

493—12.5 (13B,815) Payable attorney time.

12.5(1) *Maximum daily hours.* An attorney appointed as counsel or guardian ad litem must not perform services for indigent persons or submit claims to the state public defender for payment for such services for more than 12 hours of the attorney's time in any calendar day except as provided in this subrule.

a. An attorney may perform services for indigent persons and submit claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day if and only if the attorney is in trial or other contested court hearing lasting more than one day or the attorney is preparing for such a trial or hearing that will be occurring within the next seven days.

b. If an attorney performs services for indigent persons and submits claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day, the attorney shall include with each claim form submitted to the state public defender that claims time for that date, even if the amount claimed on that claim form is less than 12 hours, a letter specifying the total hours worked for indigent persons, any additional time billed to other private clients on that date or certifying that no other time was billed to any other client, and explaining the need to work more than 12 hours.

c. Any time claimed by an attorney appointed as counsel or guardian ad litem in excess of 12 hours on a calendar day, except as permitted by this subrule, and any time claimed in excess of 16 hours on a calendar day, shall not be paid. If the time is claimed on multiple claims, the most recently submitted claim claiming time on a particular calendar day shall be reduced so as not to pay more than the maximum authorized daily hours. If more than the maximum authorized amount is inadvertently paid by the state public defender, the attorney shall reimburse the state public defender upon written notice of the improper payment.

12.5(2) *Standardized and estimated billing prohibited.* All time submitted on the itemization of services must be the actual time worked providing services to the client. Attorneys are prohibited from using standardized billing estimates for tasks, such as billing 0.1 for every page of a document reviewed or 0.2 for every e-mail sent or received, or 1.0 hour for every court proceeding. Attorneys must also not use standardized billing for cases, such as billing the same set of standard tasks in every case regardless of whether the task was actually performed.

12.5(3) *Nonbillable time.* The following activities are not reasonable and necessary legal services for the indigent client, and therefore time and expenses for such activities are not payable under the attorney's appointment and shall be denied:

a. Clerical work, including but not limited to opening and closing files; making photocopies; opening or sending mail; sending cover letters; transmitting copies of documents to a client, another party or clerk of court; sending faxes; picking up or delivering documents; drafting internal file memos; giving instructions to support staff; or billing;

b. Preparation of motions to withdraw from a case, and other time related to withdrawing from a case, when the withdrawal is made in order to retire from the practice of law, discontinue or reduce indigent defense representation, pursue another job, or is otherwise for the attorney's personal benefit;

c. Overhead, including time spent managing the operations of the attorney's law practice, office lease payments, or support staff salaries;

d. Preparation of the fee claim, itemization of services, or other time-keeping activities;

e. Preparation of an application or proposed order to exceed the fee limitations, court time obtaining such an order, or review of the order granting or denying the application;

f. Preparation of a motion for judicial review of the state public defender's action on an attorney fee claim, preparation for or attendance at a hearing on such a motion, review of an order granting or denying the motion, preparation of appellate briefs or other documents in an appeal of such a court order, preparation for or participation in oral arguments in the appeal, or review of an appellate decision regarding such a court order.

12.5(4) *Travel time.* Time spent by an attorney or guardian ad litem traveling is only payable when the travel is reasonable and necessary to represent the indigent client and the attorney or guardian ad litem is traveling:

- a.* To and from the scene of a crime in a criminal case or juvenile delinquency proceeding;
- b.* To and from the location of a pretrial hearing, trial, or posttrial hearing in a criminal case if the venue has been changed from the county in which the crime occurred or if the location of the court hearing has been changed, without changing venue, to a different county for the convenience of the court;
- c.* To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
- d.* To and from the place of detention of a client in a juvenile delinquency or criminal case if the place of detention is located outside the county in which the action is pending;
- e.* To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;
- f.* To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute and court order to visit the placement and the placement is outside the state of Iowa;
- g.* To and from the location of a family team meeting, if the place of the meeting is located outside the county in which the action is pending and the court approves that the location of the meeting is appropriate;
- h.* To and from a court of appeals or supreme court argument;
- i.* To and from the location where the deposition of an expert witness is being taken; or
- j.* To other locations for which travel authorization is obtained from the state public defender.

12.5(5) *Substitute counsel time.* Work performed by substitute counsel on behalf of an attorney appointed as counsel or guardian ad litem is payable only as provided for under this subrule. The appointed attorney is at all times personally responsible for the representation of the client and must ensure that substitute counsel is qualified to perform the work directed and that the client is effectively represented at all times. The appointed attorney is responsible for compensating substitute counsel. Claims for payment directly by substitute counsel or claims for payment by the appointed attorney that are inconsistent with this subrule shall be denied.

a. Court time. An attorney appointed as counsel or guardian ad litem must handle all court appearances unless the appointed attorney has a scheduling conflict, an illness, or other personal emergency, in which case the matter may be covered by substitute counsel. Substitute counsel may never cover for oral arguments in appellate cases.

b. Out-of-court time. Substitute counsel may perform out-of-court legal services, except that time spent by substitute counsel that duplicates work performed by the appointed attorney and time spent receiving direction from or conferencing with the appointed attorney are not payable.

c. Exceptional circumstances. Substitute counsel may be used in situations that would otherwise be impermissible if the state public defender concludes that use of such substitute counsel would be in the best interest of the client and the administration of justice and provides prior written consent to the appointed attorney.

d. Supervisory time. Time spent by the appointed attorney directing, reviewing, or correcting the work of substitute counsel is not payable.

e. Qualification of substitute counsel. Unless the state public defender has given prior written consent to use the attorney as substitute counsel, substitute counsel must have an active contract with the state public defender to perform indigent defense services, although the contract need not cover the type of case or county of the case for which the claim is submitted.

f. Inapplicability to co-counsel in Class A felonies. The previous paragraphs of this subrule do not apply to a co-counsel who is separately appointed in a Class A felony. Each separately appointed co-counsel in a Class A felony shall submit a separate indigent defense fee claim that claims only the work actually performed by the appointed attorney submitting the claim. The use of substitute counsel is not permissible in a Class A felony in which co-counsel has been separately appointed.

[**ARC 9293B**, IAB 12/29/10, effective 12/7/10; **ARC 9447B**, IAB 4/6/11, effective 5/11/11; **ARC 1512C**, IAB 6/25/14, effective 7/30/14; **ARC 2378C**, IAB 2/3/16, effective 3/9/16]