

**SANTA CRUZ COUNTY CRIMINAL DEFENSE
CONFLICTS PROGRAM
POLICIES AND PROCEDURES**

OVERVIEW

The Office of County Counsel administers the County's Criminal Defense Conflicts Program. The Program Administrator nominates attorneys for appointment by the Superior Court to represent indigent criminal defendants and other clients when the Public Defender and the alternate Public Defender firms have declared conflicts.

THE ROLE OF THE OFFICE OF THE COUNTY COUNSEL

The County Counsel designates an Assistant County Counsel to act as the Program Administrator. The Administrator oversees the daily operations and management of the Program, which includes nominating attorneys for appointment to cases, maintaining accurate records, monitoring cases, reviewing bills and invoices, overseeing budgetary matters and reporting to the County Counsel who reports to the Santa Cruz County Board of Supervisors.

PROGRAM

I. Application Process

Attorneys seeking appointments must submit a written application on the form provided by the Administrator, and shall include provisions requiring each applicant to:

- A. State applicant's eligibility for membership and for handling different categories of cases;
- B. State all case categories that applicant seeks to handle; and
- C. Declare familiarity with and agree to abide by the Legal Services Agreement between applicant and the County, and all applicable policies and procedures and, upon notice, such other further rules and regulations as may be adopted by the County.

Attorneys may at any time submit an amendment to their application for eligibility as program members in a higher category.

The decision of the Administrator in selecting attorneys to the Program will be final. The Administrator has the sole authority to determine which attorney will be nominated for appointment to which case. The Administrator has the sole authority to determine the class of cases that an attorney is eligible to handle.

II. Classification and Assignment of Cases

Cases referred to the Program shall be assigned a particular class, based on a variety of factors including, but not limited to, the complexity, client exposure to incarceration, and seriousness of the charge(s). Attached to the Legal Services Agreement is the Fee Schedule, which lists the classifications of cases.

III. Qualifications and Experience Requirements for Attorneys

The Administrator will follow these general guidelines when assigning cases:

A. Attorneys Eligible to Handle Class I Cases:

1. Membership in the State Bar of California;
2. Continuing Legal Education Requirement: Twelve hours of training in criminal law in past twelve months;
3. References, as required by the Administrator; and
4. If requested, a list of cases handled, including:
 - Case number
 - Name of defendant
 - Charge
 - Disposition
 - Name of opposing counsel
 - Name of Judge/Department

B. Attorneys Eligible to Handle Class II Cases:

1. All requirements for Class I Cases;
2. Has practiced criminal law one year or handled 50 misdemeanor cases; and
3. Has completed at least three trials to verdict.

C. Attorneys Eligible to Handle Class III Cases:

1. All requirements for Class I and Class II Cases;
2. Has practiced criminal law three years;
3. Has handled at least 20 felony matters, four to jury verdict; and
4. 12 hours of training in sexual and child abuse cases.

D. Attorneys Eligible to Handle Class IV Cases:

1. All requirements for Class I, Class II, and Class III Cases;
2. Has practiced law for five years;
3. Has the following criminal law experience:
 - a. significant experience with serious or violent felony cases, of which five went to jury verdict, or
 - b. handled a total of 30 felony matters and 10 felony trials; and
4. Significant training in sexual and child abuse cases.

E. Attorneys Eligible to Handle Class V Cases:

1. All requirements for Class I, Class II, Class III, and Class IV Cases;
2. Has an active practice with 10 years experience in the field of criminal law;
3. Has the following criminal law experience:
 - a. Significant experience with serious or violent felony cases, of which ten went to jury verdict, and
 - b. has been principal attorney in at least one first degree murder trial that went to jury verdict; and
4. Has attended the full California Death Penalty Seminar or has attended 15 hours of Capital Case Defense Training within the last two years.

F. Further Qualifications for Juvenile Delinquency Attorneys:

1. All requirements for Class I Cases;
2. Has practiced law three years with at least six months practice in the area of juvenile delinquency, which may be waived if:
 - a. Applicant has handled five trials and at least four juvenile delinquency matters through disposition, or
 - b. Served one year as a prosecutor or public defender in juvenile delinquency; and
3. Continuing Legal Ed Requirements: 12 hours of CLE in the past year in relevant area.

G. Qualifications for Civil Matters (e.g., OSC, Mental Health, LPS, Freedom of Control, Adoption, Probate):

1. All requirements for Class I Cases plus:
2. Has practiced law three years with demonstrated experience and/or expertise in the subject areas (family, administrative law, guardianship and conservatorship), which may be waived if:
 - a. Applicant has handled five trials and at least four relevant matters through final disposition and/or judgment, or
 - b. Served one year as a county counsel or public defender in the relevant area of practice, i.e., family, administrative law, guardianship and conservatorship; and
3. Continuing Legal Education Requirement: Twelve hours of CLE in the past year in relevant area.

IV. Responsibilities of Program Attorneys

- A. Active State Bar Membership. Program attorneys must be active members of the State Bar in good standing. Program attorneys will notify the Administrator in writing within five days of any discipline imposed by the State Bar including probation, suspension, or disbarment.
- B. Phone and Fax Requirements. Program attorneys are required to have an operative office telephone number (cellular is acceptable) where they can be reached between the hours of 8:30 a.m. and 5:00 p.m. They shall have a working e-mail address and fax number to a machine that can receive faxes even if the recipient is not present.
- C. Contract Compliance. Program attorneys will execute a Legal Services Agreement with the County of Santa Cruz and will adhere to the terms and conditions of the Agreement, including the maintenance of all required insurance. Program attorneys are independent contractors. They will be paid in accordance with the Fee Schedule attached as Exhibit A to the Legal Services Agreement. The County reserves the right to change the amounts set forth in the Fee Schedule periodically. A change in the Fee Schedule will impact cases assigned on or after the effective date of the modified Fee Schedule.
- D. Professional Conduct. Program attorneys will adhere to the highest standards of professional conduct and will abide by all applicable rules of professional conduct.
- E. Substitute Counsel. Except as set forth in this paragraph, an appointed Program attorney is responsible for the case and will not delegate its handling to any other attorney without the prior approval of the Administrator. In the event of an emergency, the appointed Program attorney who is not able to make an appearance is responsible to find a substitute from the approved list of Program attorneys for that class of case under contract with the County, and the Administrator is to be notified of this emergency substitution at the earliest

opportunity. Program attorneys may cause or allow another attorney to make occasional appearances or do other acts regarding their cases, provided that the substitute attorney is a Program attorney in a current Legal Services Agreement with the County and is eligible to handle that class of case. Any Program attorney appointed on a particular case who uses another Program attorney to make his or her appearances on a regular basis is subject to review by the Administrator and suspension from the Program.

- F. Additional Counsel or Co-Counsel. The Administrator may nominate additional counsel for appointment on any case when deemed appropriate.
- G. Conflict. For each case assigned, the Program attorney will determine at the outset whether a conflict of interest exists and will immediately notify the Administrator of any conflict.
- H. Client Contact. Program attorneys will make contact with clients within five working days from notification of case assignment or as soon as practicable.
- I. Investigation. Program attorneys will do the following:
 - 1. Supervise and direct the investigation of each case;
 - 2. Review all bills any investigators or other experts incur on the case to ensure all costs are necessary and reasonable; and
 - 3. Obtain advanced approval from the Administrator to spend in excess of \$300 per case for investigative services.
- J. Experts. Program attorneys will obtain advanced approval from the Administrator for services of experts in excess of \$1,000 per case.
- K. Other Expenses. Program attorneys will obtain advanced approval from the Administrator for expenses and services, including interpreters, transcription, and other services that in total are in excess of \$500 per case.
- L. Billing. Program attorneys will adhere to payment and record keeping provisions set forth in the Legal Services Agreement and in these Policies and Procedures.
- M. Program Attorney Records. Upon request, Program attorneys will furnish information regarding the status of each appointed case, the number of hours spent, the total fees charged and such additional information as required by the Administrator or as set forth in the Legal Services Agreement. Upon request, each Program attorney will complete and return all required reports to the Administrator within the time frame indicated by the Administrator.
- N. Audits. Upon request, Program attorneys will make available to the Administrator for audit purposes relevant files, accounts, ledgers, and other records related to any case originating from the Program.

- O. Performance Evaluation. Program attorneys will cooperate in any process for the evaluation of their performance by the Administrator.
- P. Travel. Travel time, mileage, and expenses within Santa Cruz County are not reimbursable, unless specifically authorized by the Administrator. Program attorneys and investigators shall avoid out-of-county travel, if possible. In the event that out-of-county investigation is needed, advance permission from the Administrator must be obtained. In such cases, the Administrator reserves the right to obtain an investigator from that out-of-county locality, if deemed to be appropriate. Prior approval is required for travel outside of California. When specifically authorized, travel time and expenses will be reimbursed in accordance with Santa Cruz County's policy for travel outside of the County.
- Q. Fees, Billing, and Reporting. Program attorneys will be reimbursed as set forth in Exhibit A, Fee Schedule, to the Legal Services Agreement. Program attorneys must use the County's Contractor Compensation Form and the County's Aud-8 form when submitting invoices for payment.

Program attorneys will be reimbursed for the actual cost for reasonable and necessary out-of-pocket expenses, such as filing fees, printing and photographic reproduction expenses, court reporter's fees, and all other directly-related expenses, excluding normal office expenses such as regular telephone charges, prorated computer research charges, facsimile charges, and normal postage charges. Program attorneys will not be reimbursed for secretarial, clerical, word processing or typist services (including overtime hours worked), or normal office operating expenses.

Program attorneys will be reimbursed for the actual cost of reasonable and necessary ancillary expenses to investigate the case and to represent the client, including but not limited to investigators, paralegals, and experts. Program attorneys shall seek prior approval from the Administrator for the expenses that are above the allowances set forth herein and/or in the Fee Schedule attached to the Legal Services Agreement. Program attorneys are to review invoices involving ancillary services to assure that they are the actual cost of such expenses before submitting them to the Administrator for reimbursement.

Program attorneys will be compensated following submission by the attorney of a completed Contractor Compensation Form as more fully described in the Independent Contractor Agreement.

Out of pocket expenses will be reimbursed following submission of sufficient supporting documentation which is more fully described in the Independent Contractor Agreement between the panel attorney and the County.

There shall be no double billing. For example, if an attorney has two matters on the court calendar and the attorney spends 2 hours total waiting for the matters to be called, a total of 2 hours shall be billed, and shall be allocated between the two cases. Four hours shall not be billed under this example.

V. Suspension, Termination, and Reclassification.

In addition to the reasons set forth in the Legal Services Agreement, a Program attorney will be subject to suspension, termination, or reclassification for cause for failing to adhere to the Legal Services Agreement, or any policy and procedure set forth herein, or for any good cause determined by the Administrator. Program attorneys will comply with the Legal Services Agreement in the event that they are suspended or terminated from the Program.

VI. Continuing Legal Education.

Program attorneys may attend continuing legal education training provided by Biggam, Christensen and Minsloff, the County's Main Public Defender Firm, or other training opportunities identified by the Administrator.

VII. Investigators.

- A. Scope of Services. Investigators are to work under the direction of the Program attorneys. Investigators are hired to perform professional investigative services to assist in defending clients, such as locating and interviewing key witnesses to support the defendant's case, photographing crime scenes, serving subpoenas, etc. Investigators should not be utilized to perform services such as copying transcripts, picking up police reports, acting as a delivery service, or any other work which could reasonably be accomplished by the attorney or his/her staff. Investigators should not be requested to "hand-hold" clients or receive direction from the client regarding the investigation.
- B. Surveillance. Investigators who wish to do surveillance of over two hours for witness location must obtain written permission from the Administrator.
- C. Investigation Budget. The Program attorney is responsible for the investigation budget and must be notified by the investigator if the amount previously authorized will be exceeded.
- D. Minimum Qualifications. Investigators must hold a city business license, a State private investigator license, and carry errors and omissions insurance with minimum coverage of \$100,000 per person.
- E. Allowable Charges. Investigators may be compensated only for the following items: Investigator's time at the hourly rate consistent with the Fee Schedule, or higher if determined by the Administrator to be necessary to investigate the case; at the rate of no more than 10 cents per page for copies; for long distance telephone calls outside the local area code(s); for materials for exhibits, and for out-of-county mileage at a rate established by the County. In order to receive reimbursement for these charges, the investigator must submit supporting documentation with his or her invoice to the Administrator.
- F. Non-Allowable Charges. Investigators will not be compensated for any of the following: Preparation of investigator's bill; preparation of documents necessary to process the bills (e.g., order for payment); travel charges associated with preparation, processing or delivery of the investigator's bill to the Program attorney, court or the Administrator; or for clerical

duties performed by the investigator or their staff.

- G. Billing. The investigator shall submit his/her invoices in a form that has been approved by the Program attorney to the Administrator by the 30th day of each month for the preceding month's expenses, unless good cause is shown, as determined by the Administrator. The investigator's invoice will contain the following information: Program attorney's name; defendant's name; court case number; dates of services; time work commenced and total time involved. The compensation paid investigators shall be paid at the rate established by the County.

IX. Interpreters.

- A. Classifications of interpreters:
1. Those certified for courtroom work; and
 2. Those certified for administrative hearings.

In addition, there are a number of languages for which certification tests are not available. In these cases, the Court uses court-approved (but not certified) interpreters.

- B. Out-of-Court Work. Program attorneys will first attempt to secure an interpreter from a County-approved list. If an appropriate interpreter is not available, the Program attorney will secure an interpreter from the court approved list of interpreters.
- C. Interpreters shall submit their invoices to the Program attorney for review to ensure that the charges are reasonable and necessary. The interpreter's invoice will contain the following information: Program attorney's name; defendant's name; court case number; dates of services; time work commenced and total time involved. The compensation paid interpreters shall be paid at the rate established by the County.

X. Attorney Review

- A. Authority to Review. The Administrator shall have the authority to review Program attorneys' performance, to discipline Program attorneys according to these rules, and to review and adjust billings as set forth herein. In the event of any billing disagreements, unless otherwise authorized or corrected by the Administrator, the sole remedy of the Program participants is to file suit in the appropriate legal forum. In the event the Program participant fails to prevail in this suit, the Administrator will be entitled to seek reasonable fees and costs.
- B. Mandatory Review. The following situations shall be reviewed by the Administrator:
1. Any case for which the hours billed exceeds the average billing for similar cases involving the same primary charge;
 2. Any attorney whose out-of-court to in-court billing ratio for any month exceeds the average ratio for other Program attorneys by more than 25 percent; and
 3. Any attorney whose performance is not in accordance with the level expected of a

reasonably competent attorney.

C. Scope of Review. The review shall focus on whether the hours spent and/or billed are appropriate given the complexity and nature of the case and the work product produced. The standard of review shall be that of a reasonable, competent criminal law practitioner who meets the appropriate panel experience requirements.

D. Procedure for Review:

1. The attorney reviewed shall be required to submit a detailed, written description of all work performed on the case or cases for the time period under review.
2. Failure to submit the requested information within fourteen calendar days of its request may result in suspension of the attorney until such time as the information is submitted.
3. At the discretion of the Administrator, the attorney may be required to personally appear and answer questions about the billings submitted. Failure to cooperate with the Administrator following such a request may result in rejection of the claim and/or termination of the Legal Services Agreement.

E. Permissible Action Following Review:

1. A finding that the billings are appropriate;
2. A finding that the billings are either inappropriate or insufficiently justified and a reduction of the billing to an appropriate amount, and the possibility of one or more of the following:
 - Suspension from receiving new assignments;
 - Suspension from Program;
 - Demotion to a lower class of cases; and
 - Reduction in the allowable hourly rate for the attorney involved.

F. Finality of Decision. Any decision hereunder is reviewable upon request of a Program member involved within thirty days from the day it is served by mail. Such request for review shall be in writing and submitted to the Administrator. This review shall be conducted by the Administrator whose decision shall be final.

G. Confidentiality. Any review under this section shall be confidential.

XI. Construction.

No portion of these policies is intended to, nor shall be construed to, preclude constitutionally mandated judicial action.

XII. Amendment.

The County has the authority and discretion to amend these policies and procedures

from time to time, as appropriate.

XIII. Definitions.

For purposes of these Policies and Procedures including the Fee Schedule, the following definitions apply:

- A. Criminal Case – is representation of a defendant in a preliminary hearing, trial or felony hearing, including all necessary motions and appearances to entry of judgment in the Santa Cruz County Superior Court or courts of lower jurisdiction. An appointment to represent a previously sentenced defendant on a subsequent matter, such as an alleged violation of probation or failure in a diversionary program, constitutes a new and separate case. Infractions are not "cases" under this definition. In the event of a defendant who has failed to appear (bench warrant) for over six months, upon arrest of the defendant the case shall be considered a new assignment.
- B. Criminal Trial – is a case charging a public offense or offenses in adult court where the determination of guilt or innocence has been submitted to a trier of fact (Judge or jury) for decision or, if resolved before submission to the trier of fact, or in which jeopardy attached before resolution based on the swearing in of the jury or the calling of the first witness.
- C. Completed Jury Trial — is a trial in which the issue of guilt has been submitted to a jury for decision. Hung juries qualify as completed jury trials; however, guilty pleas before submission to the jury do not.
- D. Juvenile Felony Adjudication- is adjudication (i.e., court trial) in juvenile court for conduct that would constitute a felony charge against an adult defendant. Juvenile felony adjudications do not count as criminal cases or criminal trials except as specified for Class experience.