

## ITEMIZED STATEMENT OF LEGAL SERVICES

by John AllenClient John Doe

Following services were rendered to this client in connection with the case(s) or  
 case(s) listed in Item II of this voucher.

TIME CODE CLASSIFICATIONSIN-COURTOUT-OF-COURT

P Preliminary Hearing  
 A Arraignment/Plea  
 M Motions/Hearings  
 W Waiting in Court  
 T Trial  
 O Other (must specify)

D Driving/Travel  
 C Conferences with Client/Witnesses  
 R Research, Preparation of Pleading  
 I Investigation by Counsel  
 N Negotiations of Pleas  
 O Other (must specify)

ED TIME MUST BE IN TENTHS OF AN HOUR

\*\*\*\*\*  
 \* IN-COURT \*  
 \*\*\*\*\*

\*\*\*\*\*  
 \* OUT-OF-COURT \*  
 \*\*\*\*\*

Date	Time Code	Atty Time	Time Code	Atty Time	Location of Activities Further Explanations, Notes or Comments
2-94		.	O	2.0	Open file
4-94		.	R	6.0	
10-94		.	C	4.0	
2-94	P	5.0		.	
	M	7.0		.	
5-94	M	8.0	C	5.0	
9-94	T	8.0	C	1.0	
11-94	O	1.0		.	Sentencing hearing
13-94		.	O	2.0	Close file, prepare orders
		.		.	

r of Additional Time Sheets \_\_\_\_

TOTAL TIME IN COURT 29 hrs. X \$65.00 = \$1,885.00  
 TOTAL TIME OUT OF COURT 20 hrs. X \$45.00 = \$ 900.00  
 TOTAL FEE CLAIM OR \$2,785.00  
 STATUTORY COMP. LIMIT \$ \_\_\_\_\_

PDS USE ONLY

Total hours for which compensation approved: In Court \_\_\_\_ Out of Court \_\_\_\_

Total Compensation For Services \$ \_\_\_\_\_

# **ITEMIZED STATEMENT OF EXPENSES**

Attorney John Allen Client John Doe

Expenses incurred in representing this client in the case(s) or proceeding(s) listed in Item II of this voucher.

## **EXPENSE CODE:**

- |                                  |  |
|----------------------------------|--|
| 1. Expert Witness                | 5. Miscellaneous; Office Copies/<br>Postage/Telephone/Supplies |
| 2. Court Reporter                | 6. Paralegal Fees  |
| 3. Investigative Service         | 7. Other (Please Specify) _____                                |
| 4. Mileage/Parking/Meals/Lodging |  |

**EXPENSES PREVIOUSLY SUBMITTED FOR THIS CASE AND PAID BY PDS DIRECTLY TO SERVICE PROVIDER**

<u>DATE</u>	<u>EXP. CODE</u>	<u>DIRECT EXPENSE INVOICE NUMBER</u>	<u>NOTES OR COMMENTS</u>	<u>COST</u>
11-8-94	3	8649	David Stone, Investigator	456.00

**EXPENSE REIMBURSEMENT REQUESTED THIS CLAIM**  
(Attach itemized invoices or receipts)

<u>DATE</u>	<u>EXP. CODE</u>	<u>NOTES OR COMMENTS</u>	
11-3-94	1	David Smith, Psychiatrist	1,000.00
11-3-94	2	Cindy White, Court Reporter	200.00
11-3-94	3	Donald Whitt, Investigator	200.00
11-3-94	4	Mileage, 200 miles at .285 mile	57.00
11-5-94	5	Photocopies 430 at \$.10	43.00
11-5-94	1	Sue Johnson, DNA Expert	500.00

Number of additional expense sheets \_\_\_\_\_

TOTAL EXPENSES PAID DIRECTLY TO SERVICE PROVIDERS	\$ 456.00
TOTAL EXPENSES CLAIMED THIS VOUCHER	\$2,000.00
TOTAL EXPENSES FOR THIS PROCEEDING	\$2,456.00

## **PDS USE ONLY**

- |          |          |
|----------|----------|
| 1. _____ | 5. _____ |
| 2. _____ | 6. _____ |
| 3. _____ | 7. _____ |
| 4. _____ |          |

[Sample letter sent to Attorney for Defense Counsel Voucher]

John Allen  
Attorney at Law  
92 East Washington Avenue  
Charleston, West Virginia 25301

VENDOR ID: 35598

FIMS ID# I 17788889

ATTENTION: BOOKKEEPING DEPARTMENT

The following cases were submitted to the WV State Auditor's Office on 2-14-95 requesting a check which represents reimbursement for fees and expenses for the listed invoices. Please allow ample time for processing.

VOICE(S)	ATTORNEY	DEFENDANT	CASE	AMOUNT
15643	John Allen	John Doe	94-F-88	\$4,785.00
CHECK TOTAL				\$4,785.00

The above check total will be reported under the Tax Identification Number 123456789.

IMPORTANT NOTICE

TO PREVENT ANY DELAY IN PROCESSING YOUR VOUCHERS, PLEASE NOTIFY OUR AGENCY WHEN YOU HAVE A NEW AND/OR ADDRESS CHANGE.

THANK YOU

## **APPENDIX B**

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY

Case No. \_\_\_\_\_

**ORDER APPROVING PAYMENT OF  
APPOINTED COUNSEL FEES AND EXPENSES**

On a former date an affidavit was filed in this Court reciting that \_\_\_\_\_ (Name)

as financially unable to employ counsel for representation in certain proceedings before this Court; and the Court being of the opinion the eligibility requirements of W.Va. Code § 29-21-1, et seq., were satisfied appointed \_\_\_\_\_ a licensed Attorney at Law practicing before the Bar of this Court as counsel

Counsel informs this Court these proceedings have been completed, and has tendered to the Court a defense counsel voucher indicating the services performed and the expenses incurred in connection with the presentation of this client. This Court has inspected said voucher and accompanying documentation and does hereby approve a payment of: \$ \_\_\_\_\_ for the services of counsel and for expenses incurred in connection with the representation; which amount shall be taxed by the Circuit Clerk a part of the costs of these proceedings.

Accordingly it is HEREBY ORDERED:

- (1) That the Clerk forward to Public Defender Services two certified copies of this Order together with two copies of the defense counsel voucher and all attachments;
- (2) That Public Defender Services issue payment in the appropriate amount to:

\_\_\_\_\_  
Tax Identification Number

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
JUDGE

**IMPORTANT NOTE:** All required orders of court must be certified copies and must bear the Circuit Clerk's seal.

[Sample Form Orders:]

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Case No. \_\_\_\_\_

**ORDER APPOINTING COUNSEL**

An affidavit has been filed with this Court reciting that \_\_\_\_\_  
(NAME)  
is financially unable to employ counsel for representation in certain proceedings before this Court. After reviewing the affidavit and considering the matter the Court is of the opinion the eligibility requirements of W.Va. Code § 29-21-1, et seq., are satisfied.

Accordingly, the Court ORDERS: That \_\_\_\_\_ licensed Attorney at Law practicing before the Bar of this Court is appointed to represent \_\_\_\_\_ in the following described proceedings before this Court:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
JUDGE

**IMPORTANT NOTE:** All required orders of court must be certified copies and must bear the Circuit Clerk's seal.

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY

Case No. \_\_\_\_\_

**ORDER APPROVING PAYMENT OF DIRECT EXPENSES**

On a former date \_\_\_\_\_ filed in this Court an affidavit reciting financial inability to employ counsel for representation in connection with certain proceedings before this Court; and the Court being of the opinion the eligibility requirements of W.Va. Code § 29-21-1, et seq., were satisfied appointed \_\_\_\_\_ a licensed Attorney at Law practicing before the Bar of this Court as counsel.

Counsel informs this Court that in order to provide adequate representation it was necessary to retain to provide the following services to the defense:

\_\_\_\_\_. This Court has considered these matters and being of the opinion the request is appropriate, approves this request.

Accordingly it is **HEREBY ORDERED**:

- (1) That the Clerk forward to Public Defender Services a certified copy of this Order together with a copy of Public Defender Services' Direct Expense Payment form; and
- (2) That Public Defender Services issue payment in the appropriate amount to:

\_\_\_\_\_ whose TIN is \_\_\_\_\_  
Tax Identification Number  
in the amount of \$\_\_\_\_\_ as payment for the services described in the Direct Expense Payment form and accompanying invoice.

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
JUDGE

**IMPORTANT NOTE:** All required orders of court must be certified copies and must bear the Circuit Clerk's seal.

## **APPENDIX C**



**March, 1996**

**CHECK LIST FOR APPOINTED COUNSEL VOUCHERS**

**Please use PUBLIC DEFENDER SERVICES' Voucher forms revised on 1/1/95. Two Copies of the ENTIRE Voucher must be submitted. To receive payment a current W-9 must be on file in our office.**

**ORDER:**

- \* Client's name and case number (must be the same on all pages of the voucher and any invoices).**
- \* Entered date (Month, Day, Year), changes must be initialed.**
- \* Judge's signature with date.**
- \* Original seal (State Auditor will not accept photocopies).**
- \* Payee's name and correct tax identification number as reported to the IRS.**
- \* Attorney's fees are limited to \$3,000.00 in non-capital cases. This limit may be exceeded for good cause shown. (W.Va. Code 29-21-13a(d)(3). Judges order must recite this finding.**
- \* If dollar amounts are altered, initials of the person making the change must appear.**

**PAGE ONE OF VOUCHER:**

- \* Invoice number of prior direct expense, if any.**
- \* Type of proceeding.**
- \* Disposition date.**
- \* Specific criminal charge. (NOT WV code citation).**
- \* Attorney's signature with date.**
- \* Name of person or firm receiving payment and tax identification number should be the same as reported to the IRS and agree with the payee and tax identification number on the order approving payment.**
- \* Grand total of all fees and expenses.**
- \* If supplemental voucher, specify by marking appropriate box.**

**NOTE: Claims submitted more than four years after the last date of service are not compensable. 29-21-13a(a).**

## **PAGE TWO OF VOUCHER - ITEMIZED STATEMENT OF LEGAL SERVICES:**

- Time must be in TENTHS of an hour. (§ 29-21-13a(g)).
- All entries must have complete date (Month, Day, Year) and be in chronological order.
- Time code for each entry.
- Computation of fees for in-court and out-of-court time (for each page). Do not have multiple totals (one per page).
- List the grand totals for in- and out-of-court with the total dollar amounts on the first page of the Itemized Statement of Legal Services.

## **PAGE THREE OF VOUCHER - ITEMIZED STATEMENT OF EXPENSES:**

- Top section is only for Direct Expenses previously paid by PDS.
- Any expense of \$10.00 or more needs to be fully itemized and/or itemized invoice attached.
- Mileage: must be itemized (date, number of miles, rate per mile). The reimbursement rate for use of a personal vehicle is at the following rates:

Dates prior to	-	August 16, 1990	\$ .20 per mile
August 16, 1990 to	-	June 30, 1992	\$ .23 per mile
July 1, 1992 to	-	December 31, 1992	\$ .26 per mile
January 1, 1993 to	-	June 30, 1993	\$ .275 per mile
July 1, 1993 to	-	December 31, 1993	\$ .28 per mile
January 1, 1994	-	until revised	\$ .285 per mile

**Note: Travel and meal reimbursement is according to the Governor's Travel Rules and Regulations authorized by Travel Management Office.**

- Meal reimbursement: list the date and time of departure and date and time of return.
- Court Reporters: A complete itemized invoice (date of service, number of pages, rate per page) must be attached. If more than one original of the transcript is being charged please note on invoice who received each copy. Unless requested by the attorney, copies are not reimbursable.
- Supreme Court pays for transcripts on appeals. PDS pays for \$2.00 a page for original and \$0.25 for transcripts of other proceedings (29-21-13a(e)); However,
- Effective September 12, 1994, PDS no longer pays for transcripts in preliminary and magistrate court jury trials. PDS will reimburse for transcribing tapes at the rate approved by Supreme Court rule.
- Investigative services; expert witnesses: Invoices must be attached and fully itemized. For each date of service list hours worked, rate per hour, mileage, rate per mile and a brief description of services rendered. \$30.00 maximum reimbursement per hour for services provided 7/1/95 and after.
- In house photocopies: \$.10 per page maximum for copies made 7/1/95 and after.

**Revised March, 1996**

**CHECK LIST FOR DIRECT EXPENSE VOUCHERS**

**Please use Public Defender Services' Voucher forms revised on 1/1/95. Two Copies of the ENTIRE Voucher must be submitted. Direct expense vouchers are paid directly to service providers only. To receive payment a CURRENT W-9 must be on file in our office.**

**\*\* The minimum amount to obtain a direct expense payment is \$200.00.**

**Direct Expense Order:**

- \* Client's name and case number must be the same on all pages of the voucher and any invoices.**
- \* The Service provider's name and type of service.**
- \* Entered date (Month, Day, Year): Changes must be initialed.**
- \* Judge's signature.**
- \* Original seal (State Auditor will not accept photocopies).**
- \* Payee's name and correct tax identification number.**
- \* If dollar amounts are altered, initials of the person making the change must appear.**

**Front Page of Voucher:**

- \* Invoice number of prior direct expense (if applicable).**
- \* Type of proceeding.**
- \* Specific criminal charge. (NOT WV Code Citation).**
- \* Attorney's signature and date.**
- \* Service provider receiving payment needs to provide name and tax identification number as reported to the IRS; order approving payment must have same name.**
- \* Please complete the address and telephone number.**
- \* Expense totals: Include only those for the appointed attorney submitting the voucher. Do not include expenses claimed by another attorney appointed to the same case.**
- \* Principal office location: Please indicate the county where the attorney's office is located.**

**Back Page:**

- Top section is only for Direct Expenses previously paid by PDS.
- Any expense of \$10.00 or more on the service provider's invoice must be fully itemized; attach an itemized invoice where applicable.
- Mileage: must be itemized (date, number of miles, rate per mile). Reimbursement rates for use of a personal vehicle are:

Dates prior to	-	August 16, 1990	\$ .20 per mile
August 16, 1990 to	-	June 30, 1992	\$ .23 per mile
July 1, 1992 to	-	December 31, 1992	\$ .26 per mile
January 1, 1993 to	-	June 30, 1993	\$ .275 per mile
July 1, 1993 to	-	December 31, 1993	\$ .28 per mile
January 1, 1994	-	until revised	\$ .285 per mile

- Meal reimbursement: List the date and time of departure as well as the date and time of return.

**NOTE:** Travel and meal reimbursement is according to the Governor's Travel Rules and Regulations authorized by Travel Management Office.

- Court Reporters: A complete itemized invoice date of service, number of pages, rate per page must be attached. If more than one original of the transcript is being charged please note on invoice the recipient of each copy. Unless requested by the attorney, copies are not reimbursable.
- Supreme Court pays for transcripts on appeals. PDS pays for \$2.00 a page for original and \$0.25 for transcripts of other proceedings (29-21-13a(e)).
- Effective September 12, 1994, PDS will no longer pay for transcripts in preliminary and magistrate court jury trials. PDS will reimburse for transcribing tapes at the rate set by Supreme Court rule.
- Investigative services; expert witnesses: Invoices must be attached and fully itemized. For each date of service list hours worked, rate per hour, mileage, rate per mile and a brief description of services rendered.

- INVESTIGATOR FEES: PDS will reimburse a maximum of \$30.00 per hour for services provided 7/1/95 and after.
- IN-HOUSE PHOTOCOPIES: PDS will reimburse \$.10 per page for copies made 7/1/95 and after.

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## PUBLIC DEFENDER SERVICES

Bldg 3 Rm 330, 1900 Kanawha Blvd E, Charleston, WV 25305-0730  
 Telephone: (304) 558-3905 Office Fax: (304) 558-1098  
 Voucher Processing Fax Number: (304) 558-6612

Welcome to the home page of West Virginia Public Defender Services.

Public Defender Services funds all indigent defense for the State of West Virginia. There are two modes of representation:

- Private attorneys appointed case by case, and
- Full-time Public Defenders.

Public Defender Services does not provide representation from this office except in a limited number of appellate matters. However, research materials are available for a minimal cost through the Criminal Law Research Center.

Public Defender Services pays each private attorney and other service provider for each case pursuant to a court order, following review by a Circuit Judge. Full-time Public Defenders are employees of a Public Defender Corporation organized at the Circuit Court level. These Corporations are separate legal entities but are funded by Public Defender Services. Included are a map showing Judicial Circuits served by Public Defender Corporations and an office directory of Public Defender offices.

In addition to criminal charges, Public Defender Services pays for representation in abuse and neglect, mental commitment, juvenile proceedings and other related matters. For specific information, consult the site map for the relevant division or person whom you may want to contact.

ORGANIZATION CHART

NEWS & UPCOMING EVENTS

OFFICE DIRECTORY

VOUCHER INFORMATION

CRIMINAL LAW RESEARCH CENTER

PUBLIC DEFENDER CORPORATIONS

APPELLATE DIVISION

FISCAL YEAR REPORTS

PERFORMANCE EVALUATION

WVU PUBLIC AFFAIRS

REPORTER - Legal Aid & Public Defender Study

FAQ

JUVENILE DEFENSE ASSISTANCE

ENHANCEMENTS

Webmaster: Sheila Coughlin  
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 Last Update: 7/23/2004

**WV PUBLIC DEFENDER SERVICES**  
**CHECK LIST FOR APPOINTED COUNSEL VOUCHERS**

Revised January 2004

Please use PUBLIC DEFENDER SERVICES' (PDS) VOUCHER FORMS revised on March 2002. The Appointed Counsel Voucher consists of the following:

- ☐ Order Approving Payment
- ☐ Defense Counsel Voucher Information Page
- ☐ Itemized Statement of Legal Services Page One
- ☐ Itemized Statement of Expenses Page One
- ☐ Itemized Statement of Legal Services Additional Page
- ☐ Itemized Statement of Expenses Additional Page

Public Defender Services requires two certified copies of the Appointed Counsel Voucher, and invoices (if applicable). Please fill out the pages of the voucher needed. To reduce the number of copies **do not** send blank pages of the voucher. For copies of the checklist and Appointed Counsel Voucher Form contact our office at (304) 558-3905 or our web site: <http://www.wvpds.org>.

To receive payment, a W-9 form must be on file in our office. The payee name and tax identification number on the voucher must match the name and number on the W-9. Please contact Sheila Coughlin by phone: (304) 558-3905 or email: [scoughlin@wvpds.org](mailto:scoughlin@wvpds.org). The W-9 Form can be found on the IRS web site: [http://www.irs.gov/forms\\_pubs/forms.html](http://www.irs.gov/forms_pubs/forms.html).

Claims submitted more than four years after the last date of service are not compensable. See W.Va Code 29-21-13a(a).

Juvenile or Child Abuse & Neglect cases can be billed after each Disposition Date (i.e., Improvement period). These vouchers are **not** supplemental to each other.

Six months after the date of appointment, the appointed attorney may submit an "interim voucher". If there has been an interim voucher paid on a case, the second voucher submitted **MUST** be the final voucher.

**PLEASE NOTE:**

When resubmitting vouchers returned (bucked back) for errors, please **DO NOT** redo the entire voucher **OR** use white out on the voucher. Every voucher received by PDS is audited and entered into our computer system which assigns the voucher an Invoice Number. The Invoice Number is the nine digit number listed at the top of the Order Approving Payment. In order to prevent duplication or further delay in processing of the voucher, please attach or correct what is requested on the letter and return the entire voucher along with the Buck Letter to PDS. The "bucked" vouchers are pulled from the regular mail and processed as soon as possible because they have already been through the system and do not require complete auditing and re-entering into the computer system.

### ORDER APPROVING PAYMENT:

- ☐ **For Judicial Use Only:** Reason for appointment must be checked by the Judge.
- ☐ **Client's name and case number** must be the same on all pages of the voucher and any invoices.
- ☐ **Entered date** must be a complete date (Month, Day, Year) and any changes to this date must be initialed.
- ☐ Must have the **Judge's signature**.
- ☐ Must have the **embossed (raised) seal**. The State Auditor will not accept photocopies.
- ☐ Enter the **payee's name and tax identification number** as reported to the IRS.
- ☐ **Attorney's fees** are limited to \$3,000 unless otherwise ordered or life imprisonment applies. ( 29-21-23a(d) (3)).
- ☐ If the **dollar amount was altered or any written changes** appear on the order, the changes must be initialed by the judge.

### DEFENSE COUNSEL VOUCHER PAGE:

- ☐ **Type of proceeding** must be on the voucher.
- ☐ **Disposition date** must be on the voucher. The disposition date is a judicial proceeding in which a criminal defendant is **sentenced or otherwise disposed of**.
- ☐ The **specific criminal charge(s)** must be listed for each case number. Please specify 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> offense. ALSO list the WV code citation.
- ☐ Must have the **attorney's signature with date**.
- ☐ **Name of person or firm receiving payment and tax identification number** must be the same as reported to the IRS and agree with the payee and tax identification number on the Order Approving Payment.
- ☐ **Complete** the Fee, Expense, and Total Claimed section.
- ☐ If the voucher is a **supplemental voucher**, specify by marking the appropriate box. If there is a question as to whether or not the voucher is a supplemental refer to the Supplemental Section of the Voucher Instructions.

### ITEMIZED STATEMENT OF LEGAL SERVICES - Page One and Additional Page:

**NOTE:** When voucher time exceeds the specified twenty (20) entries on Page One of the Itemized Statement of Legal Services, please utilize the Additional Page (cuts down the number of copies).

- ☐ Time **must** be in **TENTHS** of an hour. ( 29-21-13a(g)).
- ☐ All entries must have **complete date** (Month, Day, Year) and **must** be in chronological order.
- ☐ **Time code** is needed for each entry.
- ☐ **Complete** "Total This Sheet" Section(s). This section is for total of court hours (in and out) per page.
- ☐ **Complete** the "Grand Total" Section. This section is the grand total of court hours multiplied by the hourly rate of \$45 or \$65. Do not have multiple "grand totals" (i.e. one per page).

## ITEMIZED STATEMENT OF EXPENSES - Page One and Additional Pages:

**NOTE:** When voucher time exceeds the specified thirty (30) entries on Page One of the Itemized Statement of Expenses, please utilize the Additional Page (cuts down the number of copies). The itemization listed below also applies to **all** service providers.

- ☐ Any expense of \$10.00 or more needs to be fully itemized and/or an itemized invoice must be attached.
- ☐ **In house photocopies and faxes:** \$.10 per page maximum for copies and faxes.
- ☐ **Trial Supplies:** PDS reimburses for expenses unique to the trial (i.e., exhibits). Supplies which are reusable for any purpose, like envelopes, pens, note pads, etc are considered office overhead and are not reimbursable.
- ☐ **NOTE:** Travel and meal reimbursement are made according to the Governor's Travel Rules and Regulations authorized by Travel Management Office(TMO). Web site address for TMO:  
<http://www.state.wv.us/admin/purchase/travel/default.htm>.
- ☐ **Meal reimbursement:** Allowable only on overnight stays. Must list the date and time of departure and date and time of return.
- ☐ **Mileage:** Must be itemized (date, number of miles, rate per mile). The reimbursement rate for use of a personal vehicle is as follows:

Dates prior to August 16, 1990	\$.20 per mile
August 16, 1990 - June 30, 1992	\$.23 per mile
July 1, 1992 - December 31, 1992	\$.26 per mile
January 1, 1993 - June 30, 1993	\$.275 per mile
July 1, 1993 - December 31, 1993	\$.28 per mile
January 1, 1994 - June 30, 1996	\$.285 per mile
July 1, 1996 - January 11, 1998	\$.31 per mile
January 12, 1998 - March 31, 1999	\$.32 per mile
April 1, 1999 - December 31, 1999	\$.31 per mile
January 1, 2000 - December 31, 2000	\$.325 per mile
January 1, 2001 - December 31, 2001	\$.345 per mile
January 1, 2002 - December 31, 2002	\$.365 per mile
January 1, 2003 - December 31, 2003	\$.36 per mile
January 1, 2004 - Until revised	\$.375 per mile

- ☐ **Court Reporters:** A complete itemized invoice on court reporter's letterhead (date of service; number of pages; rate per page; type of proceeding transcript, i.e. magistrate or circuit ) must be attached. Reimbursements are as follows:

**Circuit Court Hearings:**

**Grand Jury Transcripts:**

**Depositions (In or Out of Court):**

\$2.85 Per Page for Original

\$1.00 Per Page for Copy

\$25 Appearance Fee

Not allowed if there is a transcript

No Mileage Allowed

**Magistrate Hearings:**

**Preliminary Hearings (Held in Magistrate or Circuit Court):**

\$1.60 Per Page for Expedited Typing

\$1.50 Per Page for Typing

\$0.50 Per Page for Copy

No Appearance Fees Allowed

\$5.00 Fee for Tape

- ☐ **Investigative services:** A complete itemized invoice on investigator's letterhead must be attached. Invoice must show dates of service, number of hours worked, rate per hour, mileage, rate per mile and a brief description of services rendered for each entry. For investigative services PDS allows a maximum of \$30.00 per hour.
- ☐ **Expert witnesses:** A complete itemized invoice on expert witness' letterhead. Invoice must show the date of service, service provided, hourly rate.
- ☐ **Paralegal Fees:** A complete itemized invoice on paralegal's letterhead must be attached. Paralegal Fees are reimbursable up to \$20.00 per hour (out of court only; no payment allowed for in court work). Invoice must show dates of service, number of hours worked, brief description of activity, rate per hour.

FOR JUDICIAL USE ONLY  
Reason for Appointment (Check One):  
☐ Conflict in Public Defender Office  
☐ Case Overload in Public Defender Office  
☐ No Public Defender Office  
☐ Other

PDS USE ONLY  
INVOICE NUMBER

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY

STATE OF WEST VIRGINIA  
VS.

CASE NUMBER \_\_\_\_\_

**ORDER APPROVING PAYMENT OF  
APPOINTED COUNSEL FEES AND EXPENSES**

On a former date an affidavit was filed in this Court reciting that \_\_\_\_\_ as financially unable to employ counsel for representation in certain proceedings before this Court; and the Court being of the opinion the eligibility requirements of W.Va. Code § 29-21-1, et seq, were satisfied appointed \_\_\_\_\_ a licensed Attorney at Law practicing before the Bar of this Court as counsel.

Counsel informs this Court these proceedings have been completed, and has tendered to the Court a defense counsel voucher indicating the services performed and the expenses incurred in connection with the representation of this client. This Court has inspected said voucher and accompanying documentation and does hereby approve a payment of: \$ \_\_\_\_\_ for services of counsel and for expenses incurred in connection with the representation; which amount shall be recorded by the Circuit Clerk a part of the costs of these proceedings.

Accordingly it is **HEREBY ORDERED**:

- (1) That the Clerk forward to Public Defender Services two certified copies of this Order together with two copies of the defense counsel voucher and all attachments;
- (2) That Public Defender Services issue payment in the appropriate amount to:

\_\_\_\_\_, Tax Identification Number

ENTER THIS \_\_\_\_\_, DAY OF \_\_\_\_\_,  
(date) (month) (year)

\_\_\_\_\_  
JUDGE

**IMPORTANT NOTE:** All required orders of court must be certified copies and must bear the Circuit Clerk's seal.

**PUBLIC DEFENDER SERVICES**  
**Defense Counsel Voucher Information Page**

From: \_\_\_\_\_  
Name of Appointed Attorney

This claim relates to proceedings in \_\_\_\_\_ County

Client is: \_\_\_\_\_ Adult \_\_\_\_\_ Juvenile      Date of Appointment \_\_\_\_\_

Client \_\_\_\_\_

I. \_\_\_\_\_  
Type of proceeding (use letter codes). \_\_\_\_\_

- |                                |                                   |                |
|--------------------------------|-----------------------------------|----------------|
| A. Felony                      | H. Child Abuse & Neglect          |                |
| B. Misdemeanor                 | I. Habeas Corpus (Cir. Ct.)       | N. Fugitive    |
| C. Mental Hygiene              | J. Supreme Court                  | O. Extradition |
| D. Juvenile Proceedings        | K. Magistrate Court Appeal        | P. Other _____ |
| F. Parole Probation Revocation | L. Termination of Parental Rights | (Specify)      |
| G. Mandamus Prohibition        | M. Contempt                       |                |

II.		Specific Criminal Charge	Case Number	Disposition Date	(A) "Non-Final Disposition (e.g. improvement period) (specify)
(1)	_____	_____	_____	_____	_____
(2)	_____	_____	_____	_____	_____
(3)	_____	_____	_____	Last Date of Service: _____	(B) Is this a Supplemental Voucher
(4)	_____	_____	_____	_____	Yes _____; No _____
(5)	_____	_____	_____	_____	If Yes, please reference
(6)	_____	_____	_____	_____	WVFIMS # _____ Date _____

III.  
Fee Claimed \$ \_\_\_\_\_  
Expense Claimed \$ \_\_\_\_\_  
Total Claimed \$ \_\_\_\_\_

PDS USE ONLY	
Actual Fee	\$ _____
Actual Expense	\$ _____
Actual Total	\$ _____

I hereby affirm that the above statements are true and correct.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ATTORNEY SIGNATURE

\_\_\_\_\_  
NAME OF PERSON RECEIVING PAYMENT

\_\_\_\_\_  
TAX IDENTIFICATION NUMBER

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TELEPHONE NUMBER



Client \_\_\_\_\_

The following services were rendered to this client in connection with the case(s) or proceeding(s) listed in Item II of this voucher.

## TIME CODE CLASSIFICATIONS

**IN-COURT**

- P. Preliminary Hearing**  
**H. Hearing**  
**A. Arraignment/Plea**  
**M. Motions**  
**W. Waiting in Court**  
**T. Trial**  
**O. Other (Must specify)**

**OUT-OF-COURT**

- D. Driving/Travel**  
**C. Conferences with Client/Witnesses**  
**R. Research, Preparation of Pleading**  
**I. Investigation**  
**N. Negotiations of Pleas**  
**O. Other (Must specify)**

**ITEMIZED TIME MUST BE IN TENTHS OF AN HOUR**

[illegible]**Total this sheet**

(IN COURT)

**(OUT-OF-COURT)**

### GRAND TOTALS

**TOTAL TIME IN COURT****TOTAL TIME OUT-OF-COURT**

**X \$65.00 = \$**

**X \$45.00 = \$**

TOTAL FEE CLAIM OR \$

STATUTORY COMP. LIMIT \$

## ITEMIZED STATEMENT OF EXPENSES PAGE ONE

Attorney \_\_\_\_\_ Client \_\_\_\_\_

Expenses incurred in representing this client in the case(s) or proceeding(s) listed in Item II of this voucher.

**EXPENSE CODE:**

1. Expert Witness  
2. Court Reporter  
3. Investigative Service  
4. Mileage/Parking  
Meals/Lodging
5. Miscellaneous; Copies/Postage/  
Telephone/Trial Supplies  
6. Paralegal Fees  
7. Other (Please Specify) \_\_\_\_\_

[illegible]

**TOTAL EXPENSES THIS SHEET** \$ \_\_\_\_\_

**TOTAL EXPENSES FOR THIS PROCEEDING** **\$**\_\_\_\_\_

<u>PDS USE ONLY</u>	
1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	

Attorney \_\_\_\_\_ Client \_\_\_\_\_

**TEMIZED TIME MUST BE IN TENTHS OF AN HOUR**

[illegible]**Total this sheet**

(IN COURT)

**(OUT-OF-COURT)**

Client \_\_\_\_\_

[illegible]

\$\_\_\_\_\_

**WV PUBLIC DEFENDER SERVICES**  
**CHECK LIST FOR DIRECT EXPENSE VOUCHERS**  
**Revised January 2004**

Please use PUBLIC DEFENDER SERVICES' (PDS) VOUCHER FORMS revised on December 2001. The Direct Expense Voucher consists of the following: Order Approving Payment, Defense Expense Voucher. Public Defender Services requires two certified copies of the Direct Expense Voucher and invoices. For copies of the checklist and Direct Expense Voucher Form contact our office at (304) 558-3905 or our web site: <http://www.wvpds.org>.

To receive payment, a W-9 form must be on file in our office. The payee name and tax identification number on the voucher must match the name and number on the W-9. Please contact Sheila Coughlin by phone: (304) 558-3905 or email: [scoughlin@wvpds.org](mailto:scoughlin@wvpds.org). The W-9 Form can be found on the IRS web site: [http://www.irs.gov/forms\\_pubs/forms.html](http://www.irs.gov/forms_pubs/forms.html).

**NOTE: The direct expense invoice must be \$200 or more to be eligible for the service provider to bill as a direct expense.**

**PLEASE NOTE:**

When resubmitting vouchers returned (bucked back) for errors, please **DO NOT** redo the entire voucher **OR** use white out on the voucher. Every voucher received by PDS is audited and entered into our computer system which assigns the voucher an Invoice Number. The Invoice Number is the nine digit number listed at the top of the Order Approving Payment. In order to prevent duplication or further delay in processing of the voucher, please attach or correct what is requested on the letter and return the entire voucher along with the Buck Letter to PDS. The "bucked" vouchers are pulled from the regular mail and processed as soon as possible because they have already been through the system and do not require complete auditing and re-entering into the computer system.

#### ORDER APPROVING PAYMENT:

- ☐ Client's name and case number must be the same on all pages of the voucher and any invoices.
- ☐ Entered date must be a complete date (Month, Day, Year) and any changes to this date must be initialed.
- ☐ Must have the Judge's signature.
- ☐ Must have the embossed (raised) seal. The State Auditor will not accept photocopies.
- ☐ Enter the payee's name and tax identification number as reported to the IRS.
- ☐ If the dollar amount was altered or any written changes appear on the order, the changes must be initialed by the judge.

#### DIRECT EXPENSE VOUCHER:

- ☐ Type of proceeding must be on the voucher.
- ☐ The specific criminal charge(s) for each case number must be listed. ALSO list the WV code citation.
- ☐ Must have the attorney's signature with date.
- ☐ Must have appointed attorney's name, address, and telephone number.
- ☐ Name of person or firm receiving payment and tax identification number must be the same as reported to the IRS and agree with the payee and tax identification number on the Order Approving Payment.
- ☐ Must have Payee's complete address and telephone number.
- ☐ Expense totals: Include only those for the appointed attorney submitting the direct expense voucher. Do not include expenses claimed by another attorney appointed to the same case.

#### INVOICE REQUIREMENTS:

- ☐ Any expense of \$10.00 or more needs to be fully itemized and/or an itemized invoice must be attached.
- ☐ In house photocopies and faxes: \$.10 per page maximum for copies and faxes.
- ☐ Trial Supplies: PDS reimburses for expenses unique to the trial (i.e., exhibits). Supplies which are reusable for any purpose, like envelopes, pens, note pads, etc., are considered office overhead and are not reimbursable.
- ☐ **NOTE:** Travel and meal reimbursement are made according to the Governor's Travel Rules and Regulations authorized by Travel Management Office. Web site address:  
<http://www.state.wv.us/admin/purchase/travel/default.htm>.
- ☐ Meal reimbursement: Allowable only on overnight stays. Must list the date and time of departure and date and time of return.

- ☐ **Mileage:** Must be itemized (date, number of miles, rate per mile). The reimbursement rate for use of a personal vehicle is as follows:

Dates prior to August 16, 1990	\$.20 per mile
August 16, 1990 - June 30, 1992	\$.23 per mile
July 1, 1992 - December 31, 1992	\$.26 per mile
January 1, 1993 - June 30, 1993	\$.275 per mile
July 1, 1993 - December 31, 1993	\$.28 per mile
January 1, 1994 - June 30, 1996	\$.285 per mile
July 1, 1996 - January 11, 1998	\$.31 per mile
January 12, 1998 - March 31, 1999	\$.32 per mile
April 1, 1999 - December 31, 1999	\$.31 per mile
January 1, 2000 - December 31, 2000	\$.325 per mile
January 1, 2001 - December 31, 2001	\$.345 per mile
January 1, 2002 - December 31, 2002	\$.365 per mile
January 1, 2003 - December 31, 2003	\$.36 per mile
January 1, 2004 - Until Revised	\$.375 per mile

- ☐ **Court Reporters:** A complete itemized invoice on court reporter's letterhead (date of service; number of pages; rate per page; type of proceeding transcript, i.e. magistrate or circuit ) must be attached. Reimbursements are as follows:

**Circuit Court Hearings:**

**Grand Jury Transcripts:**

**Depositions (In or Out of Court):**

\$2.85 Per Page for Original

\$1.00 Per Page for Copy

\$25 Appearance Fee

Not allowed if there is a transcript

No Mileage Allowed

**Magistrate Hearings:**

**Preliminary Hearings (Held in Magistrate or Circuit Court):**

\$1.60 Per Page for Expedited Typing

\$1.50 Per Page for Typing

\$0.50 Per Page for Copy

No Appearance Fees Allowed

\$5.00 Fee for Tape

- ☐ **Investigative services:** A complete itemized invoice on investigator's letterhead must be attached. Invoice must show dates of service, number of hours worked, rate per hour, mileage, rate per mile and a brief description of services rendered for each entry. For investigative services PDS allows a maximum of \$30.00 per hour.

- ☐ **Expert Witnesses:** A complete itemized invoice on expert witness' letterhead. Invoice must show the date of service, service provided, hourly rate for each entry.
  
- ☐ **Paralegal Fees:** A complete itemized invoice on paralegal's letterhead must be attached. Paralegal Fees are reimbursable up to \$20.00 per hour (out of court only; no payment allowed for in court work). Invoice must show dates of service, number of hours worked, brief description of activity, rate per hour.



FOR JUDICIAL USE ONLY  
Reason for Appointment (Check One):  
☐ Conflict in Public Defender Office ☐ No Public Defender Office  
☐ Case Overload in Public Defender Office ☐ Other

PDS USE ONLY  
INVOICE NUMBER

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY

STATE OF WEST VIRGINIA

VS.

CASE NUMBER \_\_\_\_\_

**ORDER APPROVING PAYMENT OF DIRECT EXPENSES**

On a former date \_\_\_\_\_ filed in this court an affidavit reciting financial inability to employ counsel for representation in connection with certain proceedings before this Court; and the Court being of the opinion the eligibility requirements of W.Va. Code § 29-21-1, et seq, were satisfied appointed \_\_\_\_\_ a licensed Attorney at Law practicing before the Bar of this Court as counsel.

Counsel informs this Court that in order to provide adequate representation it was necessary to retain to provide the following services to the defense:

Accordingly it is **HEREBY ORDERED:**

(1) That the Clerk forward to Public Defender Services a certified copy of this Order together with a copy of the Public Defender Services' Direct Expense form; and

(2) That Public Defender Services issue payment in the appropriate amount of \$ \_\_\_\_\_ to:

\_\_\_\_\_, whose TIN is \_\_\_\_\_  
Tax Identification Number

ENTER THIS \_\_\_\_\_, DAY OF \_\_\_\_\_,  
(date) (month) (year)

\_\_\_\_\_  
**JUDGE**

**IMPORTANT NOTE:** All required orders of court must be certified copies and must bear the Circuit Clerk's seal.

**PUBLIC DEFENDER SERVICES**  
**Direct Expense Voucher**

**From:** \_\_\_\_\_  
**Name of Appointed Attorney**

**Address:** \_\_\_\_\_ **Telephone Number:** \_\_\_\_\_

**This claim relates to proceedings in** \_\_\_\_\_ **County**

**Date of Appointment** \_\_\_\_\_ **Client is:** \_\_\_\_\_ **Adult** \_\_\_\_\_ **Juvenile**

**Client** \_\_\_\_\_

**I. Type of proceeding (use letter codes).** \_\_\_\_\_

- |                                       |  |                       |
|---------------------------------------|--|-----------------------|
| <b>A. Felony</b>                      | <b>H. Child Abuse &amp; Neglect</b>      | <b>N. Fugitive</b>    |
| <b>B. Misdemeanor</b>                 | <b>I. Habeas Corpus (Cir. Ct.)</b>       | <b>O. Extradition</b> |
| <b>C. Mental Hygiene</b>              | <b>J. Supreme Court</b>                  | <b>P. Other</b> _____ |
| <b>D. Juvenile Proceedings</b>        | <b>K. Magistrate Court Appeal</b>        | <b>(Specify)</b>      |
| <b>F. Parole Probation Revocation</b> | <b>L. Termination of Parental Rights</b> |                       |
| <b>G. Mandamus Prohibition</b>        | <b>M. Contempt</b>                       |                       |

\_\_\_\_\_ **Case Number(s)** \_\_\_\_\_ **Specific Criminal Charge(s)**

**II. Circle the appropriate expense code for this direct expense:**

**EXPENSE CODE:**

- 1. Expert Witness**
- 2. Court Reporter**
- 3. Investigative Services**
- 6. Paralegal Fees**
- 7. Other (specify)** \_\_\_\_\_

**Last Date of Service:** \_\_\_\_\_

**TOTAL OF THIS DIRECT PAYMENT \$** \_\_\_\_\_

**Attorney Certification:**

**I affirm that I have reviewed the invoice attached to this form; that the charges and claims made on the invoice are true and correct to the best of my knowledge; and that the services for which compensation is sought were provided for the defense of the client named above.**

\_\_\_\_\_  
**ATTORNEY SIGNATURE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**NAME OF SERVICE PROVIDER RECEIVING PAYMENT**

\_\_\_\_\_  
**TAX IDENTIFICATION NUMBER**

\_\_\_\_\_  
**ADDRESS (SERVICE PROVIDER)**

\_\_\_\_\_  
**TELEPHONE NUMBER**

## Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Print or type See Specific Instructions on page 2.	Name	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ .....	<input type="checkbox"/> Exempt from backup withholding
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). **However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3.** For other entities, it is your employer identification number (EIN). If you do not have a number, see **How to get a TIN** on page 3.

**Note:** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
or								
Employer identification number								

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here	Signature of U.S. person ▶	Date ▶
--------------	-------------------------------	--------

### Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

**Note:** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Foreign person.** If you are a foreign person, use the appropriate Form W-8 (see **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities).

### Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a **nonresident alien or a foreign entity** not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 30% of such payments (29% after December 31, 2003; 28% after December 31, 2005). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will **not** be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester, or
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details), or
3. The IRS tells the requester that you furnished an incorrect TIN, or
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate **Instructions for the Requester of Form W-9**.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your **individual** name as shown on your social security card on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, **enter the owner's name on the "Name" line.** Enter the LLC's name on the "Business name" line.

**Other entities.** Enter your business name as shown on required Federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note:** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note:** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

**Exempt payees.** Backup withholding is **not required** on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2);
2. The United States or any of its agencies or instrumentalities;
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities;
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities; or
5. An international organization or any of its agencies or instrumentalities.

Other payees that **may be exempt** from backup withholding include:

6. A corporation;
7. A foreign central bank of issue;
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States;

9. A futures commission merchant registered with the Commodity Futures Trading Commission;

10. A real estate investment trust;

11. An entity registered at all times during the tax year under the Investment Company Act of 1940;

12. A common trust fund operated by a bank under section 584(a);

13. A financial institution;

14. A middleman known in the investment community as a nominee or custodian; or

15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

If the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt recipients 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are **not exempt** from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a Federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a **resident alien** and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see **How to get a TIN** below.

If you are a **sole proprietor** and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner **LLC** that is disregarded as an entity separate from its owner (see **Limited liability company (LLC)** on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

**Note:** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get **Form SS-5**, Application for a Social Security Card, from your local Social Security Administration office or get this form on-line at [www.ssa.gov/online/ss5.html](http://www.ssa.gov/online/ss5.html). You may also get this form by calling 1-800-772-1213. Use **Form W-7**, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or **Form SS-4**, Application for Employer Identification Number, to apply for an EIN. You can get Forms W-7 and SS-4 from the IRS by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS Web Site at [www.irs.gov](http://www.irs.gov).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 3, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see **Exempt from backup withholding** on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA or Archer MSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name, but you may also enter your business or "DBA" name. You may use either your SSN or EIN (if you have one).

<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

**Note:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA or Archer MSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 30% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.



# **LABOR & EMPLOYMENT LAW**

**by Jeffrey G. Blaydes, Esq.**





## IV. PUBLIC EMPLOYMENT LAW

### A. INTRODUCTION

Forty of the fifty states of this nation have reasonably comprehensive statutes or executive orders involving the public employment rights of state workers. West Virginia is not one of them. As a result, the law relating to the rights of public employees and employers is scattered throughout numerous sections of the West Virginia Code and a substantial body of state and federal case law. The intent of this section is to provide an overview of some of the more common public employment issues, with a particular emphasis on discharge and discipline, since such matters are most commonly dealt with by practitioners representing either public employees or employers in their normal law practice.

The initial inquiry in each case involving the rights of a public employee is whether that employee is covered by some form of statutory employment protection. Most state workers are covered by the West Virginia State Civil Service System. W.Va. Code §29-6-1, *et seq.* School personnel and teachers are covered by separate provisions. W.Va. Code §18A-1-1, *et seq.* Some local and county officials are covered by specific statutory provisions, *e.g.* police, W.Va. Code §8-14-1, *et seq.* Some county and local employees have achieved additional protection through collective bargaining contracts. Many employees at the state and local level, however, do not have statutory or private contractual protection. Such employees in many instances, however, do have certain basic procedural due process rights with regard to their employment which are guaranteed by the West Virginia and federal Constitutions.

### B. BASIC DISCIPLINARY ISSUES

#### 1. Civil Service

A decision to discharge or reduce the rank or grade of a civil service employee requires "cause" on the part of the employer. W.Va. Code §29-6-10(12). This standard is analogous to the "just cause" standard commonly employed by collective bargaining contracts and labor arbitrators. The grounds for "cause" must specifically relate to and affect the administration and duties of the position, and must be of a substantial nature and directly affect the rights and interests of the public. Reece v. Bd. Of Trustees/Marshall Univ., 202 W.Va. 89, 502 S.E.2d 186 (1998); Roach v. Regional Jail Authority, 198 W.Va. 679, 482 S.E.2d 679 (1996); Mangum v. Lambert, 183 W. Va. 184, 394 S.E. 2d 879 (1990); Thurmond v. Steele, 159 W.Va. 630, 225 S.E.2d (1976); Guine v. Civil Service Commission, 149 W.Va. 461, 141 S.E.2d 364 (1965). The determination of whether "cause" exists must be made on a case-by-case basis, depending on all of the facts and circumstances of each case. Thurmond, 225 S.E.2d 210.

Discharge, discipline and other adverse employment actions under the state Civil Service system are dealt with through the grievance procedure for state employees. W.Va. Code §29-6A, *et seq.* The grievance procedure for state employees consists of four levels. Each level has specific time limitations for filing a grievance or appeal of a lower level decision.

The first level, which is initiated by the grievant or grievant's representative, consists of a written grievance to the grievant's immediate supervisor. A Level 1 grievance must be filed within ten days of the event upon which the grievance is based or within ten days of discovery of the grievable event or within ten days of the most recent occurrence of a continuing practice giving rise to a grievance. The immediate supervisor must issue a written decision within six days of receipt of the written grievance. A grievant alleging discrimination or retaliation may institute his or her grievance at Level 2 of the grievance procedure. W.Va. Code §29-6A-4(a).

If dissatisfied with the Level 1 decision, grievant may appeal to Level 2 by filing a written appeal to "the administrator of grievant's work location, facility, area office, or other appropriate subdivision of the department, board, commission, or agency." W.Va. Code §29-6A-4(b). The administrator or his designee must hold a conference within five days of receipt of the appeal and must issue a written decision within five days of the conference. It should be noted that the West Virginia Education and State Employees Grievance Board has jurisdiction of procedural disputes at Levels 2 and 3. W.Va. Code §29-6A-5(a).

A grievant may file a Level 3 written appeal with the chief administrator of grievant's employing department, board, commission or agency. The chief administrator or his designee must hold a hearing within seven days of receipt of the appeal and must issue a written decision within five days of the hearing. W.Va. Code §29-6A-4(c).

Public employees and employers should be aware the grievance procedure includes a default provision states in pertinent part:

The grievant prevails by default if a grievance evaluator required to respond to a grievance at any level fails to make a required response in the time limits required in this article, unless prevented from doing so directly as a result of sickness, injury, excusable neglect, unavoidable cause or fraud.

W.Va. Code §29-6A-3(a)(2). Wounaris v. West Virginia State College, 214 W. Va. 241, 588 S. E. 2d 406 (2003); Smith v. West Virginia Division of Rehabilitation Services and Division of Personnel 208 W. Va. 284, 540 S. E. 2d 152 (2000); Harmon v. Faith County Board of Education 205 W. Va. 125, 516 S. E. 2d 788 (1999).

Once a grievant has given written notice of default, an employer may request a Level 4 hearing to show that the remedy resulting from default is contrary to law or clearly wrong.

Once a grievant has received a Level 3 decision, the grievant may then appeal to Level 4, or the West Virginia Education and State Employees Grievance Board. W.Va. Code §29-6A-4(d)(1); 29-6A-5.

Under certain circumstances a grievant may bypass portions of the grievance procedure. A grievance relating to a suspension without pay, demotion, or dismissal or loss of wages may be initiated at Level 2. W.Va. Code §29-6A-4(e)(1). An employee who has been terminated, demoted or suspended for more than 20 days is entitled to appeal directly to Level 4 by filing an expedited grievance with his or her chief administrator and the director of personnel of the state civil service commission. W.Va. Code §29-6A-4(e)(2).

Judicial review of the Level 4 decision is available in circuit court of the county in which the grievance occurred or in the Circuit Court of Kanawha County. W.Va. Code §29-6A-7(b). Parties may also agree to mediate a grievance. W.Va. Code §29-6A-12. Attorney fees are available to the employee upon successful appeal to circuit court or the Supreme Court of Appeals. Such fees are also available upon reversal of an adverse action appealed by an employee.

## 2. Teachers and Other School Personnel

Teachers' contracts with a county board of education may be for a term of one to three years. After three years a teachers contract becomes a continuing contract. W.Va. Code §18A-2-2. Procedures involving termination of the continuing contract are set forth in W.Va. Code §18A-2-2, while suspensions, transfers, promotions and the like are governed by W.Va. Code §18A-2-7. Grounds for suspension and termination of school personnel are found in W.Va. Code §18A-2-8, which states that a Board of Education may suspend or dismiss an employee at any time for: "Immorality, incompetency, cruelty, insubordination, intemperance; willful neglect of duty,

unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge." A county board of education is required to demonstrate a rational nexus between a teacher's conduct and his or her fitness to perform teaching duties. Bledsoe v. Wyoming County Board of Education, 183 W. Va. 190, 394 S. E. 2d 885 (1990); Golden v. Board of Education, 169 W. Va. 63, 285 S. E. 2d 665 (1981).

Like civil service employees, state teachers and education personnel have access to a four step grievance procedure for discharge, discipline and other matters. Again, this procedure culminates with a Level 4 hearing before the West Virginia Education and State Employees Grievance Board. W.Va. Code §18-29-4(d).

Unlike the grievance procedure for state employees, the education procedure provides that at the first level the grievant will schedule a conference with his or her immediate supervisor to discuss the grievance and the remedy sought. The grievant is required to file his or her grievance within fifteen days of the occurrence of the grievable event or within fifteen days of discovery of the grievable event or within fifteen days of the most recent occurrence of the grievable event. The immediate supervisor must issue a response to the grievance within ten days. Upon receiving a response from the supervisor, the employee may file a written grievance with the immediate supervisor. W.Va. Code §18-29-4(a)(1-4).

The employee may then bring a Level 2 appeal to his or her chief administrator. W.Va. Code §18-29-4(b). The appeal must be made within five days of receipt of the immediate supervisor's response.

The employee may either file an appeal of the Level 2 decision with the governing board of the institution for a Level 3 hearing or proceed directly to Level 4. Either appeal must be

accomplished within five days of receipt of the Level 2 decision. If an employee chooses to go before the governing board, the governing board will review the record of the administrator at Level 2 and render a decision, or waive the right of review by notifying the employee of the waiver. W.Va. Code §18-29-4(c). Like state employers, education employers are subject to default where a hearing evaluator fails to respond to statutory time limits. *State ex rel Catron v. Raleigh County Bd. of Educ.*, 201 W.Va. 302, 496 S.E.2d 444 (1997); *Hanlon v. Logan County Bd. of Educ.*, 201 W.Va. 305, 496 S.E.2d 447 (1997).

A Level 4 hearing will be conducted before the West Virginia Education and State Employees Grievance Board. W.Va. Code §18-29-4(d)(1). The practitioner should be aware that the Grievance Board offers mediation prior to the Level 4 hearing. W.Va. Code §18-29-10.

Judicial review of the Level 4 decision is available in either the Circuit Court of Kanawha County or the circuit court of the county where the grievable event occurred. W.Va. Code §18-29-7. Attorney fees for judicial review are available to grievants under W.Va. Code §18-29-8.

### 3. Municipal Employees

Certain municipal employees have statutory protection with regard to their employment rights. For instance, police and firefighters in most cities are covered by local Civil Service Commissions with specific statutory hearing and appeal rights. W.Va. Code §§8-14-20 and 8-15-25. These employees cannot be discharged or disciplined without "just cause." W.Va. Code §§8-14-20(a) and 8-15-25(a); *Alden v. Harper Ferry Police Civil Service Com'n* 209 W. Va. 83, 543 S. E. 2d 364 (2001); *Johnson v. Ashley*, 190 W. Va. 678, 441 S.E. 2d 399 (1994). Attorney fees for prevailing parties are available. Overtime and wage claim issues are dealt with for such employees in other sections of this volume.

Many local and county employees have no specific statutory protection but nonetheless are afforded some form of appellate rights through local ordinances, policy handbooks or employment contracts. Eaton v. City of Parkersburg, 198 W.Va. 615, 482 S.E.2d 232 (1996); Orteza v. Monongalia County General Hospital, 173 W.Va. 461, 318 S.E.2d 40 (1984).

#### 4. Due Process Rights

Most public employees must be accorded specific due process rights pursuant to the West Virginia Constitution, Article 3, Section 10, as well as the federal Constitution.

The initial inquiry is whether the specific employee enjoys a property or liberty interest such that due process must be accorded to him or her. The specific issue becomes whether the employee is a permanent employee entitled to the security of tenure. Boggess v Housing Authority of City of Charleston 273 2d F. Supp. 729 (S. D. W. Va. 2003); White v. Barill 210 W. Va. 320, 557 S. E. 2d 374 (2001); Collins v. City of Bridgeport, 206 W.Va. 467, 525 S.E.2d 658 (1999); Barazi v. West Virginia State College, 201 W.Va. 527, 498 S.E.2d 720 (1997); Hupp v. Sasser, 200 W.Va. 792, 490 S.E.2d 880 (1997); Roach, 482 S.E.2d 679; Williams v. Brown, 190 W.Va. 202, 437 S.E.2d 775 (1993); Waite v. Civil Service Commission, 161 W.Va. 154, 241 S.E.2d 164 (1977). Local ordinances, policy handbooks or other statements of policy which would give a public employee a reasonable expectation of security of tenure constitute a basis upon which a finding of a property interest may be based. Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Roach, 482 S.E.2d 679; State ex rel. Truck v. Cole, 182 W.Va. 178, 386 S.E.2d 835 (1989); North v. West Virginia Board of Regents, 160 W.Va. 248, 233 S.E.2d 411 (1977); Major v. DeFrench, 169 W.Va. 241, 286 S.E.2d 688 (1982); State ex rel. Karnes v. Dadisman, 153 W.Va. 771, 172 S.E.2d 561 (1970).

If the specific reason for the disciplinary action might seriously damage the employee's standing and association in the community, it may also give rise to a constitutional liberty interest. Wilhelm v. West Virginia Lottery, 198 W.Va. 92, 479 S.E.2d 602 (1996); City of Huntington v. Black, 187 W.Va. 675, 421 S.E.2d 58 (1992); Waite, 241 S.E.2d 164. However, use of the term "loss of confidence in [an employee's] ability" to discharge his or her duties does not implicate a constitutional liberty interest. Wilhelm v. West Virginia Lottery, 479 S.E.2d at 605.

Once it has been established that a public employee is entitled to due process, basic rights concerning notice, right to confront and cross-examine witnesses, etc. obtain. See, for example, Waite, supra, and North, supra. Pretermination due process requires at least some opportunity for the public employee who is charged with misconduct to respond in a meaningful way to the charges against him or her prior to that termination. National Collegiate Athletic Association v. Tarkanian, 488 U.S. 179, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988), Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). See also, Vanelli v. Reynolds School District, 667 F.2d 773 (9<sup>th</sup> Cir. 1982); Nicoletta v. North Jersey Dist. Water Supply Comm., 390 A.2d 90 (N.J. 1978). Such pretermination due process guarantees need not be elaborate. Loudermill, supra; Roach, 482 at 684; Wines v. Jefferson Board of Education 213 W. Va. 379, 582 S. E. 2d 826 (per curiam); Board of Education of the County of Mercer v. Wirt, 192 W.Va. 568, 453 S.E.2d 402 (1994); Buskirk v. Civil Service Commission, 175 W.Va. 279 332 S.E.2d 579 (1985). The West Virginia Supreme Court of Appeals has traditionally been quite sensitive to due process requirements regarding public employees. Wirt, 453 S.E.2d 402; Hupp v. Sasser, 200 W.Va. 792, 490 S.E.2d 880 (1997); West Virginia University v. Sauvageot, 185 W.Va. 534, 408 S.E.2d 286 (1991); State ex rel. McLendon v.



Morton, 162 W.Va. 431, 249 S.E.2d 919 (1978); Major, 286 S.E.2d 688. At the same time, the Court has recognized that under certain circumstances substantial compliance with such due process requirements is sufficient, Alcohol Beverage Control Admin. v. Scott, 205 W.Va. 398, 518 S.E.2d 639 (1999); West Virginia Department of Health v. Mathison, 171 W.Va. 693, 301 S.E.2d 783 (1983); Vosberg v. Civil Service Commission, 166 W.Va. 488, 275 S.E.2d 640 (1981), or that public policy may impact upon the remedy for due process violations, Fraley v. Civil Service Commission, 177 W.Va. 729, 356 S.E.2d 483 (1987).

C. Specific Rights of Public Employees

1. Free Speech

Public employees enjoy the same free speech rights as private citizens, and retaliatory action may not be taken by public employees for the exercise of such rights. United States v. National Treasury Union, 513 U.S. 454, 115 S.Ct. 1003, 130 L.Ed.2d 964 (1995); Rutan v. Republican Party of Illinois, 497 U.S. 62, 111 L.Ed.2d 52, 110 S.Ct. 2729 (1990); Rankin v. McPherson, 483 U.S. 378, 107 S.Ct. 2891, 97 L.Ed.2d 315 (1987); Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968); Trimble v. West Virginia Board of Directors 209 W. Va. 420, 549 S. E. 2d 294 (2001); Tiernan v. Charleston Area Medical Center, 203 W.Va. 135, 506 S.E.2d 578 (W.Va. 1998); Woodruff v. Board of Trustees of Cabell Huntington Hospital, 173 W.Va. 604, 319 S.E.2d 372 (1984). Such constitutional protection include the right of public employees to leaflet and picket, and such rights may not be waived by contract or otherwise. Woodruff, 319 S.E.2d at 379; Cf. United Maintenance and Manufacturing Co. v. United Steel Workers of America, 157 W.Va. 788, 204 S.E.2d 76 (W.Va. 1974); Keyishian v. Board of Regents, 385 U.S. 589, 86 S.Ct. 675, 17 L.Ed.2d 629 (1967). Public employees in fact have a protected right to petition government

for the redress of grievances. Webb v. Fury, 167 W.Va. 434, 282 S.E.2d 28 (1981); Woodruff, 319 S.E.2d at 378. This right, however, is not absolute and is limited by the actual malice standard. Harris v. Adkins, 189 W.Va. 465, 432 S.E.2d 549 (1993). While it is clear that such due process protection extends to all speech in whatever form involving issue of public concern, speech confirmed solely to office work conditions or personnel matters may not be so protected. Connick v. Myers, 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983); Jones v. Dodson, 727 F.2d 1329 (4<sup>th</sup> Cir. 1984).

## 2. Collective Bargaining

West Virginia has no comprehensive collective bargaining statute. Thus, there is no statutory imperative that a public employer must bargain in good faith with a public employees' union. While such bargaining is not compelled by statute, collective bargaining is clearly permissible and contracts reached between public employers and unions are enforceable. Local 589, Council 58 Am. Fed. V. City of Huntington, 173 W.Va. 403, 317 S.E.2d 167 (1984).

The right of public employees to join a union or association is protected from any retaliatory action on the part of the public employer. City of Fairmont v. Retail Wholesale and Department Store Union, AFL-CIO, et al., 166 W.Va. 1, 283 S.E.2d 589 (W.Va. 1980); McLaughlin v. Tilendis, 398 F.2d 287 (7<sup>th</sup> Cir. 1968); Atkins v. City of Charlotte, 296 F. Supp. 1068 (W.D.N.C.) 1969).

It is clear that public employees may not be sued for damages as a result of striking against public employers. City of Fairmont, supra. See also, County Sanitation Dist. v. SEIU Local 660, 119 LRRM 2433 (Cal. Sup. Ct. 1985). However, in 1990 the West Virginia Supreme Court of Appeals refused to recognize a common law right to strike for employees, such as public school

teachers, who are under contract. Jefferson Cty. Bd. of Educ. V. Educ. Ass'n, 183 W.Va. 15, 393 S.E.2d 653 (1990). Thus, it is likely that a strike by public employees will be enjoined where the employees are under contract or where the strike seriously endangers public health and safety. See also, State Department of Highways v. Public Employment Craft Council of Montana, 529 P.2d 785 (Mont. 1974); Local 1494 Firefighters v. City of Coeur d'Alene, 586 P.2d 1346 (Id. 1978); School District v. Holland Educ. Assoc., 157 N.W. 206 (MI 1968); School Committee v. Westerley Teachers Association, 299 A.2d 443 (R.I. 1973); Appeal of Milton School District, 625 A.2d 1056 (N.H. 1993); Timerlane Rep. Sch. Dis. v. Timerlane Rep. Educ. Assoc., 317 A.2d 555 (N.H. 1974). It is possible that public employees may be fired for striking, although the rationale for such a position has been undermined in some cases. Kirker v. Moore, 308 F.Supp. 615 (S.D.W. Va. 1970). Public employees clearly may not be fired if such an action is in retaliation for the exercise of their constitutional rights, such as free speech, as outlined above. Woodruff, 319 S.E.2d 372.

### 3. Political Participation by Public Employees

Upper level political appointees may not legally require subordinate public employees to give political support to candidates of their choice. Freeman v. Poling, 175 W.Va. 814, 338 S.E.2d 415 (1985). At the same time, direct political participation by state employees may be proscribed, consistent with state and federal constitutions, including holding party office, working at the polls, organizing a political party or club, managing a political campaign, etc. Deeds v. Lindsey, 179 W.Va. 674, 371 S.E.2d 602 (1988); Weaver v. Shaffer, 170 W.Va. 107, 290 S.E.2d 244 (1982). It is also clear that upper-level political officials may not solicit political campaign contributions from lower-level state employees who therefore fear for their job security. The West Virginia Civil

Service statute contains prohibitions against certain specific political activities. The Civil Service statute also prohibits discrimination on political grounds. W.Va. Code §29-6-20.

With regard to voluntary political activity on the part of public employees on their own time, it is clear that the Legislature may not constitutionally restrict all such political activity. The West Virginia Supreme Court of Appeals has held that statutes proscribing political activity of state employees must be given narrow interpretation. Weaver, 290 S.E.2d 244.