

COMMITTEE SUBSTITUTE

FOR

H. B. 4247

(BY DELEGATES FRAZIER, BARILL,
MILEY, T. CAMPBELL AND HUNT)

(Originating in the Committee on Finance)
[February 23, 2012]

A BILL to amend and reenact §29-21-13a of the Code of West Virginia, 1931, as amended, relating to increasing the compensation of court appointed panel attorneys who represent individuals in abuse and neglect, juvenile, criminal and other proceedings.

Be it enacted by the Legislature of West Virginia:

That §29-21-13a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-13a. Compensation and expenses for panel attorneys.

1 (a) All panel attorneys shall maintain detailed and
2 accurate records of the time expended and expenses incurred
3 on behalf of eligible clients and upon completion of each
4 case, exclusive of appeal, shall submit to the appointing court
5 a voucher for services. Claims for fees and expense
6 reimbursements shall be submitted to the appointing court on
7 forms approved by the executive director. The executive
8 director shall establish guidelines for the submission of
9 vouchers and claims for fees and expense reimbursements
10 under this section. Claims submitted more than ninety
11 calendar days after the last date of service shall be rejected,
12 unless for good cause, the appointing court authorizes in
13 writing an extension: *Provided*, That claims where the last
14 date of service occurred prior to July 1, 2008, shall be
15 rejected unless submitted prior to January 1, 2009.

16 The appointing court shall review the voucher to
17 determine if the time and expense claims are reasonable,

18 necessary and valid and shall forward the voucher to the
19 agency with an order approving payment of the claimed
20 amount or of a lesser sum the court considers appropriate.

21 (b) Notwithstanding any other provision of this section to
22 the contrary, Public Defender Services may pay by direct bill,
23 prior to the completion of the case, litigation expenses
24 incurred by attorneys appointed under this article.

25 (c) Notwithstanding any other provision of this section to
26 the contrary, a panel attorney may be compensated for
27 services rendered and reimbursed for expenses incurred prior
28 to the completion of the case where:

29 (1) More than six months have expired since the
30 commencement of the panel attorney's representation in the
31 case; and

32 (2) No prior payment of attorney fees has been made to
33 the panel attorney by Public Defender Services during the
34 case.

35 The executive director, in his or her discretion, may
36 authorize periodic payments where ongoing representation

37 extends beyond six months in duration. The amounts of any
38 fees or expenses paid to the panel attorney on an interim
39 basis, when combined with any amounts paid to the panel
40 attorney at the conclusion of the case, ~~shall~~ may not exceed
41 the limitations on fees and expenses imposed by this section.

42 (d) In each case in which a panel attorney provides legal
43 representation under this article, and in each appeal after
44 conviction in circuit court, the panel attorney shall be
45 compensated at the following rates for actual and necessary
46 time expended for services performed and expenses incurred
47 subsequent to the effective date of this article:

48 (1) For attorney's work performed out of court,
49 compensation shall be at the rate of \$45 per hour. Beginning
50 July 1, 2012, compensation shall be at the rate of \$50 per hour.

51 For paralegal's work performed out of court for the attorney,
52 compensation shall be at the rate of the paralegal's regular
53 compensation on an hourly basis or, if salaried, at the hourly
54 rate of compensation which would produce the paralegal's
55 current salary but in no event shall the compensation exceed

56 \$20 per hour. Out-of-court work includes, but is not limited
57 to, travel, interviews of clients or witnesses, preparation of
58 pleadings and prehearing or pretrial research.

59 (2) For attorney's work performed in court, compensation
60 shall be at the rate of \$65 per hour. Beginning July 1, 2012,
61 compensation shall be at the rate of \$70 per hour. No
62 compensation for paralegal's work performed in court shall
63 be allowed. In-court work includes, but is not limited to, all
64 time spent awaiting hearing or trial before a judge,
65 magistrate, special master or other judicial officer.

66 (3) The maximum amount of compensation for out-of-
67 court and in-court work under this subsection is as follows:
68 for proceedings of any kind involving felonies for which a
69 penalty of life imprisonment may be imposed the amount as
70 the court may approve. For all other eligible proceedings,
71 \$3,000 unless the court, for good cause shown, approves
72 payment of a larger sum.

73 (e) Actual and necessary expenses incurred in providing
74 legal representation for proceedings of any kind involving

75 felonies for which a penalty of life imprisonment may be
76 imposed, including, but not limited to, expenses for travel,
77 transcripts, salaried or contracted investigative services and
78 expert witnesses, shall be reimbursed in an amount as the
79 court may approve. For all other eligible proceedings, actual
80 and necessary expenses incurred in providing legal
81 representation, including, but not limited to, expenses for
82 travel, transcripts, salaried or contracted investigative
83 services and expert witnesses, shall be reimbursed to a
84 maximum of \$1,500 unless the court, for good cause shown,
85 approves reimbursement of a larger sum.

86 Expense vouchers shall specifically set forth the nature,
87 amount and purpose of expenses incurred and shall provide
88 receipts, invoices or other documentation required by the
89 executive director and the State Auditor:

90 (1)(A) Reimbursement of expenses for production of
91 transcripts of proceedings reported by a court reporter is limited
92 to the cost per original page and per copy page as set forth in
93 section four, article seven, chapter fifty-one of this code.

94 (B)(i) There shall be no reimbursement of expenses for or
95 production of a transcript of a preliminary hearing before a
96 magistrate or juvenile referee or of a magistrate court trial
97 where such hearing or trial has also been recorded
98 electronically in accordance with the provisions of section
99 eight, article five, chapter fifty of this code or court rule.

100 (ii) Reimbursement of the expense of an appearance fee for
101 a court reporter who reports a proceeding other than one
102 described in subparagraph (i) of this paragraph is limited to \$25.
103 Where a transcript of a proceeding is produced, there shall be no
104 reimbursement for the expense of any appearance fee.

105 (iii) Except for the appearance fees provided in this
106 paragraph, there shall be no reimbursement for hourly court
107 reporters' fees or fees for other time expended by the court
108 reporter either at the proceeding or traveling to or from the
109 proceeding.

110 (C) Reimbursement of the cost of transcription of tapes
111 electronically recorded during preliminary hearings or
112 magistrate court trials is limited to \$1 per page.

113 (2) Reimbursement for any travel expense incurred in an
114 eligible proceeding is limited to the rates for the
115 reimbursement of travel expenses established by rules
116 promulgated by the Governor pursuant to the provisions of
117 section eleven, article ~~eight~~ three, chapter twelve of this code
118 and administered by the Secretary of the Department of
119 Administration pursuant to the provisions of section forty-
120 eight, article three, chapter five-a of this code.

121 (3) Reimbursement for investigative services is limited to
122 a rate of \$30 per hour for work performed by an investigator.

123 (f) For purposes of compensation under this section, an
124 appeal from magistrate court to circuit court, an appeal from
125 a final order of the circuit court or a proceeding seeking an
126 extraordinary remedy made to the Supreme Court of Appeals
127 shall be considered a separate case.

128 (g) Vouchers submitted under this section shall
129 specifically set forth the nature of the service rendered, the
130 stage of proceeding or type of hearing involved, the date and
131 place the service was rendered and the amount of time

132 expended in each instance. All time claimed on the vouchers
133 shall be itemized to the nearest tenth of an hour. If the
134 charge against the eligible client for which services were
135 rendered is one of several charges involving multiple
136 warrants or indictments, the voucher shall indicate the fact
137 and sufficiently identify the several charges so as to enable
138 the court to avoid a duplication of compensation for services
139 rendered. The executive director shall refuse to requisition
140 payment for any voucher which is not in conformity with the
141 record keeping, compensation or other provisions of this
142 article or the voucher guidelines established ~~issued~~ pursuant
143 to subsection (a) of this section. ~~and~~ In such circumstance, he
144 or she shall return the voucher to the court or to the service
145 provider for further review or correction.

146 (h) Vouchers submitted under this section after July 1,
147 2008, shall be reimbursed within ninety days of receipt.
148 Reimbursements after ninety days shall bear interest from the
149 ninety-first day at the legal rate in effect for the calendar year
150 in which payment is due.

- 151 (i) Vouchers submitted for fees and expenses involving
152 child abuse and neglect cases shall be processed for payment
153 before processing vouchers submitted for all other cases.