

CONDITIONS OF PRIVATE COUNSEL RETENTION
BY THE DEPARTMENT OF JUSTICE FOR REPRESENTATION OF
CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former federal employees in civil, congressional, or criminal proceedings.

1. NATURE OF RETENTION

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

d. any legal work that advances only the individual interests of the employee; and

e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

2. BILLABLE HOURS

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

3. LEGAL FEES

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience:
\$200.00 per lawyer hour

- b. Lawyer with 3 - 5 years of practicing experience:
\$160.00 per lawyer hour
- c. Lawyer with 0 - 3 years of practicing experience:
\$133.00 per lawyer hour
- d. Paralegal or legal assistant (or equivalent):
\$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel.

The Department will not provide compensation for client or other entertainment.

The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

5. FORMAT OF BILLS

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. BILLING ADDRESS

The retained attorney should submit all bills to:

Director, Office of Planning,
Budget and Evaluation
Civil Division
United States Department of Justice
Washington, D.C. 20530
Attn: Room 9042, L Street Building

7. PROMPT PAYMENT

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

