

**PRIVATE ATTORNEY SERVICES
DIVISION OF RISK MANAGEMENT
BUREAU OF CLAIMS ADMINISTRATION**

INTRODUCTION TO BILLING GUIDELINES

The Division of Risk Management, Bureau of Claims Administration, (Division) is tasked with the overall responsibility of providing a defense and managing all legal claims filed against the State of Florida, including workers' compensation, tort negligence, auto liability, federal civil rights, and employment discrimination claims.

The Division has adopted a philosophy of proactive management principles in the handling of claims filed against the State and in other legal matters involving the Division. The overall responsibility for management of these litigation and other legal matters is delegated to the Risk Management Program Specialist (Specialist) to whom a claim is assigned. The Risk Management Program Administrators are delegated the task of supervising and monitoring all legal work related to the claims assigned to their specific units.

D) ATTORNEY BILLING GUIDELINES - FORMAT FOR INVOICES

Legal services billed must conform to the Legal Services Contract and must reflect tasks that were performed during the effective period of the contract with the Division. Compensation of attorney hours will be for actual time spent providing attorney services to the Division.

- (1) **Billing Calculation:** All fee payments for tasks performed will be based upon hourly rates specified in the current Contract. Billing shall be in six minute increments. Premium rates will not be paid for overtime work.
- (2) **Use of Multiple Attorneys/Staff:** The Firm's agreed upon strategy with the Specialist must contemplate all attorneys and paralegals within the firm who will associate or otherwise assist in the handling of the case. The Specialist must first approve the extent and nature of involvement by each attorney and paralegal. Time expended by attorneys or paralegals who were either not identified to the Specialist by the Firm or who exceeded their agreed involvement in the case is not billable.
*A daily cap of ten hours of work will apply to each approved attorney or paralegal.
The defense firm must obtain approval from the Specialist for an attorney or paralegal to exceed the daily cap of ten hours of work*
- (3) **Credentials:** All firms on contract with the Division are to maintain a current résumé of each attorney who will associate or assist in the handling of the Division's assigned cases.
- (4) **Voluntary and Emergency Actions:** Voluntary activities undertaken by Attorneys without prior approval of the Specialist may be denied for payment. The only exception will be those emergency actions necessary to protect the State's interest.
- (5) **Payee:** Payments will be made to the Attorney's firm as its name appears on the Legal Services Contract on file with the Division.
- (6) **Submission of Invoices:** The Attorney's billing invoices must be submitted to the Specialist at three month intervals per claim. Any other arrangement must be approved by the Specialist handling the case and the Administrator.
 - (a) Invoices handled by the Workers' Compensation Section must be sent to:
Division of Risk Management,
Workers' Compensation Section
P.O. Box 8020
Tallahassee, FL, 32314-8020.
 - (b) Any other invoices must be sent to:
Division of Risk Management,
Bureau of Claims Administration
200 E. Gaines St.
Tallahassee, FL, 32399-0338

- (7) **Invoice Content**: The Attorney billing invoice for services rendered must include the following:
- (a) Attorney firm name. Payments will be made to the Firm as its name appears on the Legal Services Contract on file with the Division;
 - (b) Firm's physical address (and billing address, if different);
 - (c) Firm's Federal Tax ID number;
 - (d) Name of Risk Management Specialist handling the case;
 - (e) Claimant's name;
 - (f) Risk Management claim number;
 - (g) Dates of tasks performed;
 - (h) Name and initials of Attorney handling the case;
 - (i) Description of the tasks performed;
 - (j) Length of time spent performing the tasks in tenths of an hour (six minute increments);
 - (k) Attorney/paralegal hourly rate (All fee payments for tasks performed will be based on the hourly rate specified in the current written contract at the time the tasks were actually performed);
 - (l) Detailed itemization of all expenses incurred with appropriate supporting documentation for each expense;
 - (m) Subtotal of fees and expenses; a final total for the entire bill; and
 - (n) The Managing or Supervising Attorney of the office from which the work was handled must certify that all costs and fees claimed for payment are accurate and were performed in furtherance of the Legal Services Contract executed by the Attorney and the Division.
- (8) **Itemization**: All invoices must be accompanied by an adding machine tape or computer generated tabulation on letter size paper, subtotaling fees and costs, and a final total of the entire bill. All tasks described must basically conform to the agreed plan of defense that existed at the time the task was performed.
- Failure to include such itemization may result in the invoice being returned for non-compliance***

NOTE: If any of the above-listed elements are missing, the entire invoice may be sent back for non-compliance. Refer to Exhibit 2 for a sample invoice

II) COMPENSATION OF EXPENSES

The Firm’s billing invoice must be supported by attached copies of receipts/invoices for each expense. If a copy of the actual receipts/invoices cannot be provided, the firm must submit a statement of the expenses on the firm’s letterhead signed by the attorney. Each supporting document must be numbered.

Approval of Expenses: All expenses incurred by the Attorney, such as those for travel, depositions, and exhibits, must be first authorized by the Specialist. Travel authorization shall be documented by an email from the Specialist approving the need for travel, rather than a formal Travel Authorization form. Voluntary activities undertaken by defense Attorneys without prior approval of the Specialist may be denied for payment. The only exception will be those emergency actions necessary to protect the State's interest.

Routine Expenses: Routine office overhead expenses, such as local phone calls, routine postage, office runners, copy work (except bulk copying costs), local travel expenses, clerical/secretarial support services, library/resource needs, etc., are expected to be included in the hourly contract rates and shall not be paid by the Division

Non-Routine Expenses: Non-routine expenses, such as long distance telephone calls, (Including long distance faxed material), unusual or special mailing, and research of non-fundamental issues of complex nature (including the use of Westlaw and LexisNexis) must be clearly indicated and justified in your invoice. By the Firm’s agreement to provide legal services, the Division accepts the Firm’s representation that the Attorney possesses a fundamental working knowledge of state and/or federal law, including knowledge of routine procedures, relevant statutes and rules, and recent case law. Therefore, time expended by the Attorney for general research is not billable.

Copy Charges: Copy charge reimbursements will be made as follows:

Copy costs reproduced by an outside vendor must be approved in advance by the Specialist and accompanied with an invoice for fees paid.

In-house, bulk copy cost (when 100 or more copies are made at one time) must be approved by the Specialist and submitted at a charge of no more than \$.20 per page.

Charges for copying must include: (If any of these elements are missing, this expense item will be rejected.)

- Date on which the copies were made
- Statement as to what was copied
- Number of copies
- Firm’s charge per page, which should not exceed \$.20 per page

Example:

10/28/09 Copies of records from Sarasota Memorial Hospital

200 pages @ \$.20\$40.00

Telephone, Facsimile, Research & Messenger Services: For long distance telephone calls, the billing invoice should include, at a minimum, the date of the call, the phone number called, and the amount paid. If the Attorney uses computer assistance in tracking long distance phone calls and has a system that “captures” those phone calls on bills for a particular case, such a computer generated listing is acceptable, in lieu of copies of the actual phone bill. Charges for long distance calls should be stated as follows:

<u>Date</u>	<u>No. Called</u>	<u>Amount</u>
10/28/09	904-922-3120	\$4.95

Delivery of documents by Federal Express or other courier service is not a routine expense, and it is considered an “unusual or special mailing” expense under this Contract. Because this expense must be clearly indicated and justified in the bill, it should be noted on the bill that approval from the Specialist was obtained prior to incurring this expense.

Travel: Reimbursement for travel expenses is limited to the terms and rates established in Section 112.061, Florida Statutes, for each meal during the travel period. Travel reimbursements must be submitted using the State of Florida Voucher for Reimbursement of Travel Expenses form (DFS-C1-500), along with all supporting documentation of the occurrence of the travel, such as copies of tickets, receipts, travel itinerary, rental car, hotel invoices, etc. See Exhibits 3 & 4. Supporting documentation submitted for travel reimbursement must be labeled as “Travel.”

Subcontractors: The Attorney, upon receiving approval from the Specialist, may use subcontractors for professional service (e.g., court reporters, expert witnesses, computer assisted research, etc.) in the defense of the State's case. When such services are available to the State under state contract, the Attorney should use, whenever possible, a contractor approved by the State.

Court Reporters: The State has contracted with court reporters in each judicial Circuit with the exception of the following circuits: 5th, 10th, 14th, 16th, and 18th. These contracted court reporters should be used whenever possible for all Division cases. The Division can pay any court reporter under contract directly, thus eliminating the need for the Attorney to advance money for this expense. If the Attorney utilizes a contracted court reporter, the Attorney should instruct the court reporter to send court reporting bill to the Attorney for review and approval. The Attorney can then forward the bill directly to the Risk Management Program Specialist handling the file with a notation “OK to pay” and the Attorney’s name. If the Attorney must utilize a court reporter not on contract, the Attorney should try to select a firm that charges rates comparable or as close as possible to the rates charged by a state-contracted court reporter in the area. When billing the Division for fees and expenses, the Attorney must indicate on the court reporter invoice the reason that a contracted court reporter was not utilized. A list of court reporters under contract statewide and their rates can be found at <http://myfloridalegal.com/pagesaglink.nsf/Main/5595BAD17D45DC2285256D19004C1D68?OpenDocument> .

Other Subcontractors: Payment to subcontractors acquired by the Attorney will be made by the Attorney and will be reimbursed by the State immediately upon receipt of documented third party vendor charges if the expense exceeds \$ 2,500.00. Otherwise, the expense will be reimbursed in the next billing cycle.

III) **SPECIAL CONDITIONS**

Cost Effectiveness: The Attorney shall make affirmative efforts to achieve cost effectiveness by consolidating court hearings, limiting travel, streamlining case processing, using printed forms, using the appropriate level of attorney or staff experience required by task, and taking other actions to improve efficiency. Multiple staffing at meetings, hearings, depositions, trials, etc. by the Attorney will not be compensated without prior written approval from the Division.

Media Inquiries: The Attorney shall provide the Division immediate notice, by facsimile transmission or telephone, of any significant case developments which will likely result in media inquiries.

Other Representation Involving the State: The Attorney shall provide the Division immediate notice of any representation undertaken by the Attorney in matters where the client is suing or being sued by the state or state entities in any civil or adversarial administrative action.

IV) **LITIGATION DEFENSE**

The following provisions specifically apply to litigation defense assignments:
SCOPE OF SERVICES

The Attorney shall provide a defense for the State, its agents, employees, and volunteers against lawsuits assigned by the State to the Attorney for handling. The Attorney will work under the direct supervision of the Specialist assigned to the claim.

Initial Assessment. The Attorney shall review and analyze State legal files, data, documents, and other materials and formulate an agreed plan of defense for approval by the Specialist within two weeks of receipt of the case.

Pleadings. The Attorney shall prepare and file, with proper authorization from the Specialist, pleadings, motions, or briefs which may be required and represent the State in any related litigation. A copy shall be provided to the Specialist.

Discovery. The Attorney shall initiate and conduct discovery to include depositions on behalf of the State and represent the State in discovery initiated by the opposing parties.

Trial. The Attorney shall represent the State at trial. He/she may also be called upon at the discretion of the Division to represent the state at the appellate level.

Communication with Specialist. The Attorney shall attend and participate in conferences, conference calls, mediations, and report on the status of these legal matters, no later than seven days after their occurrence.

Conflict of Interest in Representation. None of the provisions of this contract are intended to impair the ability of the Attorney to represent an individual defendant (a defendant named in his/her individual capacity, rather than official capacity) who is covered by the State's risk management program. The Attorney shall abide by all ethical requirements regarding such representation. To the extent that the interests of the individual defendant and the State's risk management program are aligned, the Attorney agrees to follow all guidelines provided herein. The Attorney will otherwise advise the Risk Management Specialist in the event that a conflict appears to exist between the individual defendant's interests and the requirements of these contract guidelines. However, the provisions of Section 284.385, Florida Statutes, regarding claims handled by the State's risk management program, which among other requirements, provides that "no claims shall be compromised or settled for monetary compensation without the prior approval of the Department of Financial Services."

V) INITIAL ASSESSMENT

Within two weeks after a case's initial assignment, the Attorney should be prepared to discuss the case in detail with the Specialist. A mutually agreeable plan of defense should be established prior to the implementation of a defense plan. The file should be analyzed in sufficient detail to enable a discussion on all relevant aspects of the case, including, but not limited to the following:

All causes of action available to and/or raised by the plaintiff(s)/claimants(s);

Any coverage defenses available to the Division;

The feasibility of any pre-answer motions, i.e., change of venue, motion to dismiss, failure to perfect service, and statute of limitation issues;

The immediate need to join and/or cross-claim against additional parties;

The feasibility and practicability of any responsive pleadings, affirmative defenses and any other defenses unique to the State or its agencies, subdivisions, and/or employees;

All factual issues and discrepancies and a presentation of the discovery needed and proposed time line and cost estimate for completion;

Any special issues unique to the State or its agencies or employee(s) being defended, e.g., conflict among defendants, course and scope of employment issues, fraud committed by a workers' compensation claimant;

The need for any specialized legal research in furtherance of a particular defense strategy and an estimate of the time and cost necessary to conduct the research. Any such research must be approved in advance by the Specialist. Otherwise, such research may not be reimbursed;

Evaluation of the State's liability exposure (both in terms of dollar value and legal precedent), the plaintiff(s) comparative negligence or claimant's pre-existing conditions, if applicable, and an initial assessment of the prospects of prevailing at trial and of the potential for appellate review. If such an evaluation/assessment may not be made within two weeks of the initial assignment of the case, the Attorney must indicate the discovery required in order to furnish an informed response. This information is critical to determining settlement and defense strategy and should be furnished as soon as possible;

Any potential rights of contribution, subrogation, cost judgments and/or attorney fees, including fees pursuant to Section 57.105, which may be available to the State;

The defense counsel's assessment form will be forwarded to the Specialist on all cases where authority for any amount is sought. This form is also required for all mediation hearings and pretrial reports. It is utilized for formulating offers of judgments;

A cost budget of legal service for the plan defense;

The need for any additional investigation by the Specialist; and

The pursuit of any indemnification or contribution.

VI) STATUS REPORTING

Progress Reports. Progress reports will be made in writing to the Specialist every 45 days. The Attorney is expected to report any significant development regardless of the time interval. The Attorney will forward for review copies of all substantive pleadings, key depositions, and expert reports, as requested by the Specialist.

Pretrial Report. No later than 45 days prior to trial, the Attorney must provide to the Specialist a pretrial report and Defense Counsel Assessment Report, which includes the following:

A factual description of the case, including a summary of each issue of material fact and admissible evidence available to each party in resolving each such issue;

The nature and extent of continuing discovery efforts of each party and the anticipated completion dates of discovery;

Any further recommended investigation and/or discovery on behalf of the State;

All legal action to date, e.g., pending motions, offers of settlement;

Recommended procedural strategies prior to and during trial;

The extent of legal research and preparation anticipated prior to trial and associated costs;

Any issues that may relate to the taking of an appeal by either named party and the associated costs;

The existence and extent of settlement negotiations, present status of negotiations, and recommendations;
Dates of pretrial and trial (position on docket and likelihood of being reached during the calendar call);
All defenses available to the State;

The State's liability exposure and potential damage range, including an opinion of the likelihood of a defense verdict, anticipated range of verdict, being as specific as possible, and including any nuisance value considerations. The Attorney must indicate whether the Attorney anticipates any type of verdict that would not be payable under the State Risk Management Trust Fund, pursuant to Chapter 284, Part II, Florida Statutes, and Section 768.28, Florida Statutes.

The Attorneys general recommendations and comments concerning the case; and

Estimated cost to defend the case.

Post-Trial Report. As soon as practical, but not later than two weeks following trial, a post-trial report must be completed and submitted to the Specialist.

VII) OTHER LEGAL SERVICES

The following provisions specifically apply to assignments in the category of Other Legal Services:

SCOPE OF SERVICES

The Attorney shall provide professional legal services for the State, its agents, employees, and volunteers in subrogation matters, the evaluation of claims and/or coverage, and/or other special projects as assigned. The Attorney will work under the direct supervision of the Specialist assigned to the claim.

Initial Assessment. The Attorney shall review and analyze state legal files, data, documents, and other materials within two weeks of receipt of the case.

Pleadings. The Attorney shall prepare and file, with proper authorization from the Specialist, pleadings, motions, or briefs which may be required and represent the State in any related litigation. Copies shall be provided to the Specialist.

Discovery. When applicable, the Attorney shall conduct discovery to include depositions on behalf of the State and represent the state in discovery initiated by the opposing parties.

Trial. When applicable, the Attorney shall represent the State at trial. The Attorney may also be called upon at the discretion of the Division to represent the State at the appellate level. The attorney shall also submit progress reports and a pre- and post-trial report, in accordance with the provisions in section II. above.

Communication with Specialist. The Attorney shall attend and participate in conferences, conference calls, mediations, and report to the Specialist the status of these legal matters, no later than seven days after their occurrence.

Timeliness. The Attorney shall timely provide all other services legal services necessary to satisfactorily complete the assignment.