

**REVISED AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE San Mateo COUNTY BAR ASSOCIATION**

THIS AGREEMENT, made and entered into this 1<sup>st</sup> day of June 2017, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, (hereinafter “County”) and the SAN MATEO COUNTY BAR ASSOCIATION, a corporation, (hereinafter, “Association”);

WHEREAS, it is the desire of both the County and the Association (collectively, the “Parties”) to continue to provide appropriate and competent legal services to financially eligible persons accused of crime in San Mateo County, to those who are subject to the laws of the Juvenile Court, and to all those entitled to the services of court-appointed counsel in other proceedings;

WHEREAS, the Association is qualified to provide such legal services and representation through its Private Defender Program, subject to the authority of the courts to appoint counsel in certain cases;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the Association agrees to furnish such legal services through its Private Defender Program (“PDP”), and the County agrees to pay to the Association certain sums therefore upon the following terms and conditions:

**1. SERVICES**

The Association will provide qualified attorneys for acceptance of appointment as counsel for all financially eligible persons entitled to court-appointed counsel as a matter of law in the Superior Court of San Mateo County. The Association will provide such representation in criminal cases, juvenile cases, mental health cases, and civil and miscellaneous cases as more fully described in Section 2 of this Agreement and fee schedule detail in **APPENDIX B**. As part of such representation, the Association shall provide attorneys to appear at all arraignment calendars, all specialty courts, juvenile court detention calendars, ‘Glenwood’ and ‘Girls Program’ review calendars, ‘300’ and ‘602’ placement calendars, and as requested by the Superior Court of San Mateo County. As to the cases described in Section 2 of this Agreement, and fee schedule detail in **APPENDIX B**, the Association will provide necessary and appropriate ancillary services such as investigators, experts and other forensic services, the expense of which is not otherwise provided for by law. The Association shall also employ appropriate staff as may be required to fulfill its obligations under this Agreement.

The Association agrees and understands that the services performed under this Agreement, whether by the Association or the attorneys providing the representation described herein, are performed as an independent contractor and not as an employee of the County, and that neither the Association nor any members or attorneys performing hereunder acquires any of the rights, privileges, powers, or advantages of County employees.

## 2. CASE TYPES

For the purposes of this Agreement, a “case” shall be defined as follows: The representation of one person on one accusatory pleading. Multiple charges against a defendant in one accusatory pleading shall not prevent designation of a matter as a single case. If a single defendant is accused in more than one accusatory pleading, each separate pleading shall constitute a separate case. If multiple defendants are charged in a single accusatory pleading, it shall be considered that there are as many cases as there are defendants. Matters involving trial competency pursuant to Penal Code section 1367 *et seq.*, certified from the Municipal Court to the Superior Court, shall be deemed a separate case in each court. Any other proceeding instituted after sentence, or after the Private Defender Program has been relieved by the Court, and requiring appointment of counsel, shall be treated as one additional case.

- a. **“TYPE A” CASE** is generally described as a single Superior Court matter involving one accusatory pleading including an indictment, information, or certification under Penal Code section 859(a). It also includes the matters described in greater detail in **APPENDIX A**, attached hereto and incorporated by reference as though fully set forth herein.
- b. **“TYPE B” CASE** is generally described as a single Municipal Court matter involving one complaint or accusatory pleading, alleging a misdemeanor or a felony, and shall further be defined as a single court matter involving a petition, certification, or other Municipal or Superior Court proceeding, including but not limited to the matters described in greater detail in **APPENDIX A**, attached hereto and incorporated by reference as though fully set forth herein.
- c. **“TYPE C” CASE** is generally described as any case initiated pursuant to the Lanterman-Petris-Short Act or the Developmental Disability laws set forth in the California Welfare and Institutions Code.
- d. **“TYPE D” CASE** is defined as a juvenile dependency case initiated on behalf of a minor as defined by California Welfare and Institutions Code section 300, in which attorneys are appointed for one or both parents and/or for the child or children pursuant to Welfare and Institutions Code section 317. Each such appointment shall be counted as a case. When an attorney, previously appointed pursuant to Section 317 of the Welfare and Institutions Code, represents a party at a proceeding pursuant to Section 366.26 of the Welfare and Institutions Code for the purpose of: (1) the termination of parental rights, or, (2) the establishment of legal guardianship of a dependent minor, such proceeding shall be deemed a separate case. A petition for extraordinary writ review from an order of the court pursuant to Welfare and Institutions Code section 366.25 shall also be counted as a separate case.
- e. **“TYPE E” CASE** is defined as any matter in the Juvenile Court brought pursuant to the juvenile delinquency statutes of the State of California, including but not limited to those set forth in Welfare and Institutions Code section 602 *et seq.*

If, during the term of this Agreement, the Legislature enacts any law, or a court decision is rendered which has the effect of changing the definition of a “Type” as defined in Sections 2.a., 2.b., 2.c., 2.d. and 2.e. above, the County and the Association agree to continue to define the case as set forth in this Agreement.

In the event of a termination of the contract, and/or a determination not to contract further, the Association’s responsibility for the representation of persons it has been appointed to represent in juvenile dependency cases (“Type D” cases as described in Section 2.d above) will not extend beyond the term of this Agreement, subject to the parties’ Termination and Transition Services obligations as set forth in Section 7 herein.

### **3. COMPENSATION**

This Agreement covers a minimum period of two years renewable for an additional period of two years if the parties mutually agree, and subject to the parties’ Termination and Transition Services obligations as set forth in Section 7 herein, and provides for fixed amounts of compensation during the term of the Agreement. Both the County and the Association acknowledge uncertainty about the effect that significant increases or decreases in case appointments, the number and nature of murder and other Special Litigation (defined below in Section 3i) case appointments, legislation, court decisions, or actions of other agencies could have on the ability of the parties to perform under the terms of the Agreement. The County and the Association agree to meet, at the request of either party, to discuss any such concern at the earliest possible time so as to determine whether changes in the terms of the Agreement are necessary. The Parties estimated the amount of the funds, as set forth below, and the Parties acknowledged the uncertainty of increases and/or decreases of case appointments that may affect the amount actually spent within the requirements of this Agreement. To that end, in the event that any funds advances to the Association for the performance of Services remains unspent at the end of each fiscal year, the Association shall notify the County with an estimate of unspent balance within forty (40) days of the close of the fiscal year, and with a final amount of unspent balance within 120 days of the close of the fiscal year. The parties agree that the Association shall make a good faith effort to maintain a reserve fund, which shall be adequate to provide compensation for representation, and all associated expenses, in the event of termination of the contract, and/or a determination between the parties not to contract further. The parties acknowledge that a minimum reserve level of 10 percent (10%) should be maintained by the Association for a program of this size and complexity. When the Association notifies the County of any unspent funds, the Association shall identify the amount the Association retains as reserve. The Association agrees that any unspent balance, not including a mutually agreed upon amount for reserves, will either be (1) returned to the County, or (2) applied to the remaining fixed payments as set forth below, at the County’s sole election; however, in all cases any unspent funds will be applied to remaining payments set forth below until there is an agreement on compensation as outlined in (c) below.

In consideration for the Association’s performance of the obligations set forth herein, and subject to the Association’s satisfaction of its financial reporting obligations as set forth in Section 4, below, the County agrees to pay the Association the following:

- a. The Association and the County understand and agree that, pursuant to the prior agreement between the parties, the County has already paid the Association through September 30, 2017, notwithstanding the added costs pursuant to Appendix D related to Type D Child Dependency Cases.
- b. Unless and until the Association provides the financial reporting obligations as set forth in Section 4, below, for the period commencing October 1, 2017 and ending June 30, 2018, the County shall pay the Association an amount of \$1,600,000 upon the full execution of this revised Agreement. In addition, on April 1, 2018, the County shall pay the Association an amount of \$4,800,000 for services provided pursuant to this Agreement through June 30, 2018. During the period of time between the full execution of this Revised Agreement and June 30, 2018, the Association shall provide monthly reports to the County, documenting actual costs paid for open cases and related services provided by the Association pursuant to this agreement. Costs will be based upon the actual amount paid by the Association for representation of PDP clients on all types of cases and services provided pursuant to this Agreement based upon the Fee Schedule which is attached hereto as **APPENDIX B**, plus any actual administrative overhead costs incurred that are not included in **APPENDIX B**. On or before June 30, 2018, the County shall compare the monthly actual reports with the amount paid pursuant to this Revised Agreement and reconcile the difference pursuant to Section 3, Compensation, of this Agreement. In no event shall the total amount paid to the Association exceed the total sum of \$6,400,000.00 for services provided through June 30, 2018.
- c. Once the Association has provided to the County's satisfaction, the financial reporting obligations as set forth in Section 4, below, the County and the Association will meet and confer on costs for services and cases for the fiscal years covered by the contract, to be paid out on a quarterly basis. Unless and until there is an agreement to modify the Fee Schedule, compensation will be paid pursuant to the Fee Schedule attached hereto as **APPENDIX B**. The County anticipates that the next payment pursuant to this Agreement will occur either on or after July 1, 2018, and no later than September 1, 2018, once the County Controller has completed a follow-up audit and signed off on all financial reporting obligations as specified in Section 4 of this Agreement, below.
- d. Except as specified in Sections 3.h, 3.i, 3.j and 3.k below, such annual amounts of compensation shall include all services for court appointments defined under Section 2, **CASE TYPES**, and for **SPECIAL LITIGATION CASES**, defined in Section 3.i below, made during the period of the Agreement. In addition, all cases appointed to the Private Defender Program prior to June 30, 2015, but unfinished as of June 30, 2018, are included within the terms of this Agreement. An appointment shall be deemed made within the meaning of this Agreement on the date on which the Private Defender Program is first appointed.
- e. The Association shall be responsible for the complete representation of all persons for whom appointment was made under Section 2 during the period of

this Agreement. Complete representation shall include provision of all services under the terms of this Agreement until a new appointment is authorized by the terms of Section 2.

- f. A **SPECIAL LITIGATION CASE** is a case involving multiple charges, unusually complex issues of law or facts, novel issues of law requiring complex motions or writs, or which requires extraordinary demands upon an attorney's time and efforts and skill. Special Litigation cases are primarily cases involving a homicide, attempted homicide, or cases providing for a sentence of life imprisonment. They also include proceedings pursuant to the Sexually Violent Predators Act (California Welfare and Institutions Code section 6600 *et seq.*), proceedings to extend the commitments of Mentally Disordered Offenders (California Penal Code section 2962 *et seq.*), and proceedings to extend the commitments of persons found Not Guilty by reason of Insanity (California Penal Code section 1026.5). Private Defender Program lawyers are compensated on an hourly basis for such cases, at the rates set forth in the Fee Schedule established by the Association. In the event that no agreement exists between the County and the Association after June 30, 2019, the County agrees to pay for all Special Litigation case services as are provided after June 30, 2019 by the Association for Special Litigation cases appointed during the term of this Agreement or previous agreements at the rates the Association pays, and under procedures prevailing during the last year of this Agreement.
- g. The payments set forth in Sections 3.b, 3.c, 3.d, 3.e and 3.f above, are based on a calculation of the anticipated caseload for each type of case. The rates for each type of case, for the term of this Agreement, are set forth in detail in APPENDIX B, attached hereto and incorporated by reference as though fully set forth herein.
- h. **Exclusion for Certain Cases.** Any case that is prosecuted by the Office of the Attorney General of California, or any case in which an attorney is appointed pursuant to the provisions of *Harris v. Superior Court* (1977) 19 Cal.3d 706, 140 Cal.Rptr. 318, shall not be included within the terms of this Agreement, but may at the County's option, be the subject of a separate agreement for representation. Notice of any known Motion pursuant to *Harris* above, shall be immediately forwarded to the County by the Private Defender Program. Any case in which a privately retained attorney seeks court appointment through the Private Defender Program, shall not be included within the terms of this Agreement unless the Chief Defender of the Private Defender Program shall approve. In the event that the Chief Defender intends not to approve, he or she shall notify the County immediately. Without the Chief Defender's approval, the County has no obligation to compensate the Association for such cases, nor does the Association have an obligation to compensate such attorneys. Such attorneys must apply directly to the appointing court for compensation pursuant to Sections 987.2(a) and 987.3 of the California Penal Code.
- i. **Exclusion for Penal Code 987.9.** In the event that Section 987.9 of the California Penal Code (concerning funds for investigators, experts, and other

ancillary services in death penalty cases) is modified, repealed or superseded during the term of this Agreement, any case expense currently reimbursable by the State of California which is transferred to the County due to such Section 987.9 being modified, repealed or superseded is not included in the terms of this Agreement, and shall be reimbursed separately and in addition thereto.

#### **4. ADDITIONAL OBLIGATIONS**

In addition to the Services set forth in Section 1 herein, the Association and the County expressly agree to the following duties and obligations:

##### **a. PDP POLICIES AND PROCEDURES**

1. The Association shall develop and document accounting policies and procedures for the PDP, which shall be designed to ensure that segregation of duties, proper reviews and approvals, financial analyses, monitoring by management, and other internal controls are followed. The Association's management shall ensure compliance with these policies and procedures.
2. The Association shall thoroughly review vouchers for accuracy and compliance with documented policies, prior to paying the vouchers. The review and approval procedures performed by PDP personnel shall be documented to ensure the rules are consistently applied and monitored by management to verify that they are being followed.
3. The Association shall establish policies to ensure that voucher approval duties are segregated from system administration and voucher payment duties. Any deviation from this requirement shall be subject to higher level management review and documentation by the Association.
4. The Association shall properly allocate costs to the PDP. The Association shall develop a methodology to allocate employees' salaries and benefit expenses between PDP and non-PDP activities, which should then be reflected in updated case costs and other estimates used to determine the annual contract amount.
5. The Association shall have the sole responsibility for determining the fees and rates paid to Private Defender Program attorneys for work performed under the terms of this Agreement. The Association shall provide to the County a copy of the current Fee Schedule, setting forth such fees and rates, and shall provide to the County a copy of any modifications to the Fee Schedule within 30 days of adoption by the Association.
6. The Association shall furnish to the County, within 60 days of the end of each quarter of this Agreement, the names of all attorneys who represented Private Defender Program clients during that quarter.

##### **b. FINANCIAL REPORTING OBLIGATIONS**

1. The Association shall provide to the County audited financial statements that include a Statement of Financial Position, Statements of Activities and Changes in Net Assets, and Statement of Cash Flows. The financial statements and Management Letter should be provided to the County no later than December 31 following the fiscal year-end. The Association shall change auditors at least once every five years.
2. The Association agrees to provide detailed reports of actual expenditures incurred for providing indigent legal services to the County no later than December 31 following the fiscal year-end to ensure the annual contract amount is reasonable and supported.
3. At least two weeks prior to each of the quarterly payment dates identified in Sections 3.b, 3.c, 3.d, 3.e and 3.f, the Association shall provide the County with summary and detailed reports on case counts and related costs for the quarterly period immediately preceding the payment date that can be easily verified to source documentation upon request. The following summary and detailed reports shall be provided:
  - Expenditures by Attorney
  - Expenditures per Court Case Number, Case Type and Sub-Type
  - Expenditures by Fee Type
  - Expenditures by Administrative Expense Type
  - Case Count by Type and Sub-Type (with case number details)
  - All fees and costs which are, or may be, subject to reimbursement by the State or Federal governments, or which may be eligible for other than San Mateo County funding
4. The Association understands and agrees that: (1) the County will have no obligation to make quarterly payments to the Association pursuant to Sections 3.b, 3.c, 3.d, 3.e and 3.f until two weeks after the date upon which the Association delivers to the County the financial reports identified in Section 4.c; and (2) any delay by the County in making the quarterly payment to the Association pursuant to Sections 3.b, 3.c, 3.d, 3.e and 3.f resulting from the Association's failure to timely deliver the reports to the County as required by Section 4.c shall not relieve the Association of any of its obligations under this Agreement, including—without limitation—its obligation to provide Services pursuant to Section 1 herein.

c. RECORDS AND AUDITS

1. The Association shall maintain records and accounts during the term of this Agreement and for four years thereafter, and shall observe accepted accounting practices. The Association shall make all statistical and financial records and data relevant to the provisions of this Agreement that are not confidential and are not protected by the attorney-client or work-product privileges, available for inspection and audit by authorized representatives of the County at any reasonable time.

Except as otherwise authorized by California Government Code sections 27707 *et seq.*, nothing herein shall be construed to permit the County to examine the files of assigned counsel pertaining to actual representation of accused persons, and the laws defining the attorney-client privilege and attorney work-product will be strictly construed and observed to protect client confidentiality.

2. The Association shall furnish to the County, within 20 days of the end of each month of each year of this Agreement, a statistical breakdown of the number of cases in each of the categories defined and described in Section 2 herein, to enable the County to evaluate the performance of services under this Agreement.
4. The County shall maintain complete records of all reimbursement to the County, from whatever source, for services provided by the Association pursuant to the terms of this Agreement. The County shall furnish to the Association, upon request, information regarding the amount and source of reimbursement received by the County.

d. PERFORMANCE BENCHMARKS

1. Attorney Training. The Association recognizes that ongoing professional training is a necessity to keep attorneys abreast of changes and developments in the law. The Association shall provide sufficient training, whether in-house or through a qualified provider of Continuing Legal Education certified by the California State Bar Association, to keep all of its attorneys who perform work under this Agreement abreast of developments in relevant law and procedure. This subject shall be included in the annual report of the Private Defender Program to the County as described in Section 4.d.8. below.
2. Attorney Evaluation. The Chief Defender of the Private Defender Program, and/or his/her designee, shall evaluate the professional performance of each Private Defender Program attorney annually. The Association shall make available to the County the standards by which performance was measured, and evidence that such evaluations were conducted, although all evaluations are to be confidential between the Private Defender Program and the attorneys. The number of evaluations conducted and the results thereof shall be included in summary form in the annual report of the Private Defender Program to the County as described in Section 4.d.8. below.
3. Client Complaints. The Private Defender Program will have a felony-qualified lawyer with at least five years of felony experience on the PDP attorney panel, on duty each business day at the Private Defender Program offices during regular business hours to speak to and to answer the questions of or to receive complaints directly from PDP clients or others on behalf of the PDP client. Such attorneys, known as “Officers of the Day” (or “OD”),

will follow written procedure for handling of client complaints, which is attached hereto as APPENDIX C and incorporated herein by reference. The complaints or questions may be related to an ongoing criminal case, a yet to be filed case, or a case already adjudicated. The person may be on the phone or may come to the PDP Office to meet with the OD. The PDP will maintain a list of the assigned ODs, as well as Alternate ODs. If the OD has a personal or professional relationship with the attorney who is the subject of the complaint to such an extent that would cause the OD to be unable to exercise his professional judgment, the OD will refer the complainant to the Alternate OD or the Chief Defender. The Private Defender Program shall prepare and circulate to all staff and private defenders a flowchart or equivalent memorandum setting forth this complaint procedure, and said memorandum shall include information informing clients that they may appeal to the County Manager, and will be provided contact information for that purpose, and that they may also make a complaint with the State Bar of California, and include the State Bar's complaint form as well. The complainant will be advised that any client who indicates dissatisfaction with the decision of the Officer of the Day will be informed of his/her right to bring the complaint to the attention of the Court in the form of a *Marsden* hearing<sup>1</sup>, since the adequacy of the performance of counsel in court-appointed cases is ultimately for the Court to determine<sup>2</sup>. This information will also be included in the memorandum that will be distributed to clients. The number and nature of such complaints as well as their disposition shall be included in summary form, in the annual report of the Private Defender Program to the County, as described in Section 4.d.8. below.

4. Attorney Caseloads. The Association and the County agree that the number and type of cases for which a lawyer is responsible may impact the quality of representation individual clients receive. While there are many variables to consider, including the seriousness or complexity of each case and the skill and experience of the individual lawyer, useful information might be gathered from an evaluation of the caseloads of Private Defender Program attorneys. To this end, the Private Defender Program shall include the caseloads of each Private Defender Program attorney by types of cases, as well as the average caseloads for the Private Defender Program as a whole in the annual report of the Private Defender Program to the County, as described in Section 4.d.8. below.<sup>3</sup>
5. Initial Client Meetings. The Association and the County agree that attorneys should conduct a client interview as soon as practicable after being appointed by the Court, in order to obtain information necessary to provide quality representation in the early stages of the case and to provide

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118; 84 Cal.Rptr. 156.

<sup>2</sup> *Phillips v. Seely* (1974) 43 Cal.App.3d 104,115.

<sup>3</sup> The parties acknowledge that caseload averages are not appropriate for measuring the quality of representation provided by any individual attorney; rather they are tools for evaluating staffing needs for the Private Defender Program as a whole. The Spangenberg Group, "Weighted Caseload Study for the Colorado State Public Defender", November 1996, pg.67.

the client with information concerning the lawyer's representation and the course criminal cases take in the San Mateo County Superior Court. The client will also be provided information, both verbal and documentation, of the client complaint process, including the appeal process, at the initial client meetings. Such meetings may also serve to foster a relationship of trust and understanding that will ultimately inure to the client's benefit. Consequently, the Private Defender Program will devise a system to monitor the occurrence of early interviews of incarcerated clients, taking into account the factors that affect the ability of Private Defender Program lawyers to make early jail visits, including but not limited to the number of days between arraignment and the next court appearance and the speed of assignment of cases to individual lawyers. The results shall be included in the annual report of the Private Defender Program to the County, as described below in Section 4.d.8 below.

6. Community Outreach. The Association and the County recognize and acknowledge the significant impact that the criminal justice system has on our community, particularly in portions of our community that have been affected by crime to an extent disproportionate to population. The Association recognizes that the privilege of practicing law in this community also provides the lawyers of the Private Defender Program an opportunity to share their knowledge and experience with those whose lives are most likely to be disrupted by entanglement in the criminal justice system. The Association, independently and/or in conjunction with community outreach programs of the San Mateo County Superior Court and other community agencies, will undertake to communicate to the public the mission of the Private Defender Program and its role in the criminal and juvenile justice systems. Community outreach efforts will be included in the annual report of the Private Defender Program to the County, as described in Section 4.d.8. below.
7. Client Survey. The Association will create a survey instrument and process to seek client views on the representation they received from the Private Defender Program. The results of such survey will be included in the Annual Report of the Chief Defender beginning with the Report for the FY 2016-2017.
8. Annual Report of the Chief Defender. Subject to the exception articulated in Section 11 hereunder, within ninety (90) days of the end of each fiscal year during the term of this Agreement, the Chief Defender of the Private Defender Program shall submit a written report to the Board of Supervisors detailing the Program's performance with respect to the items described in Sections 4.d.1, 4.d.2, 4.d.3, 4.d.4, 4.d.5, 4.d.6 and 4.d.7. The annual report will also include the annual budget of the program, setting forth the costs of the operation of the program for the year, including fees for attorney's services, investigation and other ancillary defense services as well as the cost of administration. The Chief Defender may request an additional 30 days within which to submit said report, and upon receipt of said written

request, the County may consent to said 30 day extension, which consent shall not be unreasonably withheld.

**5. CONSULTATION WITH COURT ABOUT ELIGIBILITY**

The Association agrees to consult with the judiciary and representatives of the County in implementing this Agreement to assure competent representation of financially eligible persons at reasonable costs. The Association agrees to cooperate with the County and with the judiciary in the determination of financial eligibility of applicants for such services, and agrees to use best efforts in implementing any adopted financial eligibility determination system. The Association will make recommendations to the judiciary with regard to court appointment of counsel in individual cases. The term “financially eligible”, as used in this Agreement, refers to persons without sufficient means to retain counsel, as defined in California Penal Code section 987 *et seq.*

**6. NON-DISCRIMINATION**

- a. No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (including cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination, including the receipt of non-discriminatory services, under this Agreement. The Association shall ensure full compliance with federal, state or local laws, directives and executive orders regarding non-discrimination for all service providers, employees and subcontractors under this Agreement.
- b. The Association shall comply with section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- c. The Association shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. The Association’s equal employment policies shall be made available to the County upon request.
- d. With respect to the provision of employee benefits, the Association shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- e. The Association shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

- f. The Association shall comply with the San Mateo County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Association, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Association or that the Association deduct from the employees regular pay the fees received for jury service.
- g. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Association to penalties, to be determined by the County Manager, including but not limited to
  - i. termination of this Agreement;
  - ii. disqualification of the Association from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii. liquidated damages of \$2,500 per violation;
  - iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.
- h. To effectuate the provisions of this paragraph, the County Manager shall have the authority to
  - i. examine the Association's employment records with respect to compliance with this Section 5;
  - ii. set off all or any portion of the amount described in this Section 5 against amounts due to the Association under the Agreement or any other contractor between the Association and the County.
- i. With regard to performance and services provided pursuant to this agreement, the Association shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified the Association that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. The Association shall provide the County with a copy of the response to the Complaint when filed.

## **7. TERMINATION AND TRANSITION SERVICES**

- a. Termination upon 24 Months' Written Notice. If either of the Parties wishes to terminate this Agreement, the terminating party must deliver Notice in writing to the other party that is no later than twenty-four (24) months' prior to the effective date of the termination. In the event of termination by Notice pursuant to this Section, the County shall be responsible for any additional actual infrastructural or actual programming

costs incurred by the Association to facilitate this transition. The Association will invoice the actual costs to the County without any added charges.

- b. Termination for Default. Either the County or the Association may terminate this Agreement if the other party defaults in the observance or performance of its material covenants or agreements in this Agreement (other than a default in a payment obligation) and such default continues uncured for sixty (60) Business Days after written notice is given to such party failing to perform its covenants or agreements under this Agreement.
- c. Effect of Termination. Upon the effective date of the termination of this Agreement: (i) the Association may immediately cease providing new Services hereunder; and (b) any and all payment obligations of the County under this agreement will become due immediately. Upon such termination, and upon request of the County, the Association shall reasonably cooperate with the County to ensure a prompt and efficient transfer of all data documents and other materials to a new service provider in a manner such as to minimize the impact of expiration or termination on the individuals receiving Services from the pursuant to this Agreement. The County agrees to pay the Association compensation for Services performed in connection of such transfer, to the extent not contemplated in the Agreement.
- d. Transition At Time Of Termination
  - i. In the event of termination of this Agreement, in whole or in part, the Association shall take reasonable steps to ensure the orderly and effective transition of the Services to the County and/or a successor contractor (“Transition Assistance”).
  - ii. All references in this Section to termination shall include partial and complete termination, cancellation or cessation unless the context otherwise requires.
  - iii. In relation to any partial termination the provisions of this Schedule shall apply only to those parts of the Services subject to such partial termination or expiry.
  - iv. Each reference to an obligation of the Association under this Section shall be deemed to include an obligation on the Association to procure that all relevant sub-contractors to comply with such obligation.
- e. Transition Assistance Period. The Transition Assistance Period shall mean as follows:
  - i. In the case either party serves notice to terminate this Agreement pursuant to Section 7.a., the Transition Assistance Period shall mean a period of such duration as is determined by the County, but is limited to a maximum of eighteen (18) months, commencing eighteen (18) months prior to the effective date of the termination;
  - ii. In the case of a termination by default pursuant to Section 7.b, the Transition Assistance Period shall mean a period of eighteen (18)

months commencing sixty (60) Business Days after written notice is given to such party failing to perform its covenants or agreements under this Agreement; or

iii. In the case of a repudiatory breach of this Agreement, the Transition Assistance Period shall mean a period of eighteen (18) months commencing on the date upon which the non-defaulting party accepts such repudiatory breach as terminating this Agreement. The parties understand and agree that a repudiatory breach is a breach so fundamental that it permits the distressed party to terminate performance of the contract, in addition to entitling that party to sue for damages.

- f. Transition Assistance Election. During the Transition Assistance Period, the Services will be discontinued or transitioned to a Successor Contractor at the County's sole discretion and such transition shall then be performed in accordance with the Transition Assistance Plan and this Section. From the commencement of the Transition Assistance Period and continuing until a date pre-agreed or such provided to the Association by the County with a minimum of thirty (30) days' notice. All the terms and conditions of this Agreement will remain unchanged during the Transition Assistance Period.
- g. Transition Assistance Plan. The Association shall develop, with reasonable assistance from the County, a written transition assistance plan specifying in detail all activities, and the corresponding timing of such activities, necessary to facilitate an orderly and effective transition of the Services to be provided during the Transition Assistance Period ("Transition Assistance Plan"), and shall deliver the Transition Assistance Plan to the County as follows:
- i. In the case either party serves notice to terminate this Agreement pursuant to Section 7.a., within six (6) months of the service of notice to terminate this Agreement;
  - ii. In the case of a termination by default pursuant to Section 7.b, within fourteen (14) days of the commencement of the Transition Assistance Period as set forth in Section 7e.ii.; or
  - iii. In the case of a repudiatory breach of this Agreement, within fourteen (14) days of the commencement of the Transition Assistance Period as set forth in Section 7e.iii.
- h. Contract Materials. At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, reports, photographs, time entries, and other written materials (collectively referred to as "contract materials") provided by the County to the Association under this Agreement shall remain the property of the County and shall be promptly returned to the County. Upon termination, the Association may make and retain a copy of such contract materials if permitted by law.

## 8. INDEMNIFICATION

The Association shall hold harmless, defend and indemnify the County, its agents, officers and employees, from any and all liability, claims, actions, costs, damages or losses of any kind (including but not limited to injuries, or damage to person and/or property or any loss or cost) which arise out of the performance by the Association, its agents, officers, and employees under this Agreement. This obligation to hold harmless, defend and indemnify shall continue beyond the term of this Agreement or any extension of this Agreement.

The County shall hold harmless, defend and indemnify the Association, its agents, officers and employees, from any and all liability, claims, actions, costs, damages or losses of any kind (including but not limited to injuries, or damage to person and/or property or any loss or cost) which arise out of the performance by the County, its agents, officers, and employees under this Agreement. This obligation to hold harmless, defend and indemnify shall continue beyond the term of this Agreement or any extension of this Agreement.

**9. INSURANCE**

- a. **Liability insurance.** The Association shall take out and maintain during the life of this Agreement such Comprehensive General Liability, Motor Vehicle Liability and Professional Liability Insurance as shall protect the Association while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from the Association operations under this Agreement, whether such operations be by the Association or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability..... \$1,000,000
- (b) Motor Vehicle Liability Insurance..... \$1,000,000
- (c) Professional Liability..... \$1,000,000

After one year from the date this Agreement is first executed, the County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar county agreements by giving sixty (60) days' notice to the Association. The County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

- b. **Worker's Compensation Insurance.** The Association shall have in effect, during the entire life of the Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, the Association certifies awareness of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provision of the Code, and certifies compliance with such provisions before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.

## **10. MEDIATION**

Any dispute between the parties arising out of this Agreement, or any of the APPENDICES attached hereto, that the parties have been unable to resolve shall be referred to mediation. The parties will agree upon a mediator from a list of available mediators within five (5) days of being provided with a list of mediators by a Service Provider. If the parties cannot agree on a mediator within such period, then a list of three available mediators will be sent by the Service Provider to the parties. Each party may strike one name by delivering written notice to the Service Provider within five (5) days after delivery of the list of mediators. The remaining name will be the Mediator; provided that if two names are left, the Service Provider shall select which of the two shall serve as Mediator. The parties shall use their reasonable efforts to resolve this dispute during the Mediation. Mediation shall continue until the dispute is resolved or the parties decide to abandon mediation. In the event that the dispute has not been resolved within sixty (60) days after the dispute has been referred to mediation, either party shall have the right to proceed to litigation with respect to such dispute.

It is agreed by the parties that the cost of the Mediator and any associated costs resulting from mediation shall be shared equally between the parties.

It is agreed by the parties that unless otherwise expressly waived by them, any action brought to enforce any of the provisions of the Agreement for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of San Mateo, State of California.

## **11. EVALUATION**

The County and the Association recognize and acknowledge that evaluation of the performance under the terms of this Agreement is a function that necessarily includes the

participation of the San Mateo County Superior Court. As noted in *Phillips v. Seely* (1974) 43 Cal.App.3d 104,115:

“The availability of a reasonable sum of money to reasonably compensate assigned counsel where required by law is the responsibility of the board of supervisors; whether indigent persons entitled to counsel at public expense are being adequately represented by reasonably compensated counsel is for the court to determine.”

The County may form a committee to evaluate ongoing performance under the terms of this Agreement, at any time during the period of this Agreement and no less than every 5 years, that shall include members of the judiciary, members of the Association who are not actively participating as Private Defender Program attorneys, and may include other interested persons as determined by the County, to make such reports and recommendations as may be appropriate and of assistance to the parties hereto.

In any year in which such a performance review is conducted it will be in lieu of the requirement of the Annual Report described in Section 4.d.8.

The County and the Association agree that, upon the submission of any report and/or recommendation by the Committee, either party may require the other party to meet and confer regarding any changes to the Private Defender Program or amendments to this Agreement that may be warranted based on such report or recommendations.

**14. WITNESS, INTERPRETER AND TRANSLATOR FEES.**

Payment of witness fees shall be governed by the provisions of Sections 1329 and 1334.3 of the Penal Code, by Sections 68093 and 68098 of the Government Code, and such other statutory provisions as may be applicable; and the payment of interpreter and translator fees shall be governed by Section 68092 of the Government Code and Sections 731 and 752 of the Evidence Code.

**15. COURT-REQUESTED INVESTIGATIVE SERVICES.**

Upon request of the Court and with the Association’s acceptance, investigative and ancillary defense services shall be provided on behalf of a party before the court in a proceeding where such party has not received appointed counsel. Any expense incurred for services rendered under the provisions of this paragraph during the period of this Agreement may be accounted for as a Special Litigation case, and is included within the total compensation paid by the County to the Association.

**16. TERM OF AGREEMENT.**

The term of this Agreement shall cover an initial period of June 1, 2017 through June 30, 2019, subject to the parties’ Termination and Transition Services obligations as set forth in Section 7 herein. This Agreement may be renewed for an additional period of two (2) years by mutual agreement of the parties, also subject to the parties’ Termination and Transition Services obligations as set forth in Section 7 herein.

**17. PRIOR AGREEMENT**

This Agreement supersedes and replaces the prior agreement between the County and the Association for the Association to provide legal services to financially eligible persons in San Mateo County dated June 1, 2017.

**18. USE OF CONTRACT REVENUES.**

The Association agrees that all funds provided to it hereunder will be used only to enable the Association to meet its responsibilities as herein defined.

**19. SUCCESSION PLANNING.**

The Association shall appoint a Chief Defender of the Private Defender Program. The position of Chief Defender is filled by Myra A. Weiher. Should the Chief Defender retire, resign, become incapacitated or otherwise leave her current post as the Chief Defender, the Association agrees to notify the County of such change immediately. The Association shall further meet and confer with the County regarding the selection process for the position of Chief Defender.

**20. TIME OF THE ESSENCE**

Both the County and the Association expressly agree that time is of the essence under this Agreement.

**121. ENTIRE CONTRACT.**

This is the entire contract between the Parties, and no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Association and the County. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

**22. AUTHORIZED AGENT; NOTICES.**

The County Manager's Office shall be County's agent for the purpose of this Agreement. All notices provided for hereunder shall be addressed and delivered to the County Manager's Office for the County of San Mateo.

\* \* \* \* \*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement for the provision of services in connection with the Private Defender Program, effective as of February 13, 2018.

COUNTY OF SAN MATEO

BY \_\_\_\_\_  
President, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of said Board

SAN MATEO COUNTY BAR ASSOCIATION

By \_\_\_\_\_  
President

# AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

*FY 2017-2019*

## ***APPENDIX A***

**“TYPE A” CASES** also include appeals to the Appellate Department of the Superior Court of San Mateo County; writs filed on behalf of defendants (specifically excluding writs of *habeas corpus* filed on behalf of prisoners of the State of California pursuant to the provisions of California Penal Code section 4750); and all quasi-criminal and civil proceedings in either the Municipal or Superior Court which are not specifically mentioned in subsections 2b, 2c, 2d, or 2e herein, but which are proceedings in which the law requires that counsel be provided at public expense, including but not limited to contempt proceedings (California Code of Civil Procedure sections 1209 *et seq.*); proceedings to terminate parental rights (California Family Code sections 7802, 7860-7864 *et seq.*); probate conservatorship proceedings pursuant to California Probate Code sections 1471 and 1852; paternity, support, and adoption proceedings, proceedings pursuant to the provisions of the Service members Civil Relief Act, and proceedings pursuant to the Sexually Violent Predators Act (California Welfare and Institutions Code section 6600 *et seq.*).

For the first time, this Agreement includes the cost of representation of those felony offenders sentenced to life imprisonment pursuant to the provisions of California’s Three Strikes law who may be affected by the provisions of “Proposition 36” approved by the voters in the November 2012 California ballot. Since this Initiative statute has just been enacted, neither party is able to provide a reliable estimate of the cost of representation in such cases. Accordingly, the costs of these Special Litigation cases will be monitored to determine what if any effect they may have on the ability of the Association to perform under the terms of the Agreement pursuant to Section 3 (Compensation) of this contract.

**“TYPE B” CASES** also include proceedings to revoke or modify probation; matters involving competency and insanity pleas certified from the Municipal Court to the Superior Court; matters arising after the suspension of criminal proceedings pursuant to the provisions of the Welfare and Institutions Code, or after commitment to the California Rehabilitation Center; representation at lineups; representation of witnesses; and any other appearances or representations by assigned attorneys specifically requested or ratified by a Judge of the Superior Court of San Mateo County, and not included in any other provisions of this AGREEMENT, where the law requires that counsel be provided at public expense, whether or not such matter is filed in court.

# **AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION**

**FY 2017-2019**

## ***APPENDIX A-1***

This *Appendix* amends the *AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION*, made and entered into on the 4<sup>th</sup> day of June, 2013, for the provision of services by the Association's Private Defender Program (Agreement).

Pursuant to Section 3 of the Original Agreement and at the request of the Association, the parties met and discussed the inability of the Association to complete its obligations under the contract for the FYE June 30, 2015 at the compensation amount set forth in the Original Agreement. This inability is the direct result of the appointment of the Private Defender Program in the criminal cases *People v. Marvin Ware, et al, San Mateo County Superior Court Nos. SC080432, SC080433, and SC080434*.

As a result of the most massive criminal investigation in the history of San Mateo County, charges were filed pursuant to three separate but interrelated indictments against 16 individuals, nine of whom are accused of a series of Special Circumstance murders. Also alleged are a variety of other serious and violent felonies, including attempted murder, attempted robbery and dissuasion of a witness, all alleged to be in furtherance of the interests of three alleged local street gangs. The amount of evidence that has been collected is enormous. The number of hours that Private Defender Program lawyers, investigators and expert witnesses will necessarily spend in fulfilling their duties to their clients is, at this point in time, incalculable.

In order to enable the Association to fulfill its obligations under the terms of the Original Agreement in light of the appointment of the Private Defender Program in the above-referenced Superior Court cases, the Original Agreement is hereby amended to reflect that the County will pay, in addition to the compensation set forth in the Original Agreement, the attorney and investigator fees and related costs of these specific cases a sum not to exceed \$5,000,000 during the term of the current Agreement. This sum is subject to change in future agreements. Subsequent agreements will include the following terms and conditions:

1. All funds paid to the Association pursuant to this amendment will be spent exclusively on the fees and costs as defined in the Original Agreement incurred by the Association for the defense of these specific cases;
2. Should the Private Defender Program's obligations concluded for any reason while there is an unexpended balance of these funds, that balance will be refunded to the County;
3. Payments by the County to reimburse the Association for the fees and costs incurred in the defense of these cases will be made in increments of approximately \$500,000. Each incremental payment will be made as the fees and costs incurred by the Association have reached that approximate amount.

The Association will send an electronically transmitted detailed invoice in that amount to the County on a monthly basis, submitted between the 26<sup>th</sup> and the 29<sup>th</sup> of each month. The detailed invoice shall reflect a breakdown of the following information: amount billed for attorney's fees; amount billed for expert costs; amount billed for investigation costs; and amount billed for miscellaneous costs. The County will make payment thereof within 30 calendar days of receipt of detailed invoice.

4. In addition to Section 9.a. of the Original Agreement, the County will on a quarterly basis compare the actual bills to the categories of expenses submitted on a monthly basis to ensure accuracy in expense reported. The Association will fully cooperate with providing any and all information requested for review by the County pursuant to Section 9.a. of the Original Agreement.
5. Because the initial fees and costs of these cases, incurred from April 2014 through October 2014, have already exceeded the sum of \$500,000, the first incremental payment will be credited toward those already expended funds upon the submission of a detailed invoice. The unpaid balance will be reimbursed as part of the next incremental payment. This first incremental payment of \$500,000 shall be due within 10 calendar days of the approval of this amended Agreement.
6. The provisions of Section 3.b. of the Original Agreement, setting forth the dates payments are due on the original contract price, will not apply to the sums to be paid under the terms of this Appendix;
7. Notice of sums due to be paid under the terms of this Appendix may be transmitted by electronic mail;
8. All of the remaining provisions of the Original Agreement shall remain in full force and effect.

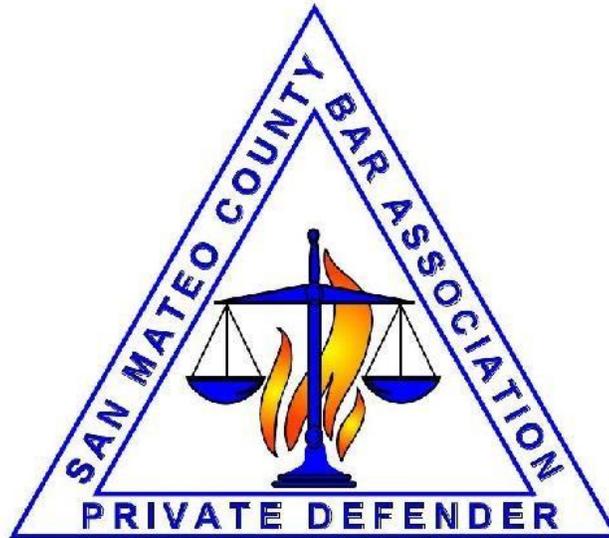
**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN  
MATEO COUNTY BAR ASSOCIATION**

*FY 2017-2019*

***APPENDIX B***

**FEE SCHEDULE**  
**effective January 1, 2018**

# San Mateo County Bar Association Private Defender Program



## FEE SCHEDULE

Effective 1/1/18

## **SECTION I – MISDEMEANOR/FELONY CRIMINAL -ADULT**

### **1. Misdemeanor- General non DV charges**

A. Case Fee	\$250
B. Pre-trial Conference	\$85
C. Probation Violation – unconsolidated case fee	\$195
D. Probation Violation – consolidated case fee	\$105
E. Probation Violation – unconsolidated – pre-trial conference fee	\$85
F. Contested Hearings on Probation Violations, sentencing, restitution, etc.	\$100/hour

### **2. Misdemeanor- Domestic Violence**

A. Case Fee	\$270
B. Pre-trial Conference	\$120
C. DV Probation Violation – unconsolidated case fee	\$195
D. DV Probation Violation – consolidated case fee	\$105
E. DV Probation Violation – unconsolidated – pre-trial conference fee	\$120
F. Contested Hearings on Probation Violations, sentencing, restitution, etc.	\$100/hour

### **3. Felony- Original Filing in Court of Limited Jurisdiction (prior to “Superior Court”)**

Case Fee depends on what happens with the case. This is a total fee and there are no separate SCR fees.

A. PRELIMINARY HEARING IS HELD when there is <b>NO SCR</b>	
1. First Session (a.m. or p.m.)	\$660
2. Additional sessions – per hour	\$80/hour
B. PRELIMINARY HEARING IS HELD when there <b>IS an SCR</b>	
1. First Session (a.m. or p.m.)	\$485
2. Additional Sessions – per hour	\$80/hour

When the Preliminary Hearing IS HELD and after the prelim the Court or DA reduces the entire case to a misdemeanor, the case is dismissed, the client pleads or the case is simply certified, then the fee is the same as above. If case is reduced to a misdemeanor after preliminary hearing but not completely resolved, you should bill misdemeanor case fee and Pre-trial fee as appropriate.

<b>C. NO PRELIMINARY HEARING IS HELD AND:</b>	
1. Client WAIVES preliminary hearing	\$270
2. Client fails to appear and attorney withdraws at SCR	\$225
3. Client fails to appear and attorney withdraws at Preliminary hearing	\$280
4. Retained counsel substituted in at SCR	\$225
5. Retained counsel substituted in at Preliminary Hearing	\$280
6. Client pleads to a felony or misdemeanor and is fully sentenced	\$400
7. Client pleads to a felony and is put over to Superior Court for sentencing or restitution report.	\$270
8. Case is totally dismissed at SCR	\$345
9. Case is totally dismissed at Preliminary Hearing	\$400
10. Client pleads and is sentenced to DEJ	\$400
11. Case is reduced to misdemeanor before Preliminary Hearing is held. (If this occurs at any time without client immediately entering a plea, you should create new billing entries for misdemeanor case fee, pre-trial and jury trial fee as appropriate.)	\$190

#### **4. SUPERIOR COURT CASES**

A. Felony Case fee/non-special fee	\$660
B. Superior Court pre-trial conference	\$120

#### **5. POST PLEA – SENTENCING ONLY IN SUPERIOR COURT**

A. Probation Report and Sentencing only in Superior Court (859a)	\$240
B. Restitution determination only in Superior Court (859a)	\$240
C. Contested Hearings on Sentencing Issues in Superior Court	\$100/hour

#### **6. POST CONVICTION CASES**

A. Felony Probation Violation Unconsolidated- Case Fee	\$225
B. Felony Probation Violation Consolidated-Case Fee	\$105
C. PRCS Violation Unconsolidated- Case Fee	\$225
D. PRCS Violation Consolidated- Case Fee	\$105
E. Parole Violation Unconsolidated -Case Fee	\$225
F. Parole Violation Consolidated -Case Fee	\$105
G. Pre-Trial Conference for Probation, Parole and PRCS Violations if Unconsolidated	\$120
H. Hearings on Probation, Parole, PRCS Violations	\$100/hour

## 7. TRIAL FEES – Misdemeanor and Felony (in addition to case fees)

- |  |            |
|--|------------|
| A. Jury Trial  |            |
| 1. Trial Fees - Per Hour   | \$135/hour |
| 2. Preparation Fee – per day   | \$280      |
| 3. Jury Deliberation – per hour (payable only if attorney is unable to return to office – explain on bill) | \$75/hour  |
| B. Court Trial   |            |
| 1. Court Trial Fees - Per Hour   | \$100/hour |
| 2. Preparation Fee – per ½ day (am or pm)  | \$120      |

**NOTE:** Trial fees commence ONLY when and if a case is actually assigned out to a TRIAL department, and is thereafter payable ONLY for hours in court, or for in-chambers discussions.

Preparation fee is payable for each day of jury trial and each ½ day of court trial, once the case is assigned to a TRIAL department AND once *in limine* motions or jury selection has begun through closing argument only.

The Preparation Fee is NOT paid for Probation Violations or Court Trials on transcripts with no testimony.

## 8. MOTIONS- a copy of the motion must be attached to the bill for review.

- |                    |       |
|--------------------|-------|
| A. COMPLEX MOTIONS | \$325 |
|--------------------|-------|

A complex motion is one that includes complex issues, original research, original writing, or a combination of these things. Extensive details and facts regarding the client could also make a motion fall into this category. (e.g. –a detailed Romero motion, a 995 with citations to the record and detailed legal analysis.) In this type of motion facts are detailed and attorney has attempted to analyze and distinguish the case, or go beyond addressing simple issues that have been previously briefed.

- |                     |       |
|---------------------|-------|
| B. STANDARD MOTIONS | \$110 |
|---------------------|-------|

A standard motion is one that uses material that has been previously briefed (e.g. - Williams motion, Pitchess motion) but still requires some original material that analyzes the applicability of the case’s facts to the cited law and a statement of facts. It should include unique application to your client and argument applicable to your case.

### C. BOILERPLATE MOTIONS

\$0

A Boilerplate motion is one that has no original research, writing, or argument about the case and the only original work is the caption and possibly a brief statement of facts. These are basic motions to continue, motions to join in someone else's motion, in limine motions for not using certain terms like "victim", federalizing all objections, and the like.

**Note on Motion Levels:** If you feel that your motion does not fit into a specific level – Administrative Fees may be requested with a detailed explanation of why your work is beyond the level generally applicable. (See section: IV: 1)

### D. HEARINGS AND ARGUMENT ON MOTIONS

\$100/hour

### 9. MISDEMEANOR AND FELONY CRIMINAL CALENDARS

A. Misdemeanor Arraignment Calendar – two (2) hours or less

\$110

A1. Over two (2) hours – additional per hour

\$75/hour

A2. Cases closed on calendar-per

\$80

B. Superior Court AM Arraignment Calendar- two (2) hours or less

\$110

B1. Over two (2) hours – additional per hour

\$75/hour

B2. Cases closed on calendar-per

\$80

C. Superior Court PM Custody Calendar

\$540

**NOTE:** Cases closed on this calendar or continued for resolution are not separately billable by attorney.

D. Specialty Court Calendars- per hour

\$185/hour

1. Drug Court, Treatment Court, Bridges, Pathways, Veterans and Military Diversion Court

2. PC1370 Court, DV Review Calendar, Laura's Law Court, CAMI Court, DUI Review Calendar.

\$170/hour

E. Specialty Court Calendars – preparation fee

\$135

(Drug Court, Treatment Court, Veterans and Military Diversion Court, 1370 Court, Laura's Law Court, CAMI Court and DUI Court.)

## 10. PC1367/1368 – WHEN A DOUBT IS DECLARED AS TO COMPETENCE

### A. FELONY CASES IN “LOWER COURT”

If a doubt is declared at any time before certification to Superior Court \$250

For arraignment in Superior Court on the mental health case (no new case number) through ALL hearings involving finding on competency and placement order \$300

If a client is found competent and proceedings are reinstated, bill from where you left off.

If a client is found incompetent and placed, when and if the client is later returned as competent, the case should be billed as a new case. (Unless the client is returned within 60 days).

### B. FELONY CASES IN SUPERIOR COURT

If a doubt is declared at any time in Superior Court, bill for the mental health/1367 portion of the case \$300

If client is found **competent** and proceedings are reinstated, when the case goes back to wherever it left off, you bill normally.

If a 1367 doubt is declared and the client is found **not competent**, then at the time of the placement order, bill a case fee and other fees as appropriate.

When a client is returned from a placement (after 60 days) and is then found **competent**, bill as a new case. (Unless returned within 60 days).

If a client is returned less than 60 days from the last placement order, (and the original attorney is reassigned to the case) no new case fee is appropriate.

**C. SPECIAL FEE CASES** – Felony and Misdemeanor – these cases should be billed hourly for all work.

### D. MISDEMEANOR CASES

If at any time a doubt is declared \$300  
(This fee covers all appearances for doctor’s reports and findings as well as communication with doctors, the client or others regarding the competency determination.)

If client is found **competent** – then the case goes back to wherever it left off and you bill normally.

If a client is found **not competent** and placed, then when the client is returned as competent, bill as a new case. (Unless the client is returned within 60 days).

If the client is returned from placement and found competent within 60 days, then the original attorney will be reassigned the case (absent compelling reasons), and no new case fee or PTC fee will be paid if attorney was paid these fees previously.

If the client returns from placement after 60 days, the original attorney will be reassigned the case (absent compelling reasons) and fees should be billed as if it is a new case.

**E. WORK ON FELONY OR MISDEMEANOR CASES AFTER PLACEMENT IS ORDERED**

During the time in which criminal proceedings are suspended, it may be necessary or appropriate to deal with issues **after placement is ordered**, but before competency has been restored. In that event, any work done should be billed at the rate of **\$85 an hour**.

Examples of this type of work include: speaking to the jail or hospital personnel to determine if placement has occurred, checking on the client’s mental health status and progress toward competence, keeping track of the maximum time for which the proceedings can be suspended, advocating for the client when the maximum confinement or competency restoration time is near, handling of a case where it is deemed that the client will not regain competency, and work towards getting a dismissal or other resolution of the case when appropriate. This may also include an appropriate motion to have the client returned to court and working with LPS attorney or County Counsel.

**F. TRIAL ON COMPETENCY**

If there is a trial on competency, then billing should be done pursuant to Section 7 of the Fee Schedule, billing like any other trial.

**11. PETITIONS FOR REDUCTION AND DISMISSAL PURSUANT TO PROP 47 AND PROP 64**

- A. Filing Petition for Reduction or Dismissal \$50
- B. Mandatory Court Appearance for resolution of Petition \$80
- C. Writing and Arguing Motion for resolution of Petition are billed according to Section I:8:A-D of this fee schedule

**12. SPECIAL ASSIGNMENTS (Only by assignment from the Staff Attorneys)**

- A. Special Assignment by Staff Attorneys \$105-120
- B. Expungements When Assigned by Staff Attorney (no motion fee) \$95/hour
- C. Line- Up \$295
- D. Motion to Withdraw Plea Review \$325 fee  
Case fee plus hourly rate \$105/hour
- E. Officer of the Day - half day/full day \$215/\$430  
Half day is 8:30am-12:00am or 1pm-4:30pm
- F. Witness Representation \$325 fee  
Case Fee plus hourly rate \$105/hour

### 13. BILLING NOTES FOR ALL CASE TYPES

A. Where a single client has multiple cases on the same calendar for pre-trial conference, only a single pre-trial conference fee may be billed. (Attorney can pick the case on which to apply the single fee).

When a case or probation violation is consolidated with other cases then only one pre-trial fee may be billed.

In all cases the pre-trial fee is payable only one time, regardless of how many pre-trials are held on the case.

As with any case that requires an extraordinary amount of work, an administrative fee request can be submitted if multiple pre-trial conferences occur and the case is appropriate for such a fee.

B. In ANY CASE – when the client fails to appear at any point in the proceedings and the PDP is relieved, the case may be submitted for payment. If the client returns to court within sixty (60) days of the FTA, then the previously assigned attorney will be expected to resume representation of the client, and no additional case fee may be billed. (Policy and Procedure Manual section 3.2.4)

If a client fails to appear for a **third** time with the same attorney, then the attorney can bill as if the case is a new case. (Case Fee and Pre-Trial Fee if held)

C. ALL bills must be submitted within 90 days of completion of the case or they will not be paid.

D. Non-Special Fee cases MUST NOT be billed until the case is closed 100%. If restitution or a Driver's License issue is still pending, then the case is still open. (See Policy and Procedure Manual section 3.2.1)

## **SECTION II-SPECIAL SERVICES**

### **1. CIVIL PROCEEDINGS**

(Family Law Contempt, Probate, Military Dissolution, Paternity, etc.)

- |    |  |           |
|----|--|-----------|
| A. | Per hour (up to 15 hours: Special Fee request required if over 15 hours)           | \$90/hour |
| B. | Trial fees - Same as Adult see Section I:7:A and B (except Prep Fees are not paid) |           |
| C. | Probate Code Sect. 3200 Medical Consent cases                                      |           |
| A. | Case Fee   | \$195     |
| B. | Hourly   | \$95/hour |

\* **NOTE:** Civil Cases MUST be paid MONTHLY like other special fee and hourly cases. A bill should be submitted EVERY month.

### **2. WRITS**

- |    |  |            |
|----|--|------------|
| A. | Case Fee   | \$210      |
| B. | Per hour – including preparation and hearing (up to 15 hours; Special Fee request required if over 15 hours) | \$105/hour |

### **3. APPEALS**

- |    |  |            |
|----|--|------------|
| A. | Per Hour – including preparation and hearing (up to 15 hours; Special Fee request required if over 15 hours) | \$105/hour |
|----|--|------------|

### **4. MENTOR SERVICES**

- |    |  |            |
|----|--|------------|
| A. | Case Fee   | \$1080     |
|    | <b>NOTE:</b> This fee is intended to compensate for the time the mentor invests as a resource to the mentee. It covers such things as telephone conversations and other casual meetings that do not consume significant amounts of time during the period of the relationship.   |            |
| B. | Hourly Fee   | \$105/hour |
|    | <b>NOTE:</b> This rate is paid in addition to the Case Fee above, and covers time spent in more structured meetings that consume significant amounts of time, including but not limited to: scheduled meetings to discuss cases, attending court appearances including pre-trials and jury trials that you attend with your mentee, etc. |            |

## **SECTION III- LPS**

### **1. LPS TRIALS AND RE-HEARINGS**

A. Case Fee	\$255
B. Jury Trial	
1. Jury Trial Fees - Per Hour (in addition to case fee)	\$135/hour
2. Preparation Fee – per day	\$280
3. Jury Deliberation – per hour (payable only if attorney is unable to return to office- explain on bill)	\$75/hour
C. Court Trial	
1. Court Trial Fees - Per Hour (in addition to case fee)	100/hour
2. Preparation Fee- per ½ day (am or pm)	\$120
D. Re-Hearing Hourly	\$95/hour

**NOTE:** Trial fees commence ONLY when and if a case is actually assigned out to a TRIAL department, and are thereafter payable ONLY for hours in court, or, for in-chambers discussions.

Preparation fee is payable for each day of jury trial and each ½ day of court trial, once the case is assigned to a TRIAL department AND once *in limine* motions or jury selection has begun through closing argument only.

The Preparation Fee is NOT paid for Probation Violations or Court Trials on transcripts with no testimony.

### **2. CALENDAR**

A. Two hours or less (including preparation)	\$180
B. Over two Hours – additional per hour	\$85/hour

### **3. WRITS**

A. Case Fee	\$210
B. Per Hour – including preparation and hearing. (Up to 15 hours; Special Fee request required if over 15 hours.)	\$105/hour

### **4. MEDICAL CONSENT/DO NOT RESUCITATE**

A. Case Fee	\$195
B. Hourly	\$95/hour

\* **NOTE:** Civil Cases that are determined to be special fee MUST be paid MONTHLY like other special fee and hourly cases. A bill should be submitted EVERY month.

## **SECTION IV- EXTRAORDINARY FEE REQUESTS**

**1. ADMINISTRATIVE FEE CASES**– Reviewed by Staff Attorneys (Chief Defender, Assistant Chief Defender and Managing Attorneys) for requests up to \$2500 additional to fee schedule.

Cases that do not meet the criteria for treatment as a Special Fee Case (see below), and yet require **extraordinary** effort and time, may be considered for additional compensation. The standard case fee already includes compensation for things that would normally come up in a case including working with a PI, experts, mental health experts, motions to continue, etc. When you have a case that is particularly complex or difficult you may apply for an Administrative Fee.

Administrative Fee requests must seek a **specific amount of compensation**. (**Specific dollar amount.**) A letter describing the case and specific factors that made it extraordinary should be attached to the bill. Additionally, the letter should include a brief itemization of the time invested. A cursory statement simply asking for the additional fee without details is insufficient. Insufficiently documented requests will be returned for documentation and may not be paid.

Your bill should reflect your understanding that the Fee Schedule was designed to cover the vast majority of cases, and is intended to compensate all attorneys on the panel equally for their work. While the Administrative Fee process is available to compensate lawyers for truly extraordinary cases, the evaluators will be mindful of the fact that panel attorneys are never asked to return money on cases assigned to them that settle quickly with little time or effort.

**2. SPECIAL FEE CASES**– Special Fee cases are assigned by the Staff Attorneys. These cases are billed hourly; no other part of the fee schedule is used in billing these cases. There are different types of Special Fee Cases.

**A. Life Imprisonment:** This category includes murders and any case that includes a charge for which the penalty prescribed by law is life imprisonment. Examples of this type of case include murder, attempted pre-meditated murder, One-Strike sexual assault, kidnapping for ransom, etc.

**B. Three Strikes Cases:**

1. A true Three Strikes Case where the client has two or more strike priors and the new charge is a serious or violent felony will start out as a “Life Case” under the Special Fee schedule and is billed at \$135/hour.

2. If a Three Strikes Case, at any time during the pendency of the case, becomes a second strike case (e.g.- by designation of the District Attorney or because a prior is determined to not be valid and this is acknowledged by the DA) then the special fee amount changes from \$135/hour to \$105/hour from that point forward.

3. If a Client has multiple strike priors but the case is filed as, or is being prosecuted as, a second strikes case, then the case is NOT a Three Strikes Case. (e.g. - The new charge is not a serious or violent felony.) This case should be billed as a general felony case. If you believe that the case is appropriately a special fee, then follow the instructions regarding making a request under that section of this fee schedule. (Section IV: 2: D)

C. Non-Life Imprisonment: Cases that most frequently fall into this category are extremely difficult felony cases. Examples are: manslaughter, kidnapping, sexual assault, child molestation, high tech crimes, complex fraud litigation, or any other case a Staff Attorney determines to be appropriately set as a special fee case based on the charges.

D. Difficult and Complex Issue Cases

These cases are ones that place extraordinary demands on the attorney's time and skills, and thus qualify, in the Staff Attorneys' Judgment, for treatment as Special Fee cases payable at an hourly rate described below.

Generally, this type of case will be assigned by a Staff Attorney as a Special Fee case from the beginning. However, an attorney should make a request when it becomes clear that a case seems it should appropriately be billed as Special Fee. (See section IV: 3)

In determining whether or not it is appropriate for a case to be a special fee case, the Staff Attorneys will evaluate the request for compensation in light of the realities of indigent criminal defense representation, including our inability to pay the true market value of attorney services. Factors that are considered in determining whether or not a case merits Special Fee treatment include:

- i. Difficult Client – serious mental issues, personality, contrariness, etc.
- ii. Nature of charges – the gist of the case, the prosecution position, potential punishment.
- iii. Extra Hours – unusual legal issues, unusual number of or type of expert witnesses to deal with, travel, quantity of documentary evidence to review, difficult witnesses to interview, etc.
- iv. Motions – unusual in scope or number (attach copy to billings)

### 3. Special Fee Request Format

The majority of Special Fee cases will be predetermined by the Staff Attorneys (Chief Defender, Assistant Chief Defender and Managing Attorneys). If you have a case that was not already marked as a Special Fee case that should have been (by charge or sentence exposure), you should contact one of the Staff Attorneys.

If you have a case that you would like to have considered as a special fee case (that is not one by definition by its charge or sentence), then you **MUST** get approval from a Staff Attorney BEFORE you submit **ANY** hourly billing. Vouchers will be returned if you do not get approval prior to submitting hourly billing.

Without violating the attorney client privilege or compromising either the rights of the client or the attorney's ethical or legal duties, each Special Fee request **must** include the following:

1. An email to a Staff Attorney explaining the charges against the client and why you believe the case is or should be a special fee case.
2. A notation on the first billing of the case as to why it is special fee and which staff attorney made the special fee approval, and why (very briefly) it is special fee.
3. Special Fee billing must be specific and detailed and done MONTHLY.  
Specific examples of how this billing must be done are as follows:
  - a. Attorneys shall identify each major issue researched and the time spent on them.
  - b. The bill shall indicate the nature of the work performed, i.e. SCR, pre-trial, review discovery, preliminary hearing, preparation for trial, meeting with client, investigator, DA, or witness, etc.
  - c. Identify the documents reviewed
  - d. Identify any motion researched or drafted
  - e. State the nature of the court appearance and the time involved
  - f. All time spent must be itemized in 1/10 hour increments.

## **SPECIAL FEE HOURLY RATES**

When a case is a special fee case, the billing consists only of hourly billing. You should not bill a case fee, pre-trial fee, motion fees, or any other event based fee.

- A. \$180/hour\* Applies to Lead Counsel in Death Penalty Cases
- B. \$150/hour Applies to Lead Counsel in a Special Circumstance Cases
- C. \$150/hour\* Applies to Second Counsel in Death Penalty Cases
- D. \$135/hour Applies to all other murder, attempted-premeditated murder cases, Three Strikes Life cases, and cases that include a charge for which life imprisonment can be imposed.
- E. \$115/hour Complex cases that involve unique facts, defendants or issues where not covered elsewhere in this section as deemed appropriate by the Staff Attorneys.
- F. \$120/hour\*\* Applies to extremely difficult felony cases, such as manslaughter, vehicular manslaughter, kidnapping, sexual assault, sexually violent predator, child molestation, high tech crime, complex fraud prosecution, or any other case a Staff Attorney determines is appropriately set at this level.
- G. \$105/hour\*\* Applies to Gang Cases, Strike Cases that begin as Three Strikes but become Second Strike Cases, MDO, NGI extensions and outpatient extensions, and other cases that the Staff Attorneys determine are appropriately set at this rate.
- H. \$90-105/hour\*\* Applies to all other cases that Staff Attorneys determines are appropriately set as special fee cases.
- I. \$105-150/hour Advisory Counsel and Stand By Counsel. Amount will be determined based on type of case and charge. A Staff Attorney will determine the appropriate hourly fee based on the underlying case details.

\*In death penalty cases where two attorneys are authorized, counsel may agree to split the hourly rates between themselves. For example, Lead Counsel and Second Counsel might agree to each bill at \$165 per hour instead of \$180 and \$150 respectively.

\*\*The rate paid for jury trial in these cases will be the higher rate described for all jury trials in the fee schedule – e.g. \$135 an hour.

**NOTE:** You should be aware that some changes in the status of a case will likely result in a change of the applicable rate. For example, if the District Attorney's Office declares that they will no longer seek the death penalty in a special circumstance murder prosecution, the rate would change from \$180/hour rate to \$150/hour. Similarly, if a simple kidnapping charge becomes a kidnapping for robbery case after the preliminary hearing, the case would go from a general non-special fee felony to a special fee case payable at the \$125/hour rate from that point forward. You should alert a Staff Attorney of such a change in status at the first available opportunity.

## **SECTION V – JUVENILE COURT**

### **1. DELINQUENCY (602 Cases)**

A. CASE FEE	\$460
1. Additional Petition: Unconsolidated	\$355
2. Additional Petition: Consolidated (with case or other PV)	\$145
B. Contested Hearing Fee	
1. Per Hour	100/hour
NOTE: Hourly fees commence from the scheduled calendar time (e.g. 9:00 am or 2:00 pm) ONLY if a witness is called and are thereafter payable only for hours in court and in-chambers discussions.	
2. Preparation Fee- per ½ day (am or pm)	\$120
NOTE: Preparation fee is payable for each ½ day of contested hearing, once the hearing has begun. The preparation fee is NOT paid for Probation Violations or Contested Hearings on transcripts or reports with no testimony.	
C. Disposition Fee (for each separate appearance)	\$160
D. PETITIONS FOR REDUCTION AND DISMISSAL PURSUANT TO PROP 47 AND PROP 64	
1. Filing Petition for Reduction or Dismissal	\$50
2. Mandatory Court Appearance for resolution of Petition	\$80
3. Writing and Arguing Motion for resolution of Petition are billed according to Section I:8:A-D of this fee schedule	
E. Calendars	
1. Placement Review Calendar	\$160
2. Glenwood Review Calendar	\$295
3. Girls Program Calendar	\$295

### **2. DEPENDENCY: (300 Cases)**

A. CASE FEE	
1. Child Representation (1 or more child)	\$970
2. Parent Representation (1 or both)	\$970

**NOTE:** Case fee is billable after disposition hearing and includes all uncontested hearings through disposition and all future non-appearance reviews. Contested hearing fees are additional.

- B. CONTESTED HEARING FEE
- 1. Per Hour \$100/hour

NOTE: Hourly Fees commence from the scheduled calendar time (e.g. 9am or 2pm) ONLY IF a witness is called and are thereafter payable only for hours in court and in-chambers discussions.

- 2. Preparation Fee- per ½ day (am or pm) \$120

**NOTE:** Preparation fee is payable for each ½ day of contested hearing once the hearing has begun. The preparation fee is NOT paid for Contested Hearings on transcripts or reports with no testimony.

- C. MANDATORY POST DISPOSITION REVIEW– by assigned attorney \$160 (for each appearance made by assigned attorney)

**3. WELFARE AND INSTITUTIONS CODE SECTION 366.26 CASES**

- A. Case Fee \$970
- B. Contested Hearing Fee \$90/hour

Note: Hourly Fees commence from the scheduled calendar time ONLY IF a witness is called and are thereafter payable only for hours in court and in-chambers discussions.

**4. AB12 CASE FEE:**

- A. When originates from 602 \$970
- B. When originates from 300 and is a new case \$970
- C. When continues from established 300 case there is no new case fee

**5. MOTIONS- a copy of the motion must be attached to the bill for review.**

- A. COMPLEX MOTIONS \$325

A complex motion is one that includes complex issues, original research, original writing, or a combination of these things. Extensive details and facts regarding the client could also make a motion fall into this category. (e.g. –difficult presumed father or relative placement motions, complex 700.1 or a detailed Romero motion) In this type of motion facts are detailed and attorney has attempted to analyze and distinguish the case, or goes beyond addressing simple issues that have been previously briefed.

- B. STANDARD MOTIONS \$110

A Standard motion is one that uses material that has been previously briefed

(e.g. -Williams motion, Pitchess motion) but still requires some original material that analyzes the applicability of the case's facts to the cited law and a statement of facts. Should include unique application to your client and argument applicable to your case.

C. MOTION USING STANDARD "JV" FORMS – 300 AND 602 \$80

This motion is one where the motion simply requires the filling in of a form after finding out information from or about your client his or her circumstances. (e.g.-WIC 778, 338)

D. BOILERPLATE MOTIONS \$0

A Boilerplate motion is one that has no original research, writing, argument or thought about the case and the only original work is the caption and possibly a brief statement of facts. These are basic motions to continue, motions to join in someone else's motion, in limine motions for not using certain terms like "victim", federalizing all objections, and the like.

**Note on Motion Levels:** If you feel that your motion does not fit into a specific level – Administrative Fees may be requested with a detailed explanation of why your work is beyond the level generally applicable. (See section IV: 1)

E. HEARINGS AND ARGUMENT ON MOTIONS \$100/hour

**6. OTHER JUVENILE RELATED ASSIGNMENTS**

A. Managing Attorney Special Assignments – per hour \$105/hour

B. Adoption/Guardianship-per hour \$90/hour

C. DEJ Violations \$160

D. EMP Violations \$160

E. Guardian Ad Litem #1 \$970

As client representative in court when client has mental health Issues. Bill case fee and reviews just like any other dependency case.

F. Guardian Ad Litem #2- per hour \$100/hour  
Representation of a minor where the client/minor has a potential civil claim.

G. Juvenile Court Adoption- per hour \$90/hour

H. Line-up		\$295
I. Officer of the Day- half day/full day		\$215/\$430
Half Day is 8:30-12:00 or 1-4:30		
J. Sealing		\$110
Fee is per client. If more is warranted attorney should request an Administrative Fee with explanation as to why extra fee is warranted.		
K. Witness Representation – Case Fee plus Hourly Rate		\$325 case fee \$105/hour
L. <i>Miranda</i> advice to in-custody 15 y.o. or younger minor [SB395]		
On-call 24 hours for consultation—non-holiday	24 hours	\$250
On-call 24 hours for consultation—holiday	24 hours	\$500
Consultation with 15 y.o. or younger minor [SB395)		\$135/hour
This fee covers travel to/from location of minor to be questioned and time spent doing the consultation		

## 7. RE-ASSIGNMENT OF CASES

When re-assignment of a case is made, the Chief Defender, Assistant Chief Defender or Managing Attorney of the Juvenile Office will determine the fee to be paid. The factors considered in making the fee determination will be the type of case reassigned, the complexity of that case, as well as the status of the case on the court calendar.

## **IV. JUVENILE EXTRAORDINARY FEE REQUESTS**

**1. ADMINISTRATIVE FEE CASES**— Reviewed by Managing Attorney (for requests up to \$2500 additional to fee schedule. This applies to both 300 and 602 cases.

Cases that do not meet the criteria for treatment as a Special Fee Case (see below), and yet require **extraordinary** effort and time, may be considered for additional compensation. The standard case fee already includes compensation for things that would normally come up in a case including working with a PI, expert, mental health expert, motions to continue, etc. When you have a case that is particularly complex or difficult you may apply for an Administrative Fee.

Administrative Fee requests must seek a **specific amount of compensation. (Specific dollar amount.)** A letter describing the case and specific factors that made it extraordinary should be attached to the bill. Additionally, the letter should include a brief itemization of the time invested. A brief statement simply asking for the additional fee without details is insufficient. Insufficiently documented requests will be returned for documentation and may not be paid.

Your bill should reflect your understanding that the Fee Schedule was designed to cover the vast majority of cases, and is intended to compensate all attorneys on the panel equally for their work. While the Administrative Fee process is available to compensate lawyers for truly extraordinary cases, the evaluators will be mindful of the fact that panel attorneys are never asked to return money on cases assigned to them that settle quickly with little time or effort.

**2. JUVENILE SPECIAL FEE CASES**— Special Fee cases are assigned by the Managing Attorney. These cases are billed hourly; no other part of the fee schedule is used in billing these cases. In determining whether or not a case is appropriate for special fee status, the Managing Attorney will evaluate the case in light of the realities of indigent criminal/juvenile defense representation, including our inability to pay the true market value of attorney services.

### **A. DETERMINATION OF SPECIAL FEE CASES:**

Determination regarding if a juvenile case is a special fee case may be made in advance of assignment or at the request of an attorney, but the special fee status can only be designated by the Managing Attorney. The specific hourly rate is determined by the type of case and/or by the Managing Attorney. (See section B below.)

Factors that are considered in determining whether or not a case merits Special Fee treatment include:

- i. Difficult Client – serious mental issues, personality, contrariness, etc.
- ii. Nature of charges – Seriousness of the offenses charged, potential serious dispositional consequences
- iii. Extra Hours – unusual legal issues, complex cases, quantity of documentary evidence to review, difficult witnesses to interview, etc.
- iv. Motions – unusual in scope or number (attach copy to billings)

## **B. JUVENILE SPECIAL FEE HOURLY RATES**

When a case is a special fee case, the billing consists only of hourly billing. You should not bill a case fee, disposition fees, motion fees, or any other set type of fee.

1. \$135/hour\* Applies to Murder, and Attempted pre-meditated Murder
2. \$120/hour\* Applies to extremely serious felony 707(b) offenses or Sexual Assault cases as defined In Penal Code section 290.008. Applies to complex 300 cases (i.e. shaken baby cases, etc.) Managing Attorney determines which cases are appropriately set at this level.
3. \$105/hour\* Applies to Serious 602 cases including those involving strike offense, gang allegations, Complex 300 cases, 300 cases involving extremely difficult clients. Managing Attorney determines which cases are appropriately set at this level.
4. \$90-105/hour\* Applies to all other cases that the Managing Attorney determines are appropriately set as special fee cases.
5. \$105-150/hour Advisory Counsel and Stand By Counsel. Amount will be determined based on type of case and charge. A Staff Attorney will determine the appropriate hourly fee based on the underlying charges and facts.

\*The rate paid for Contested Hearings in these cases will be the higher rate of either the Contested Hearing Rate of \$100 per hour or the approved Special Fee rate.

### C. Special Fee Request Format

The majority of Special Fee cases will be predetermined by the Managing Attorney. If you have a case that was not already marked as a Special Fee case that you think should have been, you should contact the Managing Attorney.

If you have a case that you would like to have considered as a special fee case that is not one by definition by its charge or sentence, then you **MUST** get approval from the Managing Attorney **BEFORE** you submit **ANY** special fee billing. Any such vouchers will be returned if you do not get approval **prior** to submitting hourly billing.

Without violating the attorney client privilege or compromising either the rights of the client or the attorney's ethical or legal duties, each Special Fee request **must** include the following:

1. An email to the Managing Attorney explaining the charges against the client and why you believe the case is or should be a special fee case.
2. A notation on the first billing of the case as to why it is special fee case, that the Managing Attorney approved it as a special fee, and why (very briefly) it is special fee.
3. Special Fee billing must be specific and detailed and done **MONTHLY**.

Specific examples of how this billing must be done are as follows:

- a. Attorneys shall identify each major issue researched and the time spent on them.
- b. The bill shall indicate the nature of the work performed, i.e. Jurisdictional Hearing, Contested Hearing, Contested Dispositional Hearing, review of discovery, etc.
- c. Identify the documents reviewed
- d. Identify any motion researched or drafted
- e. State the nature of the court appearance and the time involved
- f. All time spent must be itemized in 1/10 hour increments

### **3. BILLING NOTES FOR ALL CASE TYPES**

A. In ANY CASE – when the client fails to appear at any point in the proceedings and the PDP is relieved, the case may be submitted for payment. If the client returns to court within sixty (60) days of the FTA, then the previously assigned attorney will be expected to resume representation of the client, and no additional case fee may be billed. (Policy and Procedure Manual 3.2.4) If a client fails to appear for the third time for with the same attorney, then the attorney can bill for a new case fee.

B. ALL bills must be submitted within 90 days of completion of the case

or they will not be paid. C. All Special Fee/Hourly Cases must be billed

MONTHLY or bills may not be paid.

# AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

*FY 2017-2019*

## *APPENDIX C*

### **COMPLAINT PROCEDURE**

- 1/ The Private Defender Program (“PDP”) will have a felony-qualified lawyer with at least five years’ of serious felony experience on the PDP attorney panel, on duty each business day at the Private Defender Program offices during regular business hours to receive complaints about the performance of Private Defender Program lawyers directly from Private Defender Program clients.
- 2/ This “Officer of the Day” (“OD”) will log receipt of the complaint call in a centralized database, and shall include the following information:
  - a. the name of the person who made the complaint;
  - b. if the complainant is not the PDP client, the person’s name and contact information and their relationship to the client; and
  - c. the details of the complaint; and
  - d. any and all actions taken by the OD and/or administrative staff in response to the Complaint, including (without limitation) any investigatory efforts taken by the OD and/or administrative staff; and
  - e. the disposition of the complaint.

If appropriate, the OD or PDP personnel shall: (1) contact the client to gather additional information regarding the complaint; (2) contact other individuals who may offer relevant information; (3) review Court records; and (4) contact the attorney involved to investigate the merit of the client’s complaint.

- 3/ In the case a complaint regarding a PDP lawyers’ performance is fielded by an Office Manager, case assignment specialist, or other PDP staff member, that individual shall immediately refer the complaint to the OD, along with any information or notes regarding the complaint recorded by the staff member receiving the Complaint. The OD shall log receipt of the complaint and record the requisite information in accordance with Paragraph 2 above. If the OD requires additional information regarding the complaint, the OD or PDP personnel shall contact the complainant to obtain said information. The OD shall also provide notice to the attorney who is the subject of the complaint and obtain information/feedback regarding the complaint and the status of the case.

- 4/ The OD is empowered to recommend to the Chief Defender or Assistant Chief Defender a change to the assigned attorney at the request of a client, OR, if, in the OD's judgment, the assigned attorney's performance to date has been deficient, and that deficiency has eroded the client's confidence in his or her attorney's representation. The factors the OD will consider in exercising his/her judgment will include, but not be limited to: (1) the nature and seriousness of the complaint; (2) the relationship between the complainant and the assigned attorney; (3) the specificity of the complaint; (4) the veracity, substance and/or merit of the complaint; (5) the urgency of the complaint; (6) the timeliness of the complaint in relation to the timelines/status of the case; (7) the impact such a change would have on the outcome of the client's case; and (8) the best interests of the client.

In every instance where the OD recommends reassignment of the attorney representing the client, the OD will notify the Managing Attorney, Assistant Chief Defender or the Chief Defender and inform such of the reasons for the recommendation for reassignment. The Managing Attorney, Assistant Chief Defender or Chief Defender will then contact the lawyer for whom the OD is recommending reassignment to ascertain their perspective of the facts surrounding his or her representation of the client. The Chief Defender or Assistant Chief Defender will make the final decision as to whether the assigned attorney will be reassigned. The PDP will ensure that records will be entered into the database of all instances where the OD, Managing Attorney, Assistant Chief Defender or Chief Defender, or any PDP staff, made a recommendation for reassignment, or made a reassignment, in attorney representation as a result of a complaint lodged.

- 5/ Where the OD decides not to honor the client's request for a change of lawyers, he or she will inform the client of the right to present his or her argument to the trial court pursuant to the California Supreme Court's 1970 decision *People v. Marsden*.<sup>4</sup> In addition, the OD will inform the client of his/her right to appeal the OD's decision to the Managing Attorney, Assistant Chief Defender or Chief Defender, and ultimately San Mateo County Manager, as specified below. In addition, the OD will inform the client of his/her right to file a complaint with the State Bar of California, and will provide the complaint form to the client, as well as information regarding the location of the Complaint Form on the State Bar of California's website.
- 6/ When a spouse or other member of the client's immediate family, or friend or partner, calls to complain about the performance of a PDP attorney, the caller will be immediately referred to the OD, who will log the call into the database. In addition, the caller will be encouraged to notify the client that he or she should contact the PDP office directly.

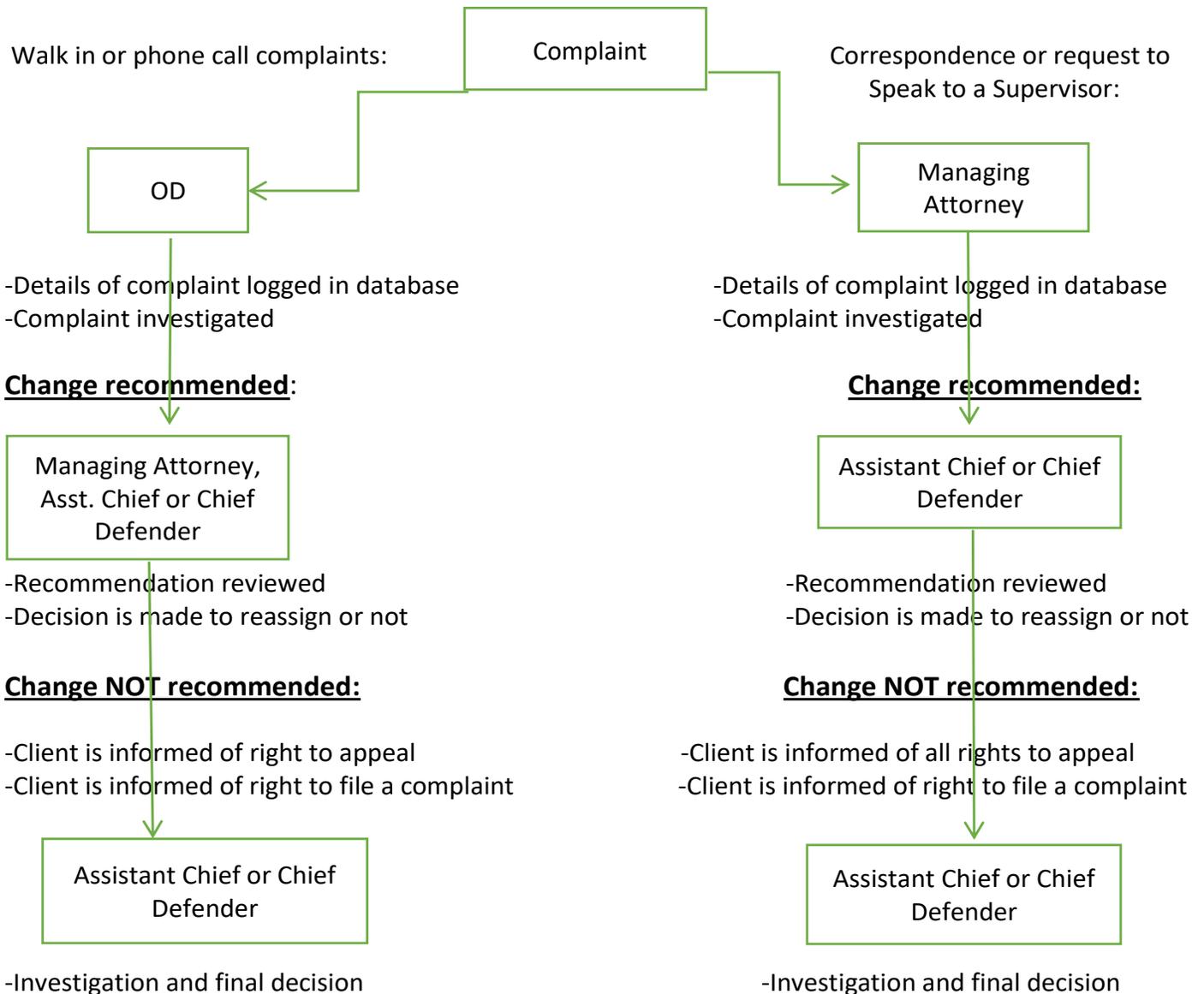
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<sup>4</sup> *People v. Marsden* (1970) 2 Cal.3d 118; 84 Cal.Rptr. 156.

- 7/ When a complaint is made to the PDP by a person who purports to be a representative of a religious, civil rights or other client advocacy organization, the OD should invite the caller to reduce his or her understanding of the substance of the client's complaint to writing, and to direct the written complaint to the Managing Attorney, Assistant Chief Defender or Chief Defender of the PDP. Written acknowledgment of receipt of such a letter will be made by the PDP administration. Such a caller should be encouraged to notify the client that the client should contact the PDP office directly.
- 8/ Officers of the Day are also obliged to discuss with PDP administrators instances where multiple complaints have been lodged against an individual attorney.
- 9/ Where a complainant is not satisfied with the response of the OD or the PDP staff, including the Managing Attorney, the complainant will be advised that he/she may appeal his/her complaint to the Chief Defender or Assistant Chief Defender. The PDP will create forms advising all clients of the PDP of the appeal process for complaints and provide such information to the clients and on the PDP's website. In addition, if the complainant is not satisfied with the PDP response, after exhausting his or her appeals to the PDP, the complainant will be advised that he/she may appeal to the San Mateo County Manager. In addition, the OD will inform the client of his/her right to file a complaint with the State Bar of California, and will provide the complaint form to the client, as well as information regarding the location of the Complaint Form on the State Bar of California's website.
- 10/ If a complainant appeals to the County Manager, the County Manager or his/her designee shall review the complaint and consult with the Chief Defender or his/her designee and obtain information regarding the complaint, the assigned attorney and the case. The County Manager and the Chief Defender will use best faith efforts to attempt to reach a mutually agreeable resolution to the complaint. If a mutually agreeable resolution may not be reached between the parties, the County Manager will issue a decision regarding the complaint and the parties shall be referred to Mediation, pursuant to section 10 of this Agreement. The County Manager's or his/her designee's decision shall be final.
- 11/ If a complainant lodges a complaint directly with the County Manager or his/her designee, the County Manager shall notify the PDP that such a complaint was received and meet and confer with the PDP regarding the complaint. If the County Manager and the PDP are not able to reach a mutually agreeable resolution of the complaint, the parties shall be referred to Mediation, pursuant to section 10 of this Agreement.

[Note: In no instance will any part of a client's case that is protected by the attorney-client or other recognized legal privilege be discussed with anyone other than the client.]

## CLIENT COMPLAINT PROCEDURES



If Assistant Chief Defender or Chief Defender declines to reassign, client will be informed about Marsden motion remedies and will also be advised about right to appeal decision directly to the County Manager’s Office, and thereafter the right to seek Mediation and, at any time, the right to pursue a complaint to the California State Bar. Complaint forms will be provided in person and on the website. The ODs are trained to inform clients that they always have a right to request a Marsden motion at any stage of the proceedings, and clients are uniformly told about the right to a Marsden motion at every stage of the complaint process.

# AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

*FY 2017-2019 (Effective July 1, 2017)*

## **APPENDIX D**

In San Mateo County, the San Mateo County Bar Association's Private Defender Program provides representation for virtually all of the children who are subjects of a juvenile dependency proceeding in the San Mateo County Superior Court, Juvenile Branch. The arrangement for this representation is embodied in a "Service Level Agreement" between the Superior Court and the Office of the County Manager to provide legal services "to qualifying persons within this County of Type "D" case types (i.e. Juvenile Dependency under Welfare and Institutions Code section 300, et seq.) as defined in the Agreement between the County and the San Mateo County Bar Association, Private Defender Program. The County shall consult with the Court regarding the services provided. Criminal Defense Services provided will be made available to those individuals whom the judicial officer determines to qualify and by court order."

The Private Defender Program, pursuant to the above-referenced Agreement with the County of San Mateo provides legal representation for the children, parents and other parties to each case for which the Court finds valid legal reason to provide appointed counsel.

The Judicial Council/Administrative Office of the Courts of the State of California, after a study of the funding and caseloads of each County's juvenile dependency providers, determined that many of the dependency programs were underfunded. Consequently, the funding for many of California's counties was augmented by additional funds from the State's annual budget from 2013 to date [**Judicial Council's Court Implementation of \$11,000,000 Augmentation of Dependency Court –Appointed Counsel Funding**]. These funds were to be used for specified purposes: i.e. "*for ...hiring additional resources (either attorney, social worker, dispositional specialist, investigator, educational consultant) for assisting dependency attorneys, and dependency attorneys alone. It could not be used for pay increases or administrative purposes or delinquency, etc.*" The reason San Mateo County's Private Defender Program qualified for the disbursement was because of a combination of high caseloads and the absence of support personnel such as social workers, dispositional specialists, or educational consultants to assist the attorneys representing children in dependency cases. The available amount of the additional funding provided to San Mateo County through this Judicial Council program is approximately up to \$312,500 per year.

The Private Defender Program has presented a proposal to San Mateo County requesting that the County make the funds available for the Private Defender Panel to

contract with two qualified support personnel: one social worker and one educational consultant to assist the Private Defender attorneys representing children in dependency cases.

The Private Defender Panel agrees that these identified funds will be used solely for the hiring of two contract staff: one Social worker and one Educational Consultant to assist dependency lawyers appointed by the Court in Type D cases. Funds will not be used for any Private Defender attorneys, forensic investigation, expert testimony and administrative overhead.

Pursuant to Paragraph 3 of the Agreement, and at the request of the Association, the parties met and discussed the availability of the additional funds provided by the State of California Judicial Council. Members of the Superior Court Finance Division, the County Manager's Office and administrative staff from the Private Defender Program discussed various options for the disbursement of funds.

There was an agreement reached that the Private Defender Program would implement a plan, subject to the approval of the Board of Supervisors, in which the PDP would contract with qualified support personnel (no more than 2) to assist counsel with the investigation and reporting back on their clients. These services would include the following:

The PDP proposes to extend the contractual relationship with the social worker consultant currently under contract, and under the same terms, to assist the PDP dependency lawyers through investigation and reporting back to the PDP dependency lawyers on the following areas: Home visitations and clients' caregivers, whether necessary and appropriate services are being provided to clients, ensuring appropriate care and supervision is being provided in group home settings, assisting in identification of family placements for the minor, and investigating particular issues or concerns as they occur; and

The PDP proposes to enter into an additional contractual relationship with an educational consultant, under the same terms as the social worker consultant as described above. The educational consultant's duty pursuant to this proposal is to assist the PDP dependency lawyers through investigation and reporting back to the PDP dependency lawyers on the following areas: Ensuring clients are receiving an appropriate educational placement in the Least Restrictive Environment, whether necessary and appropriate specialized academic instruction and related services are being provided to clients, ensuring clients are being appropriately identified and assessed for special education services through the IDEA and Section 504 of the ADA, and providing training for dependent attorneys in educational matters.

The process of funding, which was agreed upon by the parties, is to reimburse the PDP for direct costs associated with the Social Worker and the Educational Consultant. The Social Worker shall be paid at a rate of \$75 per hour or \$112,500 annually (based on a maximum of 30 hours per week, 50 weeks per year). The

Educational Consultant shall be paid at a rate of \$100 per hour or \$200,000 annually (based on a maximum of 40 hours per week, 50 weeks per year).

Future calculations of the Type "D" per case rates for child representation will not include this enhancement. Those future calculations will only include attorney services, forensic investigation, expert testimony, and administrative overhead, and will be informed by existing and/or future time study data available from the Judicial Council of California and/or the attorneys participating on the Juvenile Private Defender Panel. The County will seek reimbursement from the Judicial Council for the Type "D" per case rate and direct costs paid to the PDP under this enhancement. This enhancement, as outlined above, becomes effective July 1, 2017.

The Private Defender Program will present to the County (via email) a monthly report of the fees and costs incurred for the contracted qualified support personnel, and the County will reimburse the Private Defender Program for these fees and costs.

Juvenile Dependency will terminate under this contract on June 30, 2018. The Court will enter into a separate agreement with the Private Defender Program for these services, which are a Court mandate, beginning July 1, 2018.

Services provided under this enhancement, except those Court mandated services specifically described in California Rules of Court, Rule 10.810 and Chapter 10 of the Family Law Code (§§ 3150-3153), will no longer be provided should the State of California terminate funding.