



# SPECIAL ASSISTANT ATTORNEY GENERAL GUIDELINES

State of Georgia  
Department of Law

July 1, 2013

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## **I. INTRODUCTION**

The Attorney General of Georgia, through the Department of Law, serves as legal representative and counsel for the departments, boards, offices, commissions and other instrumentalities of the government of the State of Georgia (the "State"), along with its officers and employees. At times, the Department of Law will retain Special Assistant Attorneys General (SAAGs) to represent the State due to a variety of reasons, including the need for specialized legal expertise, representation of the State in matters venued outside Georgia, and to handling internal workload overflow. In addition, the Department of Law retains Bond Counsel for the State and various independent authorities of the State that issue debt. Finally, the Department of Law retains counsel for various transactional and advice matters.

The Department of Law is committed to providing the highest quality legal services in the most cost-effective manner and engages SAAGs as a partner in this endeavor. The SAAG is expected to represent the State with integrity, professionalism, and a sense of urgency in resolving legal problems. While the Department of Law requires SAAGs to provide legal services of the highest quality, SAAGs are also expected to make all efforts to deliver those services efficiently and cost effectively.

The Department of Law has issued these Special Assistant Attorney General Guidelines ("Guidelines") in order to provide direction regarding processes and procedures in connection with the handling of its legal matters. These Guidelines set forth the Department of Law's expectations and help to guide an effective working relationship with SAAGs. SAAGs should promptly contact the designated attorney ("Designated Attorney," defined more fully below) with any questions relating to the application of these Guidelines. These guidelines are not rules or regulations of the Department of Law or the Attorney General and are not a contract.

These Guidelines are effective for all work performed beginning July 1, 2013, and supersede previously issued guidelines.

All attorneys, professional staff and third party vendors who work on behalf of the Department of Law must be familiar with and adhere to these Guidelines. However, nothing in these Guidelines is in any way intended to interfere with The SAAG's professional judgment or duties as an advocate representing the interests of the State. The Department of Law reserves the right to amend these Guidelines at any time and post on the Department of Law website.

## **II. RETENTION**

The Department of Law will retain SAAGs through an Administrative Order of the Attorney General that will be mailed to them along with a retention letter. This order is specific to the attorney named as the designated SAAG. It is not a general appointment of a law firm nor does it authorize other attorneys or personnel to work on the case matter unless approved in accordance with these Guidelines.

SAAGs must also complete and execute such additional forms as the retention letter may require, and must provide such additional documentation or information as the administrative order and the attachments thereto request. The SAAG must return the paper versions of the executed forms, together with all other required information and documents, to the Operations Division, in accordance with the instructions contained in the administrative order.

Invoices for services will not be eligible for payment until the SAAG has timely returned to the Operations Division all documents properly completed and executed. The SAAG must also attach those forms and information to the matter assigned by the State through LexisNexis CounselLink™, its chosen electronic billing and matter management provider, using the 'Document Attachment' feature described in Appendix D.

### **III. CONFLICTS OF INTEREST**

#### **A. Initial Conflicts Check**

Prior to engagement, the SAAG shall perform a thorough check for actual or potential conflicts of interest, as defined by the applicable rules of professional conduct, which may arise from the representation of the Client. The SAAG must use best efforts to identify and discuss with the Designated Attorney any potential conflicts of a philosophic or policy-driven basis (i.e., positional conflicts) that may compromise a position taken by the State (e.g., if the firm is presently advocating, or intends to advocate a position adverse to the position of the State). Any conflict must be discussed with the Designated Attorney as soon as it becomes known. The Department of Law reserves the right to make an independent determination whether the SAAG has an actual or potential conflict of interest as discussed below.

The acceptance of an engagement on a matter by a SAAG without written disclosure of any conflicts constitutes a representation by the SAAG that a conflict check has been conducted and that there are no conflicts.

#### **B. State Agency Conflicts**

The Department of Law has a duty to protect the public interest. As part of this responsibility, the Department of Law sets policies to ensure that the legal system is maintained in a manner that safeguards the public's confidence in the integrity and impartiality of its administration. For this reason, the Department of Law prohibits SAAGs from representing private parties before the client agencies the SAAG represents and/or agency representatives of the client agencies also represented by that counsel, even in connection with non-adversarial proceedings. For example, a SAAG is prohibited from representing a private party before one of the SAAG's client agencies in connection with applications for government approvals, or in quasi-judicial and/or quasi-legislative proceedings before client agencies.

In addition, SAAGs cannot represent private parties with interests adverse to the State agency the SAAG represents in matters in which the same State agency is involved as a party. SAAGs cannot represent the State agency in matters involving private parties, if the firm concurrently represents those private parties in other matters. Furthermore, SAAGs cannot take an adversarial position against the State agency it represents on behalf of any private clients.

SAAGs are precluded from undertaking the representation of another client if the representation presents a substantial risk that the SAAG's responsibilities to the State agency would limit its ability to provide independent advice or diligent and competent representation to either the State agency or the client.

In accordance with the disclosure obligations set forth above, SAAGs must promptly and fully disclose to the Designated Attorney any potential conflict of interest. The Department of Law, after consultation with the SAAG, shall have the sole discretion to determine whether an impermissible State agency conflict exists, or whether other circumstances exist that would undermine the public's confidence in state government or the legal system.

### **C. Continuing Obligation**

The obligation to disclose conflicts continues throughout the course of the representation. SAAGs 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.

## **IV. RESPONSIBILITIES OF THE DEPARTMENT OF LAW**

The Department of Law shall designate a deputy attorney general and/or assistant attorney general (the "Designated Attorney") to supervise the SAAG. The Designated Attorney has the ultimate responsibility for the matter, including financial and strategic decisions.

The Designated Attorney will provide clear, specific instructions; communicate the State's objectives; follow the progress of the matter; keep the SAAG informed of important developments; and act as liaison between the SAAG and the State.

## **V. SAAG RESPONSIBILITIES**

### **A. Identification of Objectives**

The Department of Law should clearly define the objectives to be achieved, and the SAAG should have a clear understanding of its role in achieving those objectives. The SAAG is expected to offer clear recommendations for all major decisions related to a matter. The Designated Attorney will work with the SAAG to ensure that the SAAG has access to all relevant business information and contacts needed to form any such recommendation.

### **B. Exceptions to Guidelines**

It is the SAAG'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.

### **C. Communications**

In addition to performing assigned legal work in a competent and timely manner and making informed, ethical decisions on behalf of the State, the SAAG shall keep the Designated Attorney informed of all material developments. The SAAG must provide regular, timely, and effective communications to the Designated Attorney.

### **D. Ethical Standards**

The Department of Law conducts itself in accordance with the highest ethical standards and expects the same of its SAAGs. The SAAG should advise the Designated Attorney of the State's responsibilities under applicable laws and regulations and any legal risks in a proposed course of action. If the SAAG believes that a State employee has or will engage in illegal or unethical activity as a representative or agent of the State, the SAAG must immediately advise the Department of Law. No State employee has authority to instruct the SAAG to act in an unethical manner in connection with any matter.

The Department of Law will terminate its relationship with any SAAG who fails to adhere to the foregoing ethical standards in connection with the SAAG's representation of the State.

### **E. Malpractice Insurance**

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

### **F. File Retention**

For Litigated Matters: SAAGs 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. SAAGs shall notify the Department of Law in writing no less than sixty (60) days prior to destroying any file. The file must be destroyed in a manner that still preserves the confidentiality of the materials. Along with the written notification, the SAAG shall submit an inventory of any original State documents contained in the file to be destroyed and a certification 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 a 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.

## **VI. CONFIDENTIALITY**

In the course of representing the client, the SAAG frequently gains access to nonpublic and confidential information. The State requires SAAGs to maintain the confidentiality of such information both during and after the course of the firm's representation of the State. The SAAG must have in place appropriate procedures to ensure the protection of all such information. SAAGs must follow all statutory, regulatory, and ethical provisions relating to privacy, confidentiality and nondisclosure of all privileged, proprietary and confidential information. The SAAG 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.

Under no circumstances will the State agree to designate a settlement agreement confidential.

## **VIII. SETTLEMENT & ALTERNATIVE DISPUTE RESOLUTION**

The Attorney General encourages early settlement discussions where appropriate. SAAGs should promptly bring settlement opportunities to the Designated Attorney's attention. The Designated Attorney must authorize any settlement communication or the use of Alternative Dispute Resolution ("ADR"). All recommendations to settle a case and offers of settlement from opposing counsel shall be promptly communicated to the Designated Attorney and the client.

The State encourages use of ADR techniques in appropriate circumstances. SAAGs should proactively identify and bring to the attention of the Designated Attorney all opportunities to utilize ADR.

## **IX. STAFFING AND BILLING POLICY**

### **A. Staffing of Matters**

Throughout the engagement, the Designated Attorney and the SAAG should confer and agree on which attorney(s) within the firm will have primary responsibility for the matter and on the number, names and billing rates of the partners, associates and paralegals who will be assigned to the matter. Any request to change staffing must be discussed with the Designated Attorney.

While it is important to have an adequate number of personnel at the right levels involved, the State expects the SAAG to exercise care to avoid overstaffing. Unless otherwise approved in advance, the State will not pay for: (1) more than one attorney to attend a trial, motion hearing, conference, meeting or deposition; (2) internal firm conferences and internal written (including electronic) communication; or (3) the inclusion of associates at meetings or hearings for the purpose of "associate development." In the event the Designated Attorney approves internal firm conferences, the State will only reimburse the time of the attorney with the highest billing rate for all such conferences.

The State expects staffing to be efficient. The SAAG is expected to utilize the services of partners, associates, and paralegals to meet the State's expectations in the highest quality and most cost-effective manner. The State must not be billed for excessive time spent on tasks or excessive fees resulting from tasks performed by over-qualified or under-qualified professionals. If the Designated Attorney determines, after consultation with the SAAG, that staffing is inappropriate for particular tasks performed, the hourly rate charged may be reduced to a rate consistent with that of a lower level professional in the Department of Law's sole discretion. Similarly, if the Designated Attorney determines that excessive time was spent on a particular task, the time billed may be reduced within the Designated Attorney's sole discretion. Additionally, the Department of Law will not pay for more than ten (10) hours of time by a single timekeeper in a single day unless otherwise approved. Routine file maintenance and other administrative functions are the SAAG's responsibility and should not be billed to the State. Please review the Fees 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.

The State believes that it is most efficient for a single attorney or group of attorneys to handle a matter from beginning to end. The State expects the SAAG to strive for continuity in staffing. The State will not pay for downtime or learning time that may result from staffing changes. In addition, the State will not reimburse the SAAG for any routine training or supervisory time, including time spent at seminars, unless specifically approved in writing in advance. 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 such as approved research or drafting projects. The State will not reimburse for time spent by temporary or contract attorneys unless approved by the State in advance in writing. 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.

## **B. Rates**

The State will pay for actual services rendered at rates established in the Administrative Order. Hourly rates will remain fixed for the duration of the representation on a particular matter unless otherwise agreed to in writing.

Billings submitted at a rate that exceeds the approved rate for a particular timekeeper or timekeeper level will be reduced to the approved rate. Billing rate increases should not be submitted unless previously discussed and approved by way of an Administrative Order. Approved increases will be effective for charges incurred as of the date of approval in CounselLink.

**Comment [RE1]:** This is where language should be added to address the idea that only a SAAG may bill at the approved rate, with any related attorneys billing at lower rates. This section may have to be looked at more carefully to determine if any other language should be changed to address this issue.

## **C. Alternative Fee Arrangements (AFAs)**

For litigation and advice matters and particular transactional matters, the State 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 alternative fee arrangements in appropriate circumstances and encourages the SAAG to propose them.

#### **D. Invoices**

Beginning July 1, 2013, with invoices for work performed in June 2013, all invoices will be submitted using CounselLink. CounselLink is compatible with the majority of legal time and billing systems and there is no charge or fee to the SAAG for submitting invoices via CounselLink. Consult Appendix F – ‘Using CounselLink’ – for details on how to properly format your invoices.

For litigation, advice, and non-bond transactional matters, the SAAG shall submit monthly invoices within thirty days of the conclusion of the billing period. All charges must reflect the work performed within the billing period or a reasonable time before the billing period. Absent good cause, 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, an invoice shall be submitted within thirty days of the conclusion of the transaction. Invoices will not be accepted more than 90 days after a matter has been closed.

Absent a specific agreement for an alternative fee arrangement, SAAG 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 up or down, as the case may be, 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.

The invoices shall identify the matter name and contain a detailed statement of the time spent by each timekeeper on each activity, including a statement of the date each service was rendered, type of activity, subject matter, and all persons involved. Narrative descriptions of work performed that lack sufficient detail will be rejected. The State does not negotiate prompt pay discounts, and will not be responsible for late fees or other administrative charges.

Every bill from the SAAG is deemed a certification by the firm and billing partner that the legal services and disbursements reflected on the bill are reasonable for the legal matter involved and necessary for the proper provision of legal services. Attorney and paralegal time and disbursements that are not necessary for the cost-effective handling of the legal matter should be deleted and will not be reimbursed.

The Department of Law reserves the right to audit all fees and disbursements submitted by the SAAG, and the corresponding legal file. The Department of Law may perform this audit or retain an outside entity to perform the audit.

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

#### **E. Invoice Format**

Each invoice will include the following minimum requirements:

- Unique invoice number
- Invoice date
- Matter name
- Department of Law's matter number
- SAAG's matter number
- Any other identifying number as required by the client
- Date(s) services were performed
- Timekeeper name or ID
- Timekeeper title or level
- A narrative description of the service provided or task performed for each specific task. 'Block billed' descriptions are prohibited. The description should clearly state the nature of the task performed sufficient to allow the Department of Law 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: 'as analysis', 'conference', 'attention to matter'; 'worked on discovery', 'work on file', 'prepare for meeting', 'miscellaneous', 'other', etc.
- 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 F - 'Using CounselLink' - for more specifics.

#### F. Fees

Neither the Department of Law nor the client will reimburse the SAAG for basic support services, which the Department of Law deems to be part of the SAAG's overhead and built into the rate structure. For example, no payment will be made for tasks and services by secretaries, word processors, proofreaders, managing clerks, information system technicians, librarians, computer operators, internal messengers and the like, including any fees or expenses related to overtime, wages, meals, and transportation for support activities. Time spent preparing, discussing or supporting SAAG's invoices will not be reimbursed. The Department of Law will not pay for clerical or administrative tasks, considered overhead included in the SAAG billing rates, regardless of the personnel performing the task. These non-reimbursable tasks include but are not limited to: photocopying, printing, binding or scanning; Bates stamping, indexing, collating, coding of documents; filing (including indexing pleadings, opening or closing files, updating or organizing files); preparing transmittal letters or proofs of service; mailing, faxing or emailing; processing of mail or faxes; word processing; proofreading; maintenance of a calendar or tickler system, case tracking; scheduling appointments, events, depositions, conferences, deliveries or travel; data entry, loading or conversion; database administration and maintenance; review and/or processing of vendor, expert or local counsel billing statements; interaction with vendors; investigating potential conflicts; library

usage or library staff time, filing, serving or hand-delivering documents; and other general clerical and ministerial functions.

#### **G. Legal Research**

The SAAG is expected to be familiar with the basic substantive law at issue in the matter for which the firm was retained, and the Department of Law, or client, should not be charged for this type of research. The Department of Law 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 to its particular needs.

If legal research benefits other clients, only the proportionate share of the cost should be billed to the State. The Department of Law will pay only for the actual time spent by the SAAG or other approved timekeepers conducting the research. Fees charged by electronic or other research services, including library fees, Westlaw, Lexis, or other online services are considered general overhead and are not reimbursable.

#### **H. Disbursements and Costs**

##### **1. Generally**

The Department of Law, or client, will reimburse the SAAG 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. The SAAG's invoices to the Department of Law 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 description.

The Department of Law, or client, will not reimburse the SAAG for basic overhead expenses considered part of the SAAG's cost of doing business. For example, the Department of Law will not pay for office supplies, rent/utilities, internet service fees, cellular/blackberry or similar device charges, firm conference room charges, temporary office space, equipment rental, storage charges, printing or laser printing, case management or litigation software or systems, computer hardware or software, IT charges including database creation and/or maintenance, subscriptions, books, periodicals or publications, professional association fees, attendance at seminars, CLE programs or conferences, group outings, client entertainment, or interest on outstanding invoices.

##### **2. Court Reporter Expenses**

The Department of Law, or client, will reimburse the SAAG for actual costs incurred for court reporters and transcripts. In the event the Designated Attorney does not request a specific court reporter, the SAAG should obtain the lowest possible charge for court reporting fees, including any possible volume discounts.

Transcription expenses must identify the court reporter and the services provided (i.e., number of transcripts or pages, hard copies or tapes, etc.).

### **3. Express Mail & Couriers**

Express mail and courier fees are reimbursable with proper documentation but should be incurred only when necessary.

### **4. Photocopying**

The Department of Law or client will reimburse photocopying charges not exceeding \$0.10 per page. Oversized and custom copying projects should be handled using the most economical option. If the nature of a copying project makes an outside copying service more economical and confidentiality is maintained through the execution of the confidentiality agreement attached as Appendix E, the State expects the SAAG to make those arrangements.

### **5. Postage**

Postage expenses are considered general overhead and are not reimbursable.

### **6. Telephone and Facsimile Transmissions**

Telephone charges (including conference call charges) and facsimile transmissions, local and long distance, are considered general overhead and are not reimbursable. Electronic transmission of documents (scanning and emailing) is the preferred method.

### **7. Third Party Services**

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

Invoices from third party vendors should be paid directly by the SAAG, incorporated into the SAAG's invoice to the Department of Law and should include the appropriate detail. Copies of third party invoices may be requested by the Department of Law and should be retained in accordance with Internal Revenue Service ("IRS") guidelines. There may be times when it would be more appropriate for the State to pay a third party vendor directly. If so, and after consultation with the Designated Attorney, the invoice should be sent to CounselLink for processing.

#### **I. Travel**

##### **1. Alternatives to Travel Encouraged**

Alternatives to travel such as conference calls or videoconferences are strongly encouraged and should be used by the SAAG whenever practicable. All travel time must be clearly identified on the invoice in a separate time entry.

## 2. Air & Rail Travel

All air and rail travel must be first approved by the Designated Attorney in writing and should be anticipated by the SAAG. Unless an exception is specifically approved in advance, the Department of Law will not reimburse airfares or rail fares that exceed the standard coach fare. It is expected that the SAAG will take advantage of any available discounts. The Department of Law expects that travel time on its matters will be used as productively as possible and that legitimate charges billed to the Department of Law during travel time will be paid at the full hourly rate, but only if the timekeeper in question actually worked only on State matters while traveling and a description of the work is provided.

## 3. Automobile Travel

The mileage reimbursement rate is determined by the Statewide Travel Regulations which can be found on the Georgia State Accounting Office website (<http://sao.georgia.gov>). The purpose of the trip, as well as origin and destination points must be shown.

## 4. Meals

The Department of Law will reimburse the SAAG for meals based on the Statewide Travel Regulations found at the Georgia State Accounting Office website (<http://sao.georgia.gov>). Under no circumstances will the Department of Law reimburse for alcoholic beverages.

## 5. Hotel Lodging/Accommodations

The Department of Law will reimburse the SAAG for hotel lodging/accommodation expenses based on the Statewide Travel Regulations found at the Georgia State Accounting Office website (<http://sao.georgia.gov>).

**Comment [RE2]:** Added this language for your review.

## J. Expense Reimbursement

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, including original receipts before making reimbursement to any attorney, employee or third party. Travel and meal expenses and receipts may be audited and shall be retained by the SAAG in accordance with applicable IRS guidelines. Unless requested to do so by the Department of Law, the SAAG should not forward copies of travel and meal expense receipts with the firm's invoice.

Personal travel expenses will not be reimbursed. These include, but are not limited to, salon expenses, in-room or in-flight movies or entertainment, excess baggage expenses, travel agency expenses, shoe shines, toiletries, dry cleaning or laundry, and luggage.

**X. MEDIA**

The SAAG *shall not* make any statements to the media on behalf of the Department of Law or relating to State matters. All media inquiries must be immediately reported to the Designated Attorney. The SAAG may be asked on occasion to assist in the development of media responses

