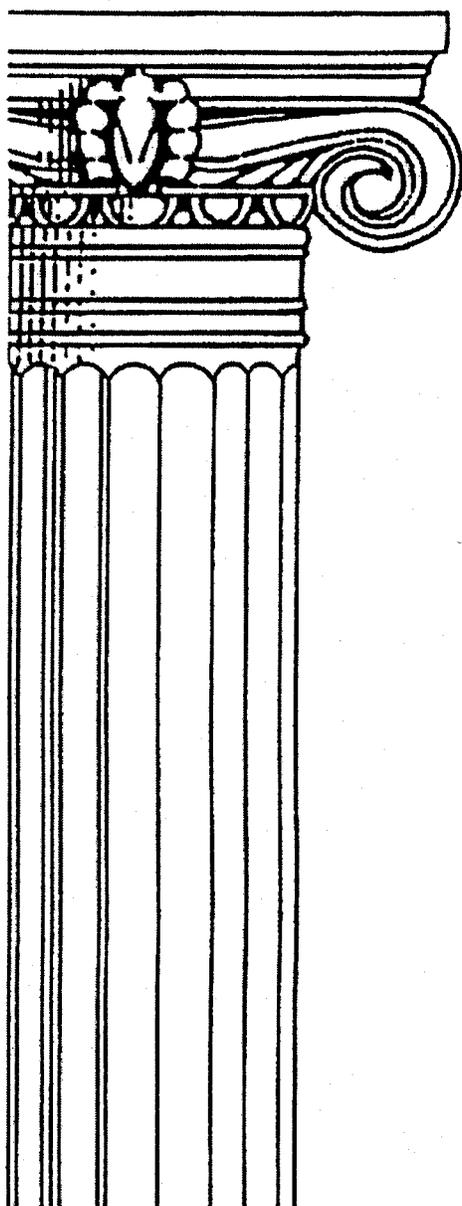


Supreme Court of Virginia

# CHART OF ALLOWANCES

*July 1, 2018*



Supreme Court of Virginia  
Office of the Executive Secretary  
Department of Fiscal Services  
804/786-6455  
[www.courts.state.va.us](http://www.courts.state.va.us)

## **Policy Requiring the Timely Submission of Payment Requests**

### **Applicability:**

This Policy applies to all requests for payment submitted to the Office of the Executive Secretary of the Supreme Court of Virginia, including, but not limited to, requests for payment submitted by special justices, guardians *ad litem*, interpreters, mediators, court-appointed counsel, court-appointed experts, substitute judges, retired judges and others.

### **Requirements:**

All requests for payment of fees or for travel or other expenses must be submitted no later than thirty (30) days after the service or the travel is completed. For court-appointed counsel, each time limit is measured from the completion of all proceedings in the court for which the request is being submitted. See Va. Code § 19.2-163.

If a request for payment is submitted more than thirty (30) days after the service or the travel is completed, the Office of the Executive Secretary may require additional documentation.

All requests for payment, whether initially submitted to the court or, as appropriate, to the Office of the Executive Secretary, and any additional documentation required, must be received by the Office of the Executive Secretary within twenty-four (24) months of the date on which the service or the travel is completed. The person submitting the payment request is responsible for ensuring that the request is received by the Office of the Executive Secretary within the twenty-four (24) month period. If necessary, the person submitting the payment request should contact the Office of the Executive Secretary in writing before the end of the 24 month period. Any such inquiry may be sent to: Office of the Executive Secretary, Supreme Court of Virginia, Attn. Fiscal Department, 100 N. 9<sup>th</sup> Street, Richmond, Virginia 23219. **NO PAYMENT WILL ISSUE AFTER 24 MONTHS FROM THE DATE ON WHICH THE SERVICE OR TRAVEL IS COMPLETED.**

### **Waiver Funds:**

Virginia Code § 19.2-163 provides that if at any time the funds allocated for the waivers are exhausted, the Executive Secretary is to certify that fact to the courts, and no additional waivers may be approved. Waiver funds are appropriated annually and typically are exhausted before the end of the year. Therefore it is important that applications for fee cap waivers be submitted in the same year the service is performed and as early as possible since payment is subject to the availability of funds appropriated for that year.

## **Hourly Rate for Court-Appointed Counsel**

Unless otherwise specified, the Supreme Court of Virginia's established rate of up to \$90 per hour (in and out of court) for court-appointed counsel shall apply. Time shall be recorded in increments not greater than .10 hour (6 minutes).

Code Section	Description	Per Diem	Statutory Limit
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8.01-9

Guardian ad litem for defendant under a disability in a civil action.

**Note:** Payment out of the criminal fund of fees and expenses of a guardian ad litem for a defendant under a disability in a civil action is authorized only in certain, limited situations, specifically when:

- (1) in a civil action against an incarcerated felon for divorce where the felon is incarcerated as a result of a crime committed against the felon’s spouse, child, or stepchild and involving physical injury, sexual assault, or sexual abuse (as set forth in the statute);
- (2) in a civil action against an incarcerated felon for damages arising out of a criminal act (as set forth in the statute); or
- (3) a court in a divorce action has made specific findings that both the plaintiff and the defendant are indigent and that the defendant is a person under a disability as defined in § 8.01-2, and based upon those findings, the court has determined that payment of the guardian ad litem out of the criminal fund is required as a matter of law. **Court order indicating that plaintiff and defendant are both indigent and that defendant is a person under a disability is required.**
- (4) In a civil action to enter an interdiction order pursuant to §4.1-333 when the respondent is indigent and a “person under a disability” as defined by §8.01-2.

The Supreme Court of Virginia’s established rate of up to \$75/hour in court and \$55/hour out of court for guardians ad litem applies. Time shall be recorded in increments not greater than .10 hour (6 minutes).

Code Section	Description	Per Diem	Statutory Limit
8.01-384.1	Interpreters for the speech-impaired or hearing-impaired in civil proceedings		
	<p><b>Note:</b> Certified interpreters under contract with the Department for the Deaf and Hard-of-Hearing who provide services to any Virginia state court must submit the required paperwork directly to that Department. <b>DO NOT SUBMIT ON FORM DC-40. DEPARTMENT OF DEAF AND HARD-OF-HEARING WILL SUBMIT.</b></p>		
8.01-384.1:1	Interpreters for non-English-speaking persons in civil cases.		
	Submit Form DC-44 List of Allowances-Interpreter		
	See Judicial Council Guidelines (copy available online at: <a href="http://www.courts.state.va.us/courtadmin/aoc/djs/programs/interpreters/manuals/lep/chapter08/pdf">http://www.courts.state.va.us/courtadmin/aoc/djs/programs/interpreters/manuals/lep/chapter08/pdf</a> ).		
	<p><b>Note:</b> Requests for foreign language translations of written materials should be submitted to the Foreign Language Services Coordinator at the Office of the Executive Secretary to determine whether a staff or contract interpreter/translator is available, prior to arranging for translation services by another provider.</p>		
16.1-241 (V)	Counsel-petition for judicial authorization for abortion		\$120.00
	Guardian ad litem-petition for judicial authorization for abortion		
	The Supreme Court of Virginia's established rate of up to \$75/hour in court and \$55/hour out of court for guardians ad litem applies. Time shall be recorded in increments not greater than .10 hour (6 minutes).		

Code Section	Description	Per Diem	Statutory Limit
16.1-267	<p>Court-appointed attorney J&amp;DR</p> <p>Guardian ad litem J&amp;DR (The Supreme Court of Virginia's established rate of up to \$75/hour in court and \$55/hour out of court for guardians ad litem applies. Time shall be recorded in increments not greater than .10 hour (6 minutes).)</p> <p>Requests by an attorney who serves as a guardian ad litem for a child for reimbursement submitted on a DC-40 for out of court time and costs associated with administering or overseeing drug tests performed after June 30, 2014 cannot be approved for payment from the Criminal Fund.</p> <p>See attached court-appointed counsel fee cap waiver information and instructions</p>		\$120.00
16.1-276	Out-of-state witness - compensation of travel expenses		.545/mile
16.1-299.1	<p>Blood sample required for DNA analysis upon conviction or adjudication of felony (Juvenile).</p> <p><b>Note:</b> A juvenile convicted of a felony or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult shall have a sample of his blood taken for DNA analysis provided the juvenile was fourteen years of age or older at the time of the commission of the offense.</p> <p>The Criminal Fund will reimburse only when:</p> <ol style="list-style-type: none"> <li>(1) The defendant has been convicted of a felony or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, but was not sentenced to a period of confinement (e.g., was placed on probation or on suspended execution of sentence or</li> <li>(2) The convicted juvenile was remanded to the custody of the sheriff solely for the purpose of blood withdrawal, but the sheriff does not have the resources available, contracted or on staff, and must secure the services of a private provider to conduct the withdrawal.</li> </ol> <p><b>Form DC-40 must be accompanied by Form CC-1390.</b></p>		

Code Section	Description	Per Diem	Statutory Limit
16.1-361	Compensation of Experts - J&DR Competency Court appearance - Witness Fee, Mileage		
	(1) Evaluation of Competency to Stand Trial (Guidelines established by the Supreme Court of Virginia after consultation with the Department of Behavioral Health and Development Services)		\$400.00
	(2) Court Appearance - Witness Fee (plus mileage at .545/mile)		\$100.00
	<b>Note:</b> Pursuant to §16.1-357, the Commissioner of Behavioral Health and Developmental Services arranges for court-ordered services to restore competency, which are not payable from the Criminal Fund.		
17.1-611	Witness for the Commonwealth		.
	<b>Mileage and Tolls Only</b>		.545/mile
17.1-612	Expert Witness		
	<b>Court order and itemized invoice required</b>		
17.1-618	Juror per diem (Includes travel expenses) (Use Form DC-43)	\$30.00	
18.2-62	Testing of certain persons for human immunodeficiency virus (HIV) or hepatitis B or C viruses		
18.2-252	Suspended sentence conditioned upon substance abuse screening and testing		
18.2-254	Commitment of convicted person for treatment for drug or alcohol abuse (substance abuse screening and testing)		
18.2-268.8	DUI – Withdrawal of blood by Commonwealth or local office		\$25.00

Code Section	Description	Per Diem	Statutory Limit
18.2-346.1	Testing of persons convicted of prostitution or certain drug offenses for human immunodeficiency viruses (HIV) and hepatitis C		
19.2-70.2	Pen register or trap and trace device (expenses of providing facilities and assistance)		
19.2-112	Extradition allowance expenses		
<b>(Submit on a Travel Expense Reimbursement Voucher)</b>			
19.2-152.12	Required representation for respondent in protective order proceeding under Chapter 9.1 of Title 19.2 (§19.2-152.7:1 through 19.2-152.12).  The Criminal Fund will compensate for the representation of a respondent in an applicable protective order proceeding only when:  (1) Counsel is required pursuant to the Servicemembers Civil Relief Act (§8.01-15.2), <b>or</b>  (2) A guardian ad litem is required because respondent is a “person under a disability” as defined by §8.01-2 (see §8.01 9).  Compensation as either counsel or a guardian ad litem is limited in district court to a cap of \$120 and in circuit court to a cap of \$158, since the statute provides that “the court may order such counsel or guardian ad litem to be compensated for services pursuant to §19.2-163.”		
19.2-155	Appointment of substitute for Commonwealth Attorney  Use §19.2-332 as the authorizing Code section from the Chart of Allowance on Form DC-40. Attach copy of appointment order. The Supreme Court of Virginia’s established rate of up to \$90/hour in and out of court applies. Time shall be recorded in increments not greater than .10 hour (6 minutes).  <b>Copy of Executive Secretary’s approval required for the appointment of a special prosecutor.</b>		

Code Section	Description	Per Diem	Statutory Limit
19.2-163	Court-appointed attorney:		
	District Court*		\$120.00
	District Court - preliminary hearing capital charge		Set by Court**
	Circuit Court - capital charge		Set by Court**
	Circuit Court - felony punishable by more than 20 years		\$1,235.00
	Circuit Court - all other felonies		\$445.00
	Circuit Court - misdemeanor punishable by confinement in jail		\$158.00

See related court-appointed counsel fee cap waiver information and instructions on pages 12-13

**Note:**

- (1) \*If felony charge for adult in juvenile court or general district court is disposed of in the district court, then circuit court felony rates apply. Felony class or possible punishment, if the felony is unclassified, must be indicated.
- (2) For revocation of probation - indicate §19.2-306 as the original code section charged; note either felony or misdemeanor and the highest class of the original charges. Payment is allowed on the basis of only one charge. For example, if a defendant who is on probation for 5 charges were subject to a probation revocation proceeding, the court-appointed attorney would be reimbursed for only 1 charge --- the probation revocation. The fee cap in this example would be determined based on the highest fee cap of the original five charges.
- (3) Guardian ad litem or Juvenile Appeal must be indicated. The Supreme Court of Virginia's established rate of up to \$75/hour in court and \$55/hour out of court for guardians ad litem applies. Time shall be recorded in increments not greater than .10 hour (6 minutes). The fee for counsel appointed pursuant to §16.1-266 to represent a parent or guardian in a civil matter is up to \$120 in J&DR court and up to \$158 in circuit court.
- (4) Authorization for payment out of the criminal fund of a guardian ad litem appointed in a circuit court is limited to an appeal from J&DR court and appointment of the guardian ad litem under §16.1-266.

Code Section	Description	Per Diem	Statutory Limit
(5)	<p>If a judge concludes that counsel for an indigent respondent in a civil contempt proceeding for failure to pay child support is constitutionally required by the holding in <i>Turner v. Rogers</i>, 131 S. Ct. 2507, 2011 U.S. LEXIS 4566 (2011), an attorney may be appointed for a fee of up to \$120 in J&amp;DR court and up to \$158 in circuit court.</p> <p><b>Court order indicating that the respondent is indigent and that due process requires the appointment must be submitted with Form DC-40.</b></p>		
(6)	<p>Payment for psychological evaluations and drug testing in custody matters pursuant to §16.1-278.15 is not authorized.</p>		
(7)	<p>Counsel representing a defendant charged with a Class 1 felony (capital murder) or counsel representing an indigent prisoner under sentence of death in a state habeas corpus proceeding, may submit to the court on a monthly basis, a statement of all costs incurred and fees charged by him in the case during that month. Whenever the total charges are deemed reasonable by the court for which payment has not previously been made or requested exceed \$1,000, the court may direct that payment be made. Completed District Court Form DC-334 (Request for Appointment of a Lawyer) indicating "Capital Murder" or Circuit Court Order must be attached when submitting voucher for reimbursement.</p> <p><b>*The Supreme Court of Virginia has established separate hourly rates for capital cases of up to \$200 per hour in court and \$150 per hour out of court.</b></p>		
(8)	<p>Representation by a court appointed attorney of a defendant with regard to an ancillary misdemeanor certified to circuit court along with a felony under Va. Code §19.2-190.1 is eligible for compensation of up to \$120 for each misdemeanor. Because that portion of the representation for the ancillary misdemeanor does not involve the conclusion of the matter, that representation of the ancillary misdemeanor in district court is not eligible for further compensation under the waiver provision of §19.2-163.</p>		

Code Section	Description	Per Diem	Statutory Limit
19.2-164	<p>Interpreters for non-English speaking persons in criminal cases</p> <p>Submit Form DC-44 List of Allowances-Interpreter</p> <p>See Judicial Council Guidelines (copy available online at: <a href="http://www.courts.state.va.us/courtadmin/aoc/djs/programs/interpreters/manuals/lep/chapter08.pdf">http://www.courts.state.va.us/courtadmin/aoc/djs/programs/interpreters/manuals/lep/chapter08.pdf</a>)</p> <p><b>Note:</b> Requests for foreign language translations of written materials should be submitted to the Foreign Language Services Coordinator at the Office of the Executive Secretary to determine whether a staff or contract interpreter/translator is available, prior to arranging for translation services by another provider.</p>		
19.2-164.1	<p>Interpreters for speech impaired or hearing impaired in criminal cases</p> <p><b>Note:</b> Certified interpreters under contract with the Department for the Deaf and Hard-of-Hearing who provide services to any Virginia state court must submit the required paperwork directly to that Department. <b>DO NOT SUBMIT ON FORM DC-40. DEPARTMENT OF DEAF AND HARD-OF-HEARING WILL SUBMIT.</b></p>		
19.2-165.1	<p>Medical fees for gathering evidence</p> <p>Request for reimbursement for sexual assault-related PERK or forensic examinations should be submitted to the Criminal Injuries Compensation Fund Payment Coordinator (P O Box 26927 Richmond VA 23261)</p> <p>Request for reimbursement for forensic examinations for any other authorized purpose should be submitted by the Commonwealth's Attorney or designated victim/witness coordinator to the Supreme Court of Virginia.</p>		
19.2-166	<p>Court reporters</p> <p>Invoice required for any amount over \$500 for one defendant.</p>		

Code Section	Description	Per Diem	Statutory Limit
19.2-175	Compensation of Experts		
	(1) Evaluation of Competency to Stand Trial		\$400.00
	(2) Evaluation of Mental Status at the Time of Offense (MSO)		\$500.00
	(3) Evaluation of Mental Status at the Time of the Offense and Competency to Stand Trial		\$750.00
	(4) Pre-sentence Evaluation		\$400.00
	(5) Court Appearance - Witness fee (plus mileage at .545/mile)	\$100/day	
	(6) Revocation of Conditional Release (§19.2-182.8)- Evaluation of Acquittee		\$500.00
	<b>Note:</b>		
	(i) Except in capital murder cases, the Supreme Court of Virginia has established the fees listed above as the maximum amount allowed for each evaluation. Form DC-40 MUST identify the service rendered by using the above description or item number.		
	(ii) Court-ordered services to restore competency are not payable from the Criminal Fund.		
19.2-182	Attorney fee in proceeding for commitment (criminal)		\$150.00
19.2-211	Counsel for special grand jury		
	The Supreme Court of Virginia has established a rate of up to \$90/hour (in and out of court) for non-government attorneys appointed under this code section. Time shall be recorded in increments not greater than .10 hour (6 minutes).		
19.2-215	Costs of multi-jurisdiction grand jury (services provided)		
	<b>Note:</b> Pursuant to §19.2-205, costs for grand juror per diem and mileage shall be paid from local funds.		
19.2-269.1	Services of sheriff for appearance of inmate as witness (circuit court only)		

Code Section	Description	Per Diem	Statutory Limit
19.2-301	Mental Examination - Sexual Abnormality (rates established by the Supreme Court of Virginia)		\$600.00
19.2-310.2	<p>DNA analysis (blood withdrawal) <b>Form CC-1390 required</b></p> <p>(1) The defendant has been convicted of a felony, convicted of a violation of §18.2-67.4, 18.2-67.4:2, 18.2-67.5(C), 18.2-130 or 18.2-370.6, or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, but was not sentenced to a period of confinement (e.g., was placed on probation or on suspended execution of sentence, or the sentence was suspended) or</p> <p>(2) The convicted juvenile was remanded to the custody of the sheriff who does <u>not</u> have the resources available, contracted or on staff, and must have the withdrawal conducted by an outside private source.</p>		
19.2-326	<p>Indigent appeals attorney fee and expenses of appellate court filing</p> <p><b>Note:</b> Appellate court order required for all appeal-related fees and expenses, including printing or briefs. Bills for printing of briefs must be submitted by court-appointed counsel.</p>		Set by Appellate Court
19.2-327.1	Court-appointed attorney-Scientific investigation of human biological evidence		
19.2-330	Out-of-state witness-compensation of travel expenses		.545/mile
19.2-332	<p>Miscellaneous compensable services in a criminal case required by law or court order prior to the service for which no specific compensation is provided</p> <p>(Court order or other authority required with Form DC-40)</p>		

Code Section	Description	Per Diem	Statutory Limit
19.2-386.12B	Sale of forfeited property (actual expenses in excess of sale of proceeds)		
20-49.3	Blood tests for paternity - HLA blood test (indigent party) <b>(BLOODS TESTS FOR SUPPORT CASES INVOLVING DIVISION OF CHILD SUPPORT ENFORCEMENT (DCSE) NOT PAID BY CRIMINAL FUND - CONTACT DCSE)</b>		
20-115	Commitment and sentence for failure to comply with order or decree (payment for court-appointed counsel authorized pursuant to §19.2-163)		
	J&DR District Court		\$120.00
	Circuit Court		\$158.00
20-124.4	Mediation Form DC-40 must be accompanied by Form DC-604. (Any referral that includes both (i) custody or visitation and (ii) child or spousal support shall be considered two separate appointments.)		\$120.00 Per Appointment Mediated
32.1-48.03	Court-appointed counsel fee for isolation hearing upon petition in general district court; temporary detention (plus necessary expenses)		\$75.00
32.1-48.04	Court-appointed counsel fee for isolation hearing upon appeal to circuit court (plus necessary expenses)		\$150.00
37.2-906	Sexually Violent Predator - Court-appointed attorney  The Supreme Court of Virginia has established a rate of up to \$90/hour in and out of court, with cap of \$5,000 for a bench trial or \$6,000 for a jury trial. Time shall be recorded in increments not greater than .10 hour (6 minutes).		

Code Section	Description	Per Diem	Statutory Limit
37.2-907	<p>Sexually Violent Predator - Appointment of Experts</p> <p>Statutory cap for evaluation is \$5,000; however, pursuant to statutory direction, after consultation with the Department of Behavioral Health and Developmental Services, the Supreme Court has established a guideline of \$2,500 for a typical evaluation.</p> <p>This amount does not include daily fee for appearance as witness (\$750) or allowance for mileage (.545/mile).</p> <p>Daily fee for required appearance in court as witness.</p>		\$750.00
46.2-301.1	<p>Administrative impoundment of motor vehicle</p> <p>There are three situations in which there is a statutory authorization for reimbursement by the Commonwealth of Virginia. No reimbursement from the Criminal Fund will be made unless Form DC-40 has been submitted with the following supporting documentation:</p> <ol style="list-style-type: none"> <li>(1) A bill from the storage company or a receipt from the person who incurred the cost of impoundment, and</li> <li>(2) Either a copy of the court order, Form DC-499, with the block checked: "No probable cause for arrest or warrant" or else a copy of the underlying charge reflecting the dismissal of the charge, a reduced charge or an acquittal.</li> <li>(3) Indication that a lien holder repossesses or removes vehicle from storage pursuant to security agreement.</li> </ol>		
46.2-1209	<p>Unattended or immobile vehicle (daily towing, storage and recovery fees when identity of violator unknown or no violation)</p>		
53.1-40	<p>Court-appointed attorney for consultation with indigent prisoners</p> <p>Approved Rate (2014 Appropriations Act) – Up to \$55/hour with a maximum per diem compensation of \$200.</p> <p>Number of inmates consulted must be attached. Time shall be recorded in increments not greater than .10 hour (6 minutes).</p>		
53.1-165	<p>Revocation of parole, or post release supervision of felon</p>		

Code Section	Description	Per Diem	Statutory Limit
53.1-205	Felonies by prisoners		
53.1-210	<p>Agreement on Detainer and transportation of an out- of-state witness who is a prisoner in another state.</p> <p>Original receipts required. Form VI or other authority from the Attorney General or court order required.</p>		
63.2-1203	<p>Court-appointed attorney for birth parent withholding consent to adoption</p> <p>Guardian ad litem for birth parent under a disability or for child: charge the parties (state will not pay)</p> <p>Court order indicating that birth parent is indigent is required.</p>		\$158.00
63.2-1609	<p>Guardian ad litem - Emergency order for protective services – indigent adult only</p> <p>The Supreme Court of Virginia’s established rate of up to \$75/hour in court and \$55/hour out of court for guardians ad litem applies. Time shall be recorded in increments not greater than .10 hour (6 minutes).</p>		
64.2-2008	<p>Guardians and Conservators (fees and costs)</p> <p>The Supreme Court of Virginia’s established rate of up to \$75/hour in court and \$55/hour out of court for guardians ad litem applies. Time shall be recorded in increments not greater than .10 hour (6 minutes).)</p> <p><b>Court order indicating that incapacitated person is indigent required.</b></p> <p>Payment by Commonwealth of petitioner’s attorney’s fees is not authorized.</p>		
State Budget	<p>Habeas Corpus</p> <p>All expenses must be itemized. Number of miles traveled must be specified. Receipts required where applicable.</p>		

*General Information and Instructions*

Section 19.2-163 of the Code of Virginia provides the following fees for court-appointed counsel:

<b>Court</b>	<b>Charge*</b>	<b>Statutory Fee</b>	<b>Supplemental Statutory Waiver Amount</b>	<b>Fee for Additional Waiver</b>
District	Misdemeanor	\$120	Up to \$120	Discretion of Court
Juvenile and Domestic Relations District	Delinquency – Equivalent to Misdemeanor or Felony, Class III to VI	\$120	Up to \$120	Discretion of Court
Juvenile and Domestic Relations District	Delinquency – Equivalent to Felony, Class II, or Probation Violation for Felony, Class II	\$120	Up to \$650	Discretion of Court
District	Felony, Class III to VI resolved in District Court	\$445	Up to \$155	Discretion of Court
District	Felony, Class II, resolved in District Court	\$1,235	Up to \$850	Discretion of Court
Circuit	Misdemeanor	\$158	Not Available	Discretion of Court
Circuit	Delinquency	\$158	Not Available	Discretion of Court
Circuit	Felony, Class III to VI	\$445	Up to \$155	Discretion of Court
Circuit	Felony, Class II	\$1,235	Up to \$850	Discretion of Court
*Defense of an unclassified felony punishable by 20 years or less is compensated as a Felony class III or IV felony; by more than 20 years as a Class II.				

Fee waivers may only be approved by the court in which the case is concluded.

The General Assembly has authorized the above schedule for compensation for an attorney appointed by the court in non-capital cases. If co-counsel (more than one attorney) is appointed to represent a defendant at the same time in a non-capital case, then co-counsel shall share the statutory fee, supplemental statutory waiver amount, and fee for additional waiver permitted for one attorney. In the circuit court, court-appointed counsel who is granted leave of court to withdraw and who terminates the representation prior to conclusion of the case, is eligible for the statutory fee and the supplemental statutory waiver amount but is ineligible for a fee for additional waiver.

Upon submission by counsel of a detailed accounting of time expended for court-appointed representation,<sup>1</sup> the court in its discretion and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia may waive the limitation of the statutory fee and

<sup>1</sup> Time shall be recorded in increments not greater than .10 hour (6 minutes).

authorize additional compensation up to the supplemental statutory waiver amount when the effort expended by counsel, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver.

Counsel may also request additional compensation exceeding these amounts by submitting a written request with a detailed accounting of the time spent <sup>2</sup> and justification for the additional amount. The presiding judge shall determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether this request for additional compensation above the supplemental statutory waiver amount is justified, in whole or part, by considering the effort expended and time reasonably necessary for the particular representation, and, if so, shall forward the request as approved to the chief judge of the circuit court or district court for approval.

If both the presiding judge and the chief judge determine that an additional amount is justified based upon the novelty, difficulty, effort expended and time required for the particular representation and they approve a fee for such an additional waiver amount greater than:

- \$2,000 in any district court,
- \$3,000 in any circuit court misdemeanor or circuit delinquency charge,
- \$5,000 in any circuit court felony, class III to VI charge, or
- \$15,000 in any circuit court felony class II charge,

then such request for an additional waiver amount in excess of the foregoing amounts shall be submitted by the Chief Judge to the Office of the Executive Secretary, with the DC-40A and all supporting documentation, and upon review by the Chief Justice of the Supreme Court, may be paid in full, or, in lieu of full payment, be approved for a partial payment. Partial payments shall be made only in the event the Chief Justice finds such partial payment is necessary to promote the equitable distribution of waiver funds through the end of the fiscal year.

These procedures are in addition to guidelines posted at [http://www.courts.state.va.us/forms/district/statutory\\_criteria\\_fee\\_cap\\_waiver\\_guidelines.pdf](http://www.courts.state.va.us/forms/district/statutory_criteria_fee_cap_waiver_guidelines.pdf)

The payment approval process,<sup>3</sup> including review and approval of invoices by the Office of the Executive Secretary, is a function of the Supreme Court of Virginia's oversight of the judiciary's budget and management of funds, including the Criminal Fund. Fee waivers are paid from a finite appropriation allocated to the fiscal year. The foregoing process is necessary to facilitate the fair distribution of funds as provided for in the Code of Virginia and the Budget.<sup>4</sup>

There is no appeal process available if an application for waiver of fee caps is denied. Additionally, if at any time the funds appropriated to pay for waivers become insufficient, the Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further waivers shall be approved or paid.

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<sup>2</sup> Time shall be recorded in increments not greater than .10 hour (6 minutes).

<sup>3</sup> See Virginia Code § 2.2-810.

<sup>4</sup> See Item 35 of the 2018-20 Biennial Budget.