

ATTACHMENT C
BILLING GUIDELINES

**DIVISION OF ADMINISTRATION
OFFICE OF RISK MANAGEMENT
CASE HANDLING GUIDELINES AND BILLING PROCEDURES**

For attorneys under contract, the Office of Risk Management, hereinafter referred to as ORM, expects to work with you and your firm in an efficient and cost-conscious manner consistent with your firm's ethical obligations. Nothing contained herein is intended to restrict Contract Counsel's exercise of professional judgment in rendering legal services. Contract counsel bears ultimate responsibility for all work performed pursuant to the contract and/or billed to the file.

I. GOALS FOR CASE DEVELOPMENT AND RESOLUTION

- Efficient assessment of liability and early settlement of cases where liability is clear
- Identification and agreement between contract counsel and ORM regarding necessary defense steps, activities, and strategy for those cases not capable of early resolution
- Employment of alternative dispute resolution whenever feasible
- Timely discussion and agreement on settlement authority between contract counsel, ORM, and appropriate personnel at the Louisiana Department of Justice (DOJ) prior to and during negotiation and finalization of settlement

II. STAFFING

- Only contract attorneys and their staff approved by ORM may work on ORM cases.
- An attorney may not work on a case until a contract has been signed by all parties. Verbal approval, documented in writing, may be obtained to begin work *only in an emergency*.
- Contract Counsel and ORM shall agree on one attorney, referred to as the "Billing Attorney" who will have primary responsibility for the file. The activities of the Billing Attorney are governed by the terms and conditions of the contract, the letter of appointment from the Attorney General and these Case Handling Guidelines and Billing Procedures.
- Billing Attorney is required to review all email with the same frequency and to the same extent as he reviews communications received via the U.S. Postal Service.
- Billing Attorney shall be primarily responsible for all communications with ORM and DOJ.
- At the inception of the contract, Billing Attorney is required to provide an e-mail address to ORM and DOJ.
- Rates for each attorney and/or paralegal who will work on the file must be agreed upon between Contract Counsel and ORM. Any changes in rates must be approved by ORM in writing before becoming effective.
- Cases should be staffed by the fewest number of attorneys and paralegals necessary to perform the work effectively and efficiently.

- Any staffing changes should be discussed with ORM prior to engaging in billable work.
- Duplication/repetition of effort among staff members must be avoided.
- Attorneys and paralegals may not bill for clerical tasks.
- Attorneys may not bill attorney rates for paralegal tasks.
- Work performed by clerical and/or administrative staff is not billable.
- ORM will not pay to bring associates or staff ‘up to speed’ on a case due to unforeseen changes in staffing by the law firm.
- Attendance of more than one attorney at mediation requires approval from the State Risk Administrator-Claims.

III. BUDGET

- The defense budget is particularly critical to ORM, as it includes an estimate of the **MAXIMUM JUDGMENT VALUE OF THE CASE**.
- Initial budget should be prepared within 60 days of assignment of the case, in accordance with these Case Handling Guidelines and Billing Procedures.
- ORM recognizes that any budget figures advanced are simply estimates.
- The estimated budget will in no way restrict the effective defense of the case.
- At such time as the budget estimates, including the **MAXIMUM JUDGMENT VALUE** of the case, become inaccurate, counsel must provide updated figures with a description of the developments which necessitated revision of the initial estimate.
- The defense budget must be submitted through Trial Net utilizing UTBMS litigation codes and format.

IV. REPORTING

REPORTING FORMS

Billing Attorney is required to provide the reports listed below in accordance with the instructions set forth in these guidelines and on the body of the forms, which will be transmitted by ORM with the contract. Reporting forms can be downloaded from <http://www.doa.la.gov/orm/formsATTY.htm>. Electronic copies of the forms may be obtained from the DOJ Program Director of Litigation.

The Initial Case Assessment, Request for Settlement Authority and Notice of Case Closure Forms shall be provided in all types of litigation. Six Month and Status Update Forms are not used during Medical Review Panel proceedings or for Prisoner Judicial Review Suits. Special forms are provided by ORM for these categories of claims.

Immediate notice of receipt of an Offer of Judgment from Plaintiff or co-defendant shall be provided to the ORM Adjuster.

The completed reporting forms shall be transmitted via email or fax to the adjuster at ORM, the appropriate Section Chief at DOJ and via email to the DOJ Deputy Director of Litigation at LitDir@ag.state.la.us

A. Initial Case Assessment

Due within 60 days of acceptance of contract.

Form includes space to report Defense Budget, including MAXIMUM JUDGMENT VALUE of the case, which should be prepared after careful thought and analysis of the Petition/Complaint for Damages and any available investigative materials.

B. Six Month Case Assessment

Due within six months of the date of acceptance of contract.

Provide assessment for Maximum Judgment Value.

Updated Defense Budget must be submitted through Trial Net utilizing UTBMS litigation codes when previous estimates are no longer accurate. Provide description of developments which necessitate revision of budget.

C. Status Update Report

Due after the submission of the Six Month Case Assessment form whenever there is a significant change in counsel's evaluation of liability and/or quantum or when requested by ORM. If the status of the case is such that the Billing Attorney can take no action to move the case along, i.e. waiting on accrual of period of abandonment, counsel should email the assigned ORM adjuster noting the inactivity. When, or if, an event occurs such that the case is no longer inactive, Billing Attorney is required to report the reason for the change in status of the case on this form and resume submission of status updates when applicable.

Updated Defense Budget, must be submitted through Trial Net utilizing UTBMS litigation codes when previous estimates are no longer accurate. Provide description of developments which necessitate revision of budget.

D. DOJ/ORM Request for Settlement Authority (RSA)

1. INITIAL RSA

Submission of the INITIAL RSA is triggered by one of the following events, and is due within the applicable time frame set forth below:

(a) IMMEDIATE NOTICE—RECEIPT OF OFFER OF JUDGMENT

Billing Attorney shall **immediately** notify the adjuster upon receipt of an Offer of Judgment from the Plaintiff or a co-defendant, and shall submit a completed RSA as soon as possible to the Adjuster, the appropriate Section Chief, and the DOJ Deputy Director.

(b) TEN DAY DEADLINE

Billing Attorney shall submit completed RSA form within **10 days** (unless otherwise specified) of the occurrence of any of these other events:

- Receipt of settlement offer from Plaintiff
- Receipt of request to mediate/arbitrate from any party
- Receipt of Notice of Status Conference to set trial date
- Counsel's determination that liability is certain and/or settlement is advisable
- Settlement activity on the part of any co-defendant
- Receipt of instructions from ORM adjuster to make an offer of judgment to plaintiff. (Prior written approval of DOJ required before offer may be extended.)
- Any significant or unusual event which changes the evaluation of the State's exposure

(c) THIRTY DAY DEADLINE

Billing Attorney shall submit completed RSA form within **30 days** (or as soon as practicable) prior to any **status conference** at which it may be **reasonably anticipated that settlement will be discussed by the Trial Judge or his designee**

2. SUPPLEMENTAL RSA'S

Billing Attorney shall submit a SUPPLEMENTAL RSA when (1) there is a significant change in counsel's evaluation of liability and/or quantum as reported in the previous RSA or (2) when requested by the Adjuster. It is recommended that any new information or new evaluation be set forth in **boldface type** on the Supplemental RSA form.

3. PRE-TRIAL REPORT RSA---DUE 60 DAYS PRIOR TO TRIAL

Unless otherwise instructed by the Adjuster, the RSA form is to be used for preparation of a Pre-Trial Report, and it is due at least 60 days prior to trial.

When a trial is continued, an updated Pre-Trial Report RSA shall be submitted (unless instructed otherwise by the adjuster) at least 60 days prior to the new trial date and it must include a description of any significant developments, including pre-trial rulings that bear on the assessment of liability or damages, a recap of settlement discussions, and any other new information that affects resolution of the case.

ADDITIONAL REPORTING REQUIREMENTS

In addition to the foregoing, **during trial**, Billing Attorney shall provide the Adjuster with brief daily reports, via email or fax. Verbal reports must be documented in writing.

Any judgment/verdict on the merits rendered against the State shall be reported immediately, either verbally or via email, to the adjuster, the appropriate DOJ Section Chief and the DOJ Program Director of Litigation.

Written post-trial report, including but not limited to summary of significant testimony, assessment of witnesses, rulings from the bench, evaluation of jury, recommendation for new trial/appeal and reasons therefore, must be submitted within seven (7) days of verdict or decision to adjuster, appropriate DOJ Section Chief and DOJ Program Director of Litigation. (DO NOT WAIT FOR FORMAL JUDGMENT.) If appeal is recommended, an appeal budget must be submitted with the post-trial report.

All reports must contain any and all significant, new information and/or developments, with a clear explanation of the impact on the case.

ORM will not pay for any time billed for preparation of reporting forms and/or status reports other than those specifically requested by ORM.

ORM will not pay for time billed in preparation of incomplete reporting forms or reporting forms which replicate near verbatim information contained in correspondence.

V. AUTHORIZATION REQUIRED

A. WRITTEN AUTHORIZATION

Billing Attorney must obtain prior written authorization from the adjuster and as indicated, from DOJ, for the following:

1. Stipulations of Liability
Additional written concurrence of Senior Counsel to the Attorney General Required.

2. Waiver of Jury Trial
Additional written concurrence of Senior Counsel to the Attorney General Required.
3. Appeal or Writ—taking or waiving
Additional written concurrence of DOJ Section Chief is required. Billing Attorney may not, in any case, permit the delays to lapse where specific agreement of ORM and the specific concurrence of the DOJ Section Chief cannot be obtained within applicable delays.

When faced with an adverse ruling in an interlocutory order or judgment that does not involve a monetary award, such as a denial of a MSJ or rulings on a Motion in Limine, etc, defense counsel shall, in lieu of a formal RSA, communicate with the assigned adjuster to obtain authority to apply for writs on the interlocutory decision. The adjuster and his/her supervisor may grant or deny authority or may otherwise act on the recommendation of defense counsel. At the adjuster and/or the supervisor's discretion, he/she may confer with the State Risk Administrator-Claims and the Assistant Director for Litigation Management to reach a decision on the issue. The request by defense counsel, and the response from the adjuster, shall be in the form of an email communication; any verbal request or response thereto shall be confirmed immediately by email communication and placed in the case file.

4. Response to Plaintiff's Offer of Judgment
(Additional written concurrence of Section Chief, Deputy Director and Senior Counsel to the Attorney General Required)
Use RSA form.
5. Extending Offer of Judgment to Plaintiff
(Additional written concurrence of DOJ Section Chief, Deputy Director and Senior Counsel to the Attorney General Required)
Use RSA form.
6. Retaining Experts, outside adjusters, independent investigators, photographers, etc. Use ORM form provided with contract.
7. Trial stipulations that do not bear significantly on issue of liability, i.e., stipulation as to the amount of a lien for reimbursement of medical bills.
8. Authorization for more than one attorney to attend mediation shall be requested to the State Risk Administrator-Claims.

B. VERBAL AUTHORIZATION

Billing Attorney must obtain prior verbal authorization from the adjuster, which must be confirmed in writing, for the following:

1. Take or participate in out of state depositions

2. Schedule independent medical examination or obtain outside review of medical records
3. Legal Research in excess of 3 hours.
4. Inspection of Scene of Accident
5. Participation in mediation

VI. DOCUMENTATION

Contract counsel must always provide ORM the following documentation in a timely manner.

- A. Copies of all pleadings and amended pleadings, reports, evaluations, or other substantive documents that are either prepared or received by counsel. These documents should not be transmitted to DOJ unless requested by DOJ. ORM will not pay for routine transmittal letters.
- B. Releases, Orders of Dismissal, and Final Judgments
(Copies shall be sent to the ORM adjuster, the appropriate DOJ Section Chief, and the DOJ Deputy Director.)
- C. Any other documents reasonably requested by the ORM adjuster, in particular research memoranda, motion papers and briefs, deposition transcripts, expert and medical reports.
- D. No payment will be made for preparation of pleadings and other substantive documents when copies have not been furnished to the ORM adjuster.

Note: In the case of coverage disputes between ORM and an individual being defended, coverage related privileged information must not be disclosed absent consent from the individual or as a result of discovery between the ORM adjuster and the individual.

VII. CONSULTATION

- A. Billing Attorney and the ORM adjuster should endeavor to agree on proposed activities outlined in the plan of action set forth in the Initial Case Assessment and updated in the subsequent reporting forms.
- B. In medical malpractice cases, an evaluation should be made by Billing Attorney, followed by Consultation with the ORM adjuster, as to the use of Medical Review Panel members as experts at trial.
- C. Any request for investigation or discovery should be handled directly with the adjuster, unless otherwise instructed.

VIII. CHARGES FOR SERVICES

ALLOWABLE CHARGES AND RELATED PROCEDURES:

- A.** In-Firm Conference
1. Reasonable and necessary time is reimbursable to obtain specific advice or counsel on substantive or procedural aspects of the case
 2. Must provide sufficient detail to demonstrate relevance and value

- B.** Multiple Attendances
1. Generally, only one attorney may bill for attendance at trial, court appearances, meetings, depositions, witness interviews, inspections, mediations and other events.
 2. Billing Attorney must consult with the ORM adjuster and receive prior written approval for more than one timekeeper's attendance at an event.

C. Depositions

No prior consultation needed for attendance of deposition of the following:

1. Plaintiff
2. Client
3. Co-Defendant
4. Primary Treating Physician
5. Liability Experts

Billing Attorney should consult with the ORM adjuster for authorization to attend all other depositions.

Written authorization is required for attending out of state depositions.

Within **ten (10) days** of the conclusion of the deposition, attorney shall provide a written report which summarizes the key points of the deposition testimony and an assessment of how the facts affect the case. Only upon request of the ORM adjuster, shall a copy of the deposition be provided.

D. Legal Research

1. Billing Attorney must consult with and receive approval from ORM if more than three (3) hours of research is expected.
2. Research, whether legal, medical, engineering or in other areas which is necessary to educate the attorney on the issues, shall be described in detail to include the issues and the source material.
3. Research of topics by electronic means will be reimbursed based on the amount of time incurred to perform the research.
4. Copies of all significant research must be sent to adjuster. Other results of research must be furnished upon request.
5. Repetitive research which duplicates prior research conducted in other cases on the same issue will not be allowed. However, reasonable time to locate, update, and modify prior research for use in a new case is compensable.
6. Research on a body of law with which contract counsel should be familiar will not be allowed.

E. Motions

1. Billing Attorney must consult with ORM when events occur which justify filing a motion.

F. Revision of Standardized Forms/Pleadings

1. Only actual time spent personalizing standardized forms/pleadings is billable.
2. Time spent, drafting 'standard' language is not billable.

G. Summaries and Trial Preparation

1. Should occur only when needed
2. Unless requested by the ORM adjuster, the following activities shall be performed *only* if trial is imminent:
 - a. Line summary of deposition
 - b. Preparation of Jury Charges
3. Digests and summary preparation are typically a paralegal function.

4. Unless prior approval is received from the ORM adjuster, attorney time is not billable for digests and summary preparation.

H. Editing

1. Charges for editing routine work product of another attorney will not be allowed.

I. Travel

1. Billing Attorney must consult with the ORM Adjuster prior to any out of state travel. Louisiana State travel rules and regulations will apply. First Class travel is not allowed. Arrangement for air travel must be made through State travel contractor to obtain State rates. Authorization is not required for in-state travel. However, State Travel Rules and Regulations will apply.
2. Mileage must include beginning and ending odometer readings or a computer map source, date and reason for travel.
3. Travel to and from depositions, etc., shall be paid at ½ the usual hourly rate.
4. Travel time and expenses will be disallowed if travel distance from attorneys' office to destination is within a 10 mile, one way radius, including travel time to and from the courthouse or other destination for attending hearings and filing of pleadings or other litigation activities.

NON-BILLABLE CHARGES:

A. Secretarial and Clerical Activities

Not billable to ORM

1. Examples Include
 - a. Mail handling
 - b. New file set up
 - c. Calendar maintenance
 - d. Transcribing
 - e. Copying
 - f. Posting

C. Format

1. Heading to include:
 - a. Firm's IRS number
 - b. Case caption
 - c. Name of client
 - d. ORM file number
 - e. DOJ number (Docket Number or MRP Number)
2. Body must include daily entries showing:
 - a. Date work performed
 - b. Person performing work (initials)
 - c. Detailed description of work/Uniform Task-Based Management System (UTBMS) Litigation Codes
 - d. Actual time in 1/10-hour increments

D. Bill Summary

1. Full name of each timekeeper
2. Status of each timekeeper (i.e., partner, associate, paralegal, etc.)
3. Total hours and total cost for each timekeeper
4. Itemized expenses
5. Total fees and expenses for current billed period
6. Attorney Affidavit must be included with invoice. Experience level (number of years) of each attorney shown on the invoice must be verified and submitted with the affidavit.

E. Time Charges

1. Only actual time for each task
2. Must be in 1/10-hour increments
3. Must be recorded daily

4. Must be services an attorney would provide and not services that can be provided by a secretary or paralegal

F. Single Entry Time

1. Applies if activity time greater than 1/10-hour
2. One activity per entry
3. No bulk or block descriptions

G. Service Description

1. Description of Service to include:
 - a. Nature (e.g., “call to...”)
 - b. Specific activity/project to which work relates
 - c. Subject matter of all communications and the identity and status of the person with whom the communication occurs
 - d. When entering multiple tasks with the same description of service include time of day task was performed in the description field.
2. Generic descriptions not allowed, e.g.:
 - a. “Review File”
 - b. “Attention to”

X. DISBURSEMENTS — INTERNAL

ORM does not pay law office overhead.

ORM pays actual expenses without markup.

A. Itemization

1. Itemization should appear on bills unless documentation is included with bill:
 - a. Date
 - b. Specific description (i.e., telephone, photo, cc)
 - c. Cost

- B. Telephone**
 - 1. ORM pays only actual necessary long distance charges.
- C. Paralegal Services**
 - 1. Work which should be billed as paralegal work:
 - a. Drafting form subpoenas
 - b. Following up on all subpoenas
 - c. Seeking medical information
 - d. Summarizing or digesting depositions (only upon request of ORM adjuster or when trial is imminent)
 - e. Legal research when it can be done by a paralegal
- D. Clerical Services**
 - 1. ORM will not pay for either regular or over time clerical services.
 - 2. Work which should be done by secretaries:
 - a. Making copies
 - b. Faxing documents
 - c. Scheduling depositions, hearings, etc.
- E. Faxes**
 - 1. ORM will only pay actual long distance charges
 - 2. ORM will not pay flat rate or per-page fax
- F. Computerized Legal Research**
 - 1. ORM will not pay for vendor and service charges (e.g., Westlaw, etc.)
 - 2. ORM pays for the professional opinion of attorney, not the cost to obtain the information.
- G. Photocopy**
 - 1. In-House photocopy, maximum \$.10/page
 - 2. Bill should show number of pages copied

XI DISBURSEMENTS — EXTERNAL

ORM will only pay actual costs—no markup allowed

A. Itemization

1. External expenses included on attorney's bill

Include:

- a.** Name of vendor
- b.** Date of service
- c.** Description of service
- d.** Cost

B. Express Mail

1. Use only as necessary and for reasons beyond firm's control.

C. Travel

- 1.** Billing Attorney should consult the ORM adjuster prior to incurring any out of state travel expenses
- 2.** Travel expenses will be reimbursed in accordance with the Louisiana State Travel Rules and Regulations.

D. Documentation

1. Firm must supply receipts/documentation for all expenses.

E. External Professional Service

- 1.** Billing Attorney must consult the ORM adjuster before hiring experts, consultants, investigators, etc.
- 2.** Billing attorney must complete the Request for Contract Expert/Consulting Form and submit it along with fee schedule and Curriculum Vitae to the ORM adjuster before approval will be given. Once approval is granted, the ORM adjuster will request a Contract for Professional Services for the expert/consultant. Forms can be downloaded from <http://doa.louisiana.gov/orm/formsATTY.htm>

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF _____

BEFORE ME, the undersigned authority, personally came and appeared, _____
_____, Attorney at Law, who being first duly
sworn, did depose and state:

That payment of fees for professional services is due from the Office of Risk
Management in accord with the attached invoice or bill which is made a part hereof: and

That this affidavit is hereby prepared in accord with R.S.39:1521.1 (Act 848 of 1982).

Sworn to and subscribed before me this _____ day of _____, 20____.

NOTARY PUBLIC