

TREASURY — GENERAL

(a)

OFFICE OF THE PUBLIC DEFENDER

Fees for Service

Adopted New Rules: N.J.A.C. 17:39-3

Proposed: April 21, 2014, at 46 N.J.R. 687(a).

Notice of Proposed Substantial Changes upon Adoption to Proposed

New Rules: August 4, 2014, at 46 N.J.R. 1736(a).

Adopted: October 7, 2014, by Joseph E. Krakora, Public Defender.

Filed: November 6, 2014, as R.2014 d.185, **with substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-10, and **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 2A:158A-7(j), 16, and 19.

Effective Date: December 1, 2014.

Expiration Date: December 1, 2021.

Summary of Public Comment and Agency Response:

1. Comments Received During Initial Comment Period Giving Rise to Substantial Changes in Proposal upon Adoption
No public comments were received.

2. Comments Received During Initial Comment Period, Not Giving Rise to Changes in the Rule Proposal
No public comments were received.

3. Comments Received upon Publication of Notice of Proposed Substantial Changes upon Adoption to Proposed New N.J.A.C. 17:39-3
No public comments were received.

Summary of Agency-Initiated Change:

Upon discussion with staff, the Public Defender has made the following two changes throughout the new rules:

1. At N.J.A.C. 17:39-3.1(b)1i and ii and (b)2i and ii, a change to the lead-in text is made to clarify that the degree of crime indicated is for the client is initially charged with, not the final charge as of the ultimate disposition. This change simply provides that the fee is based on the initial charges against the clients; and

2. At N.J.A.C. 17:39-3.1(b)1i(1) and (2) and (b)1ii(1) and (2), (b)2i(1) and (b)2ii(1), and (b)3i, substitution of the word “disposition” for “plea.” This change simply provides additional clarification that the new rules will affect all types of case resolutions, not just pleas.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal requirements applicable to the subject matter of the adopted new rules.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

CHAPTER ***[17]* *39***

OFFICE OF THE PUBLIC DEFENDER

SUBCHAPTER 1.-2. (RESERVED)

SUBCHAPTER 3. FEES FOR SERVICE

17:39-3.1 Office of the Public Defender fees

(a) Pursuant to N.J.S.A. 2A:158A-7(j), 16, and 19, the Office of the Public Defender (OPD) will charge its clients for the cost of attorney services, investigation, expert witnesses, and other actual costs of representation.

(b) In all cases, the Office of the Public Defender will charge its clients a flat fee based on the case type and/or degree of crime. These rates will apply to all attorney and investigator services, including any

litigation (experts and transcripts) expenses, provided by the OPD to provide representation to its clients pursuant to N.J.S.A. 2A:158A-7(d). As used in this subsection, “day” shall mean any court day during which any portion of the trial takes place to include jury selection at the front end and deliberations at the back end. The billing rates used in criminal cases are as follows:

1. Criminal Court (Adult):

i. ***[For]* *Clients charged with*** 1st and 2nd degree crimes:

(1) Pre-indictment ***[plea]* *disposition***: \$250.00;

(2) Post-indictment ***[plea]* *disposition***: \$500.00;

(3) Trial (up to five days): \$750.00; and

(4) Trial (every three days beyond initial five): \$500.00; and

ii. ***[For]* *Clients charged with*** 3rd and 4th degree crimes:

(1) Pre-indictment ***[plea]* *disposition***: \$150.00;

(2) Post-indictment ***[plea]* *disposition***: \$250.00;

(3) Trial (up to five days): \$500.00; and

(4) Trial (every three days beyond initial five): \$500.00;

2. Family Court (Juvenile Delinquency):

i. ***[For]* *Clients charged with*** 1st and 2nd degree crimes:

(1) ***[Plea]* *Disposition***: \$250.00;

(2) Trial (up to five days): \$750.00; and

(3) Trial (every three days beyond initial five): \$500.00; and

ii. ***[For]* *Clients charged with*** 3rd and 4th degree crimes:

(1) ***[Plea]* *Disposition***: \$150.00;

(2) Trial (up to five days): \$500.00; and

(3) Trial (every three days beyond initial five): \$500.00;

3. Drug Court:

i. ***[Plea]* *Disposition***: \$250.00; and

ii. Program completion: \$250.00;

4. Intensive supervision program: \$100.00;

5. Special hearings unit: \$200.00;

6. Title 9 child abuse and neglect cases: \$500.00; and

7. Title 30 termination of parental rights cases: \$750.00.

(c) In cases where the OPD does not represent the defendant, but provides ancillary services and/or transcripts to the defendant pursuant to *Matter of Canady*, 126 N.J. 486 (1991) or *State v. Arenas*, 126 N.J. 504 (1991), the actual cost will be billed to the defendant.

(d) The OPD will send the client a bill for all services rendered at the end of the case if the flat rate bill has not yet been paid.

(e) No client will be denied services based on inability to pay any OPD fee.

(f) Nothing in this section shall preclude a client from arranging with the OPD to make partial or installment payments of any fee. Pursuant to N.J.S.A. 2A:158A-20, the Public Defender or the Public Defender’s designee may compromise and settle any fee claim whenever the financial circumstances of the client involved are such that, in the judgment of the Public Defender or the designee, the best interests of the State will be served by such compromise and settlement.

(g) Notwithstanding the provisions of (b) above, all cases closed prior to ***[(the effective date of this rule)]* *December 1, 2014,*** will be billed at the hourly rate of \$30.00 per hour for attorney services, in- or out-of-court, \$15.00 per hour for investigator services, and actual costs for litigation (experts and transcripts) expenses. All cases that are open on or after ***[(the effective date of this rule)]* *December 1, 2014,*** will be billed at the flat fee rate.

TREASURY - GENERAL

OFFICE OF THE PUBLIC DEFENDER

Fees for Service

Proposed New Rule: N.J.A.C. 17:39-3

Authorized By: Joseph E. Krakora, Public Defender.

Authority: N.J.S.A. 2A:158A-7(j), 16, and 19.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-044.

Submit written comments by June 20, 2014, to:

Andrew Christian Rojas

First Assistant Public Defender

Office of the Public Defender

Hughes Justice Complex

P.O. Box 850

Trenton, NJ 08625-0850

Fax: (609) 777-1795

The agency proposal follows:

Summary

Since its inception in 1967, the Office of the Public Defender (OPD) has billed its clients for services rendered pursuant to its statutory mandate that a defendant represented by the OPD

pay for the reasonable value of services. Based upon the prior rule at N.J.A.C. 17:39-3.1, which expired on August 7, 2005, the OPD currently charges its clients for representation by designated counsel and investigators as follows:

- Attorney services in the amount of \$30.00 per hour, in- or out-of-court;
- Investigator services in the amount of \$15.00 per hour;
- All litigation expenses (experts and transcripts) at actual cost; and
- A \$50.00 administrative fee, to be paid when client representation commences, to help defray the costs associated with opening a file and beginning representation.

Governor Chris Christie issued Executive Order Nos. 1 and 2 on January 20, 2010, to promulgate administrative rules that emphasize efficiency and effectiveness in New Jersey State government operations. In compliance with these directives, proposed new N.J.A.C. 17:39-3, which consists of N.J.A.C. 17:39-3.1, will replace the aforementioned expired rules containing the existing hourly rate fee schedule with a flat fee rate schedule based on case type and/or degree of associated crime.

In addition to eliminating the existing \$50.00 administrative fee, which helps defray the costs associated with opening a file and beginning representation, proposed new N.J.A.C. 17:39-3.1 includes the following flat fee billing rates:

1. Criminal Court (Adult):

i. For 1st and 2nd degree crimes:

- (1) Pre-indictment plea: \$250.00;
- (2) Post-indictment plea: \$500.00;
- (3) Trial (up to five days): \$750.00; and
- (4) Trial (every three days beyond initial 5): \$500.00; and

- ii. For 3rd and 4th degree crimes:
 - (1) Pre-indictment plea: \$150.00;
 - (2) Post-indictment plea: \$250.00;
 - (3) Trial (up to five days): \$500.00; and
 - (4) Trial (every three days beyond initial 5): \$500.00;

2. Family Court (Juvenile Delinquency):

- i. For 1st and 2nd degree crimes:
 - (1) Plea: \$250.00;
 - (2) Trial (up to five days): \$750.00; and
 - (3) Trial (every three days beyond initial 5): \$500.00; and

- ii. For 3rd and 4th degree crimes:

- (1) Plea: \$150.00;
 - (2) Trial (up to five days): \$500.00; and
 - (3) Trial (every three days beyond initial 5): \$500.00;

3. Drug Court:

- i. Plea: \$250.00; and
- ii. Program completion: \$250.00;

4. Intensive supervision program: \$100.00;

5. Special hearings unit: \$200.00;

6. Title 9 child abuse and neglect cases: \$500.00; and

7. Title 30 termination of parental rights cases: \$750.00.

Each year, the OPD represents in excess of 125,000 clients, and the new proposed rule will affect those individuals. Knowing the total actual cost for legal representation prior to the

rendering of any service will enable clients to commence payments sooner, and it may decrease the need for the OPD to enact a lien if full payment is received prior to disposition of the case.

New subsections (c) through (f) set forth that the defendant will be billed the actual costs under certain circumstances when the OPD does not represent the defendant, but does provide ancillary services and/or transcripts; the OPD will bill clients at the end of the case if the bill has not been paid; no client will be denied services; and partial payments and installment payments may be approved by the Public Defender or designee. New subsection (g) states that all cases closed prior to the effective date of this subchapter shall be billed the hourly rate currently in effect and all cases opened on or after the effective date of this subchapter will be billed at the flat fee rate.

As the OPD has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rule will continue to assist the OPD in meeting its statutory obligation. Since no client can be denied services based on an inability to pay, no client will go unrepresented and there will be no disruption in legal representation or court calendars.

Ordinarily, the client is sent a bill after the case file is closed. Under the proposed new rule, the client knows the total actual cost for legal representation prior to the rendering of any service, thus enabling payments to commence sooner. It also may decrease the need for the OPD to enact a lien, if full payment is received prior to disposition of the case.

Because the Public Defender, or his or her designee, has the statutory authority to compromise and settle claims for services, the financial circumstances of a client will continue to

be taken into account in determining whether to settle and on what terms under the proposed new rule.

Economic Impact

During the period July 1, 2011 through June 30, 2012, under the existing hourly billing format of \$30.00 per hour for attorney services, \$15.00 per hour for investigator services, and actual costs for litigation (experts and transcripts) expenses, the average cost incurred by OPD clients ranged from a low of \$73.00 to a high of \$3,713.00. Under the flat fee proposal, OPD clients would receive the same level of legal representation, to include all attorney and investigator services, as well as any litigation (experts and transcripts) expenses; however, the cost would be a flat rate based solely on case type and/or degree of associated crime. The following chart contains a comparison of client costs incurred between the current hourly billing format and the proposed flat fee format.

<u>Description of Case</u>	Current Average Billed	Proposed Flat Fee
<u>Criminal Court (Adult):</u>		
<u>For 1st and 2nd degree crimes:</u>		
Pre-indictment plea	\$128.00	\$125.00
Post-indictment plea	\$327.00	\$325.00
Trial	\$3,713.00	\$750.00

For 3rd and 4th degree crimes:

Pre-indictment plea	\$128.00	\$125.00
Post-indictment plea	\$327.00	\$325.00
Trial	\$3,713.00	\$500.00

Family Court (Juvenile Delinquency)

For 1st and 2nd degree crimes:

Plea	\$132.00	\$125.00
Trial	\$508.00	\$500.00

For 3rd and 4th degree crimes:

Plea	\$132.00	\$125.00
Trial	\$508.00	\$500.00

Drug Court:

Program participation (Adult)	\$125.00	\$125.00
Program participation (Juvenile Delinquency)	\$149.00	\$125.00

Intensive Supervision Program \$73.00 \$70.00

Special Hearings Unit \$241.00 \$200.00

<u>Title 9 Child Abuse and Neglect Cases</u>	\$1,048.00	\$500.00
<u>Title 30 Termination of Parental Rights Cases</u>	\$2,363.00	\$750.00

Ordinarily, it is only after the closing of a case file that the client is sent a bill for OPD representation. However, under the proposed new rule, the client knows the total actual cost for legal representation prior to the rendering of any service, thus enabling payments to commence sooner. If full payment is received prior to disposition of the case, the proposed new rule also may decrease the need for the OPD to enact a lien. It is also the OPD's expectation that a higher percentage of clients will pay for OPD services. Finally, this proposed new rule will result in administrative savings due to increased effectiveness and efficiency in OPD operations.

Whether using the existing hourly billing format of \$30.00 per hour for attorney services, \$15.00 per hour for investigator services, and actual costs for litigation (experts and transcripts) expenses, or replacing it with a flat case fee, both methods represent only a fraction of the cost to the OPD of providing client services. In view of the fact that OPD clients are indigent, as defined by the court pursuant to N.J.S.A. 2A:158A-14, any other increase is not appropriate at this time. No other agencies will be impacted by the proposed new rule.

Federal Standards Statement

A Federal standards analysis is not required, because there are no Federal requirements applicable to the subject matter of the proposed new rule.

Jobs Impact

The proposed new rule will not directly impact the number of jobs, either generated or lost. The rule applies to individuals only and not to business entities.

Agriculture Industry Impact

The proposed new rule will not have an impact on the agriculture industry of the State.

Regulatory Flexibility Statement

The proposed new rule imposes no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because it relates to those individuals represented by the OPD.

Housing Affordability Impact Analysis

The proposed new rule will not have an impact on housing affordability in the State. The proposed rule concerns fees for service charged by the OPD.

Smart Growth Development Impact Analysis

The proposed new rule will not have an impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed rule concerns fees for service charged by the OPD.

Full text of the proposed new rule follows:

CHAPTER 17

OFFICE OF THE PUBLIC DEFENDER

SUBCHAPTER 1. - 2. (RESERVED)

SUBCHAPTER 3. FEES FOR SERVICE

17:39-3.1 Office of the Public Defender fees

(a) Pursuant to N.J.S.A. 2A:158A-7(j), 16, and 19, the Office of the Public Defender (OPD) will charge its clients for the cost of attorney services, investigation, expert witnesses, and other actual costs of representation.

(b) In all cases, the Office of the Public Defender will charge its clients a flat fee based on the case type and/or degree of crime. These rates will apply to all attorney and investigator services, including any litigation (experts and transcripts) expenses, provided by the OPD to provide representation to its clients pursuant to N.J.S.A. 2A:158A-7(d). As used in this subsection, “day” shall mean any court day during which any portion of the trial takes place to include jury selection at the front end and deliberations at the back end. The billing rates used in criminal cases are as follows:

1. Criminal Court (Adult):

i. For 1st and 2nd degree crimes:

- (1) Pre-indictment plea: \$250.00;
- (2) Post-indictment plea: \$500.00;
- (3) Trial (up to five days): \$750.00; and
- (4) Trial (every three days beyond initial five): \$500.00; and

ii. For 3rd and 4th degree crimes:

- (1) Pre-indictment plea: \$150.00;
- (2) Post-indictment plea: \$250.00;
- (3) Trial (up to five days): \$500.00; and

(4) Trial (every three days beyond initial five): \$500.00;

2. Family Court (Juvenile Delinquency):

i. For 1st and 2nd degree crimes:

(1) Plea: \$250.00;

(2) Trial (up to five days): \$750.00; and

(3) Trial (every three days beyond initial five): \$500.00; and

ii. For 3rd and 4th degree crimes:

(1) Plea: \$150.00;

(2) Trial (up to five days): \$500.00; and

(3) Trial (every three days beyond initial five): \$500.00;

3. Drug Court:

i. Plea: \$250.00; and

ii. Program completion: \$250.00;

4. Intensive supervision program: \$100.00;

5. Special hearings unit: \$200.00;

6. Title 9 child abuse and neglect cases: \$500.00; and

7. Title 30 termination of parental rights cases: \$750.00.

(c) In cases where the OPD does not represent the defendant, but provides ancillary services and/or transcripts to the defendant pursuant to *Matter of Canady*, 126 N.J. 486 (1991) or *State v. Arenas*, 126 N.J. 504 (1991), the actual cost will be billed to the defendant.

(d) The OPD will send the client a bill for all services rendered at the end of the case if the flat rate bill has not yet been paid.

(e) No client will be denied services based on inability to pay any OPD fee.

(f) Nothing in this section shall preclude a client from arranging with the OPD to make partial or installment payments of any fee. Pursuant to N.J.S.A. 2A:158A-20, the Public Defender or the Public Defender's designee may compromise and settle any fee claim whenever the financial circumstances of the client involved are such that, in the judgment of the Public Defender or the designee, the best interests of the State will be served by such compromise and settlement.

(g) Notwithstanding the provisions of (b) above, all cases closed prior to (the effective date of this rule) will be billed at the hourly rate of \$30.00 per hour for attorney services, in- or out-of-court, \$15.00 per hour for investigator services, and actual costs for litigation (experts and transcripts) expenses. All cases that are open on or after (the effective date of this rule) will be billed at the flat fee rate.

PROPOSAL SECTION

TREASURY - GENERAL

OFFICE OF THE PUBLIC DEFENDER

Notice of Proposed Substantial Changes Upon Adoption to Proposed New Rules

Fees for Service

Proposed Changes: N.J.A.C. 17:39-3

Proposed: April 21, 2014, at 46 N.J.R. 687(a).

Authorized By: Joseph E. Krakora, Public Defender.

Authority: N.J.S.A. 2A:158A-7(j), 16, and 19.

Submit written comments by October 3, 2014, to:

Andrew Christian Rojas

First Assistant Public Defender

Office of the Public Defender

Hughes Justice Complex

P.O. Box 850

Trenton, NJ 08625-0850

Fax: (609) 777-1795

or via e-mail to: FlatFee.PublicComments@opd.state.nj.us

Take notice that the Office of the Public Defender (OPD) proposed new rules at N.J.A.C. 17:39-3 on April 21, 2014, at 46 N.J.R. 687(a), to replace the current manner in which clients are

charged for services rendered on their behalf by the OPD. The public comment period closed June 20, 2014.

The OPD is proposing two substantial changes throughout the new rules based upon further internal discussion. The OPD did not receive any public comments on the original notice of proposal. This notice of proposed substantial changes is published pursuant to N.J.S.A. 52:14B-4.10.

Summary of Agency-Initiated Changes:

Upon discussion with staff, the Public Defender has made the following two changes throughout the new rules:

1. At N.J.A.C. 17:39-3.1(b)1i and ii and (b)2i and ii, a change to the lead-in text is made to clarify that the degree of crime indicated is for what the client is initially charged with, not the final charge as of the ultimate disposition. This change simply provides that the fee is based on the initial charges against the clients; and

2. At N.J.A.C. 17:39-3.1(b)1i(1) and (2) and (b)1ii(1) and (2), (b)2i(1) and (b)2ii(1), and (b)3i substitution of the word “disposition” for “plea.” This change simply provides additional clarification that the new rules will affect all types of case resolutions, not just pleas.

Effect of Proposed Changes on Impact Statements Included in Original Proposal

The changes to the proposed new rules will not affect the impact statements included in the original rule proposal. These changes simply clarify that the new rules will affect all types of case resolutions, not just pleas and that the fee is based on the initial charges against the clients. None of these changes affect the Social, Economic, Jobs, or Agriculture Industry Impacts; the

Federal Standards Statement; the Regulatory Flexibility Statement; or the Housing Affordability or Smart Growth Development Impact Analyses as published in the original proposal.

Full text of the proposed substantial changes to the proposed new rules follows (additions to proposal indicated in boldface **thus**; deletions from proposal indicated in brackets [thus]):

CHAPTER 17

OFFICE OF THE PUBLIC DEFENDER

SUBCHAPTER 1.-2. (RESERVED)

SUBCHAPTER 3. FEES FOR SERVICE

17:39-3.1 Office of the Public Defender fees

(a) (No change from proposal.)

(b) In all cases, the Office of the Public Defender will charge its clients a flat fee based on the case type and/or degree of crime. These rates will apply to all attorney and investigator services, including any litigation (experts and transcripts) expenses, provided by the OPD to provide representation to its clients pursuant to N.J.S.A. 2A:158A-7(d). As used in this subsection, “day” shall mean any court day during which any portion of the trial takes place to include jury selection at the front end and deliberations at the back end. The billing rates used in criminal cases are as follows:

1. Criminal Court (Adult):

i. [For] **Clients charged with** 1st and 2nd degree crimes:

(1) Pre-indictment [plea] **disposition:** \$250.00;

(2) Post-indictment [plea] **disposition:** \$500.00;

(3)-(4) (No change from proposal.)

ii. [For] **Clients charged with** 3rd and 4th degree crimes:

(1) Pre-indictment [plea] **disposition:** \$150.00;

(2) Post-indictment [plea] **disposition:** \$250.00;

(3)-(4) (No change from proposal.)

2. Family Court (Juvenile Delinquency):

i. [For] **Clients charged with** 1st and 2nd degree crimes:

(1) [Plea] **Disposition:** \$250.00;

(2)-(3) (No change from proposal.)

ii. [For] **Clients charged with** 3rd and 4th degree crimes:

(1) [Plea] **Disposition:** \$150.00;

(2)-(3) (No change from proposal.)

3. Drug Court:

i. [Plea] **Disposition:** \$250.00;

ii. (No change from proposal.)

4.-7. (No change from proposal.)

(c)-(g) (No change from proposal.)