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**E-89-17 Compensation of unemployed or retired  
nonexpert witnesses for testifying**

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**Question**

Under circumstances in which a retired or unemployed nonexpert witness must spend a substantial, but reasonable and necessary, amount of time in preparation, travel and/or testifying, may a lawyer compensate the witness for his or her time at a rate that would approximate the hourly wage that the witness would be earning if he or she had not been unemployed or retired?

**Opinion**

Reaffirming our opinion as stated in Formal Opinion E-88-9 [61 Wis. B. Bull. 18 (Nov. 1988)], “[g]enerally [i]t is permissible . . . to pay reasonable amounts to witnesses to compensate for lost wages incurred in testifying, and for travel and similar expenses, and to pay [any lawful] witness fee.” C. Wolfram, *Modern Legal Ethics* (1986) at 651.”

Although unemployed or retired persons would, by definition, not lose “wages” as a result of being a witness, they obviously are deprived of time that would otherwise be devoted to other endeavors. When the amount of time reasonably required of such a witness is substantial, we believe that it should be proper to *reasonably* compensate the witness for his or her loss of time, unless, of course, such compensation is prohibited by law. SCR 20:3.4(b).

Whether such compensation would be “reasonable” if based upon an unemployed or retired person’s usual wage when working, however, is not a question that this committee can definitively answer. We believe that this determination would have to be made on a case-by-case basis. *See* Formal Opinion E-88-9.