

THE RULES AND REGULATIONS OF THE CONFLICT PROGRAM

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THE RULES AND REGULATIONS OF THE CONFLICT PROGRAM

I. ORGANIZATIONAL STRUCTURE OF THE CONFLICT PROGRAM

A. PURPOSE

1. Appointment of attorneys to represent clients.

The Program¹ exercises the Court's delegated discretion to select qualified attorneys for appointment when the Public Defender and Alternate Defender are not available. Selection is based upon a rotational system, providing as far as practicable equal access to appointments by all attorney participating attorneys. The Program compensates these attorneys pursuant to fee schedules established in its funding contracts.

2. Execution of funding contracts

The Program executes one or more contracts between Independent Counsel, Inc. and the County, or the Court, for the provision of legal services to clients.

3. Other purposes

The Program has the following additional purposes: to maintain a high standard of practice by participating attorney attorneys, and to assist participating attorney attorneys in the maintenance and improvement of their law practices.

B. INDEPENDENT COUNSEL, INC.

The Program shall operate under the auspices of Independent Counsel, Inc., referred to herein as ICI. The Board of Directors of ICI, herein called the Board, has the ultimate responsibility for administration of the Program.

C. THE CONFLICT PROGRAM ADVISORY COMMITTEE

1. Appointment of committee.

The Board shall appoint a committee consisting of at least five active attorneys of the California State Bar. This committee shall be called the "Conflict Program Advisory Committee." The Committee shall be the basic

¹Definitions are in [Part XI](#).

policy-recommending body for the Program.

2. Quorum.

A majority of the Committee shall constitute a quorum. Meetings may be held in person, or if necessary, telephonically or electronically.

3. Removal.

Any Committee member may be removed at any time without cause by the Board.

4. Rules.

The Committee shall have the responsibility to review the rules and recommend such changes or additions thereto as may, from time to time, be deemed appropriate to carry out the purposes of the Program, subject to approval of the Board, and by the County and/or the Court if the changes or additions will result in a material increase in expenses under a contract to which they are a party.

D. THE DIRECTOR

The Board shall appoint an administrator, also called the "Director," who shall administer the Program. The Director's duties in administering the Program shall generally be defined as those duties customarily performed by a chief administrative officer, including all staffing, accounting and reporting responsibilities.

E. THE PANEL ATTORNEYS (PARTICIPATING ATTORNEY(S))

1. Duties

a. Skilled and effective representation

In each case in which an attorney is appointed by the Program, the attorney shall provide skilled and effective legal representation, consistent with the attorney's qualifications and fiscal prudence.

b. Duties specific to case classes

Duties specific to case classes are stated in [Part II](#) of these Rules.

c. Delegation of duties

Except in cases of emergency and with the prior approval of the Director, a participating attorney shall not delegate responsibility for an appointed case to anyone, and shall personally perform all necessary services except court appearances for continuances and settings, which may be referred to any participating attorney. Payment for other participating attorneys' services is the responsibility of the appointed attorney, who may bill for those services.

2. Eligibility requirements

No attorney has the right to participate in the Program, and no attorney has a property interest in participation in the Program. Participating attorneys and their respective employees shall be deemed at all times to be independent contractors. Nothing in these rules, or in any other documents, communications, contracts, agreements, or otherwise between participating attorneys and ICI, the Conflict Program Advisory Committee, or the Program shall be construed as creating an employment relationship. An attorney is eligible to participate in the Program if he or she:

- a. is an active member in good standing of the California State Bar.
- b. timely pays the required annual participation fee set by the Board. The participation fee is due at the beginning of each fiscal year (July 1) and/or at the time an application for participation is submitted for consideration.
- c. maintains (or will promptly maintain) his or her principal office in Contra Costa County, signs a declaration under penalty of perjury to that effect, and lists this office with the State Bar and the attorney's malpractice insurance carrier;
- d. conducts (or will conduct) a majority of his or her practice in Contra Costa County and signs a declaration under penalty of perjury to that effect;
- e. if that person maintains more than one office in Contra Costa County, designates the office which shall be his or her principal office where the person is available more than 50% of the time and lists the designated office with the State Bar and the attorney's malpractice insurance carrier;
- f. maintains all appropriate attorney case records and assures prompt inspection or transmission of copies of the same upon order of the Court to any successor assigned attorney, the State Public Defender, counsel on appeal, or the person represented;

- g. maintains proper records to enable the County and the Court to file claims for State reimbursement, to the extent that doing so does not violate the attorney-client and/or attorney work-product privileges;
- h. maintains records of case activity and expenditure information necessary for ICI to provide the County and the Court with reports and to make claims for reimbursement from the County. Except as otherwise authorized by California Penal Code sections 987, *et seq.*, and California Government Code sections 27707, *et seq.*, nothing herein shall be construed to permit the County or the Court to examine individual case files, or as being a waiver any privilege;
- i. maintains attorneys' professional liability insurance naming ICI as a certificate holder with coverage limits of not less than \$100,000.00 per claim and \$300,000.00 in the aggregate, applicable to all cases received through appointment by the Program;
- j. agrees to defend, indemnify, save, and hold harmless the County and its officers, agents and employees from all liabilities and claims for damages for death, sickness or injury to persons or property, including without limitation, all consequential damages, to the extent caused by the operations or the services of the participating attorney hereunder, resulting from the conduct, negligent or otherwise, of the participating attorney, its agents or employees; participating attorney shall waive any and all claims against ICI and its officers, directors, participating attorneys, agents and employees, the Committee, the administration and staff of the Program, the Court, and the County and its officers, agents and employees, for any liability for loss arising out of the operation of the Program, the legal and related services provided, or out of referrals, assignments and appointments.
- k. agrees in writing under penalty of perjury to abide by the Rules of the Program, and does in fact abide by these Rules.
- l. is approved for participation in the Program by the Committee. The Committee may, in its discretion, approve participating attorney for a specific case who do not comply with the requirements of Paragraphs c and d of this Section (office and practice within the County) if the Committee determines there is a shortage of participating attorneys needed to comply with the County funding contract. All approvals under this paragraph are subject to review by the Board, and the Board's decision on participation is final.
- m. is not currently or previously the subject of State Bar disciplinary proceedings nor has any current criminal charges pending without satisfactory explanation to the Committee.

Notwithstanding an attorney's eligibility to participate in the Program, the Board may terminate, modify, or decline to renew an attorney's participation at any time.

II. APPOINTMENTS PANELS

A. APPOINTMENTS TO BE MADE FROM PANELS

The Committee shall establish a case classification system as stated in the applicable funding contract or contracts, and shall establish a panel of attorneys for each case class. An attorney shall be appointed to provide representation in a case only if the attorney is a participating attorney of the panel for that case's class. The Committee has the discretion to place in case panels (or grant temporary placement for a specific client), and to deny placement to attorneys in case class panels, based on the attorneys' overall qualifications, but it shall consider the requirements stated in Part IX below in exercising this discretion.

B. THE ROTATIONAL SYSTEM OF APPOINTMENT

1. Appointments to be made on rotational system

Participating attorneys shall where feasible be offered appointments on a rotational system on cases for which they are qualified. An attorney who receives an appointment shall move to the lowest position in the applicable panel unless the Director grants a waiver for good cause. The attorney whose most recent appointment was the earliest in time shall be in the highest position. A new admittee shall be placed in the rotation as if that attorney had received an appointment on the day of admission. The Director or staff may allocate appointments outside the rotational system only in extraordinary circumstances, and shall report the same in writing to the Committee (except no report is needed for circumstances (1) and (4) below). Extraordinary circumstances include circumstances where (1) the Public Defender or Alternate Defender is not available due to being overloaded, (2) there is insufficient time before the next court appearance, (3) it is reasonably foreseeable that the charges will be amended to a higher class, or (4) if a participating attorney has previously performed substantial work for a client on a closed case.

2. Refusal of appointments

If a participating attorney refuses an appointment, the participating attorney shall maintain his or her position in the applicable rotation; however, the Director shall have the discretion to place a participating attorney at the bottom of any rotation if the participating attorney refuses three consecutive appointments. Participating attorneys shall not refuse to accept

appointments based on any of the characteristics listed in California Civil Code section 51, or based on the existence or non-existence of private funds to pay attorneys' fees in probate guardianship and conservatorship cases.

C. GENERAL PROCEDURE FOR MAKING APPOINTMENTS

Upon receipt of written notice from the Public Defender, Alternate Defender Office, or any Judge or clerk of the Court, that a conflict exists and that an affidavit of conflict or unavailability has been or will be filed concerning a person, or written notice from any Judge or Clerk of the Family Law or Probate Divisions of the Court that counsel is needed, the Director or staff shall appoint an attorney to represent that person, pursuant to these Rules.

D. THE CRIMINAL CASE PANELS

1. In general

The criminal case panels shall consist of those participating attorneys eligible to perform the services called for in the current contract between the County and ICI, and any subsequent contract(s) with substantially the same purpose, in criminal and/or juvenile delinquency cases.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)2](#), each participating attorney of a criminal case panel must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate for each rotation in which the participating attorney participates. These requirements are stated in [Part IX](#). The Committee shall have the discretion to depart from these requirements, including but not limited to consideration of "second chair" services, consideration of other relevant training and experience, consideration of the high or low quality of the attorney's services in previous cases, and consideration of the attorney's ethical standards, to determine whether an attorney is qualified for a classification based on experience and judgment equivalent to those stated in Part VIII. However, the Committee shall not find an attorney to be qualified for class 1 cases if the attorney does not meet the requirements of Rule 4.117. All decisions of the Committee under this paragraph are subject to review by the Board, and the Board's decisions are final.

3. Membership in multiple panels

Attorneys who are qualified to receive appointments in any case class shall necessarily be qualified for any lower classification. Attorneys shall be placed in the panel for each class for which they are qualified, except that

attorneys qualified for Class I, II, or III cases shall not necessarily be placed in a Class V panel. The Director may appoint an attorney not in a Class V panel to provide representation in a Class V case for good cause.

4. New cases involving existing clients

a. Attorney not qualified for new case

If an attorney represents a client through appointment by the Program, and a new case or probation violation is filed against that client for which the attorney is not qualified, the attorney shall promptly move to withdraw as counsel, and the Director or staff shall appoint a qualified attorney to represent the client on all cases subject to Program appointment.

b. Attorney qualified for new case

If an attorney represents a client through appointment by the Program, a new case or probation violation is filed anywhere in Contra Costa County against the client, and the attorney is qualified to provide representation in that case, the attorney shall be appointed to represent that client in the new case, regardless of the case's class.

5. Changes in sentence exposure

When a charging document is amended, or a successor charging document is filed in the same case, the attorney shall immediately notify the Conflict Program. If the Conflict Program determines that the client's sentence exposure has changed, resulting in a change in the case classification, the case shall immediately be closed and a new case opened in the appropriate class. All billing after the change in sentence exposure shall be at the rates applicable to the new case classification, unless the attorney has failed to notify the Conflict Program promptly of an increase in sentence exposure, in which case the attorney shall be required to bill at the lower rates during the time the case was incorrectly classified. If an attorney fails to report a reduction in the client's sentence exposure and thereby bills at a rate higher than appropriate, the Director shall report this circumstance to the Committee for appropriate action. If an increase in the client's sentence exposure has increased the case classification, and the attorney is not qualified to accept appointments in that classification, the attorney shall move to withdraw and a new attorney shall be appointed, unless each of the following are true:

a. The attorney has made full disclosure to the client of the Conflict

Program's rules on case classifications and has obtained the client's informed, written consent to continue representing the client, and

- b. The Director has determined that the best interests of the client appear to be furthered by continuity of representation by the assigned attorney.

6. Duties of attorneys on the criminal case panel

In addition to those duties stated in [Part I\(E\)\(1\)](#) above, an attorney receiving an appointment in a criminal or juvenile delinquency case shall provide the following legal and related services, until disposition of the case and in no event after the expiration of the period for filing a Notice of Appeal:

- a. all necessary court appearances;
- b. legal research;
- c. investigative services;
- d. interpreting services required out of Court, or for witnesses called by the attorney,
- e. medical, psychiatric, laboratory and other diagnostic services, and fees for expert witnesses not statutorily mandated;
- f. preparation of documents and necessary filings and appearances in pretrial, trial or other proceedings through judgment including writ proceedings necessary for effective representation of the client;
- g. preparation of necessary legal documents;
- h. motion practice;
- i. discovery review and analysis;
- k. assistance to the client in preparation of and filing of Notice of Appeal and other documents pursuant to Section 1240.1 of the Penal Code, and
- l. all other legal representation consistent with Section 27706(a) of the Government Code, exclusive of post-judgment appeals and writs.
- m. an active GTL (or similar) account to accept telephone calls from in-custody clients, if applicable.

- n. an attorney assigned as counsel to a case through the Program shall not accept payment for private representation of the defendant in the same case.

E. THE WITNESS REPRESENTATION PANEL

1. In general

The witness representation panels shall consist of those attorneys eligible to receive appointments to represent witnesses pursuant to any contract between the Court and ICI.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), each participating attorney in the a witness representation panel must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate, for each rotation in which the participating attorney participates. These requirements are stated in Part IX.

3. Duties of attorneys on the witness representation panels

In addition to the duties stated in [Part I\(E\)\(1\)](#), participating attorneys in the witness representation panels shall provide all legal representation necessary for effective representation of the witness, through the conclusion of the hearing or trial at which the witness is then appearing. Participating attorneys shall provide outside services if necessary pursuant to [Part X\(L\)](#) below. Participating attorneys shall where feasible cooperate with the Court's or County's cost recovery efforts.

F. THE JUVENILE DEPENDENCY IMMIGRATION PANEL

1. In general

The juvenile dependency immigration panel shall consist of those attorneys eligible to receive appointments to represent dependent minors in immigration proceedings pursuant to any contract between the Court and ICI.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), each participating attorneys in the juvenile dependency immigration panel must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate. These requirements are stated in [Part IX](#).

3. Duties of attorneys on the juvenile dependency immigration panel

In addition to the duties stated in [Part I\(E\)\(1\)](#), participating attorneys in the juvenile dependency immigration panel shall provide all legal representation necessary for effective representation of the dependent minor concerning immigration matters, through the conclusion of immigration procedures. Participating attorneys shall provide outside services if necessary pursuant to [Part X\(L\)](#) below. Participating attorneys shall where feasible cooperate with the Court's or County's cost recovery efforts.

G. THE PROBATE GUARDIANSHIP PANELS

1. In general

The probate guardianship panels shall consist of those attorneys eligible to receive appointments to represent minors in probate guardianship cases pursuant to any contract between the County and ICI.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), participating attorneys in the probate guardianship panels must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate, for each rotation in which the panel participating attorney participates. These requirements are stated in [Part IX](#).

3. Duties of attorneys on the probate guardianship panels

In addition to the duties stated in [Part I\(E\)\(1\)](#), participating attorneys in the probate guardianship panels shall provide all legal representation necessary for effective representation of the minors in probate guardianship cases. Participating attorneys shall provide outside services if necessary pursuant to [Part X\(L\)](#) below. Participating attorneys shall where feasible cooperate with the Court's or County's cost recovery efforts.

4. Attorneys participating in multiple panels

Attorneys who are qualified to receive appointments in the complex experience level shall necessarily be qualified for the standard experience level. Attorneys shall be placed in the panel for each class for which they are qualified.

H. THE CONSERVATORSHIP PANELS

1. In general

The conservatorship panels shall consist of those attorneys eligible to receive appointments to represent conservatees in conservatorship cases pursuant to any contract between the Court and ICI.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), participating attorneys in the conservatorship panels must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate, for each rotation in which the panel participating attorney participates. These requirements are stated in [Part IX](#).

3. Duties of attorneys on the probate guardianship panels

In addition to the duties stated in [Part I\(E\)\(1\)](#), participating attorneys in the conservatorship panels shall provide all legal representation necessary for effective representation of conservatees in conservatorship cases. Participating attorneys shall provide outside services if necessary pursuant to [Part X\(L\)](#) below. Participating attorneys shall where feasible cooperate with the Court's or County's cost recovery efforts.

4. Attorneys participating in multiple panels

Attorneys who are qualified to receive appointments in the complex experience level and/or the public benefits level shall necessarily be qualified for the standard experience level. Attorneys shall be placed in the panel for each class for which they are qualified.

I.
PANEL

THE IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS

1. In general

The immigration consequences of criminal convictions ("ICCC") panel shall consist of those attorneys eligible to receive appointments to advise panel attorneys on the potential immigration consequences of convictions in any case in which the original appointment was made pursuant to any contract between the County and ICI.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), each participating attorney in the immigration consequences of criminal convictions panel must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate. These requirements are

stated in [Part IX](#).

3. Duties of attorneys on the immigration consequences of criminal convictions panel

In addition to the duties stated in [Part I\(E\)\(1\)](#), participating attorneys in the immigration consequences of criminal convictions panel shall perform all services necessary to advise the appointed attorney of potential immigration consequences of criminal convictions in a case in which the original appointment was made pursuant to any contract between the County and ICI. Participating attorneys in this panel shall provide no other services, and the responsibility for representing the client shall not be delegated from the attorney handling the underlying case to the ICCC attorney. Participating attorneys in this panel shall where feasible cooperate with the Court's or County's cost recovery efforts.

4. Compensation of attorneys on the immigration consequences of criminal convictions panel.

Attorneys appointed under this provision shall be compensated at the rate of pay applicable to the underlying case.

5. Special procedures for appointment of attorneys from the immigration consequences of criminal convictions panel.

No attorney shall be appointed from the immigration consequences of criminal convictions panel unless an attorney currently representing a client through appointment by the Program submits an outside services request form establishing the need for consultation with an attorney with expertise in the immigration consequences of criminal convictions. If the request is approved, the Conflict Programs shall appoint an attorney from the subdivision of the ICCC panel corresponding to the class of the case.

J. THE CONTEMPT DEFENSE PANEL

1. In general

The contempt defense ("contempt") panel shall consist of those attorneys eligible to receive appointments in any class.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), each participating attorney in the contempt panel must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate. These requirements are stated in [Part IX](#).

3. Duties of attorneys on the contempt defense panel

In addition to the duties stated in [Part I\(E\)\(1\)](#), participating attorneys in the contempt panel shall perform all services necessary to defend the client against allegations of contempt of court and the potential punishment therefor. Participating attorneys of this panel shall where feasible cooperate with the Court's or County's cost recovery efforts.

4. Compensation of attorneys on the contempt defense panel.

Attorneys appointed under this provision shall be compensated at the rate of pay applicable to class III cases.

III. APPLICATION AND RECERTIFICATION

A. WRITTEN APPLICATION

Requests to participate in any panel shall be by written application only, submitted on a form provided by the Committee. Participating attorneys shall be required to apply to renew their participation at the beginning of each fiscal year. Participating attorneys may at any time submit an amendment to an application stating the participating attorney's eligibility for additional panels and/or classification(s) within a panel. Such amendments do not require an additional fee. Each applicant shall:

1. state the applicant's eligibility for participation in and qualifications for the panel(s) and classification(s) desired;
2. state the applicant's familiarity with, and agreement to abide by, these Rules, together with such other and further rules and regulations as may be adopted by the Committee in the future, and the applicable fee schedules;
3. state that the applicant shall defend, save, indemnify, and hold harmless, and waive any and all claims against, ICI and its officers, directors participating attorneys, employees, the Committee, the administration and staff of the Program, the Court, and the County and its officers, agents and employees for any liability for loss including without limitation, all consequential damages, arising out of the operation of the Program, the legal and related services provided, or out of referrals, assignments and appointments from any cause whatsoever arising from or connected with the operations or the services of the participating attorney hereunder, or its agents or employees; and
4. remit the annual participation fee with the completed application. The fee shall include a mandatory subscription to OnLaw for all attorneys except

attorneys whose participation is limited to the probate guardianship and/or conservatorship panels, who may choose to subscribe to OnLaw.

B. CERTIFICATION AND RECERTIFICATION

1. Committee to review applications

The Committee shall evaluate and certify applicant attorneys for all appropriate panels. The Director shall place attorneys in the panels for which the Committee certifies them. The Board may review, modify, reject or approve the Committee's certification decisions at any time, in which cases the Board's decision is final. All new applications for participation, and all amendments to applications, shall be evaluated for certification upon submission. Applications to renew participation without changing panels may be evaluated for recertification at the discretion of the Committee. Participating attorneys may be evaluated for certification or recertification at any time in the discretion of the Committee and the Board.

2. Review of Committee's certification decisions

An applicant or participating attorney who has been denied certification in any panel shall, upon written request to the Committee, have the right to appear and be heard and present evidence before the Committee of the participating attorney's competence to represent clients in the panel for which certification was denied. The decision of the Committee shall be final unless the Board elects to review it. Board decisions under this paragraph are final.

IV. VOLUNTEER SERVICES

A. A participating attorney may volunteer to handle a case for which he or she is eligible. In such event, the participating attorney shall receive no pay. Such service may count toward eligibility for certification for a panel. A participating attorney volunteering for a case for which he or she is eligible shall immediately be placed at the top of the list in that panel in order to receive an appointment as a volunteer. A participating attorney shall not lose his or her regular place on the rotation list by volunteering.

B. A participating attorney may continue to volunteer to handle cases provided, however, no participating attorney shall be assigned more than two volunteer cases at any time.

C. If more than one participating attorney volunteers within the same panel, the participating attorneys' names shall be placed at the top of the list in the order in which the Program received the requests to volunteer.

D. Participating attorneys may volunteer to serve as "second chair" attorneys in any case, except a capital case, subject to paragraph E immediately following, if the assigned attorney consents and continues to accept full responsibility for the delivery of legal services to

the client. Volunteer second chair services shall not be compensated. The nature and extent of second chair services shall be within the discretion of the assigned attorney.

E. No attorney providing representation in a case pursuant to appointment by the Program shall associate any other attorney on the case, or otherwise cause or allow another attorney be an attorney of record on the case, without the prior approval of the program Director.

V. REPORTING REQUIREMENTS

- A. The Director shall account for all funds the Program disburses, and shall compile statistics on the number and classification of all cases in which the program makes appointments, and shall make periodic reports to the Committee, the Board, the County and the Court. The Director shall compile other statistical information and make reports of the same as directed by the Committee and the Board.
- B. If contract expenditures appear likely to exceed the payment limit of the contract before its termination, the Director shall promptly notify the Committee and the County and/or the Court.

VI. SUSPENSION, TERMINATION AND RECLASSIFICATION

- A. A participating attorney may be subject to termination or reclassification from the Program at any time for any substantial violation of these Rules, in the discretion of the Committee.
- B. A participating attorney shall be subject to termination or reclassification from the Program at any time for any substantial violation of the Rules of Professional Conduct or upon publicly disclosed disciplinary action by the California State Bar.
- C. A participating attorney may withdraw from the Program at any time upon written notice to the Director, but no portion of any fee paid to the Program will be returned, nor will any unpaid fee due the Program be discharged. The participating attorney resigning shall, whenever possible, complete the cases to which the participating attorney has been appointed. The resigning participating attorney shall remain in compliance with these rules, including the insurance requirements, until all assigned cases are completed. If it is not possible for the resigning participating attorney to complete cases, the participating attorney shall request to be relieved as counsel from the Court at no expense to the Program.
- D. Immediately upon receipt of a complaint from a judicial officer concerning a participating attorney's professional competence in the representation of minor clients, the participating attorney shall be placed on inactive status, causing the participating attorney to be ineligible for new referrals to represent minors. The participating attorney's existing caseload shall not be affected by this action. The Committee shall thereafter investigate the matter and take such action as it deems appropriate, including but not limited to termination under [Parts VI\(A\) and \(B\)](#)

above, or reinstatement of the participating attorney's active status. The Committee shall communicate to the complaining judicial officer the results of its investigation and any action taken by the Committee in response to the complaint. All decisions and actions by the Committee under this paragraph are subject to review by the Board, and the Board's decisions are final.

- E. Whenever the Director receives a complaint from a judicial officer, or a written complaint from an attorney, about the performance of an attorney who is a participating attorney of the Program, the Director shall include the complaint as an item on the agenda for the next scheduled Committee meeting. If a participating attorney of the Committee receives such a complaint, the Committee participating attorney shall promptly notify the Director, who shall include the complaint as an item on the agenda for the next scheduled Committee meeting.
- F. The Committee may take any action it deems appropriate to investigate the complaint, including but not limited to designating an ad hoc subcommittee or person to conduct necessary investigation, interviewing witnesses including the judicial officer, other attorneys, and clients, interviewing the attorney and/or requiring the attorney to appear personally before the Committee. If the Committee determines that a participating attorney violated these Rules or the Rules of Professional conduct, the Committee may, at its discretion, either immediately terminate the participating attorney from the Program, or notify the participating attorney that he or she violated the Rules and that future violations will subject him or her to termination from the Program. All decisions and actions by the Committee under this paragraph are subject to review by the Board, and the Board's decisions are final.
- G. When the Director receives a complaint from a client, an unwritten complaint from an attorney, or a complaint from any other person who is not a judicial officer about the performance of an attorney who is a participating attorney of the Criminal Conflict Program, the Director shall have the discretion to include the complaint as an item on the agenda for the next scheduled Committee meeting. The Director shall keep a record of all complaints from any source about the performance of attorneys.
- H. The Director shall have the discretion to suspend an attorney from any and all appointment rotations immediately upon receipt of a complaint about the attorney's performance. In all such instances the complaint shall be included as an agenda item for the next scheduled Committee meeting.

VII. PRIVILEGES

No waiver of the attorney-client privilege and/or the attorney work product privilege shall be made by any communications between participating attorneys and the Board, any Board Committee including the Fee Review Committee, the Conflict Program Advisory

Committee, the Director, or Program staff necessary to effect the purposes of the Program, including but not limited to billing and payment records and funding requests. All communications between participating attorneys and the Board, any Board Committee including the Fee Review Committee, the Conflict Program Advisory Committee, the Director, or Program staff of or pertaining to attorney-client communications and/or attorney work product shall be confidential.

VIII. CASE CLASSIFICATIONS AND PANELS

A. CASE CLASSIFICATIONS

Cases shall be classified as follows:

1. Adult criminal cases
 - a. class 1.

Capital cases
 - b. class 2H.

Non-capital homicides; all homicide cases in which a life sentence may be imposed, and homicide cases in which a State prison sentence of fifteen years or more may be imposed.
 - c. class 2.

All non-homicide cases in which a life sentence may be imposed, and non-homicide cases in which a sentence of fifteen years or more may be imposed. Any re-sentencing on a case that was formerly a class 2 or class 2H case (e.g., SB 1437/PC 1170.95 Petitions and Franklin hearings).
 - d. class 3.

All cases in which the maximum penalty is more than six years and less than fifteen years.
 - e. class 4.

All other felony cases including felony probation violations alleged either as new petitions or included on a Complaint, Indictment or Information on an existing case (e.g., In re Law notice).
 - f. class 5.

- Misdemeanor cases
- 2. Juvenile Delinquency cases
 - a. class 1.
 - Capital cases
 - b. class 2H.
 - Non-capital homicides; all homicide cases in which a life sentence may be imposed, and homicide cases in which a State prison sentence of fifteen years or more could be imposed against an adult convicted of the same crimes.
 - c. class 2.
 - All non-homicide cases in which a life sentence may be imposed, and cases in which a sentence of fifteen years or more could be imposed against an adult convicted of the same crimes.
 - d. class 3.
 - All cases in which the maximum penalty which could be imposed on an adult convicted of the same crimes is more than six years and less than fifteen years.
 - e. class 4.
 - All other felony cases
 - e. class 5.
 - Misdemeanor cases
- 3. Witness cases
 - All witness representation cases
- 4. Juvenile dependency immigration
 - All juvenile dependency immigration cases
- 5. Probate guardianship cases
 - a. All cases classified as "Complex Experience Level"

- b. All cases classified as “Standard Experience Level”
- 6. Conservatorship cases
 - a. All cases classified as “Complex Experience Level”
 - b. All cases classified as “Public Benefits Level”
 - c. All cases classified as “Standard Experience Level” where the Court referral does not include Conservatorship of an Estate
 - d. All cases classified as “Standard Experience Level” where the Court referral includes Conservatorship of an Estate
- 7. Contempt defense cases

All contempt defense cases

B. PANELS

The Committee shall establish individual panels for each case classification established in these Rules.

C. SENTENCE EXPOSURE

In criminal and juvenile delinquency cases, sentence exposure shall be calculated based upon the allegations in the current charging document excluding misdemeanor counts and probation violations.

IX. QUALIFICATIONS FOR APPOINTMENT

A. CLASS ONE CASES

The qualifications for appointment in class 1 cases are set forth in California Rules of Court, Rule 4.117. It provides:

Rule 4.117. Qualifications for appointed trial counsel in capital cases

(a) [Purpose] This rule defines minimum qualifications for attorneys appointed to represent persons charged with capital offenses in the superior courts. These minimum qualifications are designed to promote adequate representation in death penalty cases and to avoid unnecessary delay and expense by assisting the trial court in appointing qualified counsel. Nothing in this rule is intended to be used as a standard by which to measure whether the defendant received effective assistance of counsel.

(b) [General qualifications] In cases in which the death penalty is sought, the

court must assign qualified trial counsel to represent the defendant. The attorney may be appointed only if the court, after reviewing the attorney's background, experience, and training, determines that the attorney has demonstrated the skill, knowledge, and proficiency to diligently and competently represent the defendant. An attorney is not entitled to appointment simply because he or she meets the minimum qualifications.

(c) [Designation of counsel] (1) If the court appoints more than one attorney, one must be designated lead counsel and meet the qualifications set forth in (d) or (f), and at least one other must be designated associate counsel and meet the qualifications set forth in (e) or (f). (2) If the court appoints only one attorney, that attorney must meet the qualifications set forth in (d) or (f).

(d) [Qualifications of lead counsel] To be eligible to serve as lead counsel, an attorney must: (1) Be an active member of the State Bar of California; (2) Be an active trial practitioner with at least 10 years' litigation experience in the field of criminal law; (3) Have prior experience as lead counsel in either (A) At least 10 serious or violent felony jury trials, including at least 2 murder cases, tried to argument, verdict, or final judgment; or (B) At least 5 serious or violent felony jury trials, including at least 3 murder cases, tried to argument, verdict, or final judgment; (4) Be familiar with the practices and procedures of the California criminal courts; (5) Be familiar with and experienced in the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; (6) Have completed within two years prior to appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and (7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(e) [Qualifications of associate counsel] To be eligible to serve as associate counsel, an attorney must: (1) Be an active member of the State Bar of California; (2) Be an active trial practitioner with at least three years' litigation experience in the field of criminal law; (3) Have prior experience as (A) Lead counsel in at least 10 felony jury trials tried to verdict, including 3 serious or violent felony jury trials tried to argument, verdict, or final judgment; or (B) Lead or associate counsel in at least 5 serious or violent felony jury trials, including at least 1 murder case, tried to argument, verdict, or final judgment; (4) Be familiar with the practices and procedures of the California criminal courts; (5) Be familiar with and experienced in the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; (6) Have completed within two years prior to appointment at least 15 hours of capital case defense training approved for minimum continuing legal education credit by the State Bar of California; and (7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(f) [Alternative qualifications] The court may appoint an attorney even if he or she does not meet all of the qualifications set forth in (d) or (e) if the attorney demonstrates the ability to provide competent representation to the defendant. If the court appoints counsel under this subdivision, it must state on the record the basis for finding counsel qualified. In making this determination, the court must consider whether the attorney meets the following qualifications: (1) The attorney is

an active member of the State Bar of California or admitted to practice *pro hac vice* pursuant to rule 983;(2) The attorney has demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases;(3) The attorney has had extensive criminal or civil trial experience;(4) Although not meeting the qualifications set forth in (d) or (e), the attorney has had experience in death penalty trials other than as lead or associate counsel;(5) The attorney is familiar with the practices and procedures of the California criminal courts;(6) The attorney is familiar with and experienced in the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence;(7) The attorney has had specialized training in the defense of persons accused of capital crimes, such as experience in a death penalty resource center;(8) The attorney has ongoing consultation support from experienced death penalty counsel;(9) The attorney has completed within the past two years prior to appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and(10) The attorney has been certified by the State Bar of California's Board of Legal Specialization as a criminal law specialist.

(g) [Public defender appointments] When the court appoints the Public Defender under Penal Code section 987.2, the Public Defender should assign an attorney from that office or agency as lead counsel who meets the qualifications described in (d) or assign an attorney that he or she determines would qualify under (f). If associate counsel is designated, the Public Defender should assign an attorney from that office or agency who meets the qualifications described in (e) or assign an attorney he or she determines would qualify under (f).

(h) [Standby or advisory counsel] When the court appoints standby or advisory counsel to assist a self-represented defendant, the attorney must qualify under (d) or (f) of this rule.

B. CLASS TWO CASES

State Bar certification as a criminal law specialist, or criminal practice experience equivalent to certification standards within the last seven years.

C. CLASS THREE CASES

Three years of experience as an attorney, and the handling of twenty-five separate felony matters, at least five of which have been jury trials submitted for decision, and five misdemeanor trials submitted for decision all within the last ten years.

D. CLASS FOUR CASES

An attorney who has handled twenty separate criminal matters and three jury trials submitted for decision.

E. CLASS FIVE CASES

All attorneys who have:

or

- 1) Read *Defending Your Client in a Misdemeanor Case (Including a DUI)*, by CEB or equivalent research; and either
- 2) Attended CPDA Summer Basic Trial Skills Institute or equivalent program;
- 3) Observed or participated in a Contra Costa Courtroom:
 - a. Arraignments (half-day calendar)
 - b. Pre-trial conferences (half-day calendar, preferably in chambers if allowed by the court);
 - c. Pre-trial motions including 1538.5 motions (half-day calendar); and
 - d. All of the following jury trial activities: in limine motions, jury selection, opening statements, closing statements and presentation of evidence.

F. JUVENILE DELINQUENCY CASES

Attorneys who meet the qualifications for representation of the corresponding adult criminal case level and who meet the applicable standards set forth in California Rules of Court, Rule 5.664, and completion of Declaration of Eligibility for Appointment to Represent Youth in Delinquency Court (JV-700).

G. WITNESS REPRESENTATION CASES

Attorneys may be placed on the witness representation panel if they satisfy the general requirements for participation in the Program, if they are qualified for appointments in class III cases, and if they meet the following special qualifications:

1. Training on the law and practice of witness representation.
2. Attendance at any subsequent training seminars or workshops as directed by the Program, and review of any materials on the subject as directed by the Program.
3. Demonstrated proficiency in the legal representation of witnesses.
4. Because time is often of the essence in responding to requests for attorneys to represent witnesses, attorneys must be reachable by telephone, pager or otherwise and must demonstrate the ability to appear in court within thirty minutes of a call from the Program. Attorneys who receive an appointment to represent a witness, in cases of urgency, and who fail to appear in court within thirty minutes of their appointment, may be dropped from the witness representation panel in the discretion of the Committee.

H. JUVENILE DEPENDENCY IMMIGRATION CASES

The Committee shall consider the attorney's specific experience and training in the

field of juvenile dependency immigration matters, and any other relevant factors.

I. PROBATE GUARDIANSHIP CASES

1. Standard Experience Level

All attorneys receiving appointments to serve as minor's counsel in probate guardianship cases must meet the requirements of California Rules of Court Rule 7.1101 including annual certification.

2. Complex Experience Level

In addition to the above requirements, attorneys in the complex experience level must have acted as lead counsel in at least five contested guardianship matters, and have represented minors in at least five cases, at least three of which were probate guardianship cases.

J. CONSERVATORSHIP CASES

1. Standard Experience Level

All attorneys receiving appointments to represent parties in conservatorship cases must meet the requirements of California Rules of Court Rule 7.1101 including annual certification.

2. Complex Experience Level

In addition to the standard experience level requirements, attorneys in the complex experience level must have acted as lead counsel in at least five contested conservatorship matters, have represented a party in at least ten probate conservatorship cases, and have acted as lead counsel in at least two trials.

3. Public Benefits Experience Level

In addition to the standard experience level requirements, attorneys in the public benefits experience level must have particular training and expertise to qualify them to address practical and technical issues involving Medi-Cal, Medic-Aid, SSI, and long term care needs, suitable for representing persons with alleged disability in matters such as Special Needs Trusts or petitions pursuant to Probate Code section 3100 *et seq.*

K. IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS CASES

The Committee shall consider the attorney's specific experience and training in the

area of immigration consequences of criminal convictions, and any other relevant factors.

L. CONTEMPT DEFENSE

All attorneys receiving appointments to represent persons charged with contempt of court must be qualified for any class.

X. BILLING REGULATIONS

A. FEE SCHEDULE

1. General Rule.

Attorneys shall be compensated pursuant to the fee schedule applicable to the class of case in which representation is provided at the time of the appointment, except for probate guardianship and conservatorship cases in which the Court has ordered that the source of payment is a private party. Changes in the fee schedule apply prospectively only.

2. Changes in sentence exposure in criminal and juvenile delinquency cases.

If a charging document is amended in a criminal or juvenile delinquency case, resulting in a change in the client's sentence exposure, the case may be reopened in a new case class, with a new fee schedule. Rule II(D)(5) states the procedure to be followed when a client's sentence exposure changes.

B. PRESUMPTIVE MAXIMUM FEES

The Conflict Program funding contract establishes presumptive maximum fees for various tasks, and a general presumptive fee for pretrial work in adult misdemeanor cases. No payment will be made in excess of a presumptive maximum fee unless the case has been designated exceptional, as provided in these rules.

C. PRESUMPTIVE MAXIMUM FEE TABLE

The presumptive maximum fees are:

1. Criminal cases

A. Adult Misdemeanors

10 hours of time for all pretrial services per client (regardless of the

number of cases)

B. Adult and Juvenile Felonies

1. Motions to continue

0.3 hours

2. drafting *Williams* motion (to suppress fruits of warrantless search)

0.6 hours

3. review of initial discovery packet

50 pages per hour, 0.5 hour minimum. Any subsequent discovery review is billed at 50 pages/minutes per hour and should reflect the numbers of pages or the length of the digital discovery.

4. review of transcripts of court proceedings

60 pages per hour

5. informal requests for discovery

0.3 hours

6. drafting 995 motion (not including transcript review)

5 hours

7. drafting motion to disclose the identity of a confidential informant

3 hours

8. drafting motion to quash search warrant or suppress evidence (non-*Williams* motion)

6 hours

9. telephone call or email with prosecuting attorney, the court, probation, co-counsel etc.

0.1 hour

10. Picking up discovery from the DA or PD

0.1 hour

2. Probate Guardianship and Conservatorship cases

A. Review tentative ruling

0.1 hour

B. Draft report of counsel

4 pages per hour, 2.5 hours maximum

C. Review court investigator's report

0.5 hours

D. Draft issue conference statement

1.2 hours

E. Review court file

0.5 hours

F. Prepare stipulation for EC 730 expert

0.5 hours

G. Review EC 730 expert's report

1.0 hours

H. Guardianship mediation

3.0 hours

I. Conservatorship mediation

6.0 hours

D. EXCEPTION REQUEST PROCEDURE

1. Panel attorneys may at any time request that a case be designated “exceptional.” This request shall be made according to a standard format adopted by the Conflict Program, and it shall be submitted to the Director of the program (“the Director”). The request may apply to the case as a whole or to a particular task or multiple tasks required for the case.
 - a. If the exception request is submitted before any fees have been incurred in excess of the presumptive maximums, fees may be paid up to the presumptive maximums regardless of whether the request has been considered or granted.
 - b. If the exception request is submitted after fees have been incurred in excess of any presumptive maximum fee, no fee shall be paid in excess of the presumptive maximum unless and until the request has been considered and granted. Even if the request has been granted, fees incurred in excess of any presumptive maximum before the request has been granted may, in the discretion of the Director, be denied.
2. The Director may deny, grant, or modify and grant a request to designate a case as exceptional. The Director may designate the case as a whole as exceptional and/or establish new presumptive maximum fees applicable to the case. In any case in which the Director has established a new presumptive maximum fee, that fee shall be not exceeded unless a new exception request has been submitted and considered as provided herein.
3. No payment shall be made for services which are not reasonable and necessary to provide an adequate defense (in criminal and juvenile delinquency cases) or adequate representation (in all other cases). In considering whether to deny, grant, or modify and grant requests to designate a case as exceptional, the Director shall be guided by the standards of practice stated in the Final Report of the California Commission on the Fair Administration of Justice (www.ccfaj.org), *ABA Criminal Justice Standards for the Defense Function*, *The State Bar of California Guidelines On Indigent Defense Services Delivery Systems* and the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*.

E. BILLING FORMS

1. Electronic billing program required for attorneys and investigators

The Committee shall approve a standard electronic billing program for use by attorneys and investigators. Attorney and investigator bills must be submitted using the electronic billing program.

2. When bills must be submitted

a. General Rule

Attorney and investigator bills shall be submitted monthly using the Conflict Program's web based billing program. No later than midnight on the 7th day of each month, the attorney must certify to the accuracy of the previous month's bill by checking the declaration under penalty of perjury box on the form. In any case in which an investigator submits a bill, the assigned attorney must review and approve the investigator's bill before the investigator's bill can be paid. Also, in any case in which an investigator submits a bill, the assigned attorney must review and approve the investigator's bill before the attorney will be allowed to complete the attorney's bill.

b. Special Rule for Probate Guardianship and Conservatorship cases

Probate Guardianship and Conservatorship cases may be billed monthly regardless of whether the Court has designated the case as "County pay" or "private pay." Cases not billed timely as required in paragraph A above shall not be paid. Attorneys shall obtain reimbursement of Conflict Program payments from estates in appropriate cases. A copy of any order granting compensation to an attorney appointed through the Program shall be delivered promptly to the Program. Whenever an attorney receives payment on a probate guardianship or conservatorship case from a source other than the Conflict Program, the attorney shall promptly notify the Criminal Program of the payment and make prompt reimbursement of all Criminal Conflict payments on the case, limited by the amount of the private payment.

c. Outside services bills

Outside service bills are not submitted on the electronic billing program. The rules governing outside services bills are stated in part K(2) below.

3. Itemization of time expended

Bills must include a clear itemization of the date and nature of each court appearance, and the date, nature and time expended for each out of court task. Bills which are unclear, include surplusage, or for other reasons require excessive time to review, may be rejected.

4. Task-based billing

If an attorney performs more than one task on a case during a single day, the bill shall list each task, and the time required for that task, separately. If a single task requires more than one day, the attorney may choose to list the task only once, specifying each day during which the task was performed and the total time required for the task. If different tasks are performed on the same day, each task must be itemized separately.

5. 0.1 hour increments required

Bills shall account for time in 0.1 hour increments.

6. Submission of pleadings and other supporting documents

In all cases, whenever an attorney bills for preparing a motion or other pleading, the attorney must submit a copy of the pleading. In all cases, upon request of the program, an attorney or investigator shall submit any documents necessary for effective billing review. Failure to submit documents under this section shall be grounds for denying payment.

7. Specific billing rules

a. "One Hour Rule" for court appearances.

All bills exceeding one hour for court appearances must include a statement of the time the appearance began, and the time it ended. Bills one hour or less do not require this statement. Bills exceeding one hour which do not include a statement of the start and stop times will be reduced to one hour.

To implement this rule, please use the following guidelines:

Court appearances "begin" at the time the case is scheduled on the court's calendar, or the time the attorney arrives in the scheduled department, whichever is later.

Court appearances "end" when the court proceedings for the case conclude.

Work on the case which is related to a court appearance, such as conferences with the client or opposing counsel, should be billed separately, as "out of court" work. However, if this work occurs during the time billed for a court appearance, it may not be billed again.

- b. “One Hour Rule” for reports of counsel in probate guardianship and conservatorship cases.

All bills exceeding one hour for reports of counsel in probate guardianship and conservatorship cases must include a statement of the number of pages of the report. Bills one hour or less do not require this statement. Bills exceeding one hour which do not include a statement of the page number will be reduced to one hour.

Reports of counsel are presumed to require one hour for every four pages, with a 2.5 hour maximum.

- c. “One Hour Rule” for reviewing discovery.

All bills for reviewing discovery exceeding one hour must include a statement of the number of pages reviewed. Discovery review in multiple stages is subject to this rule if the aggregate time exceeds one hour. Bills exceeding one hour which do not include a statement of the number of pages will be reduced to one hour. This rule applies to attorneys and investigators.

The presumptive maximum fee for reviewing discovery is 50 pages per hour, with a 0.5 hour minimum.

- d. “One Hour Rule” for reviewing transcripts

All bills for reviewing transcripts exceeding one hour must include a statement of the number of pages reviewed. Transcript review in multiple stages is subject to this rule if the aggregate time exceeds one hour. Bills exceeding one hour which do not include a statement of the number of pages will be reduced to one hour.

The presumptive maximum fee for reviewing transcripts is 60 pages per hour.

If you create a transcript summary, or take extensive notes, while reviewing a transcript, please bill that time separately. For example, if you review a 60 page transcript and create a transcript summary, and the total time required is 80 minutes, please bill one hour for transcript review and 0.4 hour for creating the summary.

- e. “One Hour Rule” for funding requests for investigators reviewing discovery

Funding authorization for investigators shall automatically include up to one hour for the investigator's review of discovery. No payment shall be made to investigators for more than one hour reviewing discovery unless funding was specifically requested and approved in advance.

The presumptive maximum fee for reviewing discovery is 50 pages per hour, with a 0.5 hour minimum.

Investigators should bill for the actual time spent reviewing discovery, subject to the 0.5 hour minimum. They are not automatically entitled to bill one hour. Investigators must state the actual number of pages reviewed if the bill exceeds one hour.

- f. Investigation funding for client visits must be specifically requested and authorized.

Funding authorization for investigators shall not include client visits unless they were specifically requested and authorized.

The purpose of this rule is to avoid unnecessary duplication of the attorney's work communicating with the client, while supporting investigator contact which is reasonably necessary to provide adequate representation to the client.

Possible justifications for investigator client visits include: difficult clients demanding such contact; complicated investigations where it is more efficient for the investigator to discuss the investigation directly with the client; and overworked attorneys lacking the time to see their clients. The latter justification should be invoked sparingly, if at all.

8. Closing cases

The billing program includes a box labeled "final." An attorney shall check this box when the attorney submits a bill after the conclusion of the case. The case will be closed when the Conflict Program processes the bill.

The "conclusion of the case" is defined as follows:

- a. Criminal and juvenile delinquency cases
 - 1. Not guilty verdict(s) on all counts
 - 2. Dismissal of all charged counts

3. Sentencing (and filing of a Notice of Appeal if necessary)
4. Disposition in juvenile delinquency cases, unless the client receives a grant of probation, in which case it is the termination of probation.
5. Thirty days after the issuance of a bench warrant, if the warrant remains outstanding. The participating attorney shall remain attorney of record unless relieved by the Court.
6. Successful completion of diversion
7. Client placed on diversion with a review date beyond 6 months.
8. Attorneys shall request to be relieved by the Court from any case that is concluded except when bench warrants are issued.

b. Witness representation cases

The conclusion of the case occurs when the hearing at which the witness faced compulsion to testify concludes, unless the witness is ordered to return to court on a future date.

c. Other cases

The conclusion of the case occurs when all necessary services pursuant to the appointment have been performed.

F. PAYMENT UPON WITHDRAWAL WITHOUT GOOD CAUSE

If any attorney withdraws from a case without good cause, the Director may refuse to authorize payment or may authorize reduced payment.

G. MULTIPLE CASES INVOLVING THE SAME CLIENT

1. General rule

When an attorney represents a client in more than one case, the attorney shall bill only once for services which benefit the client in more than one case.

2. Billing rates

The attorney may designate the case with the highest billing rate as the “lead” or controlling case.

3. Billing cases

Electronic cases will be created for each case when an attorney represents a client with multiple cases. The attorney should select a “lead” or controlling case and use its billing; if no such case exists, the attorney may select any case. If all services benefitted all cases, the attorney should submit one bill in the lead case. If certain services were performed on fewer than all the client’s cases, the attorney should bill all services in the lead case, except services devoted exclusively to another case. Services devoted exclusively to a case not designated the lead case shall be billed separately.

4. New cases filed against an existing client

When a new case is filed against a client currently being represented through a Program appointment, the attorney may not bill for work on the new case unless the attorney has been appointed in the new case. An attorney who learns of a new case, including a probation violation, against an existing client should advise the Judge hearing the new case to order the Program to appoint an attorney on the new case. This is commonly called “sending the case to conflicts.”

Any work performed on the new case before the attorney has been appointed may not be billed.

Some Judges may prefer to make a direct appointment of the current attorney on the new case, without sending the case to the Conflict Program. In this circumstance, the Presiding Judge is responsible for reviewing and approving the attorney’s bill on the new case. When advised of this fact, most Judges change their minds and send the case to the Conflict Program.

H. BILLABLE MATTERS

1. General rule

Attorneys may bill for all time and court appearances reasonably required to represent the client, consistent with these Rules and section 27706(a) of the Government Code, excluding post-trial writs and appeals, from the date of appointment through the conclusion of the case, or until relieved as counsel, whichever occurs first. Attorneys may bill for preparation and filing

of a Notice of Appeal and other documents pursuant to Penal Code section 1240.1.

2. Specific billable matters

a. client conferences during court appearances

Client conferences during any period in which the attorney has billed for a court appearance shall not be billed.

b. telephone appearances and ex parte appearances in probate cases.

Court appearances by telephone, and ex parte appearances in probate cases, shall be billed at the applicable out of court rate.

c. travel

Attorneys may bill for travel time and mileage only when the destination is over twenty miles one way.

d. motions, writs and other pleadings

Time spent in the preparation and filing of necessary motions, writ petitions, and other pleadings, and associated court appearances, excluding post-judgment writs and appeals, is billable. A copy of the motion, writ petition or other pleading must be submitted with the attorney's bill.

e. trial related appearances

1. trailing for trial

When a case on the trial calendar is called in the master calendar department and trailed, the attorney shall bill for a calendar appearance.

2. immediate trial assignment

When a case on the trial calendar is called in the master calendar department and assigned to a trial department for an appearance during the same half day, the attorney shall bill for a trial appearance but not a calendar appearance.

3. delayed trial assignment

When a case on the trial calendar is called in the master

calendar department and assigned to a trial department during a later half day, the attorney shall bill for a calendar appearance in the master calendar department, and bill for all subsequent trial appearances.

4. trial through jury instructions

The attorney shall bill for all appearances in a trial department through final instruction of the jury at the applicable trial rate, regardless of whether a jury is summoned or jeopardy attaches.

5. deliberations and verdict

The attorney shall bill at the applicable jury trial rate for any court session which includes jury readback, jury questions, rendering of the verdict, mistrial, or other courtroom activity. The attorney shall bill at the applicable out of court rate for any court session which includes jury deliberations.

6. changes of plea during trial

The attorney shall bill for any change of plea in a trial department at the applicable trial rate. If the change of plea occurs in a calendar department after the case is assigned to trial, and if the change of plea occurs in the same half day as a trial department appearance, the attorney shall bill for a trial appearance but not a calendar appearance. If the change of plea occurs in a calendar department after the case is assigned to trial, and if the change of plea occurs in a half day in which there is no trial department appearance, the attorney shall bill for a calendar appearance.

I. NON-BILLABLE MATTERS

1. Communications with the Program

No communications with the Program or the Board whether by telephone, in writing, or otherwise, are billable.

2. Travel to and from court

Travel to and from court is not billable, unless the distance traveled is more than 20 miles from the attorney's office.

3. Staff time

Secretarial, bookkeeping, paralegal and other services routinely performed in the business of running a law practice are not billable. Scanning discovery and file organization is billable if valuable to provide adequate representation; scanning discovery for archival purposes is not billable. Drafting case notes is not billable.

4. Services by other attorneys

Pursuant to [Part I\(E\)\(1\)\(c\)](#), the appointed attorney may bill for another attorney's court appearance, but in no event shall the appointed attorney's bill be increased due to necessary communications with the appearing attorney.

5. Services performed after the conclusion of the case

Services performed after the conclusion of the case, including correspondence with appellate counsel and providing case files to clients, are not billable, regardless of whether the attorney submitted a final bill. Services shall not be performed for cases with outstanding warrants except for services necessary to recall the warrant. The "conclusion of the case" is defined in Part X(E)(8) above.

J. DOUBLE BILLING NOT ALLOWED

When an attorney or investigator works on more than one case during the same period of time, the aggregate time billed for all cases shall not exceed the total time period. For example, if an attorney appears in court on two cases, and is in court for a total of two hours, the total billed for both cases shall not exceed two hours.

K. REOPENING CASES

1. General rule

Once a final bill has been submitted, no further attorney's fee shall be paid for that case. If further work is required on a case in which a final bill has been submitted, the case shall be opened as a new case if substantial new work is expected (e.g., probation violations), or the old case shall be reopened if a minor amount of new work is expected (e.g., requests for sentence modifications).

2. Procedure for reopening cases

When an attorney becomes aware of the need to reopen a case, the attorney must immediately notify the Program of the need to reopen the case. Failure to notify the Program will result in the Program not making a new appointment, and the Program shall have no obligation to pay for the attorney's services after the final bill.

3. Probation violations

Probation violations are new cases which may be assigned through the normal rotational system at the discretion of the Director. The attorney who provided representation when probation was granted is not automatically assigned the case when a probation violation is alleged.

L. OUTSIDE SERVICES

1. Outside services defined

Outside services are those of investigators, experts, court reporters, interpreters, social workers, and other professionals providing assistance to an attorney in the representation of a client pursuant to appointment through the Program. Outside services do not include secretarial, clerical, bookkeeping and other services routinely performed in the business of running a law practice, for which no billing is allowed unless the Director grants a waiver for good cause.

2. Payment for outside services

a. attorney's responsibility

The attorney who retains an outside service provider has the responsibility for payment for the provider's services.

b. Conflict Program payment for outside services.

The Program will pay for outside services actually rendered, if funding authorization was obtained in advance and if the services were reasonably necessary. Otherwise the Conflict Program is not liable to pay for outside services.

c. outside services billing.

Bills from outside service providers may be submitted at any time, in any comprehensible format. However, they shall be submitted promptly upon completion of the services. The assigned attorney must approve an outside service provider's bill before the Conflict Program will review it for payment. Outside service bills submitted

more than 60 days after completion of services shall not be paid by the Conflict Program. Attorneys are strongly encouraged to advise outside services providers of this rule and to insure compliance with it.

3. Funding authorization protocol

- A. Panel attorneys may at any time request authorization for funding for investigation, experts and other outside services. These requests shall be made in a standard format adopted by the Conflict Program, and they shall be submitted to the Director of the program.
1. Outside services expenses not exceeding \$100.00 shall be exempt from the provisions of this paragraph.
 2. The Director may deny, grant, or modify and grant a request for authorization for funding for outside services.
 3. Except as provided in subparagraph (A) above, no payment for outside services shall be made unless funding therefor has been approved in advance. The Director may make an exception to this rule in case of a trial emergency or other good cause. In considering whether good cause has been shown for failure to request funding in advance, the Director shall consider the totality of the circumstances including, but not limited to, the attorney's history of failure to request funds in advance, and the need to deter attorneys from incurring outside services fees without advance authorization.
- B. No funding shall be authorized, nor payment made, for services which are not reasonable and necessary to provide an adequate defense (in criminal and juvenile delinquency cases) or adequate representation (in all other cases). In considering whether to deny, grant, or modify and grant requests for funding for outside services, the Director shall be guided by the standards of practice stated in the Final Report of the California Commission on the Fair Administration of Justice (www.ccfaj.org), ABA *Criminal Justice Standards for the Defense Function*, The State Bar of California *Guidelines On Indigent Defense Services Delivery Systems* and the ABA *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*.

4. Special rules for investigators

a. investigators list

The Program shall maintain a list of licensed private investigators who have agreed to work at the Program's contracted rates. These rates are stated in the Conflict Program's funding contract for professional services, plus expenses. Only investigators on the Conflict Program's list may receive compensation from the Conflict Program.

b. allowable investigation expenses

Investigators may bill for reimbursement of actual travel and expenses within and outside the County. Investigators' travel time shall be paid at the standard hourly rate for investigation, not the travel rate payable to attorneys or social workers. Mileage may be reimbursed for use of the investigator's vehicle at the current IRS mileage rate.

5. Special rules for interpreters

a. interpreters for clients

1. out of court services

In any case in which language problems prevent the client from communicating effectively with an appointed attorney, or an investigator or expert working for the attorney, the attorney may request funding authorization for an interpreter as provided herein.

2. in court services

In court interpretive services to facilitate attorney-client communications are the Court's responsibility. The Program will not pay for such services. To preserve the attorney-client privilege, attorneys should make sure that an interpreter of in court communications between attorney and client is not also serving as an interpreter for a witness or other party.

b. interpreters for witnesses

1. out of court services

In any case in which language problems prevent effective communication between the attorney, expert or investigator and a potentially necessary witness, the attorney may request funding authorization for an interpreter as provided herein.

2. in court services

Unless the Court is obligated to provide in court interpretation services for witnesses, in any case in which language problems prevent effective communication between the attorney, expert or investigator and a trial witness to be called by the attorney, the attorney may request funding authorization as provided herein.

6. Special rules for expert witnesses

- A. Expert witnesses must provide a CV to the Program before any funding is authorized.
- B. Travel and lodging for expert witnesses shall be arranged by the Conflict Program staff to the extent practicable.

7. Trial emergencies

Expenses for outside services incurred during the course of a trial or Juvenile Court hearing without prior approval may be reimbursed upon a showing that the services were of an urgent nature, reasonable, and necessary, and that a request for authorization could not reasonably have been made prior to incurring the expense.

M. ATTORNEY EXPENSES FOR TRAVEL, MEALS AND LODGING

1. Travel over twenty miles one way

Attorneys may bill for necessary travel from their offices, if the travel exceeds twenty miles one way. Trips with multiple stops shall be considered multiple trips and not be aggregated to determine the length of travel. Attorneys may bill for reimbursement of actual and reasonable meal expenses only when out of county travel necessarily requires being away from the County at normal meal times. Attorneys may bill for reimbursement of lodging expenses only when out of county travel necessarily requires being away from the County overnight.

2. Allowable charges for travel, meals and lodging

Travel time shall be paid at the rate stated in the Conflict Program's funding contract. Expenses of travel by private car are reimbursable at the prevailing IRS mileage rate. Mileage shall be calculated utilizing the attorney's office within the County as the start and end points of the trip. Expenses of travel by common carrier are reimbursable at the lowest reasonably available fare. Rental car expenses are reimbursable at the

lowest reasonably available rental rate. When overnight travel is required, reasonable lodging expenses are reimbursable, and meals are reimbursable to a maximum of \$40.00 per day.

3. Prior authorization required over \$100.00

All bills for travel, meals and lodging over \$100.00 must receive prior authorization. Attorneys shall use the "outside services" request form to request prior authorization for travel, meals and lodging.

4. Billing for travel, meals and lodging

Bills for travel, meals and lodging under \$100.00 shall be separately itemized on the standard attorney billing program, and may be submitted whenever the standard attorney bills may be submitted.

5. Legal services performed while traveling

Legal services performed while traveling shall be billed and paid the same as other legal services.

N. OTHER EXPENSES

1. General rule

All expenses other than reasonable photocopying, telephone and process service expenses must be authorized prior to incurring the expense. The standard outside services request form shall be used to obtain such authorization.

2. Reasonable photocopying, telephone and process service expenses

Reasonable photocopying, telephone and process service expenses up to \$100.00 are reimbursable without prior authorization. The standard attorney billing program shall be used for such expenses. Receipts must be submitted, except for in-house photocopying, which is reimbursable to a maximum of \$0.10 per page.

3. Trial emergencies

Expenses incurred during the course of a trial or Juvenile Court hearing without prior authorization may be reimbursed on a showing that the expense was reasonable and necessary and that a request for authorization could not reasonably have been made prior to the trial or hearing.

O. APPEAL OF EXCEPTION, FUNDING AND PAYMENT DECISIONS

1. Fee Review committee

- A. In any case in which the Director has denied or modified a request to designate a case as exceptional, or in which the Director has denied or modified a request for authorization for funding for investigation, experts or other outside services, or in which the Director has denied or modified payment to an attorney, investigator, or other outside service provider, a panel attorney may appeal the Director's decision to the Fee Review Committee.
- B. The Board shall establish the Fee Review Committee and appoint its members.
- C. The Fee Review Committee shall correspond with the Director and participating attorney as determined in their sole discretion by email, telephone or in person.
- D. The members of the review committee shall at all times preserve all privileges and maintain the confidentiality of all privileged information and communications divulged during the committee's proceedings.

2. Presiding Judge

In any case in which a panel attorney disagrees with the decision of the Fee Review Committee, the attorney may submit a request for attorney's fees and/or funding for outside services to the Presiding Judge of the Superior Court of the State of California, County of Contra Costa, or another Judge of that Court whom the Presiding Judge has designated. The attorney shall include a copy of the Review Committee's opinion(s) with the request. The decision of the Presiding Judge or Judge designee shall be binding on the Conflict Program.

3. Extraordinary relief

In any case in which a panel attorney disagrees with the decision of the Presiding Judge or Judge designee, the attorney may petition for extraordinary relief in any appropriate court.

XI. DEFINITIONS

- A. The "Program" is the Conflict Program.
- B. "ICI is Independent Counsel, Inc.
- C. The "Board" is the Board of Directors of Independent Counsel, Inc.

- D. The “President” is the President of the Board of Directors of Independent Counsel, Inc.
- E. The “County” is the County of Contra Costa.
- F. The “Court” is the Superior Court of the State of California, County of Contra Costa.
- G. The “Committee” is the Conflict Program Advisory Committee.
- H. The “Director” is the Director of the Conflict Program.
- I. A “participating attorney” is an attorney who has satisfied the requirements and been approved for participation in the Program.
- J. A “client” is any person for whom legal services are provided pursuant to appointment under these Rules.
- K. A “continuance” is a court appearance serving no legal purpose other than the selection of future court dates. The public denomination of the court hearing is irrelevant. “To set,” “further proceedings” and similar hearings are continuances. Continuances obtained at the request of other parties are continuances, regardless of any objection by the billing attorney.
- L. A “calendar appearance” is any court appearance other than a continuance, an evidentiary hearing, a preliminary hearing, a court trial, or a jury trial.
- M. An “evidentiary hearing” involves the taking of testimony from at least one live witness.
- N. A “preliminary hearing” is also known as a preliminary examination. It is the probable cause hearing in a felony case.
- O. A “court trial” is any trial without a jury.
- P. A “jury trial” is any trial with a jury, including all appearances in an assigned jury trial department, regardless of whether a jury is summoned or jeopardy has attached.
- Q. A “half day” is any portion of the regular court session held either before or after the lunch break.
- R. “Conclusion of the case” is defined in part X(E)(8) above.

End