94-649 MAINE COMMISSION ON PUBLIC DEFENSE SERVICES (PDS)

Chapter 7: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COUNSEL

Summary: This Chapter establishes an hourly rate, fee schedule, and administrative procedures for payment of Counsel. The Chapter also establishes rules for the payment of expenses that are eligible for reimbursement by the Commission. Finally, this Chapter requires that all vouchers for attorney fees and reimbursable expenses must be submitted using PDS' Electronic Case Management System.

SECTION 1. DEFINITIONS.

1. Counsel. "Counsel" means a private attorney designated eligible by the Commission to be assigned to provide a particular service or to represent a particular client in a particular matter and assigned by PDS or a court to provide that service or represent a client. For the purposes of this Chapter, "Counsel" does not include Employed Counsel or Public Defenders.

2. Days. "Days" means calendar days.

3. Employed Counsel. "Employed Counsel" has the same meaning as defined by 4 M.R.S. § 1802.

4. Executive Director. "Executive Director" means the Executive Director of PDS or their decision-making designee.

5. Final Voucher. "Final Voucher" means and includes the voucher required by Section 8 of this Chapter to be submitted within 90 days of a Terminal Case Event.

6. Home Court. "Home Court" means the physical location of the court in closest proximity to Counsel's Primary Office Location.

7. Homicide. "Homicide" has the same meaning as in 94-649 C.M.R. ch. 3.

8. Interim Voucher. "Interim Voucher" means any voucher submitted in a case before Counsel's professional responsibility in a matter ends.

9. PDS or Commission. "PDS" or "Commission" means the Maine Commission on Public Defense Services.

10. PDS Liaison. "PDS Liaison" has the same meaning as defined by 94-649 C.M.R. ch. 3.

11. PDS' Electronic Case Management System. "PDS' Electronic Case Management System" means the electronic case management, billing, voucher, assignment, and records platform for the administration of Counsel services, including the entry of case information, time records, expenses, vouchers, assignments, and related data.

12. Particular Client Assignment. "Particular Client Assignment" means an assignment of Counsel to represent a particular client in a particular matter either by PDS or a court under Rule 44 of the Maine Rules of Unified Criminal Procedure or Rule 88 of the Maine Rules of Civil Procedure. For the purpose of this Rule a "particular matter" is a matter described by a particular docket number in a court.

13. Primary Office Location. "Primary Office Location" means a single physical location within the State of Maine which Counsel designates as their principal place of doing business. If Counsel has more than one office location, they must designate one single office as their Primary Office Location agrees to abide while performing work for PDS.

14. Public Defender. "Public Defender" has the same meaning as defined by 4 M.R.S. § 1802.

15. Resource Counsel. "Resource Counsel" means counsel designated eligible to serve as Resource Counsel pursuant to 94-649 C.M.R. ch. 3.

16. Supplemental Voucher. "Supplemental Voucher" means any voucher submitted for work performed by Counsel on behalf of their indigent client after the Terminal Case Event has occurred.

17. Terminal Case Event. "Terminal Case Event" means the order, decision or judgment that signifies the final resolution of a Particular Client Assignment such that substantive appearances before the court are no longer necessary to resolve the issues raised by the complaint, indictment, petition, appeal, or other initial pleading that provided the impetus of the case.

SECTION 2: APPLICABILITY.

This Chapter applies to Counsel.

SECTION 3: REQUIREMENTS OF COUNSEL.

1. Timekeeping and Recordkeeping:

A. Contemporaneous Timekeeping. Counsel shall record their time at the time work is performed or as soon thereafter as is reasonably practicable.

B. Independent Daily Log Recordkeeping. Counsel shall maintain timekeeping records independent of the PDS' Electronic Case Management System. Those records must be maintained as a daily log where all time events from a particular date are recorded on that date's log.

C. Timekeeping records must be sufficiently detailed to permit independent review and verification of the work performed and shall include, at a minimum:

(1) Client name;

(2) Docket number;

(3) Date of service;

(4) Detailed description of work performed;

(5) Duration of the work performed, recorded in tenths of an hour; and

(6) The name of the individual who performed the work.

D. Timekeeping records shall be legible, organized chronologically, and capable of being provided electronically to PDS upon request.

E. Timekeeping records shall minimize to the extent possible confidential information, while still providing enough detail to permit a review to determine what service was provided and should not contain information related to non-PDS clients.

F. Counsel shall preserve all timekeeping records for the period required by the Maine Rules of Professional Conduct.

G. Upon request, Counsel shall promptly provide timekeeping records to PDS for audit, monitoring, investigation, quality review, or other authorized purposes.

H. Failure to maintain records as required by this Chapter creates a rebuttable presumption that disputed time entries are not compensable.

2. Actual Time Requirement.

A. Counsel may only record and seek payment for actual time spent performing compensable work. The sole exception to this is for Lawyer of the Day minimum fees as provided by Section 4(2) herein.

B. Counsel shall not bill based upon standardized increments, presumptive values, estimates, averages, customary durations, minimum billing units, or other billing methodologies that do not reflect actual time spent.

C. Counsel shall not divide a single task into multiple time entries when the task was performed as one continuous activity and division would result in an overstatement of time.

D. If multiple emails and/or texts occur on the same day concerning the same client and recipient(s), those communications shall be aggregated into a single time entry reflecting the actual time spent. Examples include without limitation:

(1) Review of Emails/Text Messages: If Counsel reviews multiple emails and text messages regarding one client in a single day, Counsel shall bill that as one entry and may only bill for the actual time that it took to review those correspondences.

(2) Preparation of Emails: If Counsel sends multiple emails regarding one client on a single day, Counsel shall bill that as one entry for the actual time spent. Since it is likely that the preparation of emails is the main billing event in that sequence, Counsel should use the "Prepare Email" event option to describe this activity. If there are multiple emails contained within a single billing event, Counsel should include a time entry comment listing the number of emails.

E. Block Billing. Counsel shall not engage in block billing that prevents meaningful review of the time spent on individual tasks. Counsel shall not combine substantively different legal tasks performed on the same date into a single time entry.

3. PDS' Electronic Case Management System:

A. Counsel shall open cases in PDS' Electronic Case Management System within seven (7) days of receiving the actual or constructive notice of appointment.

B. Counsel shall enter time into PDS' Electronic Case Management System no later than thirty (30) days after the date on which the work was performed.

(1) Time entered more than thirty (30) days after the work was performed creates a rebuttable presumption that the time is not compensable.

C. Counsel shall not enter time into PDS' Electronic Case Management System before the work has been performed. Time entered before the work was performed creates a rebuttable presumption that the time is not compensable.

D. Time entered into PDS' Electronic Case Management System shall accurately reflect the underlying timekeeping records maintained pursuant to this Section.

E. Time entered in PDS' Electronic Case Management System shall accurately reflect the name of the person who performed the work.

F. Counsel shall submit vouchers in accordance with the requirements of this Chapter.

4. Certifications:

A. Information entered in PDS' Electronic Case Management System constitutes the good faith representation of Counsel that the information is accurate; reflects the actual time spent; complies with all Commission rules; and complies with the Maine Rules of Professional Conduct, including but not limited to, Maine Rule of Professional Conduct 1.5.

B. Counsel shall be personally and exclusively responsible for the PDS' Electronic Case Management System account assigned to them. Each Counsel shall personally maintain access to that account. Counsel may not permit any other person to use their account, nor may any attorney provide any other person with that attorney's login credentials.

C. Counsel's staff may be provided their own account to PDS' Electronic Case Management System upon a written request of Counsel. Counsel shall ensure that each staff member is personally and exclusively responsible for and maintains access to their account. Counsel shall ensure that no staff member permits any other person to use the account, nor may any staff member provide any other person with that staff member's login credentials. Counsel is responsible for ensuring the accuracy of all data entered into PDS' Electronic Case Management System, whether entered by Counsel or their staff.

5. Clients with Multiple Cases. When Counsel submits vouchers for multiple cases on behalf of the same client that were worked on and resolved simultaneously:

A. Counsel shall designate one lead docket and record shared work on that docket.

B. Time shall not be duplicated across multiple dockets.

C. Case-specific work may be billed to the individual docket in which the work was performed.

D. All vouchers referenced in this Subsection shall be submitted on the same day.

6. Payment & Reimbursement of Expenses for Creating File for Client.

A. Counsel may submit a voucher for reasonable time and expenses incurred in copying, scanning, or otherwise reproducing a client's file when providing the file to the client or successor counsel, regardless of when the client or successor counsel requests the file.

B. Compensation for time shall be billed at the hourly rate established in this Chapter.

C. Reimbursement for copying or scanning expenses shall be subject to the same limits and documentation requirements set forth in this Chapter, including the exclusion of the first 100 pages of any single print or copy job.

D. Vouchers for compensation under this Subsection may be submitted as a Supplemental Voucher associated with the original Particular Client Assignment.

7. Payment & Reimbursement of Expenses for Work Performed in a Post Conviction Review Matter for a Former Client.

A. If Counsel is subpoenaed or otherwise required to perform work in a post-conviction review proceeding concerning a case in which the Counsel previously represented the petitioner, the Counsel may seek compensation for the time and expenses reasonably incurred in connection with such testimony.

B. Compensation for time shall be billed at the hourly rate established in this Chapter. Travel and related expenses shall be reimbursed in accordance with this Chapter.

C. Vouchers for compensation under this Subsection shall be submitted as a Supplemental Voucher associated with the original Particular Client Assignment.

SECTION 4. HOURLY RATE OF PAYMENT.

1. Effective March 1, 2023:

A. A rate of One Hundred Fifty Dollars ($150.00) per hour is authorized for time spent by Counsel, and billed using PDS electronic case management system, on an assigned case on or after March 1, 2023.

B. A rate of Eighty Dollars ($80.00) per hour remains authorized for time spent on an assigned case between July 1, 2021 and February 28, 2023.

C. A rate of Sixty Dollars ($60.00) per hour remains authorized for time spent on an assigned case between July 1, 2015 and June 30, 2021.

2. Lawyer of the Day, Minimum Fees:

Counsel may bill a minimum fee of three (3) hours for appearances as Lawyer of the Day. A single minimum fee may be charged for each appearance at which Counsel serves. If Counsel serves as Lawyer of the Day for a morning session that continues into the afternoon, that will be one appearance. If Counsel serves as Lawyer for the Day for a morning session and then a subsequent afternoon session with a second appearance time and list, that will be two appearances. Vouchers seeking the minimum fee must show the actual time spent and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged per appearance regardless of the number of clients consulted at the request of the court.

SECTION 5: COMPENSABLE TIME AND EXPENSES.

1. Compensable Time. Counsel is eligible for compensation by PDS for reasonable and necessary legal services that directly advance the representation of an assigned client, subject to the limitations of this Chapter. The burden is on Counsel to demonstrate that claimed time directly advanced the representation.

2. Expenses. PDS may reimburse reasonable and necessary litigation and case-related expenses authorized by this Chapter. Claims for all expenses must be itemized and include documentation. All expense documentation must be attached to the voucher used to seek reimbursement for the expense claimed.

A. Mileage. Mileage reimbursement shall be made at the State rate applicable to confidential State employees on the date of the travel.

(1) Mileage reimbursement will not be paid for travel to and from a Counsel's Home Court.

B. Tolls.

C. Parking. Necessary parking fees associated with multi-day trials and hearings will be reimbursed.

D. Non-Routine Office Expenses. Itemized, necessary, non-routine expenses may be paid by PDS after review. Non-routine office expenses include without limitation: overnight and express postage; collect phone calls; copy costs for print or copy jobs in excess of 100 pages, beginning with the 101st page; printing/copying/binding of legal appeal brief(s).

E. Expert and Investigator Expenses. Other non-routine expenses for payment to third parties, (*e.g.*, investigators, interpreters, medical and psychological experts, testing, depositions, etc.) will only be paid pursuant to 94-649 C.M.R. ch. 302.

F. Witness, Subpoena, and Service Fees. Witness, subpoena, and service fees will be reimbursed only pursuant to the Maine Rules of Court. Counsel should not advance these costs. These costs shall not be included as a voucher expense without prior consent from the Executive Director.

SECTION 6: LIMITATIONS ON PAYMENT OF TIME AND EXPENSES.

1. Annual Billable Hours Limit:

A. Counsel shall not be compensated for more than two thousand five hundred (2,500) hours of billable time during a state fiscal year (July 1-June 30). At 52 weeks per year, 2,500 billable hours equates to approximately 48 billable hours every week of the year

B. For purposes of this Section, billable time includes all compensable attorney hours recorded in PDS' Electronic Case Management System, regardless of whether the time relates to a Particular Client Assignment, training provided by PDS, Lawyer of the Day services, Resource Counsel services, PDS Liaison, and specialty court services.

C. Counsel shall be exclusively responsible for keeping track of their compensation and billable hours.

D. Upon reaching two thousand five hundred (2,500) billable hours in a fiscal year, Counsel shall not accept any new case assignments.

E. Nothing in this Section relieves Counsel of any professional or ethical obligation owed to existing clients. Counsel shall continue to provide competent, diligent, and zealous representation to all clients for whom Counsel has already accepted an assignment, notwithstanding the fact that the annual compensation limit has been reached.

F. The annual billable hours limit established in this Section shall apply only to time incurred on or after July 1, 2027.

2. Limitations on Travel Time:

A. Designation of Primary Office Location. Upon registration and annual renewal with PDS, Counsel must designate their primary office location. If Counsel has more than one office, they must designate a single primary office to be used for the purpose of this Section. Counsel's designated primary office location determines their Home District.

(1) The districts are as follows:

(a) York County
(b) Cumberland County
(c) Oxford, Franklin, and Androscoggin Counties
(d) Kennebec and Somerset Counties
(e) Penobscot, Piscataquis Counties
(f) Sagadahoc, Lincoln, Knox, and Waldo Counties
(g) Hancock and Washington Counties
(h) Aroostook County.

B. Travel Time on Particular Client Assignments within Home District. Counsel may be compensated for travel time to and from all courts within their Home District.

D. Travel Time on Particular Client Assignments Outside of Home District. Counsel may accept Assignments from courts outside of their Home District but will only be compensated for a maximum of one hour of travel time, each way, for each trip to court.

(1) Exceptions to Travel Time on Particular Client Assignments Outside of Home District.

(a) Counsel may be compensated for travel time for client visits or any other purpose.

(b) This limitation does not apply to Homicide cases, post-conviction review cases, or appeals to the Maine Supreme Judicial Court.

(c) This limitation does not apply to situations in which a current client has a new case outside counsel's Home District. Counsel may be paid full travel time in those cases, subject to other relevant provisions of the Commission rules.

E. Waiver of Travel Time Limitations and Home District limitation. The Executive Director has the discretion to grant a waiver of the travel time limitation imposed by this Subsection and to grant Counsel an additional Home District. To request a waiver, counsel must submit a request on a form provided by PDS prior to acceptance of the Particular Client Assignment.

3. Out-of-State Travel, Overnight Travel, and Associated Expenses. All out-of-state travel, overnight travel, and any associated expenses must be approved by the Executive Director in writing prior to incurring the expense.

A. Reimbursement will be subject to the State's per diem maximum rate policies.

B. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.

SECTION 7: NON-COMPENSABLE TIME AND EXPENSES.

1. Non-Compensable Time. Unless otherwise authorized by this Chapter, Counsel shall not seek compensation for and will not be compensated for:

A. Administrative activities, including without limitation:

(1) Timekeeping.

(2) Entering time or other data into PDS' Electronic Case Management System or any other timekeeping software.

(3) Preparing, reviewing, editing or submitting vouchers.

(4) Reviewing billing records.

(5) Responding to PDS inquiries related to monitoring and performance evaluations, investigation of complaints, billing discrepancies, or other information.

(6) Maintaining office records.

(7) Creating files or closing files.

(8) Counsel's obligations pursuant to Maine Rules of Professional Conduct 5.1.

(9) Office management activities.

B. Duplicative activities, including without limitation:

(1) Multiple billings for substantially identical work.

(2) Unnecessary duplication of correspondence or other work.

(3) Reviewing an email and the attached document separately. Counsel may only bill for actual time spent.

C. Work that could not provide any substantial benefit to the client or representation.

D. Work that is generated for the sole or primary purpose of generating billable hours.

2. Expenses, including without limitation:

A. Single-day parking fees.

B. Parking tickets, fines, and/or fees for other violations will not be reimbursed.

C. Mileage. Mileage reimbursement will not be paid for travel to and from Counsel's Home Court.

D. Routine Office Expenses, including without limitation postage other than overnight and express postage, telephone, cell telephone, fax, office overhead, utilities, the first 100 pages of any one print or copy job, local phone calls, and office supplies.

SECTION 8. ADMINISTRATION.

1. Quarterly Billing – Timing Requirements.

A. Quarterly Billing Required. Counsel shall submit vouchers for every Particular Client Assignment at least once each calendar quarter, in accordance with the schedule below. For example, for work performed between January 1-March 31, a voucher with those time entries and expenses must be submitted on or before June 30 of that same year.

Work Performed	**Voucher Due**
January 1st-March 31st	June 30th
April 1st-June 30th	September 30th
July 1st-September 30th	December 31st
October 1st-December 31st	March 31st

B. Late Submissions. Vouchers not submitted within the timeframes established by this Section are not payable unless an exception is granted pursuant to this Section.

(1) Exception. Counsel may request an exception in writing to the PDS Audit Director or their designee by demonstrating that a voucher could not have been timely submitted for reasons outside the actual or constructive control of Counsel.

(a) "Reasons outside the actual or constructive control of Counsel" means that the event could not reasonably have been anticipated, prevented, or mitigated by ordinary professional diligence, and the event directly prevented timely submission or compliance.

(i) Reasons outside the actual or constructive control of Counsel may include without limitation: serious medical emergencies, death or critical illness of immediate family members, natural disasters, military or government service, death or incapacity of staff, and technology failures outside of Counsel's control.

(ii) Reasons not outside the actual or constructive control of Counsel include without limitation: caseload, trial schedule, vacation or planned absences, and office disorganization.

(2) If an exception decision is rendered, Counsel may submit an appeal in writing to the Executive Director, within 10 days of the Audit Director's decision. A decision on an exception under this Subsection is final agency action.

C. Counsel shall remain responsible for timely submission of vouchers regardless of whether the case remains pending. The pendency of a case shall not constitute good cause for failure to comply with the quarterly billing requirements of this Chapter.

D. Monthly Billing Encouraged. Counsel may submit Interim Vouchers for payment of counsel fees and expenses associated with a Particular Client Assignment a maximum of once every calendar month, and monthly billing is strongly encouraged to promote timely payment and accurate recordkeeping.

2. Transition to Quarterly Billing. Notwithstanding any other provision of this Chapter, the quarterly billing requirements established herein shall be phased in according to the following schedule:

A. All time incurred prior to January 1, 2024 shall be included on a voucher submitted no later than January 1, 2027.

B. All time incurred between January 1, 2024 and December 31, 2024 shall be included on a voucher submitted no later than July 1, 2027.

C. All time incurred between January 1, 2025 and December 31, 2025 shall be included on a voucher submitted no later than January 1, 2028.

D. All time incurred between January 1, 2026 and December 31, 2026 shall be included on a voucher submitted no later than March 31, 2027.

E. Beginning January 1, 2027, Counsel shall comply with the quarterly billing requirements established by this Chapter for all work performed on or after January 1, 2027.

3. Billing – Timing Requirements. The following provisions shall remain in effect during the phasing in of quarterly billing, on the same schedule as outlined by Section 8(2) herein. Once the date of the time events are governed by the quarterly billing schedule contained in Section 8(2) herein, the timing requirements provided in Section 8(3) no longer apply.

A. Vouchers for payment of counsel fees and expenses associated with a Particular Client Assignment shall be submitted within 90 (ninety) calendar days of a Terminal Case Event.

(1) A Terminal Case Event is the order, decision or judgment that signifies the final resolution of a Particular Client Assignment such that substantive appearances before the court are no longer necessary to resolve the issues raised by the complaint, indictment, petition, appeal, or other initial pleading that provided the impetus of the case. There can be only one Terminal Case Event in a Particular Client Assignment. Terminal Case Events exclusively include:

(a) The order granting a motion to withdraw Counsel;

(b) The entry of dismissal of all charges or petitions; or

(c) Judgment or other final order or decision of the court.

(2) Lawyer of the Day, Specialty Court Liaison, Resource Counsel, and all other services rendered on behalf of the Commission and not associated with a Particular Client Assignment shall be billed within 90 days of the service provided.

B. The period for submitting a voucher established by this Subsection shall run from the date that the Terminal Case Event is docketed.

(1) Services are rendered on Lawyer of the Day assignments on the date Counsel appears in court and serves as Lawyer of the Day. Services performed as a PDS Liaison, Resource Counsel, or as part of any other PDS-sponsored program are rendered on the date the individual tasks were performed as indicated by the date associated with the time entry recorded to account for that time.

C. Vouchers not submitted within 90 days of a Terminal Case Event or the timeframe otherwise established by this Chapter shall be reduced according to the schedule established by this Section below, except on a showing by Counsel that a voucher could not have been timely submitted for reasons outside the actual or constructive control of Counsel. If an exception decision is rendered by the Audit Director, Counsel may submit an appeal in writing to the Executive Director on this issue only, within 10 days of the Audit Director's decision. The Executive Director's decision on an exception under this Section is final agency action.

(1) Reduction for Untimely Voucher Submission. The total reduction applied to vouchers submitted after the 90-day deadline is calculated by multiplying the total voucher amount by the applicable percentage according to the schedule established below.

(2) The days elapsed since the relevant Terminal Case Event are calculated in the same manner as in determining compliance with the 90-day deadline.

(3) Reduction Schedule:

Days After Terminal Case Event	Reduction
91 – 104	10%
105 – 150	25%
151 – 180	50%
181 or more	100%

(4) Any reduction for the untimely submission of a voucher may only be applied after Counsel is provided with an opportunity to request an exception pursuant to subsection (1)(C) of this Section.

D. Counsel may submit interim vouchers not more often than once every calendar month per case.

E. Sunset of this Section.

(1) Notwithstanding any other provision of this Chapter, the voucher submission requirements and reduction contained in Section 8(3) shall remain applicable only to vouchers containing time incurred before January 1, 2027.

(2) Effective July 1, 2028, Section 8(3) is repealed. Thereafter, all voucher submissions shall be governed exclusively by the quarterly billing requirements established in Section 8(2).

4. Time Entries and Voucher Submission.

A. Detailed Billing. All time on vouchers shall be detailed and accounted for in .10 of an hour increment, rounding up to the nearest .10 of an hour. Each time entry shall identify the purpose of the work performed by selecting the most relevant event option from PDS' Electronic Case Management System.

B. Supplemental Vouchers. If a Particular Client Assignment requires additional, supplemental work be performed by Counsel after the Terminal Case Event occurs, Counsel may submit a Supplemental Voucher for the work performed after the final voucher is submitted. All time included on a supplemental voucher must be billed within 90 days after the task was completed. Notwithstanding any other provision of this Chapter, any time included on a supplemental voucher that is not submitted within a reasonable period of time is not payable except on a showing by Counsel that the voucher could not have been timely submitted for reasons outside the actual or constructive control of Counsel.

(1) Time for work performed by Counsel before the Terminal Case Event occurred may not be included on a supplemental voucher.

C. Time for work performed by Counsel after the Terminal Case Event occurred may be included on a final voucher. If a final voucher is submitted greater than 90 days after a Terminal Case Event, the entire voucher will be reduced according to the reduction schedule established by this Chapter including any time for work performed after the terminal case occurred.

5. Audit/Voucher Review. PDS may conduct audits, investigations and billing reviews of Counsel at any time. Counsel shall fully cooperate. Failure to cooperate constitutes grounds for suspension, removal from eligibility lists, denial of payment, and any other authorized action.

A. High Daily Alerts. PDS will generate an alert when Counsel submits time entries exceeding ten (10) hours in a single day. The alert will identify the cases in PDS' electronic case management system associated with time entries on that date.

(1) Counsel shall provide a response to the alert.

(2) Counsel's response must address all time entries recorded on the date in question, including entries from cases not yet billed. The response shall:

(a) Confirm the accuracy of the time billed and provide a written explanation of why the billed time exceeded ten (10) hours; or

(b) Identify each inaccurate entry and provide corrections as set forth in this Section.

(3) If errors are found in unbilled cases or vouchers not yet submitted, Counsel shall correct the errors in the Electronic Case Management System and document the corrections in the response.

(4) If errors are found in billed cases, Counsel shall remit reimbursement to the Commission in an amount equal to the overbilled time. Counsel may not offset the error by reducing time entries in other matters.

(5) Vouchers containing outstanding high daily alerts will not be paid until a response to the alert is received.

(6) Upon request, Counsel shall provide underlying timekeeping records supporting any date that generated a high daily alert.

B. Upon request by PDS, Counsel shall provide additional information or documentation.

(1) All vouchers about which PDS requests additional information or documentation are deemed improper invoices until questions satisfactorily answered.

(2) If Counsel fails to respond to a request for additional information within ninety (90) days, the voucher shall be denied and is no longer eligible for payment.

6. Ancillary Matters. Counsel may be paid for work on an ancillary matter while the PDS case to which they have been assigned is pending, if the work on that ancillary matter is necessary to assist in the defense of the pending PDS matter.

A. Representation on the collateral matter must further the client's interest in the case to which counsel was assigned. PDS' payment in the collateral matter ends when the case to which counsel was appointed ends.

B. Prior authorization from PDS for payment for work outside the scope of the case to which Counsel was assigned is required.

SECTION 9. RESOURCE COUNSEL.

1. Resource Counsel may bill pursuant to this Chapter for any billable tasks outlined in Section 9(2) and subject to the limitations in Section 9(3) of this Section.

2. Billable Tasks.

A. Meetings and other communications with Counsel, Employed Counsel, and Public Defenders about the practice of law or ethical or legal issues related to assigned cases.

B. Assisting Counsel, Employed Counsel, and Public Defenders with drafting documents and with litigation preparation for assigned cases.

C. Meetings and other communications with members of the judiciary or prosecution about matters pertaining to indigent representation upon the written request of the Executive Director.

D. Preparing and presenting trainings at the request of the Executive Director.

E. In-court observation of Counsel if requested by the Executive Director.

F. Responding to calls, emails, and/or webform submissions from individuals who contact PDS through the PDS hotline and/or website. This includes:

(1) Communication with the person who called;

(2) Communication with others to address the individual's matter; and

(3) Limited scope representation undertaken to resolve urgent issues for indigent persons concerning matters for which the person would be entitled to appointment of counsel.

G. Other tasks as deemed appropriate by the Executive Director and with prior written authorization of the Executive Director.

3. Limitations.

A. Any services rendered as Resource Counsel must be strictly limited to matters relating to assigned—not retained or pro bono—cases.

B. If Resource Counsel serves as co-counsel on a Particular Client Assignment, then Resource Counsel must enter the case in the PDS' Electronic Case Management System and bill for it as a typical case, not as Resource Counsel.

C. Prior to preparing a training at the Commission's request, Resource Counsel must have prior written authorization from the Executive Director, which must include a cap on the maximum number of hours the Commission will pay Resource Counsel to prepare and present the training.

D. Resource Counsel must be licensed to practice law in Maine and eligible to accept PDS case assignments at all times while performing Resource Counsel duties. Resource Counsel will not be paid for work done unless Resource Counsel is licensed to practice law in Maine and eligible to accept PDS case assignments.

E. As a condition of the opportunity to serve as Resource Counsel, Resource Counsel must maintain detailed records of the services they perform and provide copies of those records to PDS upon request. At a minimum, those records must include:

(1) The number of attorneys to whom Resource Counsel services are rendered; and

(2) A running log of the number of hours Resource Counsel spends on:

(a) Rendering general Resource Counsel services to attorneys;

(b) Rendering client-specific services; and

(c) Preparing and presenting trainings.

F. Resource Counsel will not be paid for billing more than 40 hours in one seven-day period.

G. Resource Counsel do not develop any property interest in the opportunity to serve in that role. There is no guarantee that PDS will provide any number of hours to Resource Counsel.

H. Resource Counsel may not incur any expenses of any type on behalf of PDS without prior written approval from the Executive Director.

4. Counsel may bill pursuant to this Chapter for time spent receiving the services of Resource Counsel.

SECTION 10. NON-PAYMENT BASED ON MISCONDUCT.

1. The Executive Director may withhold payment of some or all of Counsel's vouchers during the pendency of any investigation of Counsel if the Executive Director has reason to believe that Counsel violated any Commission Rule or any of the Maine Rules of Professional Conduct.

2. If, upon investigation, the Executive Director concludes that Counsel violated any Commission Rule or a Maine Rule of Professional Conduct, the Executive Director may withhold or deny payment, in whole or in part, of some or all of Counsel's vouchers.

3. Pursuant to 4 M.R.S. § 1804(3)(J), a decision of the Executive Director pursuant to this Section constitutes final agency action.

STATUTORY AUTHORITY:
4 M.R.S. §§ 1804(2)(F), (3)(B), (3)(F) and (4)(D); 4 M.R.S. § 1805(12).

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AMENDED:
March 19, 2013 – filing 2013-062
July 1, 2013 – filing 2013-150 (EMERGENCY)
October 5, 2013 – filing 2013-228
July 1, 2015 – filing 2015-121 (EMERGENCY)
June 10, 2016 – filing 2016-092
July 21, 2021 – filing 2021-149 (EMERGENCY)
January 17, 2022 – filing 2022-007
June 23, 2022 – filing 2022-100 (Final adoption, major substantive)

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September 1, 2024 – filing 2024-204

NONSUBSTANTIVE EDITS:
September 3, 2024 (Addition of a statutory citation in Section 8, subsection 1 of the rule, as well as in the statutory authority/rule history section).

APAO ACCESSIBILITY CHECK: July 24, 2025

APAO ACCESSIBILITY CHECK: August 14, 2025

AMENDED:
August 17, 2025 – filing 2025-159

NONSUBSTANTIVE CORRECTIONS (cross-reference update):
April 2, 2026