Administrative Office of the Courts

Supreme Court of New Mexico
Arthur W. Pepin, Director

COURT-APPOINTED ATTORNEYS PAYMENT GUIDELINES

Non-Contract Counsel

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I. INTRODUCTION

The New Mexico Judiciary is committed to providing quality legal representation for indigent parties in certain civil proceedings when the law requires that an attorney be appointed by a court. Since 1993, the legislature has earmarked funds to pay for court-appointed attorneys in the courts. The Administrative Office of the Courts (AOC), through the Court-Appointed Attorney Program (CAAP), oversees the administration of all court-appointed attorneys in these cases.

This guide was created to clarify the policies and processes governing billing for non-contract attorneys, and to provide examples for how to properly complete fee applications. The AOC will pay for attorneys in cases specified in Section II. These guidelines supersede all policies and procedures previously in effect relating to expenditures for non-contract attorney fee payments.

For additional assistance, please feel free to contact the CAAP staff at 505-827-4354 or aoccaaff@nmcourts.gov.

II. APPOINTED COUNSEL FEE SCHEDULE

All non-contract attorneys will be compensated at $50.00 per hour for in-court and out-of-court work billed against a fee cap according to the schedule below.

TYPE OF CASE – Milestone Event ***RA = Respondent's Attorney; GAL = Guardian Ad Litem; YA = Youth Attorney**	**STATUTE**	**FEE CAP**
Adult Protective Services Sequestered Hearing	§27-7-27 (2007)	 $250
New Mexico Uniform Parentage Act (RA) Adjudication of Paternity Denial of genetic testing Other (must have additional court order)	§40-11A-641(A) (2009)	 $600 $150 $300
New Mexico Uniform Parentage Act (GAL) Adjudication of Paternity Denial of genetic testing	§§40-11A-608(C) or 612(B) (2009)	 $150 $150
Uniform Probate Code- Guardians of Incapacitated Persons (GAL) **adult only** Appointment of Guardian	§45-5-303(C) (2009)	 $250
Kinship Guardianship Act (GAL) Appointment of Guardian Revocation of Guardianship	§40-10B-9 (2009)	 $600 $600
Mental Health – **Adult only** Commitment Extended Commitment Appointment of Treatment Guardian Review Hearing	§43-1-4 (2007)	 $150 $150 $150 $100
Mental Health – Children's Code (GAL/YA) Commitment (Involuntary) Extended Commitment Appointment of Treatment Guardian Commitment (Voluntary) Review Hearing	§32A-6A-13 (2008)	 $150 $150 $150 $75 $100
Children's Code – (RA) Custody Adjudication/Disposition Judicial Review Permanency Hearing TPR	§32A-4-10(B) (2005) or §32A-3B-8(B) (2009)	 $200 $600 $100 $150 $600
Children's Code – (GAL/YA) Custody Adjudication/Disposition Judicial Review Permanency Hearing TPR	§32A-4-10(C) (2005) or §32A-3B-8(C) (2009)	 $200 $600 $100 $150 $600

III. RULES GOVERNING BILLING

PRESCRIBED INVOICE FORMS

RAs, YAs and GALs shall complete and submit the appropriate prescribed invoice form, associated with the relevant case type, listed below. If the submitted invoice form is incomplete or incorrect, the form will be returned and the attorney will be notified electronically.

Case Type	**Statutory Authority**	**Indigency Required**	**Form #**
Mental Health (Adult)	§43-1-4	No	NCA-MH-1
Mental Health (Children)	§32A-6A-13	No	NCA-SQ-6A
Domestic Affairs; Uniform Parentage Act	§40-11-19	yes (for parents)	NCA-DM-GAL NCA-DM-RA
Children's Code/ Abuse and Neglect	§32A-4-10	yes (for parents)	NCA-JQ-2
Children's Code/ Abuse and Neglect	§32A-4-10	no for GAL/YA	NCA-JQ-1
Probate/ Protection of Persons Under Disability	§45-5-303(C)	No	NCA-PB-45
Adult Protective Services Act	§27-7-27	No	NCA-PRO-1
Kinship Guardianship Act	§40-10B-9	Yes	NCA-KG-10B
Mileage Reimbursement	NMSC Admin Order NO. 15-8500	No	NCA-MI-4

APPLICATION FOR PAYMENT

✓	Filed by attorney. Select specific form from table above.
✓	Must attach the "**Order of Appointment**" with Presiding Judge's signature.
✓	If necessary, must attach the "**Order of Indigency**" with Presiding Judge's signature.
✓	Must be filed within 30 days of completion of the milestone event/hearing.

VENDOR AND TAX ID NUMBER

The vendor number identifies you, the attorney, as a payee in the State of New Mexico's vendor payment system. If you do not already have a vendor number, please call the CAAP for assistance at **505-827-4354**.

The Tax ID number for this purpose is your federal tax ID number (also called an Employer Identification Number, or EIN).

GROSS RECEIPTS TAXES

The attorney may request payment of applicable gross receipt taxes, in addition to the maximum allowable fee.

REIMBURSABLE EXPENSES

Mileage

Mileage is reimbursable by the AOC for per-trip, out-of-town mileage when a trip is in excess of 40 miles, pursuant to the current regulation or New Mexico Supreme Court Administrative Order NO. 15-8500. Reimbursement for mileage will be paid at .46 per mile for *all* out-of-town mileage once the specified 40-mile per trip threshold is exceeded.

To determine the number of miles traveled please go to RandMcNally.com http://maps.randmcnally.com/mileage_calculator

- Enter the departure city and the destination city into the mileage calculator.
- Attach a screen print of the Rand McNally mileage result to your reimbursement request.

✓	Filed by attorney. Must use Form NCA-MI-4.
✓	Must include file stamp date of the "**Order of Appointment**".
✓	Must attach a copy of the **screen print** of from the Rand McNally mileage result.
✓	Must be filed within 30 days of completion of the milestone event/hearing.

Witness Fees

Rule 10-143 NMRA governs subpoenas of witnesses pursuant to the Children's Code. Rule 10-143(B)(2) NMRA provides that service of a subpoena upon a named person shall be made by delivering a copy to such person and, if that person's attendance is commanded, the witness is to be paid a prescribed witness fee and mileage.

The AOC's Witness Fee Payment Guidelines provide that "witnesses shall be allowed no fees for service" but may be reimbursed "per diem and mileage expenses pursuant to the current Per Diem and Mileage Act."

The Guidelines go on to provide that the AOC will "not pay in-town mileage for witnesses" and will only pay mileage when the witness is required to travel "over 15 miles one way from his town of residence." Reimbursement for mileage will be paid at .46 per mile for *all* miles driven, once the 15-mile threshold is exceeded. Witness per diem will only be paid when the witness is required to travel for at least two hours "beyond the normal work day." A "normal work day" is defined as 8 hours within a nine-hour period.

Police officers and other law enforcement officers who are on duty at the time of trial shall not receive per diem or mileage.

To summarize:

- Did the witness have to travel out of their town of residence to testify?
- Did the witness have to travel over 15 miles from his or her town of residence to testify?

If the answer to either of these questions is no – the witness is not entitled to mileage.

- Did the witness travel for at least two hours beyond their normal workday to testify?

If no, the witness is not entitled to per diem.

If the witness is entitled to mileage and per diem the attorney must fill out the Witness Certification form obtained from the Court Clerk. If the form is not available, please contact the CAAP at 505-827-4354 or aoccaaff@nmcourts.gov. The form must be signed by the witness, the attorney, and the judge or judge's designee. The original form, a copy of the subpoena, any original receipts, and a copy of the client's indigency form/determination should be sent to the CAAP. The CAAP will process the application and then mail the payment to the witness.

Expert Witness Fees

The expert witness fee payment guidelines were amended in December 2007 to be consistent with the New Mexico Supreme Court's decision in *State ex.rel. Children, Youth & Families Dep't v. Kathleen D.C.* 141 N.M. 535, 157 P.3d 714 (2007).

How to pay an expert:

- Obtain a signed Order approving payment from the children's court judge.
- The order ***must be supported by findings*** consistent with the requirements established in: *State ex rel. Children, Youth and Families Department v. Kathleen D.C.* 141 NM 535, 157 P3d 714. (2007)
- Experts must be vendors for the State of New Mexico. An expert without a vendor number can call the CAAP for assistance.
- Include an invoice from the expert.
- Payment is on a reimbursement basis.

The following Payment Schedule governs payment and must be followed unless lower fees apply:

Expert	Consultation or Prep Cost	Court Appearance Cost
M.D.	$105.00 per hour	$135.00 per hour
Ph.D. including Psychologist	$90.00 per hour	$120.00 per hour
M.D. Specialist including Psychiatrist	$120.00 per hour	$150.00 per hour
Master's Level including LISW, LPCC	$65.00 per hour	$90.00 per hour

Unusual Expenses

Requests for payment of discovery, deposition, or unusual expenses must be approved by the judge assigned to the case *before* the fees are incurred, and are only reimbursable if accompanied by an order from the district court judge assigned to the case.

Please note that when determining whether to grant expenses, the assigned judge shall consider the value added to the proper representation at trial, and whether another available alternative would fulfill the same function at a lesser cost.

NON-REIMBURSABLE EXPENSES

Routine office expenses including, but not limited to, long distance telephone or fax charges, photocopies, postage and delivery charges and parking shall be absorbed by the attorney. The following are examples of additional non-reimbursable expenses:

- Mileage and parking incurred between the attorney's home and office, the attorney's home and court, or the attorney's office and court;
- Fixed office overhead expenses;
- Court transcripts or depositions, except as provided by law;
- Lodging, meals, mileage and travel by common carrier for the client, the client's family, the client's friends, or for the attorney's employees; and
- Services performed by a social worker, including, but not limited to, expenses incurred to use a Licensed Independent Social Worker to do child interviews and home investigations.

SUBMISSION DEADLINES

- Fee applications must be submitted within 30 days of the date of the journal entry disposing of the complaint or motion, or date of the journal entry approving the case plan, whichever is later.
- Fee applications submitted past 30 days will result in a 50% reduction in fees and expenses.
- Fee applications submitted past 60 days will **not** be paid.
- Defective fee applications that are corrected and resubmitted within 10 days of being returned will be reimbursed at the same rate as if they were correct on the date first submitted.

IV. EXTRAORDINARY FEES

In cases involving unusual complexity or special circumstances that warrant a significantly greater than normal time commitment, additional compensation may be granted:

- Upon application by the attorney to the CAAP; or
- By order of the court, after appropriate review of time records and other documentation, and upon a finding that the hours expended are necessary and reasonable, and compensation under these guidelines inadequate, and contingent upon the availability of funding. The court's order shall set forth the specific unusual facts and circumstances of the particular case justifying the excess fee.

CASES IN WHICH EXTRAORDINARY FEES MAY BE GRANTED:

- Complex cases involving multiple parties, which require an extraordinary amount of trial preparation time.
- Cases that involve unique legal issues.
- Cases requiring extended days of trial.