

June 11, 2013

Memo to Public Defender Commission Contracts Committee

From: Larry Murphy, Office of the State Public Defender Contracts Manager

Re: Paralegal Criteria, Duties and Fees

Reasoning:

I believe that if OPD would pay contract attorneys for paralegal assistance it would enhance the attorney's performance and be cost effective.

I think that OPD could reimburse Paralegals who work in a contract attorney's office and we can also create a pool of independent paralegal professionals. We would pay a contract attorney using his/her employed paralegal when the contract attorney claims said service on his/her monthly claim. We would directly pay an independent paralegal whose services have been preapproved.

Criteria:

Section 25-10-304 M.C.A. defines a paralegal as a person qualified through education, training, or work experience who is employed or retained to perform, under the supervision of a licensed attorney, substantive legal work that:

- (a) requires a substantial knowledge of legal concepts, and
- (b) in the absence of the paralegal, would be performed by an attorney.

The education, training and work experience requirements are set forth fully in Attachment A.

Services:

An OPD approved paralegal shall be entitled to claim the following services and be paid for the same:

- researching legal issues
- drafting pleadings and motions
- basic fact gathering
- client interviews
- case/file management
- organizing discovery
- trial and pretrial assistance
- any other substantive legal task delegated and supervised by an attorney

An OPD approved paralegal shall be governed by the Rules of Professional Responsibility and all Rules promulgated by the State Bar of Montana. See Attachment B.

Fees:

It is my understanding that OPD is currently paying between \$35 to \$46/hour to paralegals assisting attorneys in capital cases. We are also paying capital attorneys up to \$150/hour. These rates exceed our non-capital rates. I therefore recommend that the PDC adopt rates for paralegal services at \$35/hour for capital cases and \$25/hour for non-capital cases.

Attachment A

An individual may use the title "paralegal" if the individual:

- (a) has received an associate's degree in paralegal studies from an accredited institution or a baccalaureate degree in paralegal studies from an accredited college or university;
 - (b) has received a baccalaureate degree in any discipline from an accredited college or university and has completed not less than 18 semester credits of course work offered by a qualified paralegal studies program;
 - (c) has received certification by the national association of legal assistants or the national federation of paralegal associations;
 - (d) has received a high school diploma or its equivalent, has performed not less than 4,800 hours of substantive legal work under the supervision of a licensed attorney documented by the certification of the attorney or attorneys under whom the work was done, and has completed at least 5 hours of approved continuing legal education in the area of legal ethics and professional responsibility; or
 - (e) has graduated from an accredited law school and has not been disbarred or suspended from the practice of law by any jurisdiction.
- (3) A person may not practice as a paralegal except under the supervision of a licensed attorney and is prohibited from engaging in the unauthorized practice of law.

Attachment B

It is the responsibility of every paralegal to adhere to all court rules, agency rules and state and federal statutes as well as the Montana Rules of Professional Conduct. All paralegals belonging to the Paralegal Section of the State Bar of Montana shall also be governed by these Rules:

A paralegal may perform any task that is properly delegated and supervised by an attorney provided that the attorney maintains responsibility for the work product and maintains a direct relationship with the client.

A paralegal shall not:

- a. Establish an attorney-client relationship;
- b. Establish the amount of a fee to be charged for legal services;
- c. Give legal opinions or advice;
- d. Represent a client before a court or agency unless so authorized by that court or agency;
- e. Engage in, encourage, or contribute to any act which would constitute the unauthorized practice of law;
- f. Engage in any conduct or take any action, which would involve an attorney in a violation of professional ethics or give the appearance of professional impropriety;
- g. Perform duties that only attorneys may do; or
- h. Perform functions that attorneys themselves are prohibited from performing.

A paralegal should assist attorneys in providing Pro Bono services to the public.

A paralegal shall take reasonable measures to ensure that his or her status as a paralegal is established at the outset of any professional relationship with a client, court or administrative agency, a member of the general public or with other attorneys.

A paralegal shall preserve all client confidences.

A paralegal shall prevent a conflict of interest resulting from his or her employment affiliations or outside interests.