

OFFICE OF THE STATE PUBLIC DEFENDER

Calculations and Assumptions to Determine the Hourly Cost per FTE and Contract Attorney

This paper provides the calculations and underlying assumptions behind the agency study that produced a cost per hour for an FTE attorney and for a contract attorney. The costs included in this study are from the agency's unaudited financial statements for FY 2011.

The results of the study are as follows: the cost for an FTE (staff attorney) in FY 2011 was \$72 per hour and the cost for a contract attorney was \$95 per hour.

Here are the calculations and assumptions included in the study:

1. The cost information came from the agency's FY 2011 unaudited financial statements. The agency expended \$21,297,670 during FY 2011 (excluding capital defense costs).
2. The average cost per FTE attorney with benefits and insurance is about \$35 per hour.
3. Contract attorneys are paid \$60 per hour. They are also reimbursed for certain other costs including travel, lodging, etc. which are an insignificant part of the total cost.
4. During FY 2011 the agency recorded the receipt of 27,664 new cases. Of these, 20,388 or 74% were assigned to FTE attorneys and 7,276 or 26% were assigned to contract attorneys. This 74/26% split was used to allocate most of the central office cost types between FTE and contract attorneys.
5. Total payments to contract attorneys during FY 2011 were \$5,256,546 or 25% of the total expended. This is a direct cost related only to the efforts of contract attorneys.
6. Total payments during FY 2011 for expert witnesses, mental health evaluations, and other outside services provided for client defense totaled \$801,940 or 4% of the total cost. This cost was allocated to FTE/contract attorneys on a 74/26% basis as both FTE and contractors use outside services in client defense.
7. The total amount expended during FY 2011 to provide central services to the agency was \$1,889,397 or 9% of the total cost. Much of this cost was allocated to FTE/contract attorneys on a 74/26% basis. The cost related to the agency's human resources department was only allocated to the FTE attorney area and the costs associated with contract management were allocated 100% to the contract attorney area.
8. The remaining \$13,349,787 or 63% of expenditures was for regional public defender operations, the major crimes unit, and for the appellate program. This cost was allocated as per assumption 12 noted below. These operations use both FTE attorneys and contract attorneys to provide services to clients.
9. During FY 2011 it is assumed that contract attorneys billed the agency about 87,609 hours. This calculation was based on the total cost of \$5,256,546 paid directly to contract attorneys divided by the rate of \$60 per hour. This number was used to derive the contractor cost per hour in assumption 18.
10. Non-managerial FTE attorneys are assumed to be paid for 2080 hours during the fiscal year, during which they are assumed to work on cases at least 80% of the time or 1664 hours. This calculation was necessary to develop the number that would be used to calculate the FTE attorney cost per hour in assumption 17.
11. Management FTE attorneys are assumed to be paid for 2080 hours during the fiscal year, during which they are assumed to work on cases in accordance with agency policy 114. This policy sets the number of hours to be worked by managers on cases between 600 and 1700 depending factors noted in the policy.

12. Regional and appellate costs are allocated between FTE and contract attorneys for their respective areas using an 85% FTE and 15% contract attorney allocation for large and medium regions and the appellate, and a 60% FTE and 40% contract attorney allocation for the small regions (a region's size is based on the caseload of a region and not in terms of geography). This distribution represents the fact that these functions provide management and oversight of both FTE and contract attorneys serving clients in their respective areas. For example, the Kalispell region's costs, excluding those paid to contract attorneys and to other contractors, total \$1,967,240. Offices in Polson and Kalispell include both public defender and regional operations. Regional personnel manage all FTE and contract public defender activities in the Kalispell region (comprised of all of the courts and clients in Flathead, Lake, Lincoln, and Sanders counties). Of the \$1,967,240 noted above, \$295,086 or 15% is allocated to the oversight and management of the contract attorneys that provide services to the region while the remaining cost remains with the FTE attorneys.
13. The total FTE attorney counts were taken from the agency's FY 2011 staffing report by region. That report reflected 117.75 FTE attorneys.
14. FTE attorneys providing central office functions were assumed to work cases zero percent of the time during FY 2011. These attorneys include the Chief Public Defender, the Training Coordinator, and the Contract Manager. The MCU supervisor, who is also an attorney, is assumed to work on cases zero percent of the time.
15. Other FTE attorneys providing regional or program management that are not listed in assumption 14 above, were assumed to work cases in accordance with agency policy 114. If an attorney in this category worked more or less than noted in agency policy 114 and these increased or decreased hours were used in the calculations, the hourly cost per FTE would decrease or increase as the case may be. The study assumes that any overages or shortages offset each other.
16. Hours worked by an FTE attorney over the 2080 hours were not included in this study. If excess hours were included, the cost per hour would be reduced from the current hourly rate. However, hours *not* worked by an FTE aside from the allowances noted above were also excluded. The study assumes that any overages or shortages offset each other.
17. Hourly cost per FTE attorney: using the assumptions noted above the \$72 per hour rate was derived as follows:
 - a. The total cost allocated to FTE attorneys was \$12,993,349.
 - b. The total number of FTE attorneys was 117.75 and this was reduced to 109.20 based on assumptions 11, 14 and 15.
 - c. The total cost of FTE attorneys is \$12,993,349, divided by 109.20 or an average of \$118,989 per attorney.
 - d. The hourly cost is \$118,989 divided by 1664 hours (see assumption 10 above) or \$72 per hour.
18. Hourly cost per contract attorney: using the assumptions noted above the \$95 per hour rate was derived as follows:
 - a. The total cost allocated to contract attorneys was \$8,304,322.
 - b. The total hours billed based on assumption 9 above was 87,609.
 - c. The hourly cost is \$8,304,322 divided by 87,609 hours or \$95 per hour.

Note: The hourly costs for investigators are \$27 per hour for FTE and \$46 per hour for contractors. The fee schedule for contract mental health services follows.

MENTAL HEALTH PROFESSIONAL:

OPD Protocol Governing Referral and Examination

November, 2007

The focus of the Mental Health Referral and Examination Protocol is to mainstream the nature and extent of examinations to specifically address the referral question(s). This will standardize the referral and examination process. As the process is standardized, there will be more efficient use of time resulting in cost savings for the case.

The Office of the State Public Defender (OPD) is aware of the fact that different referral questions require different abilities and skills of different Mental Health (MH) Professionals. Therefore, for the purposes of the OPD, referrals must be tailored to fit the specific case in question and hence serve our defendants in the most efficient and cost effective manner possible.

A collaborative and synergistic relationship must exist between OPD and MH Professionals. "MH Professional" will be defined as those indicated in the Montana Code Annotated (MCA) 53-21-102(11):

"Mental health professional" means:

- (a) a certified professional person;*
- (b) a physician licensed under Title 37, chapter 3;*
- (c) a professional counselor licensed under Title 37, chapter 23;*
- (d) a psychologist licensed under Title 37, chapter 17;*
- (e) a social worker licensed under Title 37, chapter 22; or*
- (f) an advanced practice registered nurse, as provided for in [37-8-202](#), with a clinical specialty in psychiatric mental health nursing.*

(Italics added.)

For the purpose of this protocol, the use of *Mental Health* includes both clinical and substance use disorders and concerns. Therefore, *Mental Health* also takes into consideration co-occurring disorders.

For the purpose of this protocol, *Mental Disorder* is as defined in 53-21-102 (9) MCA:

- (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.*
- (b) The term does not include:*
 - (i) addiction to drugs or alcohol;*
 - (ii) drug or alcohol intoxication;*
 - (iii) mental retardation; or*
 - (iv) epilepsy.*
- (c) A mental disorder may co-occur with addiction or chemical dependency.*

(Italics added.)

The *Specialized Assessment* includes Competency to proceed to adjudication/ Fitness to proceed evaluations as indicated in 46-14-101 MCA:

(1) The purpose of this section is to provide a legal standard of mental disease or defect under which the information gained from examination of the defendant, pursuant to part 2 of this chapter, regarding a defendant's mental condition is applied. The court shall apply this standard:

(a) in any determination regarding:

(i) a defendant's fitness to proceed and stand trial;

(ii) whether the defendant had, at the time that the offense was committed, a particular state of mind that is an essential element of the offense; and

(b) at sentencing when a defendant has been convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of commission of the offense for which the defendant was convicted, the defendant was unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of the law.

(2) (a) As used in this chapter, "mental disease or defect" means an organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation.

(b) The term "mental disease or defect" does not include:

(i) an abnormality manifested only by repeated criminal or other antisocial behavior;

(ii) a developmental disability, as defined in 53-20-102;

(iii) drug or alcohol intoxication; or

(iv) drug or alcohol addiction. (Italics added.)

When an attorney deems there may be a “Mental Health issue” with a case, the attorney reviews and completes the Mental Health Consultation and Referral Form to help clarify mental health issues that may be present in the case.

The protocol explains in some detail each of the four elements governing referral and evaluation. One or more of the following protocols should be employed, as appropriate:

A) Consultation with the OPD Mental Health (MH) Consultant,

B) Consultation with a MH Professional,

C) Screening by a MH Professional or,

D) Examination by a MH Professional.

For additional information and Protocol forms, please see

<http://www.publicdefender.mt.gov/>

**Attachment C
Estimated Cost Schedule
Fees Not to Exceed**

	<u>Psychologist, M.D.*</u>	<u>LCSW</u>	<u>LCPC</u>	<u>LAC</u>
Consultation (phone or in person)				
Per 15 minutes	31.25	18.75	18.75	18.75
Screening				
Per hour	125.00	75.00	75.00	
Examination for diagnostic information (within screening category)				
Screening/2hr	250.00	75.00	75.00	
Document review/hr	125.00	75.00	75.00	
Analysis/Conclusion/Report Writing/Administrative (e.g., preparation of case specific forms, compiling files, archiving files, writing letters to attorney, etc.) and Case Management (e.g., TPC w/ attorneys, TPC w/ examinees, collateral interviews/TPC etc.)/hr	125.00	75.00	75.00	
Specify if diagnostic tool is used				
Personally Administered/ hr	125.00	75.00	75.00	
Computer generated	Per cost	Per cost	Per cost	
CD specific examination (see Attachment F)				
Full CD evaluation	300.00	300.00	300.00	300.00
Computer generated	Per cost	Per cost	Per cost	Per cost
Additional Document review or assessment/hr (must be required AND pre-approved)	125.00	75.00	75.00	75.00
Specialized Examination (Competency, fitness to proceed, sex offender, etc.)				
For Screening/2hr	250.00	----	----	----
Document review/hr	125.00	----	----	----
Specify evaluative tool used				
Personally administered/hr	125.00	----	----	----
Computer generated	Per cost	----	----	----
Analysis/Conclusion/hr	125.00	----	----	----
Sex Offender Evaluations (Includes Risk Assessment)	1500.00	1500.00	1500.00	

Travel

Travel time will be calculated at 50% of the Protocol-indicated hourly rate with a cap of \$60 per hour.
Mileage reimbursement will be calculated at State Rate for all disciplines.
Miles calculated via State site <http://www.mdt.mt.gov/travinfo/scripts/citydist.pl>
Overnight lodging and per diem per State Rate

Court Testimony

To be paid at 150% of the Professional's Protocol-indicated hourly rate. Testimony is to include wait time at the court house.

No Show (NS) for appointment

To be paid for one hour at 50% the Protocol-indicated hourly rate.

*APRN paid at 90% that of Ph.D./M.D. rate

Professional Record of Billing form is to be used (please see attachment H).

Under extraordinary circumstances, the Commission authorizes the Chief Public Defender to pay outside of the rate structure.