. The interest rate in effect for a particular audit shall not increase or decrease from the rate in effect on the day that the Disposition Recommendation is dated.
9. An amortization schedule shall be provided to each attorney/vendor. The amortization schedule will represent the payment schedule.
10. Attorneys/vendors must at least pay the monthly amount due on or before the payment dates appearing on the amortization schedule.
11. Attorneys/vendors may pay the entire remaining unpaid balance (plus accrued interest) at any time by requesting a payoff amount from the CPCS audit staff.
12. Attorneys/vendors agree to abide by all of the Committee's interest rate policies and procedures.
13. Attorneys/vendors will not receive annual statements of interest paid, unless requested in writing. Audit staff shall be given 60 days from the date the written request is received to comply with such requests. Such statements of interest paid shall be in the form of updated amortization schedules.