

Office of the State Public Defender Administrative Policies

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1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) may enter into agreements with outside counsel to provide services pursuant to the Montana Public Defender Act. These attorneys are independent contractors and are referred to herein as contract attorneys.
- 1.2 Contractor services are viewed as a cost-effective manner in which to ensure that public defender/indigent defense services are available in those areas where full time staff public defender services are unavailable, when conflict situations arise, or to alleviate workload issues.
- 1.3 The OPD Contract Manager, working in conjunction with the Conflict Coordinator and Regional Deputy Public Defenders (RDPDs), will determine the maximum number of contract attorneys needed in a desired practice area(s)/region(s).

2.0 PROCEDURE

- 2.1 Prospective contract counsel must complete the Attorney's Summary of Education and Experience as provided on the OPD website.
- 2.2 Upon receipt of the Attorney's Summary of Education and Experience information, the OPD Contract Manager will review the information.
- 2.3 If the Contract Manager determines that the applicant meets OPD's qualifications **and** there is a need for services in the practice area(s) and region(s) in which the applicant wishes to practice, the applicant will be provided with a Memorandum of Understanding (MOU).
- 2.4 If the pool of contract attorneys is at maximum capacity in the desired practice area(s)/region(s), qualified applicants will be added to a waiting list and will be provided with an MOU when there is a vacancy.
- 2.5 After returning the signed MOU, prospective contract counsel will be contacted for a meeting to assess competency in the chosen area(s) of practice.
- 2.6 The RDPD will assign non-conflict cases and the Conflict Coordinator will assign conflict cases, ensuring that the attorney has the qualifications to handle the specific type of case being assigned in accordance with Policy 117, Caseload Management.
- 2.7 The RDPD will monitor the performance of the contract counsel, both conflict and non-conflict, and will participate in the biennial proficiency determination of each contract counsel.

3.0 STANDARDS COMPLIANCE

- 3.1 Prospective contract counsel acknowledge that they have read and agree to abide by the *Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act*.

- 3.2 Contract counsel are required to verify Standards compliance annually for each area in which they practice using the on-line Computer Based Training and Verification tool.
- 3.3 Contract counsel are required to complete Continuing Legal Education training annually, as determined by the Public Defender Commission.

4.0 MENTORING / TRAINING

- 4.1 If, after receiving the Attorney Summary of Education and Experience, the Contract Manager determines further training and/or mentoring is advisable prior to providing an MOU, the Contract Manager advises the prospective contract attorney to contact the Training Coordinator who will create a training/mentoring plan in conjunction with the RDPD.
- 4.2 Upon successful completion of the training/mentoring plan, the Training Coordinator will notify the Contract Manager, Conflict Coordinator, and RDPD that he is satisfied that OPD can assign specific types of cases to the attorney. The Contract Manager will then forward the MOU to the new attorney and Sections 2 and 3 will apply.

5.0 DURATION OF REPRESENTATION

- 5.1 Following sentencing, it is the responsibility of contract counsel to explain appeal options to the client, including the applicable timeframe during which the decision to appeal must be made. It is the client's decision whether or not to appeal.
- 5.2 If the client chooses to appeal, contract counsel will refer the case to the Office of the Appellate Defender (OAD) per the OAD procedure at <http://publicdefender.mt.gov/forms/pdf/AppellateContractorProcedure.pdf>
- 5.3 Contract counsel shall not move to withdraw from representing a client until the case has been referred to the OAD, or until the appeal time on the case has expired.
 - 5.3.1 Client retains the option to change the decision to proceed with an appeal at any time until the appeal time has expired.

6.0 PAYMENTS FOR SERVICES

- 6.1 OPD shall directly pay contracted counsel for services rendered.
- 6.2 Contract counsel services shall be according to the fee schedule established by the Public Defender Commission, which is subject to change.
- 6.3 Pre-approved travel expenses shall be paid at the state travel rates.
- 6.4 OPD shall offer a stipend per the fee schedule to help defray office costs such as telephone, postage, and copies.
- 6.5 Other expenses shall be paid if pre-approved per OPD Policy 125, Pre-Approval of Client Costs. All third party costs will be paid directly to the vendor and not reimbursed to the contract attorney.

7.0 PAYMENT PROCEDURES

- 7.1 Contract counsel shall submit an itemized claim on the appropriate payment form for conflict and non-conflict cases by the tenth of the month following the date of service. Submit services for only one calendar month per claim form.
- 7.2 The forms and accompanying instructions are posted on the OPD web site. Each form must contain the case number assigned by OPD.
- 7.3 Hourly time shall be billed in tenths of an hour.
- 7.4 Claims for non-conflict services shall be submitted to the supervising RDPD for review, who shall within five days review and forward the claim to the Central Services office. The OPD Contract Manager will review, approve and pay the claim within 30 days of receipt in the regional office.

- 7.5 Claims for conflict services are to be submitted directly to the Conflict Coordinator, who will review, approve and pay claims within 30 days of receipt.
- 7.6 Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned OPD case number.
- 7.7 Claims submitted more than 45 days from the last day of the month of service will be denied.

8.0 CLOSING

Questions about this policy should be directed to:

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