

Delaware Department of Justice Outside Counsel Billing Policy

As of January 21, 2025

I. Introduction/Purpose

The Delaware Department of Justice (“DOJ”), through the Civil Division, serves as legal representative and counsel for the department, boards, offices, commissions, and other instrumentalities of government of the State of Delaware (the “State”), along with its officers and employees. At times, the DOJ will retain or assist clients in the retention of outside counsel to represent the State for a variety of reasons, including the need for specialized legal expertise, representation of the State in matters venued outside Delaware, and to handle matters requiring additional resources.

The DOJ is committed to providing the highest quality legal services in the most cost-effective manner. We require our outside counsel to agree with and honor that commitment. Outside counsel is expected to represent the State with integrity, professionalism, and a sense of urgency in resolving the legal problems for which their services are retained. While the DOJ requires outside counsel to provide legal services of the highest quality, outside counsel is also expected to make all efforts to render those services efficiently and cost-effectively.

The DOJ has issued this Outside Counsel Billing Policy (the “Policy”) in order to provide direction regarding processes and procedures in connection with the billing of services rendered by outside counsel. The Policy sets forth the DOJ’s expectations and is intended to help guide an effective working relationship with outside counsel. Outside counsel should promptly contact the Coordinating Attorney (defined below) with any questions relating the application of this Policy.

This Policy is incorporated by reference into and shall form a material part of every outside counsel engagement agreement. This Policy is effective for all work performed beginning March 12, 2025, and supersedes any previously issued billing policies for outside counsel.

All attorneys, professional staff, and third-party vendors who work on behalf of the DOJ must be familiar with and adhere to the terms in this Policy. However, nothing in this Policy is intended to interfere with the outside counsel’s ethical obligations, professional judgment, or duties as an advocate representing the interests of the State. The DOJ reserves the right to amend the Policy at any time. The most current version of the Policy will be publicly available on the DOJ’s website.

II. Responsibilities of the DOJ

The DOJ shall designate a Deputy Attorney General as the “Coordinating Attorney” to supervise the services rendered pursuant to the outside counsel contract. The Coordinating Attorney will provide clear, specific instructions, communicate the State’s objectives, follow the progress of the matter, keep outside counsel informed of important developments, and act as a liaison between outside counsel and the State. The Coordinating Attorney, or their designee, shall review the invoices submitted by outside counsel for compliance with the terms of this Policy. The New Castle County Deputy State Solicitor and the Governor’s office retain ultimate approval authority for bills submitted by outside counsel.

III. General Billing practices

Billing rates will be in effect for entire matter as provided for in the engagement agreement. Any change must be approved by the Department of Justice and the Office of the Governor in writing 60 days in advance of the effective date of the change in a billing rate.

Invoices are to be rendered monthly within 30 days after end of month for the entire month, with no carry-over billing (example cannot bill from May 1 - June 15).

Each invoice must reference the name of the matter being worked on and an invoice number. Invoices also must include:

- A. A detailed statement of the time spent by each timekeeper, including a statement of the date each service was rendered, the type of activity, the subject matter, and all persons involved. Narrative descriptions of work performed that lack sufficient detail will be rejected. Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail, with each service showing a separate time entry and not combined or "lumped" together; however, tasks performed on a project which total a de minimis amount of time can be combined or lumped together if they do not exceed 0.5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.
 1. The description of services or activity should be brief and informative. For example, merely listing "Research" is not an acceptable billing entry. An acceptable entry would be "Legal research on statute of limitations issues related to [Insert issue]." Another example of an unacceptable billing entry would be merely listing "Telephone calls" instead of "Telephone calls to J. James of [Firm] and M. Smith [of firm] re: motion to dismiss." Be sure to identify the "who, what and where."
 2. Time billed for each activity should be identified separately. Do not combine different types of activities in one entry on the invoice. Again, "Block billing" of fees is not acceptable, even if the same individual performed the activities.
- B. The State does not negotiate prompt pay discounts and will not be responsible for late fees or other administrative charges.
- C. Details of fees by lawyer or paralegal by number of hours per task and a description of the work completed.
- D. Reference to the hourly discounted rate per attorney and other staff billed on the invoice.
- E. Expense/disbursement details and charges by category along with copies of expenses attached with the invoice.

- F. All invoices shall be in increments of no less than 0.1 billing hour (6 min.). Block Billing of Services is unacceptable.
- G. Invoices should be sent electronically to the Coordinating Attorney. The Coordinating Attorney, or their designee, shall conduct an initial review of each invoice and request any necessary or appropriate corrections or modifications. The Coordinating Attorney shall then circulate the invoice to the New Castle County Deputy State Solicitor and the Governor's office for final approvals.
- H. The DOJ reserves the right to audit all fees and disbursements submitted by outside counsel, and the corresponding legal file.
- I. While it is important to have an adequate number of personnel at the right levels involved, the State expects outside counsel to exercise care to avoid overstaffing.
- J. Unless preapproval is obtained from the Coordinating Attorney, no more than two outside counsel attorneys are permitted at meetings (internal and external), depositions, mediations, negotiations, and/or hearings.
- K. No firm paralegals at meetings, depositions, mediations, negotiations, or hearings unless pre-approved by the Coordinating Attorney.
- L. Billable hours for summer interns/clerks are not allowed unless pre-approved by the Coordinating Attorney. Pre-approval is required for each assignment.
- M. More than 10 hours per day by one member of outside counsel staff will be closely reviewed.
- N. Internal conferences accounting for more than 10% total monthly billings will be closely reviewed. Excessive intra-office conferences between attorneys or paralegals for providing instruction or status will be closely reviewed.
- O. Billing for research on general legal issues which should be within the knowledge of the firm and/or associate will be closely reviewed.
- P. Billing of hours for work done by multiple attorneys in the firm for similar work on the same issue will be closely reviewed.
- Q. Billing for phone calls and emails with Deputy Attorneys General in furtherance of outside counsel's representation of the State will be closely reviewed.
- R. Billing attorney and/or paralegal time for invoice preparation, review, or for corrections to the invoice is not acceptable.
- S. Excessive time spent in "file review", "updating file", or similar tasks will be closely reviewed.
- T. Excessive time spent in "review and revision" of documents prepared by outside counsel will be closely reviewed.

- U. Charging attorney time for tasks that should be performed efficiently and effectively at less expense by a paralegal or secretary, or charging paralegal time for tasks that should be performed by clerical workers will be closely reviewed. For example, we do not allow charging attorney time for arranging logistics for a deposition.
- V. Hours charged at a more senior attorney rate when a matter should be handled by a less senior attorney will be closely reviewed.
- W. Charging for secretarial time and overtime for other staff members is not permitted.

IV. Expenses/Disbursements

- a. The State will reimburse outside counsel for reasonable, documented, and itemized out-of-pocket disbursements and costs incurred on behalf of the State, with the exceptions and limitations as set forth herein. Invoices should reflect the actual cost and should not include any markup. All disbursements must be fully itemized with a description sufficient for review, identifying the number of units, price per unit, and total cost. The State may refuse to pay for disbursements billed as “miscellaneous” billed in a group (e.g., Travel Expenses - \$5,000.00) or disbursements without description. Should there be any question or concern as to whether a fee or expense is reasonable or otherwise subject to reimbursement, outside counsel should contact the Coordinating Attorney for an approval.
- b. The State will reimburse outside counsel for actual costs incurred for court reporters and transcripts. Outside counsel should obtain the lowest possible charge for court reporting fees, including any possible volume discounts. Pre-approval from Coordinating Attorney is required for expedited requests or multiple copies.
- c. Express mail and courier fees are reimbursable with proper documentation but should be incurred only when necessary.
- d. The State will reimburse photocopying charges not exceeding \$0.10 per page. Oversized and custom copying projects should be handled using the most economical plan.
- e. Non-reimbursable expenses
 - i. Computer, e-mail, word processing charges
 - ii. Online research charges (for example Westlaw, Lexis)
 - iii. Fax charges and telephone charges
 - iv. Conference room charges, rent
 - v. Office supplies
 - vi. Library use, staff
 - vii. Clerks, proofreader charges, support salaries
 - viii. Transportation charges for travel to hearings/client agencies when travel is

within the State of Delaware. Prior to incurring any travel costs outside of Delaware to be billed to the State, outside counsel shall consult with the Coordinating Attorney and obtain approval in writing.

ix. Meals

V. Use of Outside Consultants, Experts and Contract Attorneys.

There may be instances where the use of consultants, experts and contract attorneys may be required to staff a case. This should be done as part of the case planning in conjunction with the Coordinating Attorney. These fees should be reasonable and necessary, should not be subject to additional mark-up by the firm, and are subject to prior approval by the DOJ and the Governor's office.