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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

SENATE BILL NO. 334

(By Senator WOOTEN, ET AL)



OK KCL

PASSED APRIL 11th 72, 1997

In Effect July 1, 1997 Passage

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SENATE WEST VIRGINIA

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Senate Bill No. 334

(BY SENATORS WOOTON, BALL, BOWMAN, DITTMAR, FANNING,
HUNTER, OLIVERIO, SCHOONOVER, SNYDER, WHITE,
BUCKALEW, DEEM, KIMBLE AND SCOTT)

||

[Passed April 12, 1997; to take effect July 1, 1997.]

OK
KCL

AN ACT to amend and reenact section thirteen-a, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reimbursement of the cost of transcripts provided by official court reporters; and requiring public defender services to keep computer records of payments made for such transcripts.

Be it enacted by the Legislature of West Virginia:

That section thirteen-a, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, 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
3 incurred on behalf of eligible clients, and upon completion
4 of each case, exclusive of appeal, shall submit to the
5 appointing court a voucher for services. Claims for fees
6 and expense reimbursements shall be submitted to the
7 appointing court on forms approved by the executive
8 director. Claims submitted more than four years after the
9 last date of service shall be rejected.

10 The appointing court shall review the voucher to
11 determine if the time and expense claims are reasonable,
12 necessary and valid, and shall forward the voucher to the
13 agency with an order approving payment of the claimed
14 amount or of a lesser sum the court considers appropriate.

15 (b) Notwithstanding any other provision of this section
16 to the contrary, public defender services may pay by direct
17 bill, prior to the completion of the case, litigation expenses
18 incurred by attorneys appointed under this article.

19 (c) Notwithstanding any other provision of this section
20 to the contrary, a panel attorney may be compensated for
21 services rendered and reimbursed for expenses incurred
22 prior to the completion of the case where: (1) More than
23 six months have expired since the commencement of the
24 panel attorney's representation in the case; and (2) no
25 prior payment of attorney fees has been made to the panel
26 attorney by public defender services during the case. The
27 amounts of any fees or expenses paid to the panel attorney
28 on an interim basis, when combined with any amounts
29 paid to the panel attorney at the conclusion of the case,
30 shall not exceed the limitations on fees and expenses
31 imposed by this section.

32 (d) In each case in which a panel attorney provides legal
33 representation under this article, and in each appeal after
34 conviction in circuit court, the panel attorney shall be
35 compensated at the following rates for actual and neces-
36 sary time expended for services performed and expenses
37 incurred subsequent to the effective date of this article:

38 (1) For attorney's work performed out of court, compen-
39 sation shall be at the rate of forty-five dollars per hour.
40 For paralegal's work performed out of court for the
41 attorney, compensation shall be at the rate of the
42 paralegal's regular compensation on an hourly basis or, if
43 salaried, at the hourly rate of compensation which would
44 produce the paralegal's current salary, but in no event
45 shall the compensation exceed twenty dollars per hour.
46 Out-of-court work includes, but is not limited to, travel,
47 interviews of clients or witnesses, preparation of pleadings
48 and prehearing or pretrial research.

49 (2) For attorney's work performed in court, compensa-
50 tion shall be at the rate of sixty-five dollars per hour. No
51 compensation for paralegal's work performed in court
52 shall be allowed. In-court work includes, but is not
53 limited to, all time spent awaiting hearing or trial if the
54 presence of the attorney is required.

55 (3) The maximum amount of compensation for out-of-
56 court and in-court work under this subsection is as
57 follows: For proceedings of any kind involving felonies
58 for which a penalty of life imprisonment may be imposed,
59 the amount as the court may approve; for all other eligible
60 proceedings, three thousand dollars unless the court, for
61 good cause shown, approves payment of a larger sum.

62 (e) Actual and necessary expenses incurred in providing
63 legal representation for proceedings of any kind involving
64 felonies for which a penalty of life imprisonment may be
65 imposed, including, but not limited to, expenses for travel,
66 transcripts, salaried or contracted investigative services
67 and expert witnesses, shall be reimbursed in an amount as
68 the court may approve. For all other eligible proceedings,
69 actual and necessary expenses incurred in providing legal
70 representation, including, but not limited to, expenses for
71 travel, transcripts, salaried or contracted investigative
72 services and expert witnesses, shall be reimbursed to a
73 maximum of fifteen hundred dollars unless the court, for
74 good cause shown, approves reimbursement of a larger
75 sum.

76 Expense vouchers shall specifically set forth the nature,

77 amount and purpose of expenses incurred and shall
78 provide receipts, invoices or other documentation required
79 by the executive director and the state auditor:

80 (1) (A) Reimbursement of expenses for production of
81 transcripts of proceedings reported by a court reporter is
82 limited to the cost per original page set forth in section
83 four, article seven, chapter fifty-one of this code. Reim-
84 bursement of the cost of copies of such transcripts is
85 limited to the cost per copy page as provided for under
86 said section four. It is the duty of the executive director of
87 public defender services to maintain computer records of
88 all transcripts, including originals and copies, for which
89 payment has been made.

90 (B) (i) There shall be no reimbursement of expenses for
91 or production of a transcript of a preliminary hearing
92 before a magistrate or juvenile referee, or of a magistrate
93 court jury trial, which has been reported by a court
94 reporter at the request of the attorney, where the prelimi-
95 nary hearing or jury trial has also been recorded electroni-
96 cally in accordance with the provisions of section eight,
97 article five, chapter fifty of this code or court rule.

98 (ii) Reimbursement of the expense of an appearance fee
99 for a court reporter who reports a proceeding other than
100 one described in subparagraph (i) of this paragraph, or
101 who reports a proceeding which is not reported by an
102 official court reporter acting in his or her official capacity
103 for the court, is limited to twenty-five dollars. Where a
104 transcript of a proceeding is produced, there shall be no
105 reimbursement for the expense of any appearance fee.
106 Where a transcript is requested by the attorney after an
107 appearance fee has been paid, reimbursement of the
108 expense incurred to obtain the transcript is limited to the
109 cost of producing the transcript, within the prescribed
110 limitations of paragraph (A) of this subdivision, less the
111 amount of the paid appearance fee.

112 (iii) Reimbursement of travel expenses incurred for
113 travel by a court reporter is subject to the limitations
114 provided by subdivision (2) of this subsection.

115 (iv) Except for the appearance fees provided in this

116 paragraph, there shall be no reimbursement for hourly
117 court reporters' fees or fees for other time expended by the
118 court reporter, either at the proceeding or traveling to or
119 from the proceeding.

120 (C) Reimbursement of the cost of transcription of tapes
121 electronically recorded during preliminary hearings or
122 magistrate court jury trials is limited to the rates estab-
123 lished by the supreme court of appeals for the reimburse-
124 ment of transcriptions of electronically recorded hearings
125 and trial.

126 (2) Reimbursement for any travel expense incurred in an
127 eligible proceeding is limited to the rates for the reim-
128 bursement of travel expenses established by rules promul-
129 gated by the governor pursuant to the provisions of
130 section eleven, article eight, chapter twelve of this code
131 and administered by the secretary of the department of
132 administration pursuant to the provisions of section forty-
133 eight, article three, chapter five-a of this code.

134 (3) Reimbursement for investigative services is limited
135 to a rate of thirty dollars per hour for work performed by
136 an investigator.

137 (f) For purposes of compensation under this section, an
138 appeal from a final order of the circuit court, or proceed-
139 ing seeking an extraordinary remedy, made to the supreme
140 court of appeals, shall be considered a separate case.

141 (g) Vouchers submitted under this section shall specifi-
142 cally set forth the nature of the service rendered, the stage
143 of proceeding or type of hearing involved, the date and
144 place the service was rendered and the amount of time
145 expended in each instance. All time claimed on the
146 vouchers shall be itemized to the nearest tenth of an hour.
147 If the charge against the eligible client for which services
148 were rendered is one of several charges involving multiple
149 warrants or indictments, the voucher shall indicate the
150 fact and sufficiently identify the several charges so as to
151 enable the court to avoid a duplication of compensation
152 for services rendered. The executive director shall refuse
153 to requisition payment for any voucher which is not in
154 conformity with the recordkeeping, compensation or other

155 provisions of this article and in such circumstance shall
156 return the voucher to the court or to the service provider
157 for further review or correction.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Paul Hannon
.....
Chairman Senate Committee

Nick Santasia
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1997.

Darrell Holmes
.....
Clerk of the Senate

Bugoy D. Luz
.....
Clerk of the House of Delegates

Eul Ray Tomblin
.....
President of the Senate

Pat
.....
Speaker House of Delegates

The within *is approved* this the *2nd* day of *May*, 1997.

Spencer
.....
Governor

PRESENTED TO

GOVERNOR

Date 4/30/97

Time 3:05 pm