

OUTSIDE COUNSEL GUIDELINES



STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL
DIVISION OF LAW
25 MARKET STREET
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Effective: January 1, 2015

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I. INTRODUCTION

The Attorney General of New Jersey, through the Department of Law and Public Safety, Division of Law (“Division”), serves as legal representative and counsel for the departments, boards, offices, authorities, agencies, commissions, and other instrumentalities of the government of the State of New Jersey (“State”), along with their officers and employees. When appropriate, the Division will retain outside counsel to represent the State.

In those cases where the Division retains outside counsel, the objective of these Outside Counsel Guidelines (“Guidelines”) is to ensure the highest quality legal representation and services for the State while maintaining effective supervision and cost controls.

In many respects, these Guidelines resemble those in the private sector. However, some charges and disbursements that private clients may accept as reasonable may not be acceptable in matters for a public agency. Accordingly, these Guidelines contain some important differences from private sector policies of which outside counsel should be aware.

These Guidelines are effective for all work performed beginning January 1, 2015. They supersede previously issued guidelines and, unless exceptions are approved in writing by the Director of the Division of Law or his or her designee, constitute the terms under which outside counsel are engaged. The “Guidelines of the Attorney General for the Selection of Bond Counsel under Executive Order No. 26” dated March 30, 1995, remain in full force and effect, except that in the event of any conflict between those 1995 Guidelines and these Guidelines with respect to billing and payment of fees to Bond Counsel, these Guidelines shall control.

BY ACCEPTING AN ENGAGEMENT BY THE STATE, LAW FIRMS WILL BE DEEMED TO HAVE FAMILIARIZED THEMSELVES WITH THESE GUIDELINES AND TO HAVE AGREED TO ADHERE TO THEM IN ALL RESPECTS, NOW AND AS THEY MAY CHANGE FROM TIME TO TIME UPON WRITTEN NOTICE. THIS ACCEPTANCE IS A MATTER BOTH OF CONTRACT AND PROFESSIONAL RESPONSIBILITY.

The Division expects you to inform all attorneys, senior managers and billing team members working on State matters of these Guidelines. Any questions about the Guidelines should be promptly directed to the Division attorney designated in the written engagement letter as the principal point of contact (the “Designated Attorney”).

The Division reserves the right to amend these Guidelines from time to time, providing written notification to outside counsel within thirty (30) days of the effective date of any substantive changes.

II. RETENTION

The State will retain outside counsel through a written retention letter and packet. (Note that counsel may begin work pursuant to oral retentions; the retention letter will follow shortly thereafter.) As described in the retention packet, New Jersey law contains additional requirements applicable to retentions. Please note that several of these requirements involve submitting additional information on the forms provided and/or referenced.

Outside counsel must properly execute the original of the retention letter and complete and execute all additional forms the retention packet may require, and must provide all additional documentation or information the retention packet requests. Counsel must return to the Designated Attorney a signed original of the executed retention letter, together with all other required information and documents, in accordance with the letter's instructions.

Invoices will not be eligible for payment until outside counsel has returned to the Designated Attorney the retention letter and all documents properly completed and executed, and until counsel has satisfied all requirements for retention as specified in the retention letter and its attachments. Using the "Document Attachment" feature described in Appendix A, outside counsel must also attach these forms and information to the matter number the State assigns through LexisNexis CounselLink™, its electronic billing and matter management provider.

III. CONFLICTS OF INTEREST

A. Initial Conflicts Check

Outside counsel must be sensitive both to direct conflicts of interest that representation of the State and other clients poses, and to the less direct, but nevertheless serious, conflicts that may arise from the same firm's advocacy, on behalf of other clients, of positions conflicting with important State interests. Prior to your engagement, your firm should carefully review whether any conflicts of either type exist and, if so, bring those conflicts to the attention of the Designated Attorney. The Division expects to be promptly informed of and consulted with respect to all potential conflicts. Although issue conflicts may not necessarily result in a disqualification of your firm, the Division does expect to be consulted before your firm accepts an engagement that will require the firm to advocate a position that may be adverse to a State legal interest or otherwise prejudicial to the interests of the State. The Division in its sole discretion shall, after consultation with you, determine whether an impermissible State agency conflict exists, or whether other circumstances exist that would undermine the public's confidence if your representation continued.

Outside counsel's acceptance of an engagement on a matter without written disclosure of any conflicts constitutes outside counsel's representation that it has conducted an appropriate conflict check and no conflict exists.

B. State Agency Conflicts

The Division has a duty to protect the public interest. As part of this responsibility, the Division sets policies to ensure that the legal system operates in a manner that safeguards the public's confidence in the integrity and impartiality of its administration. For this reason, in addition to insisting that its attorneys follow the Rules of Professional Conduct, the Division prohibits outside counsel that represent a State agency, while such matter is pending, from:

(1) Representing private parties before that State agency (or its officers) in adversarial, transactional or non-adversarial proceedings. By way of example and not limitation, outside counsel are prohibited from representing any private party before a client agency in connection

with applications for government approvals, as well as in quasi-judicial and/or quasi-legislative proceedings before that client agency. Outside counsel also may not, on behalf of a private client, lobby a State agency they represent.

(2) Representing private parties in any matter in which the State agency also is a party, if the private party has interests adverse to the State agency.

(3) Representing the State agency in a matter involving a private party, if the firm concurrently represents that private party in other matters.

(4) Being adverse to the State agency the firm represents on behalf of a private client (*i.e.* within the meaning of RPC 1.7).

(5) Representing another client if that representation would present a substantial risk that outside counsel's responsibilities to the State agency would limit its ability to provide independent advice or diligent and competent representation either to the State agency or the other client.

(6) Representing another client where the outside counsel's knowledge of the State's legal positions or strategy, derived from its representation or prospective representation of the State agency, could be used to the advantage of the other client or the disadvantage of the State.

Note that, pursuant to New Jersey law, State agencies cannot consent to or waive conflicts of interest.

In accordance with the disclosure obligations set forth above, outside counsel must promptly and fully disclose to the Designated Attorney any potential conflict of interest. As noted above, the Division's determination, in its sole discretion, that a conflict exists shall be binding on outside counsel.

C. Continuing Obligation

The obligation to disclose conflicts continues throughout the course of the representation. Outside counsel must review conflicts of interest on an ongoing basis as new matters are opened. Any new attorney/client relationships that potentially create a conflict shall be reported to the Designated Attorney immediately.

D. No Representation of Other Persons/Entities Absent Approval

Outside attorneys engaged to represent a particular State entity (as opposed to a named person) should consider themselves to have formed an attorney-client relationship *only* with that entity, and not any of its individual employees. When speaking with current or former employees of the client entity, outside counsel should, as appropriate, advise those employees that although their dialogue will be considered attorney-client communications to the fullest possible extent, counsel's responsibility is to the client entity and they do not represent those employees in their individual capacities. As a matter proceeds, if employees of a client entity will be examined under oath or interviewed in other adverse contexts, and if outside counsel believe it advisable for them to represent the employees in their individual capacities at such

events, outside counsel must obtain the Designated Attorney's advance consent before agreeing to represent such persons in their individual capacities. The Designated Attorney, in consultation with other Division personnel, will determine if it is appropriate for the individual to receive representation and, if so, by whom.

Outside counsel who are engaged to represent both an entity and employees of that entity simultaneously are expected to take all necessary steps to ensure the continuing absence of conflicts, and to preserve their ability to continue representing the entity in the event that conflicts develop between the entity and individual clients.

IV. OUR WORKING RELATIONSHIP

A. Identification of Objectives/Relationship Attorney

The deputy attorney general (DAG) or assistant attorney general (AAG) assigned as the Designated Attorney in a matter will be your regular point of contact for financial and strategic decisions. (In rare cases, the Designated Attorney may be an employee of another State office or agency.) Only the Designated Attorney, that person's superior, the Director of the Division of Law and/or the Attorney General have authority to direct outside counsel in the handling of the matter. Outside counsel shall not initiate contact with any other State employee unless specifically authorized. If a State employee other than one listed above asks outside counsel to proceed in a certain fashion or to perform certain activities with respect to a specific legal matter, outside counsel should report the request to the Designated Attorney and obtain direction prior to proceeding.

The Designated Attorney will be your firm's principal contact with the Division. Outside counsel shall designate a Relationship Attorney to be the Designated Attorney's principal contact. Outside counsel may expect the Designated Attorney to provide clear, specific instructions; communicate the State's objectives; closely monitor the management plan and budget; follow the progress of the matter; keep outside counsel informed of important developments; and act as liaison between outside counsel and the State. In all matters, the State remains ultimately responsible for making all substantive decisions and determining the costs and benefits of contemplated legal activity. In many matters, Division attorneys will act as full co-counsel and be engaged with you in the day-to-day conduct of the case. In matters where you are handling that day-to-day conduct without Division personnel as co-counsel, the Division expects to be consulted on a regular basis throughout the course of your engagement and to be kept fully informed of the current status and proposed course of the matters assigned to your firm. All strategic, tactical, staffing (including any proposed staffing changes) and significant resource allocation decisions about State legal matters must be made in collaboration with the Designated Attorney. Please be advised that, in some prior cases, courts have directed that all filed papers must be signed or co-signed by a Division attorney.

Documents prepared for service or filing should be sent to the Designated Attorney with enough lead time to allow for meaningful review (*e.g.*, a minimum of one week for major briefs). Only in exceptional circumstances should the lead time for any non-urgent matter be less than three business days. You should ask the Designated Attorney about exceptions to this requirement for routine documents, such as stipulations extending time, and when extraordinary

circumstances will prevent you from providing the reasonable lead time specified in this paragraph. No motions, briefs or other correspondence with a court may be filed on behalf of the State unless those briefs have been approved by the Designated Attorney (or, in the event of the Designated Attorney's unavailability, with the approval of another member of the Division team handling the case). Unless otherwise instructed, outside counsel shall forward copies of all substantive pleadings and correspondence to the Designated Attorney, once sent or filed.

In certain types of cases, including but not limited to medical malpractice actions, the Designated Attorney may agree to alternate procedures for review of documents prior to filing. The Designated Attorney will advise outside counsel as to whether these alternative procedures govern the entire matter or specified portions of it.

In some instances, the Division may elect to use cost-effective internal resources or expertise for particular aspects of a legal matter. It therefore is essential that the Division be consulted in advance of all contemplated significant steps in a matter. In that way, we can jointly determine, for instance, whether a particular research project is necessary, whether a task can be handled internally, if a motion should be made, how document gathering and review can be handled most economically, if and when settlement discussions should begin, and who should conduct those discussions. Obviously, the Division expects that the time, money and other State resources spent on any legal matter must be commensurate with its significance. The Division expects the outside counsel it retains to work with it to successfully resolve matters with dispatch and cost effectiveness.

THE STATE WILL NOT BE RESPONSIBLE FOR ANY LEGAL FEES OR COSTS INCURRED WITHOUT THE SPECIFIC APPROVAL OF THE DESIGNATED ATTORNEY OR OTHERWISE INCURRED OUTSIDE THESE GUIDELINES.

B. Early Case Assessment/Cost Assessment

Each complex matter is to be thoroughly evaluated at its outset. The same applies to actions in which the State is the plaintiff, except that the analysis will be performed before the case is filed. In any matter where the legal costs or exposure may be substantial (*i.e.*, where \$250,000+ is at stake or the prospect exists of significant injunctive relief), the State may ask that you provide an early case assessment that includes analysis of (1) likely costs to the State from the process, (2) possible outcomes, indicating the likelihood of each, and (3) strategy and tactics for termination or resolution. The format of the early case assessment may vary from a formal written document to a verbal briefing or a combination of a written budget with a verbal briefing on other aspects of the case. You should discuss the most desirable format with the Designated Attorney when you are requested to prepare an early case assessment.

In most matters, unless the Designated Attorney advises outside counsel to follow a different procedure – in which case the Designated Attorney will advise as to when a budget should be prepared and for what period of time – outside counsel will be required to provide a budget for the life of a case and cost estimates for important phases of a case as soon as practicable after counsel are engaged. In general, a life-of-case budget should reflect major assumptions, conform to the established management plan, identify specific work phases and estimate the cost of each phase, identifying projected fees and disbursements. The Division

reserves the right to revise any budget prepared by outside counsel, may offer a template budget based on past experience in similar cases, and of course has final authority to approve any budget. The Designated Attorney ordinarily will ask that budget materials be entered through CounselLink using the Budget feature. See Appendix C. Counsel then should update these estimates whenever a significant change to prior estimates is contemplated.

Please note that time spent preparing a budget is not billable, but counsel may bill for time spent preparing an early case assessment or a recommended discovery plan.

The Division places significant reliance on cost estimates and expects outside counsel to prepare them with care. Although the Division understands that unanticipated events may have an impact on costs, we expect to be consulted promptly if you believe that the most recent cost estimate you have provided is no longer accurate. **Should total fees or costs exceed the agreed budget, or should fees or costs for a phase of the case exceed the agreed estimate for that phase, without adequate explanation in advance that the increased expense will be necessary, the Division may require that an increased discount be applied to unanticipated fees or costs and reserves the right not to pay outside counsel for any amounts incurred or expended in excess of the approved budget or estimate.**

For bond matters and other transactional engagements, counsel may be expected to provide a fee cap for the transaction, approved by the Division, prior to commencing work. Only where a transaction materially changes in scope will the Division consider revisions to an agreed fee cap. **No payments above the agreed fee cap shall be made unless and until a revised fee cap has been approved in writing by the Director of the Division or his/her designee.**

C. Staffing

Law firm staffing decisions regarding the attorneys who will work on a State matter, including both the overall staffing structure and the specific individuals involved, should be discussed in advance with the Designated Attorney. The Division expects to approve all attorney staffing. Unless otherwise agreed, the Division expects the lead attorney retained to be directly and ultimately responsible for the entire assignment. The day-to-day involvement of that lead attorney, however, should be appropriate to the magnitude of the matter and the efficiency required for a timely, cost effective, quality work product. When a senior lawyer can handle an assignment most efficiently (based on skill and experience), we expect that lawyer to complete the assignment. Work suitable to more junior attorneys should be delegated. Attorneys should never bill to perform tasks that could be effectively handled by support personnel.

The Division expects lean staffing on its matters. The Division generally expects to be billed for only one attorney to attend events such as depositions, witness meetings, settlement conferences, negotiations and meetings with other parties' counsel. We recognize that in more complex matters and those with multiple work-streams, it may occasionally be appropriate for multiple attorneys to attend significant events and for members of the team to consult with each other. We insist, however, that no more than the minimum number of attorneys necessary to an event attend, that billable internal conferences and charges for drafting and reading internal email correspondence occur only when absolutely required, and that the Designated Attorney be

regularly informed both of the number of attorneys who will attend significant events and the reason for the attendance of each billing timekeeper.

As noted above, because there often are instances when the State has attorneys with expertise in a specialty area, it may well be more cost effective and efficient for these internal professionals to be used instead of (rather than in addition to) specialists at your firm.

The State believes that it is most efficient for a single attorney or group of attorneys to handle a matter from beginning to end and expects outside counsel to strive for such continuity. The State will not pay for learning time that may result from staffing changes at your firm. In addition, the State will not reimburse outside counsel for any routine training or supervisory time, including time spent at seminars, unless specifically approved in advance and included as part of the budget. The State will not ordinarily pay for summer associate time unless such time has been identified as part of the approved staffing plan for appropriate work. The State does not expect to be billed and will not pay for time submitted by librarians; secretaries; billing, filing, docketing or document clerks; internal messengers/couriers; temporary or clerical support staff; word processors; and IT professionals other than electronic discovery specialists serving a function similar to that of paralegals/case managers. The State also will not pay for time billed by attorneys or paralegals to perform tasks (filing, indexing, etc.) that could and should have been handled by support personnel.

If the Division determines, after consultation with outside counsel, that staffing is inappropriate for particular tasks performed, the hourly rate charged may, in the Division's sole discretion, be reduced to a rate consistent with that of a lower level professional. Similarly, if the Division determines that excessive time was spent on a particular task, the time billed may be reduced at the Division's sole discretion. **Please review the Acceptable Fees/Charges section below for a list of clerical and administrative tasks that should not be billed, and will not be paid, no matter who performs the work.**

In those cases being handled on a contingency fee basis, the above requirements should serve as guidelines for determining outside counsel's lodestar. Similarly, outside counsel shall, whenever possible, comply with these Guidelines concerning fees, administrative tasks, disbursements and costs, and travel, notwithstanding the fact that outside counsel may not be submitting monthly invoices for payment to the State. Lodestar information and expenses for which reimbursement will be sought must be submitted at least quarterly via informational invoicing through CounselLink as discussed above.

D. Rates

The State will pay for actual services rendered at rates established in Requests for Qualifications or otherwise agreed to in advance. At the time of your initial engagement, your firm shall furnish the Designated Attorney with a schedule of billing rates for partners, associates and all other timekeepers expected to bill time against the matter for review and approval prior to billing time to the State. **Because of State procurement rules, the rates applicable at the inception of each specific matter must remain in effect for the duration of that matter.** Hourly rates should include all overhead costs (*see* Acceptable Fees/Charges, below), none of which should be included in disbursements.

Time must be billed in 0.1 hour increments and on a per-task basis. The time entry description must be specific, detailing the action taken and the subject matter. **Absent prior consent, the Division will not pay for more than ten (10) hours of time by a single timekeeper in a single day**, but the Designated Attorney may increase that number of permissible hours in matters of special urgency or where cases are in or approaching trial.

The Division will consider alternatives to traditional hourly billing, including fixed-fee arrangements, reduced hourly rates with incentive bonuses, value billing, negotiated discounts and blended rates. The State has adopted such alternative fee arrangements in appropriate circumstances and encourages outside counsel to propose them.

Outside counsel should bear in mind that invoices may be disclosed pursuant to the State's open records laws and that courts may not sustain assertions of privilege by the Division. Although the Division will endeavor to redact privileged information before releasing bills for public consumption, counsel should, to the extent practicable and consistent with the need to fully inform the Division of its activities and to allow the Division to evaluate the reasonableness of billing narratives, avoid the inclusion of privileged matter in invoices.

E. Acceptable Fees/Charges

Overhead charges may not be billed. The State will not reimburse outside counsel for basic support services, which the State deems to be part of outside counsel's overhead and built into its rates. The State will not pay for any of the following items under any circumstances:

- Billing inquiries
- Opening and closing files
- Internal filing
- Secretarial services (including overtime charges)
- Word processing or proofreading
- Maintenance of a calendar or tickler system
- Investigating potential conflicts
- Preparing budgets
- Library usage (including book purchases or subscriptions) or library staff time
- Office supplies
- Conference room charges

Basic legal research may not be billed. Outside counsel is expected to be familiar with the basic substantive law at issue in the matter for which the firm was retained, and the State should not be charged for this type of research. If legal research benefits other clients, only the proportionate share of that cost should be billed to the State. The State also expects to benefit from previously prepared briefs and memoranda, and when such briefs or memoranda exist, will pay only for actual time spent updating or tailoring the same. All other anticipated legal research should be addressed in outside counsel's proposed budget. Legal research projects necessary in a particular litigation assignment must be approved in advance by the Designated Attorney before the research is commenced.

The State will pay only for the actual time spent by outside counsel or other approved timekeeper conducting the research. As explained *infra*, fees charged by electronic or other research services, including library fees, Westlaw, Lexis and other online services are considered general overhead and are not reimbursable.

Out-of-pocket costs must be itemized and passed through with no markup. The State will reimburse outside counsel for reasonable, documented and itemized out-of-pocket disbursements and costs incurred on behalf of the State, with the exceptions and limitations set forth in these Guidelines. Outside counsel's invoices to the Division should reflect the actual cost and should not include any markup. All disbursements must be fully itemized with a description sufficient for review, identifying the number of units, price per unit and total cost. The State may refuse to pay for disbursements billed as 'miscellaneous,' billed in a group (e.g., Travel Expenses - \$4,000.00) or disbursements without descriptions.

Prohibited disbursements. The State considers certain disbursements to be part of a law firm's overhead and will not pay such charges. These items include:

- Rent (including temporary office space)
- Westlaw, Lexis and other legal database services
- Cost or usage of computers or mobile devices or internet service charges
- Equipment rental
- Storage charges
- Catering for internal meetings
- Meals (except during business travel, and then limited to \$70 per day)
- Mileage for short trips (<30 miles one way)
- Travel costs exceeding discounted, non-refundable coach fares except where excess costs have been approved in advance
- Telephone charges
- Facsimile charges
- Allocated charges from a firm's blanket service agreements with outside vendors

Copying/scanning. Copying charges may be billed to the State at the lesser of the most favorable rate applied by your firm or eight cents per page for black and white copies and fifty cents per page for color copies when color copies are reasonably necessary. The State will reimburse for document scanning at your firm's regular rate, up to a maximum of eight cents per page, for document productions, but the State will not pay time charges associated with scanning, and there should be no charges associated with the scanning and filing of court papers and correspondence. Every effort should be made to minimize scanning expenses by working with documents in electronic format whenever possible.

Couriers and Overnight Mail. The State will reimburse for actual charges billed to the firm for deliveries (including overnight express) that are necessary in the interest of speed and reliability. The Division expects you to use the lowest cost service consistent with need and reliability, and to arrange schedules, whenever practicable, to avoid the need for premium-priced couriers. We expect you to consider using less expensive means, such as email (encrypted, when necessary) or regular mail where it is practical to do so.

Travel Expenses Must Be Reasonable. All air and rail travel must be first approved by the Designated Attorney, ideally as part of the case budget. The State expects its outside counsel to use good judgment in selecting hotels and restaurants and incurring expenses for which the taxpayers are to be charged. Alternatives to travel such as conference calls or videoconferences are strongly encouraged and should be used by outside counsel whenever practicable. If the travel involves another client, the State expects to be billed only for its proportionate share of both time and related expenses. **Except for driving time in some cases as specified below, non-working travel time is not billable without the Designated Attorney's prior approval.**

Automobile Expenses/Billing for Driving Time. The State will reimburse outside counsel at a rate not exceeding the prevailing IRS-allowed mileage rate for business travel of 30 miles or longer each way (unless a lesser rate is negotiated), and the driver may bill the associated travel time at 50% of that counsel's agreed rate. The Designated Attorney, in appropriate cases, may lower the 30-mile threshold. The State will reimburse the actual costs of taxicab, train or bus travel, or tolls and parking charges for a personal car, if necessitated by State business and not part of outside counsel's commuting cost. If a rental car is the most economical option, the State will reimburse up to intermediate/mid-size class unless three or more lawyers are traveling together, in which case a full-size car would be appropriate.

Reimbursement of Meals for Overnight Travel. The State will reimburse for meals consumed while traveling overnight on State business, but limited (absent prior approval) to no more than seventy dollars (\$70) per person, per day. Under no circumstances will the State reimburse costs for alcoholic beverages.

Maintenance of Expense Records. To ensure compliance with the State's reimbursement policies, all firms shall require itemization of out-of-pocket expenses such as airline tickets, meals and hotel bills before making reimbursement to any attorney, employee or third party, and maintain original receipts. Travel and meal expenses and receipts may be audited and shall be retained by outside counsel in accordance with applicable IRS guidelines. Unless requested to do so by the State, outside counsel should not forward copies of travel and meal expense receipts to the State with the firm's invoices.

Personal Expenses Not Reimbursable. Please take care to distinguish between personal expenses and properly chargeable business expenses. The State will not reimburse for, among other things, recreation fees, salon or spa charges, pay-per-view movies or other personal entertainment charges, airline baggage charges, travel agency expenses, shoe shines, toiletries, dry cleaning or laundry (except in the unlikely event travel of more than seven days' duration is required), or luggage.

Be Mindful of State Ethical Guidelines. When hosting or traveling with Division or other State personnel, please bear in mind that State employees are bound by strict ethical guidelines and cannot accept gifts of any kind—including meals—from outside counsel. We urge you not to place Division colleagues in the uncomfortable position of, for example, having to pay out-of-pocket because the outside lawyer has chosen an expensive restaurant in which to hold a discussion about the matter.

Vendor discounts must be passed through. If your firm receives a discount or rebate from a vendor based on your aggregate level of business with that vendor, the State expects such discount to be disclosed and to receive the benefit on a proportionate basis. This does not include frequent-flyer miles or similar perquisites allocated to individual travelers.

Filing fees. The State is exempt from paying any filing fees in the Superior Court of New Jersey (including the trial court level and Appellate Division) and the Supreme Court of New Jersey. **Consequently, any such fees mistakenly paid by outside counsel will not be reimbursed.** The State will reimburse the actual cost of any approved court filings in any jurisdiction where the State is not exempt from paying applicable filing fees.

F. Discovery

You must discuss discovery planning with the Designated Attorney at the outset of the matter and throughout the life of the case. Ordinarily, in each case where significant discovery is anticipated, the Division will expect you to prepare a written process memo. The process memo should set forth your plan for discovery, including electronic discovery, the tasks that must be completed, the allocation of responsibility for each task and a budget. **When a process memo is required, the Division will not be responsible for any charges incurred where the work is not contemplated by the memo or exceeds the stated budget, absent prior agreement.** The State will insist on processes that mitigate risk and are cost-effective, while meeting all discovery obligations imposed by applicable rules, practices, and orders.

Document review processes should be discussed and agreed upon in advance with the Designated Attorney. In cases requiring significant document review, the Division prefers Technology Assisted Review (“TAR”) to manual review when TAR is an appropriate substitute for manual review. Where manual review must be undertaken, the Division generally prefers first-pass review to be conducted by non-associate in-house reviewers or contract reviewers, closely supervised by outside counsel. Only in matters of significant complexity or sensitivity will it be appropriate to use associates for first-pass relevance reviews. We also ask that particular care be given to ensure that internal firm consultation and reporting about reviews is done cost-effectively. In the event outside counsel engages contract attorneys, the associated charges should be passed through as disbursements, with no cost markup.

G. Settlement

Outside counsel have no settlement authority unless and until such authority is explicitly conferred on them by the Designated Attorney. If you believe that settlement should be pursued, you must seek instructions in this regard from the Designated Attorney, and not pursue formal or informal settlement discussions without the Designated Attorney’s approval. Outside counsel should immediately inform the Designated Attorney of any settlement proposal or overture, formal or informal, by the opposing party or counsel.

PLEASE NOTE THAT UNDER NO CIRCUMSTANCES CAN THE STATE AGREE TO DESIGNATE A SETTLEMENT AGREEMENT AS CONFIDENTIAL. ALL STATE SETTLEMENT RECORDS ARE, BY DEFINITION, PUBLIC DOCUMENTS.

H. Exceptions to Guidelines

It is outside counsel's responsibility to discuss with the Designated Attorney all questions concerning the application of these Guidelines before proceeding on a course of action not specifically authorized by the Guidelines. The Designated Attorney has authority to modify or waive Guidelines impacting the conduct of a matter, but *not* to modify or waive Guidelines related to billing except as explicitly specified herein. If an exception to other billing aspects of any Guidelines is deemed necessary by outside counsel, a request must be submitted and approval must be obtained from the Director of the Division of Law or his/her designee. If the Director has authorized the Designated Attorney to make a billing-related exception beyond the Designated Attorney's normal authority, the Designated Attorney shall affirm that authorization in a writing to the Relationship Attorney, copied to the Director.

The State will not reimburse outside counsel for any fees or expenses incurred in violation of these Guidelines or any exception properly granted in writing. Only the Director of the Division of Law may orally grant exceptions from these guidelines, and in the event of such oral exception, either the Director or outside counsel should promptly confirm the exception in an email message or other writing.

I. Media Relations/Law Firm Advertising

THE STATE DOES NOT AUTHORIZE OUTSIDE COUNSEL OR VENDORS TO COMMENT PUBLICLY IN ANY MANNER ON ANY ASPECT OF THE STATE'S LEGAL MATTERS. All media inquiries relating to the State should be referred promptly to the Designated Attorney and discussed with the Designated Attorney before responding to the media contact in any manner. This includes even "no comment" or other non-substantive responses. If time is of the essence and you cannot reach the Designated Attorney, please contact the Director of the Division of Law or the Director of Communications for the Department of Law and Public Safety.

The State does not permit outside counsel to advertise or promote their relationship with the State, other than by listing the State as a representative client.

J. Engagement of Secondary Law Firms

Outside counsel may not retain local counsel without the Division's specific prior approval. During the course of a matter, if it becomes necessary to retain a secondary law firm and/or local counsel, outside counsel will consult with the Designated Attorney and provide recommendations for hiring a firm. Once retention has been approved, the Designated Attorney will determine if the secondary firm should: (1) be managed by, and invoices passed through outside counsel; or (2) register in CounselLink so that it may invoice the Division directly. **Local counsel must agree to have their fees and expenses governed by these Guidelines, and the Division will not reimburse local counsel fees and expenses that are inconsistent with these Guidelines.** The Division may request local counsel's full invoices to ensure compliance.

K. Engagement of E-Discovery and Other Vendors, Including Experts

Before engaging any vendor the costs of which may exceed two thousand dollars (\$2,000), including court reporting services, electronic discovery firms and experts, lobbyists or other consultants (in each case, a “vendor”), outside counsel must pre-clear that engagement with the Designated Attorney, unless the Designated Attorney has explicitly granted exceptions to this preclearance requirement. **THE STATE WILL NOT BE RESPONSIBLE FOR MORE THAN \$2,000 IN VENDOR FEES OR COSTS UNLESS THAT VENDOR’S ENGAGEMENT WAS PRE-APPROVED BY THE DIVISION.** The Division may require outside counsel to engage vendors with which the State has master contracts or preferred pricing arrangements, and always will insist on engagement of the lowest-cost vendor qualified to handle a task (understanding that complex tasks may require vendors with specialized expertise). Outside counsel and the Designated Attorney shall discuss and agree as to whether particular vendor costs should be included on outside counsel’s invoices or billed directly to the Division.

Outside counsel has the responsibility to ensure that there are no conflicts between any vendor and the State. In addition, all vendors must execute the confidentiality agreement attached as Appendix B. The fee and disbursement policies as outlined in these Guidelines shall be made available to, and followed by vendors. It is outside counsel’s responsibility to confirm that all third party billings comply with these Guidelines.

Vendor payment arrangements should be discussed in advance with the Designated Attorney. In general, the Division expects outside counsel to contract with vendors themselves and to pay the third party invoices directly, incorporating those invoices into their own bills to the State and including appropriate detail for reasonable review by Division personnel. The Division may request outside counsel to provide full copies of vendor invoices; outside counsel therefore should retain those invoices in accordance with IRS guidelines. The Designated Attorney may approve other payment arrangements, including (in rare cases) direct contracting with and payment by the State.

When engaging court reporting services, outside counsel should request only one transcript (electronic or hard copy). The Division will not reimburse charges for additional transcripts. Please note that the Division has discount contracts with certain reporting services.

L. Adherence to Ethical Standards

The State conducts itself in accordance with the highest ethical standards and expects the same of its outside counsel. No State employee ever has authority to instruct outside counsel to act in an unethical manner. If outside counsel believes that a State employee has engaged or will engage in illegal or unethical activity, the Relationship Attorney must immediately advise the Designated Attorney or, if the alleged breach involves the Designated Attorney, advise his/or her supervisor or the Director of the Division of Law. The Division will terminate its relationship with any outside counsel who, in the Division’s sole discretion, fails to adhere to the foregoing ethical standards.

M. Malpractice Insurance

Outside counsel representing the State are expected to maintain malpractice insurance coverage that is reasonable and prudent in relation to the types and sizes of matters handled. Outside counsel shall, upon request, promptly provide the Designated Attorney with copies of any applicable policies required under this section, and/or a certificate of insurance. Each policy provided must be certified by the agent or underwriter to be a true copy. If outside counsel does not have coverage or if coverage is cancelled and not immediately replaced with comparable coverage, outside counsel must immediately report this to the Designated Attorney.

N. File Retention

For Litigated Matters: Outside counsel shall retain pleadings, correspondence, discovery materials, deposition transcripts and similar documents and work product for a period of no less than seven (7) years from the date the matter is concluded or for the time period specified by rule or law in the jurisdiction in which the matter was pending, whichever is longer. Beyond this period, outside counsel shall notify the Division in writing no less than sixty (60) days prior to destroying any file. Along with the written notification, outside counsel shall submit an inventory of any original State documents contained in the file to be destroyed and a representation that any electronic version of the file will also be destroyed or deleted.

For Bond and Other Transactions, and Advice Matters: Documents shall be retained in accordance with the same policies applicable to litigated matters unless applicable law mandates any longer retention schedule. However, bond counsel and transactional/advice counsel shall retain all transcripts of transactions and memoranda of advice indefinitely unless otherwise directed by the Designated Attorney.

V. CONFIDENTIALITY

In the course of representing the State, outside attorneys frequently gain access to nonpublic and confidential information. The State requires outside counsel to maintain the confidentiality of such information both during and after the course of the firm's representation of the State. Outside counsel must have in place appropriate procedures to ensure the protection of all such information. In the event the representation requires outside counsel to become privy to protected personally-identifiable information about any person, such as health or financial records, Social Security numbers or other such information, then this information must be handled with the utmost care both within facilities in outside counsel's control, and certainly when that information is being transported. Under no circumstances should such confidential information be transported outside your offices--either physically or over the public internet--unless the information is appropriately encrypted. In the event information is compromised or potentially compromised, outside counsel must notify the Division immediately.

Outside counsel must follow all statutory, regulatory, and ethical provisions relating to privacy, confidentiality and nondisclosure of all privileged, proprietary and confidential information. Outside counsel must take appropriate measures to ensure that all legal and non-legal personnel are familiar with this requirement and are effectively supervised in this regard.

Vendors to whom outside counsel give access to confidential or proprietary material of the State (including work product) must sign the confidentiality agreement attached as Appendix B, as noted above. It is the responsibility of outside counsel to obtain a signed confidentiality agreement from each vendor and to retain those agreements.

VI. INVOICING POLICY

All invoices must be submitted using CounselLink. CounselLink is compatible with the majority of legal time and billing systems and there is no charge or fee to outside counsel for submitting invoices via CounselLink. Consult Appendix C – ‘Using CounselLink’ – for details on how to properly format your invoices. With each invoice, outside counsel also must complete and submit the State of New Jersey’s Payment Voucher (attached as Appendix D). The Payment Voucher must be uploaded to the matter using the ‘Document Attachment’ feature in CounselLink (Appendix A).

For litigation, advice, and non-bond transactional matters, outside counsel generally are expected to submit monthly invoices within thirty days of the conclusion of the billing period, absent the Division’s prior consent to a longer delay. All charges must reflect the work performed within the billing period or a reasonable time before the billing period. Absent good cause, as defined by the Division, the State will not pay for services or expenses incurred more than 90 days prior to the date the invoice is submitted. For bond matters, outside counsel are expected to submit their invoice within thirty days of the conclusion of the transaction.

Absent a specific agreement to an alternative fee arrangement, outside counsel fees shall be computed by applying the negotiated hourly rate to the time for the services expended. Hours shown must accurately reflect the time spent on the described activity and must either be the exact amount of time or the exact time rounded down to the nearest one-tenth of an hour. Block billing—grouping multiple activities under a single time charge—will not be accepted, and the State will not pay for any time recorded in a block fashion unless this requirement is waived by the Director of the Division of Law or his or her designee.

Every bill from outside counsel is deemed to be a certification by the firm and billing partner that all legal services and disbursements reflected on the bill are reasonable for the legal matter involved and necessary for the proper provision of legal services to the State. CounselLink will automatically deduct certain fees and charges that are inconsistent with these Guidelines. Every invoice then will be reviewed by the Designated Attorney and, in most cases, by an Assistant Attorney General. These reviewers may apply additional deductions for charges they deem to be inconsistent with these Guidelines or otherwise inappropriate. The process of appealing from these deductions is discussed below in Section VI.B.

The State reserves the right to audit all fee and disbursement details that outside counsel submit, as well as the corresponding legal file. The Division may perform this audit.

The State will promptly terminate the services of any outside counsel whose billing practices raise questions about the outside counsel’s integrity, honesty or compliance with the applicable rules of professional conduct or these Guidelines.

A. Invoice Format

Each invoice will include the following minimum requirements:

- Unique invoice number
- Invoice date
- Matter name
- Division of Law's matter number
- Outside counsel's matter number
- Date(s) services were performed
- Timekeeper name or ID
- Timekeeper title or level
- A narrative description of the services provided or tasks performed for each specific task. The description should clearly state the nature of the task performed sufficient to allow the Division to determine why it was necessary. Incomplete or vague charge descriptions are unacceptable. Examples of incomplete or vague charges include, but are not limited to: 'analysis', 'review file,' 'conference', 'attention to matter'; 'worked on discovery', 'work on file', 'prepare for meeting', 'misc.', and 'other'.
- Time entry to the nearest tenth (.10) of an hour
- Timekeeper rate
- Charge total
- Detail of reimbursable expenses and disbursements at actual cost

The detailed billing report from your computerized billing system will provide this information. If your firm provides services on more than one matter during a billing period, a separate invoice for each matter is required. Please refer to Appendix C - 'Using CounselLink' - for more specifics.

B. Appealing From Deductions

If CounselLink automatically deducts fees or charges and/or the Division applies deductions manually after reviewing an invoice, the invoice will be returned to outside counsel's queue for their review of these deductions. If outside counsel wishes to discuss and potentially to ask the Division to reconsider deductions, they may do so within 30 calendar days from the date on which the invoice is returned to their queue by contacting the Assistant Attorney General noted on the bill as having approved the deductions. On the 31st day after a reduced invoice is returned to outside counsel's queue, the Division will consider the deductions final.

Where the Division and outside counsel discuss deductions, outside counsel will be asked, once the discussion has concluded, to resubmit a new invoice and Payment Voucher reflecting the agreed amounts. Although the Division will discuss deductions with outside counsel and give due consideration to outside counsel's views, the Division's determinations with respect to deductions are final and the Division reserves the right to modify previously submitted Payment Vouchers to reflect the reduced amount if outside counsel do not appeal deductions or do not timely submit a new Payment Voucher reflecting them.

VII. GRATUITIES

State officers and employees are prohibited from accepting any gift, favor, service or other thing of value related in any way to the State officer's or employee's public duties. In addition, Executive Order No. 189, signed by Governor Kean, prohibits any vendor to the State from offering a gift or other thing of value to a State officer or employee or special State officer in an agency with which the vendor transacts business or offers to transact business. This Executive Order also prohibits any State officer or employee from soliciting a gift or thing of value from a State vendor. This includes charitable donations made in the name of a State employee.

APPENDIX A DOCUMENT ATTACHMENT

Law firms are able to attach case supporting documents such as pleadings, status reports and third-party invoices electronically to either an invoice or a matter. Outside counsel may be requested to upload specific documents to a matter or invoice. Documents will be permanently attached to the invoice or matter unless removed by the individual who attached them. Only the law firm and Client will be able to view the documents. Most document formats are accepted including PDF files.

PLEASE DO NOT USE DOCUMENT ATTACHMENT TO SUBMIT LAW FIRM INVOICES.

Attaching a document to an Invoice (e.g., expense receipts)

- Log in to <http://www.counsellink.net>
- From the Home page, click on either **Created** or **Scheduled** Invoices (dependent upon the status of your invoice)
- Click on the **CounselLink Invoice Number**
- To add or search for a document , click on the **Documents** link
- To add a document, click on the **Add Document** link
- Type in the document name as you want it to appear in CounselLink
- Browse your file directory for the document to add by clicking the **Browse** button
- Select the **Category** from the drop down
- Select “**Yes**” from the **Shared** drop down
- Select “**Public**” from the **Access Level** drop down
- Enter a free form description of the document in the **Description** box
- Enter a key word to assist in future searches in the **Key Word** box
- Click on **Save**

Attaching a document to a Matter (e.g., Initial Report, pleadings, summaries)

- Log in to <http://www.counsellink.net>
- From the Home page, click on **Matter Search**
- Enter the **Matter Search** criteria
- Click on the **Matter ID** or **Matter Title**
- Select **Documents** from the **Action** drop down
- Type in the document name as you want it to appear in CounselLink
- Browse your file directory for the document to add by clicking the **Browse** button
- Select the **Category** from the drop down
- Select “**Yes**” from the **Shared** drop down
- Select “**Public**” from the **Access Level** drop down
- Enter a free form description of the document in the **Description** box
- Enter a key word to assist in future searches in the **Key Word** box
- Click on **Save**

APPENDIX B
CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

_____ (Subcontractor), as a contractor of the law firm retained by the State of New Jersey, hereby acknowledges and agrees as follows:

1. All documents and data, including but not limited to financial, statistical, personnel, customer and/or technical documents, owned or supplied by the State to the Subcontractor, shall be treated as confidential (Documents and Data). The Subcontractor shall take all necessary and reasonable precautions to ensure that the State's Documents and Data are safeguarded. Use of the Documents and Data is strictly limited to that use necessary to complete the scope of work agreed upon, which may include disclosure to employees, officers or agents of any subcontractor assisting with the scope of work. Any other use, and any sale or offering of the Documents and Data in any form by the Subcontractor, or any individual or entity in the Subcontractor's charge or employ, will be considered a violation of this Confidentiality Agreement and may result in ermination of the agreement between Subcontractor and the law firm retained by the State, and the Subcontractor's suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

2. Subcontractor shall be responsible to ensure that all agents and individuals or entities in the Subcontractor's charge or employ adhere to this Confidentiality Agreement. A breach of confidentiality by any individual or entity in the Subcontractor's charge or employ will be considered a violation of this Confidentiality Agreement by the Subcontractor.

3. In the event that Subcontractor, its agent or any individual or entity in the Subcontractor's charge or employ receives a subpoena, demand, or other request for any of the State's documents or data, Subcontractor shall promptly notify the State and shall not turn over any of the State's documents or data.

4. The Subcontractor shall comply with all applicable State and Federal laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of the Subcontractor's confidentiality obligations or other event requiring notification under applicable law ("Notification Event"), the Subcontractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State of New Jersey and its trustees, officers, and employees from and against any claims, damages, or other harm related to such Notification Event.

5. Upon termination of this Confidentiality Agreement the Subcontractor shall return or erase, destroy, and render unreadable all Subcontractor copies of State Documents and Data, both physical and electronic, and certify in writing that these actions have been completed within 30 days of the termination of this Confidentiality Agreement or within 14 days of the request of an agent of the State, whichever shall come first.

6. This Confidentiality Agreement shall terminate upon the Subcontractor's termination of the contract between the law firm retained by the State and Subcontractor or upon completion of the scope of work related to the State.

Firm _____

By _____

Title _____

Date _____

APPENDIX C USING COUNSELLINK

Budgeting

Please utilize the Budget feature within CounselLink to expedite approval of your proposed budget.

Staffing

Please utilize the Staffing List feature within CounselLink to expedite approval of your staffing proposal.

Invoice Submissions

To secure prompt and accurate payments to your firm, invoices in structured data format (LEDES) submitted via the web site www.counselink.net are preferred. When necessary, we will accept invoices, in other formats, including e-mailing a .PDF or ASCII invoice, mailing a diskette or mailing a white paper invoice.

Submission of a Structured Data File to CounselLink

- Export the invoice to the LEDES (ASCII) structured data format
- Log into www.counselink.net using your assigned login and password
- Click on the Upload Invoice link on the law firm home page
- Browse to the saved LEDES invoice, select it and click "Open"
- Complete any other necessary information on the Invoice Submission page and click "Submit File"

Creating an Invoice in CounselLink (U.S. currency only)

- Log into www.counselink.net using the provided login and password
- Click on the Matter Search link on the law firm home page
- Search for the matter on which the invoice is to be submitted
- Select "Create Invoice" from the Action bar dropdown
- Enter information on the "Edit Invoice Screen" if applicable and click on Submit
- Enter fees and expenses from the invoice screen
- Submit invoice

Alternative Forms of Submission

Email: A .PDF file or ASCII format copy of the invoice may be submitted via email to dept165@examen.com. Submit only ONE INVOICE PER .PDF file, although multiple .PDF files may be attached to a single email.

Diskette: A diskette in ASCII format.

Paper: An original copy of an invoice on white paper. If submitting paper invoices, a separate invoice must be submitted for each matter. When submitting invoices for multiple matters at one time, each invoice must begin on a new sheet of paper and must have a unique numerical identifier. Unique invoice numbers for individual matters may be created by adding a suffix to the invoice number created by your system (e.g., 12345-1, 12345-2, 12345-3, etc.)

Diskettes and paper invoices should be sent to New Jersey Department of Law c/o LexisNexis Examen, Inc., Attn: CounselLink Invoices, 1801 Varsity Dr., Raleigh, NC 27606

Invoice Returns

Invoices and the charges they reflect that in all respects conform to this Policy will be promptly processed for payment. Invoices or charges that do not conform to this Policy may be returned to your firm, in whole or in part, for correction. Invoices may also be returned for the following reasons:

- Uploaded invoice is not in the LEDES format
- Invoice contains a math error
- Invoice contains block billed charges
- No invoice number
- Duplicate invoice number
- Invoice does not contain a date
- Invoice date is in the future
- Invoice is an exact duplicate of previous invoice
- Charges do not contain a date
- Time increments not in tenths of an hour
- Unknown or incorrect LF Matter ID
- At Client's discretion

Block Billing on Invoices

Invoices should set forth in detail the related professional, the distinct tasks and activities performed by each professional, the time expended in tenths of an hour and fees charged for that work in separate time entries. Additionally, the task description must be sufficiently descriptive in order to identify the facility, location or office involved. Descriptions of blocks, batches of activities or tasks under one charge (*i.e.*, “block-billing”) are unacceptable. Invoices that contain any “block” billing entries will be returned.

For example, an invoice containing the following entry will be returned:

<u>Hours</u>	<u>Description</u>
1.5	Reviewed plaintiff’s interrogatory responses; prepared letter to opposing counsel regarding settlement options; continue drafting motion for summary judgment.

An acceptable method to enter the time entry would be:

<u>Hours</u>	<u>Description</u>
1.5	Reviewed plaintiff’s interrogatory responses (.3); prepared letter to opposing counsel regarding settlement options (.4); continue drafting motion for summary judgment (.8).

CounselLink Customer Support

CounselLink technical expertise is available to our outside counsel at no cost. For technical support, please contact LexisNexis Examen's Customer Support Department at 800-600-2282, option 2, then 1. If outside the United States, please contact +1-916-679-3899.

**APPENDIX D
PAYMENT VOUCHER**



**STATE OF NEW JERSEY
PAYMENT VOUCHER
(VENDOR INVOICE)**

DOCUMENT

BATCH

ACTG PER. FY

TC	AGV	NUMBER	TC	AGV	NUMBER										
PP START	SCHED PAY	CHK	OFF	F	RF	CK	(A) VENDOR ID NUMBER								
MO	DY	YR	MO	DY	YR	CAT	LIAB	A	TY	FL					

PO#

PV DATE

CONTRACT NO.	AGENCY REF	BUYER	(B) TERMS	PAYEE: SEE INSTRUCTIONS FOR COMPLETING ITEMS (A) THROUGH (G)	(C) TOTAL AMOUNT
(D) PAYEE NAME AND ADDRESS				(E) SEND COMPLETED FORM TO:	

(F) **PAYEE DECLARATIONS**
 CERTIFY THAT THE WITHIN PAYMENT VOUCHER IS CORRECT IN ALL ITS PARTICULARS THAT THE DESCRIBED GOOD OR SERVICE HAVE BEEN FURNISHED OR RENDERED AN THAT NO BONUS HAS BEEN GIVEN OR RECEIVED ON ACCOUNT OF SAID DOCUMENT.

.....
PAYEE SIGNATURE

.....
PAYEE TITLE

.....
BILLING DATE

REFERENCE				LINE	(G) PAYEE REFERENCE
DC	AGY	NUMBER			

FUND	AGCY	ORG CODE	SUB-ORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT NO

RPT	BS ACT	DT	DESCRIPTION	QUANTITY	AMOUNT	ID	PF	TX

ITEM NO	COMMODITY CODE / DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT

CERTIFICATION BY RECEIVING AGENCY: I certify that the above article have been received or services rendered as stated herein.

.....
Signature

.....
Title

.....
Date

CERTIFICATION BY RECEIVING AGENCY: I certify that this Payment Voucher is correct and just, and payments is approved.

.....
Authorized Signature

.....
Title

.....
Date