King County	Department Policies and Procedures	General Department Policies & Procedures

Title	Document Code No.
Office of the Public Defender Assigned Counsel Panel	
Department/Issuing Agency **Community and Human Services / Office of the Public Defender**	Effective Date. October 13, 2008
Approved	

1.0 PURPOSE:

To establish clear and uniform policies and procedures regarding the appointment of assigned counsel attorneys in King County.

2.0 APPLICABILITY:

Applicable to assigned counsel panel attorneys assigned to King County Office of the Public Defender (OPD) cases.

3.0 REFERENCES:

3.1 Revised Code of Washington (RCW), Chapter 10.101

3.2 King County Code (KCC) 2.60

3.3 Standards for Public Defense Services, endorsed by the Washington State Bar Association in 2007

4.0 DEFINITIONS:

4.1 **Assigned Counsel**: Private attorneys who have applied to OPD, who meet the required qualifications, and who have been appointed by OPD to the King County Assigned Counsel Panel.

4.2 **Stand-by Counsel:** If defendant is permitted by the trial court to proceed pro se, the trial court may appoint standby counsel, who provides technical information to the defendant and is available at a moment's notice to represent the defendant in the event of that the termination of the defendant's self-representation is necessary. (State v. McDonald, 143 Wn.2d 506 (2001)).

4.3 **Payment Affidavit:** Confirmation of Assignment and Request for Payment form.

5.0 POLICIES:

5.1 Required Insurance Coverage:

5.1.1 The attorney will maintain:

- Professional liability insurance coverage in the amount of $1,000,000 for each claim and $1,000,000 in the aggregate, with a maximum deductible of $10,000;
- Commercial General Liability in the amount of $1,000,000 Per Occurrence and $2,000,000 in the aggregate; and, if an employer, Statutory Workers Compensation and Employers Liability/Stop Gap in the amount of $1,000,000.
- King County shall be named as an additional insured on the General Liability policy.

5.1.2 Proof of such coverage will be a copy of the certificate of insurance and must be submitted with the application, and notification of change in coverage should be made to OPD within thirty (30) days of any change. A copy of the certificate of insurance must be supplied to OPD once a year. In the event that another attorney must provide coverage, this attorney must have stated malpractice insurance coverage or be covered under Assigned Counsel's insurance.

5.2 Continuing Legal Education:

5.2.1 Attorneys are responsible for maintaining their eligibility for assignments. To remain eligible, seven hours of the annual continuing legal education requirement must be met in continuing legal education classes relevant to their assigned case areas.

5.3 Eligible Cases:

5.3.1 OPD does not provide public defense attorney services to municipalities. If you receive an assignment for a municipal case, be aware that OPD will not reimburse for these cases.

5.3.2 There are types of cases where a general right to counsel may exist but OPD does not have the authority to provide representation at public expense. Attorneys who are ordered by a court to represent a client in a case where OPD does not have the authority to represent clients must notify OPD immediately.

5.3.2.1 Paternity Cases. If you have an outstanding paternity matter and the origin of the case was not a court order citing *State v. James*, or a contempt of court arising from failure to take the blood test, the right to counsel in paternities is limited and OPD was in error making the original appointment. OPD cannot reimburse you for time spent on this matter. Contact OPD immediately. If you receive a new case that fits in this category, return it immediately.

5.3.2.2 Contempt Cases. If you have a contempt of court case arising from a custody matter or a case that was originally a support enforcement or paternity contempt, it may be necessary for you to withdraw. OPD is funded only for cases where a jailable contempt issue exists. If you are appointed by the court, you must inform OPD immediately and provide a copy of the court order to OPD.

5.3.2.3 Other Family Court Matters. OPD does not have the authority to fund representation in private matters such as custody and visitation matters which are not jailable contempt of court cases. If a dependency matter to which you are appointed is dismissed or otherwise is in family court as a private matter, OPD cannot reimburse you. If you receive a new case assignment from OPD that fits in this category, return it to OPD immediately. In the event that a court consolidates a family court matter with proceedings under a dependency petition, the attorney may be reimbursed for representation involving dependency related issues in the consolidated matter.

5.3.2.4 Juvenile Offender Cases. OPD assigns counsel on all juvenile offender cases. These include new information, modifications, dispositions, etc. If the Department of Youth

Services (DYS) notifies you of a hearing for a child you have previously represented, please let the OPD Juvenile Coordinator know as soon as possible so assignment can be initiated. Assigned counsel attorneys should not assume that their appointment is automatic for all cases for a particular defendant. If there is no conflict in the current matter, the assignment will likely return to the prior contract defense agency. Attachment of pertinent DYS court orders (bench appointments) to your billing affidavits will greatly assist OPD in determining correct assignments.

5.3.2.5 Bench Appointments. If you are appointed from the bench, send OPD a copy of the Order Appointing. OPD must have a copy of the order prior to generating a billing affidavit.

5.4 Assignment of Cases

5.4.1 Cases will be assigned by the OPD Adult Case Coordinator or Juvenile Case Coordinator. Assigned counsel cases will be assigned from the Assigned Counsel panel lists established by the Office of the Public Defender. Upon assignment to a case by OPD, assigned counsel must file a Notice of Appearance with the court within two business days.

5.4.2 Cases will be assigned according to a rotation procedure, in order to maintain an equitable and consistent basis of case assignment. The rotation methodology is as follows:

5.4.2.1.1 Cases will be offered first to those attorneys within the appropriate panel who have the fewest case assignments. If a case is accepted, the assignment is noted.

5.4.2.1.2 If the case is refused, the reason for the non-assignment of a case will be noted as either not available (NA) or refused (R). Reasons for which an attorney may not be available include illness, vacation, high workload, etc. Attorneys with three refusals (R) without good cause in a three calendar month period will not be assigned cases in the subsequent month.

5.4.3 Cases are assigned to an individual attorney. Use of other attorneys on appointed cases should be infrequent and limited solely to unanticipated coverage unless OPD has acknowledged the existence of co-counsel in writing. Requests by assigned counsel for co-counsel to be appointed as a second attorney on a case must be presented to the Court, and a copy of the order provided to OPD. Insurance for attorneys providing coverage must be as stated in Assigned Counsel policy (I.-H). If re-assignment is necessary, please contact OPD and withdraw from the case so OPD may reassign it.

5.4.4 Attorneys are responsible for representing eligible clients and cases only. If you feel you have been assigned a case by OPD or court appointed in error, notify either the Adult or Juvenile Case Coordinator immediately. Proceeding on a case that has been appointed, without following OPD guidelines or without notification to OPD, indicates that you have waived the right to payment.

5.4.5 Rule 9 Interns ordinarily do not have the minimum experience qualifications to be on an OPD panel pursuant to the Washington Rules of Court, Admission to Practice Rules. Any use of a Rule 9 intern must be pre-approved in writing by OPD. They may be used only on a limited basis in misdemeanor cases subject to the supervision requirements. If you accompany a Rule 9 intern into court, you may bill for either your time or that of the Rule 9, not for both.

5.4.6 If an OPD appointed client fails to appear for a hearing and has not reappeared within 30 days, you should notify OPD on your billing and the case will be formally closed. It is advisable to withdraw from the case if the Court will allow it.

5.4.7 If the client reappears *within* 180 days of the original assignment, notify OPD; the case will be reopened and you will be sent another appointment notice and billing affidavit.

5.4.8 If the client reappears *after* 180 days, s/he is no longer automatically considered eligible for a public defender and since OPD has closed the case, no longer automatically assigned to you. The client should be referred to OPD for an eligibility determination. If the client is eligible and assigned to you, OPD will notify you and send an appointment notice and billing affidavit.

5.4.9 If the court has not allowed you to withdraw, or orders you to continue representing the client, please request a written order which makes your appointment provisional pending indigency screening, and directs the client to have a financial screening before the appointment is extended beyond the court appearance at which the order is made. Clients can phone 296-7662 to determine what interview location is the most convenient. OPD interviews at most District Courts as well as in the Walthew Building and the Regional Justice Center.

5.4.10 If the court orders further probation review, post-sentencing or post-disposition hearings, your client must be re-screened for indigency. Attorneys may invoice OPD for these reviews.

5.4.11 If additional charges or new cause numbers are filed against your client during an assigned case, you must contact the case coordinator. If new cause numbers or probation hearings in other cases are filed within 180 days of your original case assignment, the coordinator may add these to your assignment. If 180 days or more have elapsed since your assignment, the client is not automatically eligible nor are you automatically appointed to represent him/her. Probation, reviews, and deferrals are considered new cases.

5.4.12 If you find there is an ethical conflict per the rules of practice, and you are no longer able to represent the client, you must notify the case coordinator to have the case reassigned. Cases cannot be reassigned to another attorney on the assigned counsel panel without authorization from the case coordinator. Counsel will remain assigned until Motion to Withdraw and Request for Substitution is allowed by the Court.

5.4.13 If defendant is permitted by the court to proceed pro se and counsel's status is changed by the court from direct representation to "stand-by" counsel, forward a copy of the court order to OPD via fax or email and notify the defendant.

5.4.14 Pursuant to RCW 10.101.050, attorneys serving on the Assigned Counsel Panel will be asked by OPD to report the hours billed for nonpublic defense legal services in the previous calendar year, including numbers and types of private cases.

5.5 Billing Procedures:

5.5.1 Once a case is assigned to you by the case coordinator, you will receive a Confirmation of Assignment/Request for Payment ("Payment Affidavit") form via email. Billings to OPD must include the completed Payment Affidavit form attached.

5.5.1.1 If your billing is the final billing for the case, you must check the final billing box on the form.

5.5.1.2 If your billing is not the final billing in the case, you must make a copy of the Payment Affidavit and retain it to use for any future billings.

5.5.1.3 Bills sent to OPD without this form will be returned to you in order that you can attach your bill to the Payment Affidavit form for the assigned case.

5.5.2 Indicate the total hours and total cost on the front of the Payment Affidavit form.

5.5.3 Details of hours and costs must be provided and may be on attached sheets from your billing system. Billing information is preferred word-processed or typed. Handwritten entries or case log notes are discouraged.

5.5.3.1 Bill in tenth of an hour increments. (See conversion table below).

01 - 06	Minutes	=	.10 Hour
07 - 12	Minutes	=	.20 Hour
13 - 18	Minutes	=	.30 Hour
19 - 24	Minutes	=	.40 Hour
25 - 30	Minutes	=	.50 Hour
31 - 36	Minutes	=	.60 Hour
37 - 42	Minutes	=	.70 Hour
43 - 48	Minutes	=	.80 Hour
49 - 54	Minutes	=	.90 Hour
55 - 60	Minutes	=	1 Hour

5.5.3.2 Itemize time spent on case and check to be sure the itemization of time matches total hours.

5.5.4 Indicate the disposition of the case in the space provided on the front of the "Payment Affidavit" form. OPD will return forms in which this information is missing.

5.5.5 Sign the perjury statement on the "Payment Affidavit" form.

5.5.6 An attorney who has been appointed by OPD as co-counsel should submit billings for the same time period. Payment may be held until co-counsel has submitted their billings, in order that the billings can be reviewed simultaneously by the reviewer.

5.5.7 Your request for payment must be submitted within thirty (30) days following the case closing. Below are some exceptions to this rule:

5.5.7.1 In juvenile dependency cases that can continue for many months, OPD will return dependency billings unpaid that do not meet the following criteria:

- Minimum of six hours expended on a case, or;
- Three months have passed with little activity on a case.

5.5.7.2 Dependency cases that are active, involving six hours or more, can be billed monthly.

5.5.8 Adult misdemeanor and juvenile offender billings should be remitted within thirty days of disposition.

5.5.9 Monthly billings may be submitted on lengthy felony cases.

5.5.10 If you are submitting an interim billing (the case is not yet closed), you must retain a copy of the Confirmation of Assignment and Request for Payment form and use this copy for your future billings. You do NOT need to request a new "original" affidavit from OPD.

5.5.11 Prior to the end of each fiscal year, OPD will send a letter requesting that attorneys submit by a specified deadline all final billings or interim billings for services provided during that year. These deadlines are necessary in order for OPD to meet King County Office of Finance

deadlines for year-end accounting purposes. Failure to meet the deadlines means that attorneys may not receive compensation for several months.

5.5.12 Affidavits submitted to OPD are reviewed for sufficiency of documentation and reasonableness of claims. If you fail to adequately detail your charges, or if the time claimed seems outside customary and usual limits, you may be asked to provide additional information.

5.5.12.1 Please review billings prior to submitting them as if you were a client receiving the statement. Include a brief progress report for clarification, including a description of the disposition of the case, if completed. . The following are some common examples of information which is useful to include:

- court waiting time;
- travel time;
- in-court hearing time;
- client conference;
- phone conferences;
- document prep or review (specify);
- other conferences (expert/investigator/DPA);
- correspondence prep; or
- any "unusual" aspects of the particular task you are itemizing, (e.g. if review of discovery is lengthy, indicate the reasons for this such as: the number of pages, the complexity of issues, etc.) The additional information provided on the original bill will assist the reviewer and prevent the unnecessary return of billings for clarification.

5.5.13 OPD affidavits are matters of public record unless they are sealed. Please exercise appropriate discretion when you fill out your invoice.

5.5.14 If the reviewer requires clarification, you will receive a notification that the billing details need clarification. Please provide a timely response.

5.5.15 OPD's goal is to make payment within 30 days of receipt of billing. This timeline is not achievable if the reviewer returns the billing for additional information.

5.5.16 Phone inquiries to ask about billings which have been submitted is strongly discouraged. Such inquiries slow down the payment process. If you have a question, please submit it via email if at all possible.

5.6 Payment Rates and Reimbursable Costs:

5.6.1 Cases assigned beginning October 1, 2007, are paid as follows[1]:

TYPE OF CASE	HOURLY RATE
Aggravated Murder	$90
Class A Felony	$70
Class B/C Felony	$55
Adult Misdemeanor	$50
Juvenile Offender	$50
Dependency/Termination	$45
Contempt of Court	$45
At-Risk Youth, CHINS, ITA	$40

Whenever rates change, the attorney is paid the rate that is in effect on the date the work is performed. If an amended complaint is filed after appointment, and the complaint includes counts billable at a higher rate, the higher rate will apply from the date of filing the amended complaint. Counsel must provide a copy of the amended complaint with the invoice.

5.6.2 Sexually violent predator (RCW 71.09/SVP) cases are paid for by the Washington State Department of Social and Health Services (DSHS). Invoices and expenses should be submitted to DSHS using the forms posted on the OPD website at Attorney Resources/Business Section.

[1] Prior rates from 2005 until October 1, 2007 were: adult felony and all juvenile offenses: $50/hour; adult misdemeanors: $45/hour; dependency, at-risk youth, CHINS, ITA cases: $40/hour. Hourly rates for aggravated murder cases, capital and some security fraud cases could be negotiated on a case-by-case basis. The 2007 rate increase was made with Washington State public defense funding pursuant to RCW 10.101. Continuation at the increased hourly rate is dependent on continuation of state funding.

5.6.3 If you have activity on several OPD appointed cases on the same day or during the same trip to court, you must prorate the total time spent among the cases. This is necessary to avoid charging OPD more than once for your time. The maximum time you may bill to all the cases worked on is the total number of hours you actually worked for the morning or day, regardless of how many cases benefited.

5.6.4 Payment is based on attorney hours only. Work completed by support staff, including word processing and document management assistance, is considered part of attorney overhead, and is not billable. In extraordinary cases, including voluminous discovery or documents, paralegal or clerical time may be sought as an extraordinary expense. The request must be made in advance of any work performed. Time spent scanning documents into computer file format is not reimbursable.

5.6.5 Billings are subject to the limitations below. **Billings may be returned if the costs are not itemized and do not have required supporting documentation.**

5.6.5.1 The administrative tasks of receiving a case, opening a file, preparing the Notice of Appearance, and billing the Office of the Public Defender (OPD) are to be billed at not more than (.70) of an hour total. Phone calls to or from OPD to receive the case are not eligible for reimbursement except as part of the (.70) of an hour.

5.6.5.2 The tasks of reviewing the bill from an expert who was approved as part of an expert services request and preparing and sending the expert services invoice to OPD altogether are to be billed at not more than (.30) of an hour total.

5.6.5.3 Dropping off a request for expert services, coming to OPD or calling OPD to check on the status of an expert services request, time spent faxing a request or additional expert services information to OPD, messengering expert service requests to OPD, and coming to OPD to pick up an approved or denied expert services request are not reimbursable activities.

5.6.5.4 Long distance and collect phone charges, with billing attached. (If billing has not yet been received, you may bill OPD for the case and request another affidavit.) Collect phone calls from the King County Correctional Facility (KCCF) do not require an attached phone bill. Collect phone calls from the KCCF are reimbursed $2.00 each. Cellular phone charges are not reimbursed.

5.6.5.5 Messenger services are in general not reimbursable. Messenger costs are allowable only when time does not permit service by the King County Sheriff in the Superior Court, or by mail in courts that permit mail service. Service by a private process service firm to police officers is an allowable cost. An explanation of the need for messenger service must accompany the billing. A copy of the invoice must accompany a request for reimbursement of messenger charges. (If billing has not yet been received, you may bill OPD for the case and request another affidavit.)

5.6.5.6 Xerox copies are reimbursed at $.10 per page. (Please include the number of copies made). If copies are made at a place of business, please include a copy of the receipt. OPD does not reimburse for time spent copying.

5.6.5.7 OPD does not reimburse for the cost of sending or receiving faxes. OPD does not reimburse for time spent faxing documents.

5.6.5.8 Mileage is reimbursable at the federal rate. **(Please calculate the total mileage and also include the date and number of miles traveled for each occurrence.)**

5.6.5.9 Parking is allowable for court appearances at the County Courthouse or for jail visits only if your office is outside the free bus zone. Parking is reimbursable up to a maximum of $6.00 per day without a receipt. If you are claiming more than $6.00 per day, please attach a copy of the receipt.

5.6.5.10 If a client is in need of appropriate trial clothing, you must first check with the jail or the client's family. If appropriate clothing is not available from these sources, OPD will reimburse costs for clothing purchased at Goodwill, Salvation Army, or similar thrift store, if accompanied by a receipt.

5.6.5.11 OPD does not reimburse for tips, interest or late charges.

5.5.6 See Expert Service Policies on the OPD website for policies and procedures on expert witness requests and payment, and current required forms. (http://www.kingcounty.gov/courts/OPD/Partners/Policies.aspx)

5.5.7 Word processing, document management assistance, trial notebooks, and Westlaw or other research costs are not allowable without prior approval from OPD.

5.5.8 Waiver of charges for provision of electronic court record should be sought from the court providing the record in an appeal from a court of limited jurisdiction (RALJ).

5.5.9 OPD does not reimburse for time spent responding to billing inquiries or to inquiries regarding client complaints received by OPD.

6.0 RESPONSIBILITIES:

6.1 Responsibilities in Representation of Clients:

6.1.1 In representing indigent clients for the Office of the Public Defender (OPD), the attorney ("Assigned Counsel") is an independent contractor, and not an employee or agent of King County for any reason.

6.1.2. The attorney will establish an attorney/client relationship with the indigent client, and the attorney shall determine what services to provide to the client in order to ensure adequate representation, subject to these Assigned Counsel Panel Policies and Procedures established by OPD. Assigned Counsel Panel attorneys shall maintain professional practice standards in providing a level of legal service that does not fall below the minimum professional standards

and Rules of Professional Conduct of the Washington State Supreme Court, the Washington State Bar Association, and the National Legal Aid and Defender Association, and any applicable case law and court rules that define the duties of counsel to their clients. Attorney responsibilities include, but are not limited to: initiating and maintaining the lawyer-client relationship; investigation and case preparation; preliminary hearings and motions; plea negotiation; trial preparation and trial or disposition without trial; and sentencing recommendations.

6.1.3 Attorneys are placed on panels based on their experience as indicated on the Application to Represent Indigent Clients, on recommendations from references, and on OPD needs. Attorneys are responsible for returning cases to OPD if they are not on the panel for the type of case assigned. Credentials may be updated at any time by requesting an application and providing additional experience information.

6.1.4 If an attorney withdraws from a case for any reason, the attorney must immediately inform the OPD coordinator. Attorneys are responsible for returning cases to OPD for reassignment if they are unable to complete the case.

6.1.5 OPD has a formal process for receiving complaints from clients, and clients concerned with the service they are receiving may be referred to OPD. A written summary of the complaint will be sent to you and you may receive a telephone call. Preliminary written response to complaints is required within two working days. Attorneys are responsible for making a preliminary written response within two days to complaints made to OPD about services to an OPD client. OPD is responsible for notifying the attorney and may accept a preliminary verbal response if it so chooses.

6.1.6 Cases must be returned to OPD for reassignment if a complaint to the Washington State Bar Association has resulted in reprimand, suspension or disbarment. OPD does not require you to return a case just because a complaint is made to WSBA.

6.1.7 Attorneys shall maintain a functioning email address and a functioning telephone number at which clients can reach them or leave a message. Attorneys are responsible for notifying OPD of a

change in contact information, such as a new telephone number, address, e-mail address, or fax number within two days of any such change.

6.1.8. In order to ensure that indigent clients are provided adequate representation, OPD or its designee will evaluate the performance of attorneys accepting cases. Such evaluation may include the following: viewing the attorney's performance in court; soliciting and receiving comments from judges, other counsel, and court personnel regarding the attorney's performance; and examining legal documents filed by the attorney.

6.1.9 Pursuant to Standard Sixteen of the Standards for Public Defense Services, as revised and endorsed by the Washington State Bar Association Board of Governors in 2007, an attorney may be removed from the A/C Panel only for good cause, which includes failure to render adequate representation, willful disregard of the rights and best interests of the client, or willful disregard of the standards for public defense. If ethical concerns are raised about an Assigned Counsel Panel attorney's behavior, those concerns will be referred to the Washington State Bar Association.

6.1.10 The attorney shall protect, defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments and/or awards of damages or attorney fees, arising out of or in any way resulting from any acts or omissions regardless of whether such acts arise from, without limitation, negligence, gross negligence, inadvertence, intentional conduct, misfeasance, malfeasance, or excusable neglect of the attorney or the attorney's employees or agents in connection with the attorney's representation of indigent clients as a result of an appointment by OPD. The attorney agrees that his/her obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any employees or agents. For this purpose, the attorney, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the County incurs any judgment, award, and/or cost arising there from including attorney's fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the attorney.

6.2 Client Eligibility:

6.2.1 Attorneys are responsible for representation of eligible clients only. This means that representation will only be reimbursed if the client is eligible according to the eligibility rules established pursuant to RCW 10.101. OPD is responsible for certifying the client's eligibility and will verify eligibility for attorneys. If an attorney must appear in court with a client who is not eligible and the court orders continued representation, request the court to make a temporary appointment for that hearing only, pursuant to RCW 10.101, and require the client to be screened for financial eligibility by OPD in order to have continued representation.

6.2.2 Clients must have eligibility re-evaluated every 180 days. If the client does not contact OPD for re-evaluation, OPD will not issue another affidavit on an open case and, therefore, may refuse payment for time spent.

6.2.3 For 180-day re-eligibility screening, refer your client to the Walthew Building, 123 Third Avenue South, 4th floor, Seattle, the Regional Justice Center, 401 Fourth Avenue North, Room G-0242, Kent, or to the court where they were arraigned for a financial eligibility interview. Clients may contact OPD at (206) 296-7662 for a schedule of interview locations and times.

6.2.4 If you withdraw from a case because the client has retained private counsel, please notify OPD.