

Office of the State Public Defender Administrative Policies

Subject: Contract Counsel	Policy No.: 130
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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.

2.0 PROCEDURE

- 2.1 Prospective contract counsel must complete the Attorney's Summary of Education and Experience as provided on the OPD website at <http://publicdefender.mt.gov>.
- 2.2 Upon receipt of the Attorney's Summary of Education and Experience information, the OPD Contract Manager will review the information and provide qualified applicants with a Memorandum of Understanding (MOU).
- 2.3 After returning the signed MOU, the Regional Deputy Public Defender (RDPD) will contact prospective contract counsel for a meeting to assess competency in the chosen area(s) of practice.
- 2.4 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.
- 2.5 The Regional Deputy Public Defender will monitor the performance of the contract counsel, both conflict and non-conflict, and will participate in the annual 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 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 www.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 The OPD shall directly pay contracted counsel for services rendered.
- 6.2 Contract counsel services shall be according to the fee schedule established by the Montana Public Defender Commission, which is subject to change (Attachment A).
- 6.3 Pre-approved travel expenses shall be paid at the state travel rates.
- 6.4 OPD shall offer a stipend of up to \$25 per month 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.

7.0 PAYMENT AND PROCEDURES

- 7.1 It is understood that contract counsel services will be supervised by the Regional Deputy Public Defender and the OPD Central Office.
- 7.2 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. The forms and accompanying instructions are posted on the OPD web site at <http://publicdefender.mt.gov>. Hourly time shall be billed in tenths of an hour. Each form must contain the case number assigned by the regional office.
- 7.3 Claims for non-conflict services shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the Central Office. The OPD Contract Manager will review, approve and pay the claim within thirty (30) days of receipt in the regional office.
- 7.4 Claims for conflict services are to be submitted directly to the Conflict Coordinator, who will review, approve and pay claims within thirty (30) days of receipt. Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned case number.
- 7.5 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 the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Attachment A

Fee Schedule

(Subject to Change by the Montana Public Defender Commission)

Attorney time \$60.00 per hour

Mileage To be paid at the current state rate

(For services rendered outside a fifteen (15) mile radius of the principal place of business.)

Office Stipend \$25 per month

(OPD will not be responsible for payment of any office costs, i.e., telephone, copying, fax or postage expenses over the aforementioned stipend unless pre-approved.)