

YOUNG LAWYERS

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IMPROVING PUBLIC DEFENDER SERVICES WITH THE HELP OF THE YLS

The right to a fair trial is one of the most basic safeguards of our civil rights. The constitutions of both the United States and the State of West Virginia go to great lengths to ensure that people charged with crimes receive counsel regardless of the person's ability to pay. As the Supreme Court of the United States observed in *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S. Ct. 792, 796 (1963), "[t]he right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before

impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." Identical safeguards exist under West Virginia law. As the Supreme Court of Appeals of West Virginia recognized in *State v. England*, 178 W. Va. 648, 650, 363 S.E.2d 725, 727 (1987), ". . . the State must, as a matter of equal protection, provide indigents with the basic tools of an adequate defense or appeal, when those tools are *available* for a price to others." Citing *Griffin v. Illinois*, 351 U.S. 12, 76 S. Ct. 585, 100 L. Ed. 891 (1956). Succinctly stated, "[t]here can be no equal justice where the kind of trial a man gets depends

on the amount of money he has." *Griffin* at 19, 591.

In recognition of the vital importance of providing legal counsel for indigent criminal defendants, the West Virginia Legislature created an executive agency known as Public Defender Services (PDS). Specifically, the Legislature declared, among other things, that ". . . in certain proceedings the state is required to provide high quality legal assistance to indigent persons who would be otherwise unable to afford adequate legal counsel; that providing legal representation to those who face an economic barrier to adequate legal counsel will serve the ends of justice in accordance with rights and privileges guaranteed to all citizens by the

Constitution of the United States of America and the constitution of the state of West Virginia . . .” W. Va. Code § 29-21-1.

According to W. Va. Code § 29-21-3, the PDS “. . . shall administer, coordinate and evaluate programs by which the state provides legal representation to indigent persons, monitor the progress of various delivery systems and recommend improvements.” Based on its Fiscal Year 2012-2013 Annual Report (the “Annual Report”), it is clear that PDS is working hard to accomplish its mission and is effectively administering and coordinating legal services for the indigent. See <http://www.pds.wv.gov/Documents/2013%20ANNUAL%20REPORT.pdf>. The purpose of this article is to aid the PDS in the recommendation of improvements.

In consultation with panel attorneys providing legal services for indigent criminal defendants, three areas for improvement have been identified: (1) time for reimbursement of vouchers; (2) the submission of fraudulent vouchers; and (3) the hourly rate for legal services. The following paragraphs will provide some background information on each area for improvement.

Time for Reimbursement of Vouchers

Pursuant to W. Va. Code § 29-21-13a(h), vouchers are required to be reimbursed within 90 days of receipt. Vouchers not reimbursed within 90 days bear interest at the legal rate in effect in the year the payment was due. In an effort to decrease the reimbursement time for vouchers, the PDS has implemented the Online Voucher System (OVS). The OVS allows attorneys to submit their vouchers electronically. PDS can then review the electronic vouchers and make changes as necessary. Unfortunately, several factors have prevented the OVS from reaching its full potential and some lawyers are still seeing long lag times on the reimbursement on their vouchers.

Submission of Fraudulent Vouchers

Regrettably, fraud continues to be a problem that plagues the PDS. As the Executive Director of the PDS observed in the January/February 2014 Newsletter, “[i]f one reviews the published list of attorneys and the amounts that are paid, the pure mathematical analysis is that many attorneys in this state are consistently billing in excess of 3,000 hours a year. As a former practitioner, I know this to be virtually impossible, especially over a three or four year

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period. And, sadly, I know of certain attorneys whose vouchers, when combined, have billable days in excess of 30 and 40 hours, which, obviously, is impossible except perhaps on another planet.” While there are some safeguards in place to flag suspicious vouchers, there appears to be a need to more comprehensively address the issue of fraudulent vouchers.

Hourly Rate for Legal Services

According to W. Va. Code § 29-21-13a(d)(1-3), compensation for out-of-court work is set at \$45 per hour, compensation for in-court work is set at \$65 per hour, and cases other than felonies that carry a life sentence are capped at \$3,000. It appears that these levels of compensation have been in effect since at least 1990. Based on the significant increase in costs of goods and services over the last 25 years, it may be time to revisit the amount of compensation that attorneys receive in the representation of the indigent.

Over the coming months, the Young Lawyers Section of the State Bar (the YLS) will work with practitioners and the PDS to find ways to reduce the time for reimbursement of vouchers, reduce the number of fraudulent vouchers and potentially increase the hourly rate for legal services. **WV**