

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

THIS AGREEMENT, made and entered into this 1st day of July 2018, 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 delinquency cases, mental health cases, 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, '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. Effective July 1, 2018, both parties agree that Type D cases are the sole responsibility of the Superior Court for the County of San Mateo and that any unresolved cases become the responsibility of the Court.
- 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 this Section above, the County and the Association agree to continue to define the case as set forth in this Agreement.

3. COMPENSATION

The Compensation pursuant to this Agreement covers fixed-quarterly payments for one year, through June 30, 2019, and is renewable for an additional period of two years if the parties mutually agree, subject to the parties' Termination and Transition Services obligations as set forth in Section 7 herein. 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 this Section below) 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 advanced 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 used in the event of termination of this Agreement pursuant to Section 7. 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 has implemented some and partially implemented others of the financial reporting obligations as set forth in Section 4, as indicated by the Controller's follow-up audit, and until the Association implements fully and completely all of the financial reporting obligations as set forth in Section 4,, for the period commencing July 1, 2018 and ending June 30, 2019, the County shall pay the Association an amount of \$18,000,000, in quarterly payments of \$4,500,00 on the following dates: 07/01/2018; 10/01/2018; 01/01/2019;

04/01/2019 upon the full execution of this revised Agreement.. During the period of time between the full execution of this Agreement and June 30, 2019, 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, 2019, the County shall compare the monthly actual reports with the amount paid pursuant to this 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 \$18,000,000 for services provided through June 30, 2019.

- b. Except as specified in this Section below, the above-stated amount of compensation shall include all services for court appointments defined under Section 2, **CASE TYPES**, and for **SPECIAL LITIGATION CASES**, defined in this Section below, made during the period of the Agreement. With the exception of Type D cases, all cases appointed to the Private Defender Program prior to June 30, 2018, 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.
- c. 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.
- d. 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 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.

- e. The payments set forth in this Section 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.
- f. **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.
- g. **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 above, 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 Section 3 above until two weeks after the date upon which the Association delivers to the County the financial reports identified in Section 4; and (2) any delay by the County in making the quarterly payment to the Association pursuant to Section 3 above and 3.f resulting from the Association's failure to timely deliver the reports to the County as required by Section 4 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 has developed and circulated to all staff and private defenders a flowchart setting forth this complaint procedure, which includes information that clients may appeal to the County Manager if they are unsatisfied with the response to their complaint. If clients express an interest in appealing the matter further, the OD shall advise clients of their right to appeal to the

County Manager and provide contact information for that purpose. The OD will also advise clients that they may make a complaint with the State Bar of California, and include information of where to locate the State Bar's complaint form for that purpose. The OD will further advise the complainant 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* hearing¹, since the adequacy of the performance of counsel in court-appointed cases is ultimately for the Court to determine.² 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.³
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 the client with information concerning the lawyer's representation and the course criminal cases take in the San Mateo County Superior Court. 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. The client will also be provided information, both verbal and written, explaining the Private

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

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

³ 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.

Defender Program as well as a brief description of the process of a criminal case. The Private Defender Program has developed a brochure for this purpose, for both felony and misdemeanor cases. This brochure provides information to clients about the complaint process and shall be presented to each client at the initial arraignment on the case. A copy is attached hereto within APPENDIX C

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 to the other Party, in writing, of said intent to terminate the Agreement with an effective date of termination that is no earlier than twenty-four (24) months' later from the date of the Notice. In the event of termination by Notice pursuant to this Section, the County shall be responsible for any actual direct and indirect costs incurred by the Association during the Notice period of twenty-four (24) months. The Association will invoice the actual costs, of representation pursuant to this Agreement, to the County without any added charges, and the County will

reimburse the Association for approved actual costs reference in Appendix B within 45 days' receipt of an invoice.

- 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 and after the expiration of the 24 month Notice period: (i) the Association may immediately cease providing new Services hereunder; and (ii) 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 pursuant to this Agreement. The County agrees to pay the Association compensation for Services performed in connection with 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 the extent possible, to secure 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. 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 July 1, 2018 through June 30, 2020, 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 in effect until June 30, 2018.

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.

21. 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 June 26, 2018.

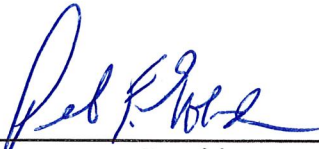
COUNTY OF SAN MATEO

BY _____
President, Board of Supervisors

ATTEST:

Clerk of said Board

SAN MATEO COUNTY BAR ASSOCIATION

By  6/26/18
President

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

FY 2018-2020

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**

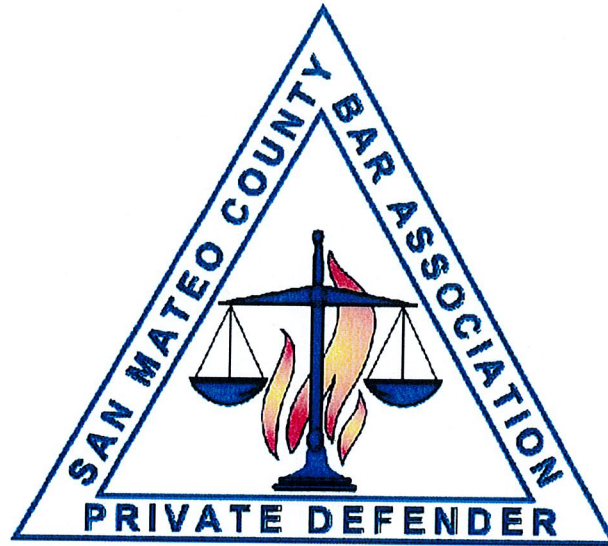
FY 2018-2020

APPENDIX B

FEE SCHEDULE

Effective July 1, 2018

San Mateo County Bar Association Private Defender Program



FEE SCHEDULE

Effective 1/1/18

(Revised 7/1/18)

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

C. NO PRELIMINARY HEARING IS HELD AND:

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
12. If a doubt is declared at any time before certification to Superior Court (See also Fee Schedule 10. A.)	\$250

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

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 case | \$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 case | \$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 and Restitution Court | \$170/hour |
| E. Specialty Court Calendars – preparation fee
(Drug Court, Treatment Court, Veterans and Military Diversion Court, Laura's Law Court, CAMI Court, DUI Court and Restitution Court) | \$135 |

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

A. FELONY CASES IN “LOWER COURT”

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
Case Fee plus hourly rate | \$325 fee
\$105/hour |
| E. Officer of the Day – half day/full day | \$215/\$430 |
| F. Witness Representation
Case Fee plus hourly rate | \$325 fee
\$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 may not be paid.

D. Non-Special Fee cases MUST NOT be billed until the case is completely closed. 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)

E. All Special Fee/Hourly Cases must be billed MONTHLY or bills may not be paid.

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
NOTE: 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

NOTE: 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 RESUSCITATE

- | | |
|-------------|-----------|
| 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

4. 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. \$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.
- F. \$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.
- G. \$105/hour** Applies to Gang Cases, Strike Cases that begin as Three Strikes but become Second Strike Cases, MDO, NGL extensions and outpatient extensions, and other cases that the Staff Attorneys determine are appropriately set at this rate.
- H. \$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.
- I. \$90 - 105/hour** Applies to all other cases that Staff Attorneys determines are appropriately set as special fee cases.

*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. On cases assigned before 7/1/18, case fee is billable prior to disposition.

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

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)

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 Representation of a minor where the client/minor has a potential civil claim.	\$100/hour
G. Juvenile Court Adoption- per hour	\$90/hour
H. Line-up	\$295
I. Officer of the Day- half day/full day Half Day is 8:30-12:00 or 1-:30	\$215/\$430
J. Sealing Fee is per client. If more is warranted attorney should request an Administrative Fee with explanation as to why extra fee is warranted.	\$110
K. Witness Representation – Case Fee plus Hourly Rate	\$325 \$105/hour
L. Miranda advice to in-custody 15 y.o. or younger minor [SB395] On-call 24 hours for consultation—non-holiday 24 hours On-call 24 hours for consultation—holiday 24 hours Consultation with 15 y.o. or younger minor [SB395] This fee covers travel to/from location of minor to be questioned and time spent doing the consultation.	\$250 \$500 \$135/hour
M. Miranda advice to minors requested by Juvenile Probation. This fee covers travel to/from location of minor to be questioned and time spent doing the consultation.	\$135/hour

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. \$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.
- 5. \$90-105/hour* Applies to all other cases that the Managing Attorney determines are appropriately set as special fee cases.

*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 may 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.

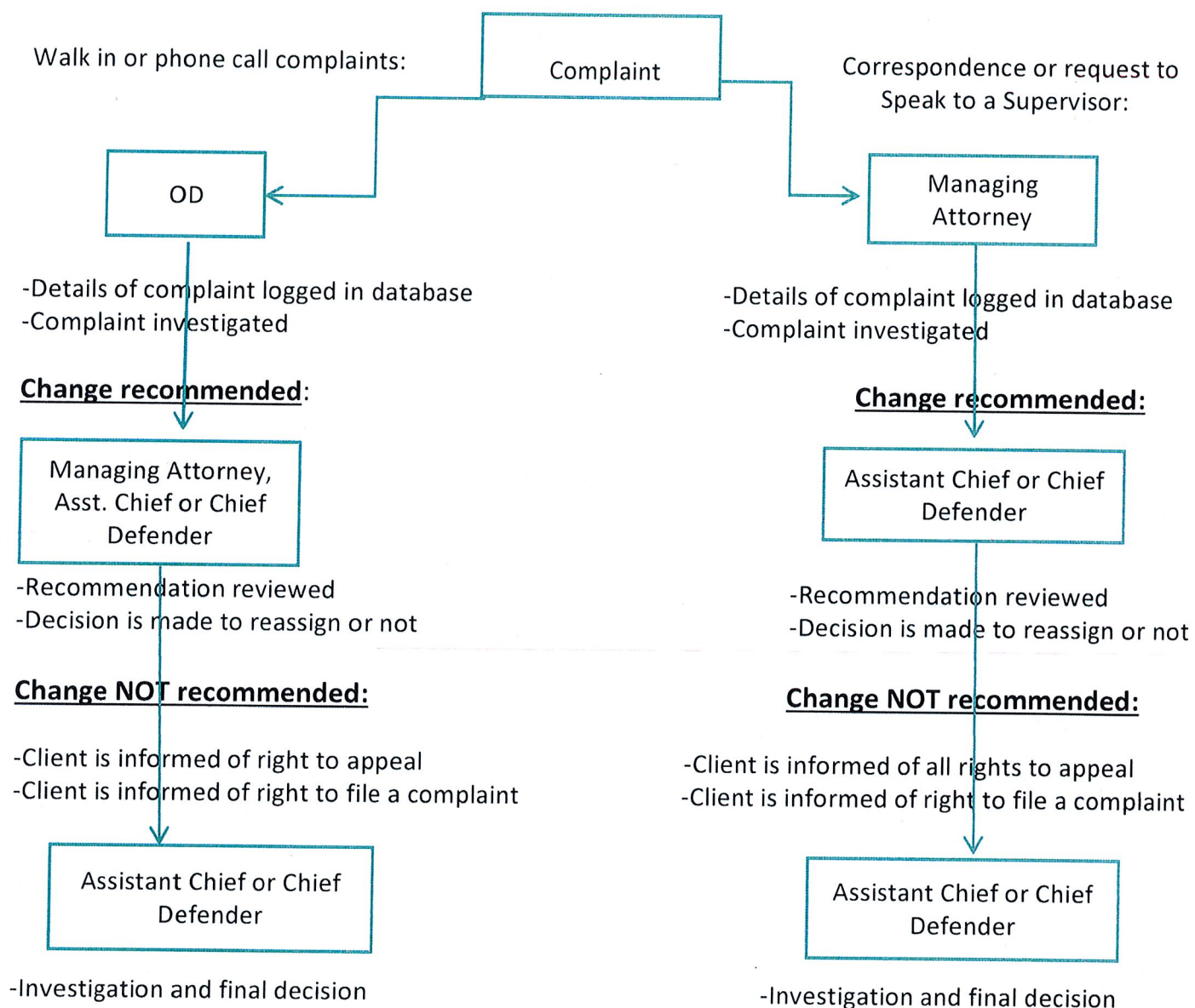
- 5/ Where the OD decides not to honor the client's request for a change of lawyers, he or she will inform the client of the right to present his or her argument to the trial court pursuant to the California Supreme Court's 1970 decision *People v. Marsden*.¹ In addition, the OD will inform the client 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.

¹ *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.

unreasonable. This is because, to intelligently exercise your constitutional right to a jury trial, you need to know all the options. You must not infer from this legal obligation to discuss offers that your attorney wants to do anything less than to provide you with full, fair and effective representation. Remember, the ultimate decision to accept or reject an offer is yours.

The preliminary hearing is the stage of the proceedings where the prosecution must establish that probable cause exists to believe that a crime was committed, and that you are the person who committed the crime. This is a very low standard and is generally shown by calling a minimal number of witnesses, or just a police officer to testify as to the investigation. Some forms of hearsay are admissible as evidence in a preliminary hearing. Seldom does the defense present any evidence at the preliminary hearing. Once the magistrate finds probable cause, you are held over to answer for a trial setting arraignment. The District Attorney will then file an Information. It is the Information that starts the trial proceedings in Superior Court.

The arraignment on the Information is generally set approximately two weeks after the preliminary hearing. These proceedings are held at the Hall of Justice in Redwood City in the courtroom of the Presiding Judge Criminal. At this arraignment, you have the right to set a trial date within sixty days. You may waive this speedy trial right and set a trial date out more than sixty days from the date of your arraignment.

There are two types of time waivers accepted by the court. The first is a time waiver to a specific date beyond the sixty days. The court requires such a waiver to be accompanied by an additional ten days should no courts be available on the date set. The other is called a general time waiver. This allows the court to continue the trial to any date in the future.

A pre-trial conference hearing date is set at the same time as the trial date. This hearing is set, on Monday or Tuesday afternoons, and generally at least two weeks before the trial date. It is set in the courtroom where the arraignment on the Information took place. At the pre-trial conference, your attorney, the District Attorney, and the Court will discuss your case. Offers, both as to the charge and the sentence, will generally be made at this time. Your attorney will discuss any offer made with you. Remember, as stated earlier, that your attorney must discuss the offer with you; it is his or her obligation. It is your decision whether to accept the offer or proceed to trial.

The Private Defender Program offices are open Monday through Friday, 8:30am-5:00 pm. There is an Officer of the Day available to receive calls or visits regarding any questions or complaints you may have about your case. All complaints will be thoroughly investigated, discussed with you and logged into the Private Defender database. If you are not satisfied with the outcome of that investigation, you will be able to appeal the decision. In that case, the appeals process will be carefully explained to you.

Felony Arraignment Date _____

PRIVATE DEFENDER PROGRAM

650-298-4000

[From JAIL dial: 1 # 21]

333 Bradford St., Ste. 200

Redwood City, CA 94063

Mon-Fri 8:30am-5:00pm

(closed Noon-1:00pm)

COURT DATES

_____ at _____ am/pm

_____ at _____ am/pm

IF YOU ARE IN CUSTODY: Call the Private Defender Program 2 or 3 working days from today during office hours. The receptionist can tell you the name and phone number of the attorney appointed to represent you. The attorney will come to visit you before the next court appearance.

IF YOU ARE OUT OF CUSTODY: Call the Private Defender Program a week from today during office hours. The receptionist can tell you the name and phone number of the attorney appointed to represent you. It is your duty to contact the attorney and set up an appointment.

My Attorney's Name: _____

Phone Number: _____

THE PRIVATE DEFENDER PROGRAM

6/18/2018

Every person charged with a felony offense has the right to be represented by an attorney at all stages of the criminal proceedings. If you cannot afford to hire an attorney the court will appoint the Private Defender Program to represent you.

The Private Defender Program consists of a panel of private attorneys dedicated to the practice of criminal defense work. Once the court appoints the Private Defender Program, an experienced criminal attorney will be assigned to help you defend your case. The Private Defender attorneys work with a panel of well-trained, experienced investigators, interpreters and experts in a variety of fields to provide the most complete approach to your defense.

Once the Private Defender has been appointed and a plea of not guilty entered, it will be important for you to contact the Private Defender Program, find the name of your assigned attorney, and schedule an appointment for an interview. If you are not in custody, be sure to bring to your interview all documents, photographs, names, addresses and telephone numbers of witnesses, and any other paperwork that is relevant to your case.

If you are in custody at the arraignment you can request a supervised release or the setting of a reasonable bail, based on your ability to pay. The judge will also review other factors related to risk of flight or any possible danger to the community in order to decide whether to grant such a request.

If the judge sets a bail amount in your case you can be released from custody by

posting cash bail or by arranging for a bail bond to be posted. Information on how to contact a bail bonds agency is located in the San Mateo County Jail.

If you remain in custody, your attorney will visit you at the jail for an interview. You may also call your attorney's office "collect" from the jail. If he or she is in the office and able to take your call, the collect call will be accepted and your attorney will speak with you about your case.

FELONIES

A felony is any criminal charge that can, upon conviction, result in a sentence of more than a year, served in the County Jail or in state prison. The District Attorney through the filing of a Complaint usually initiates a felony case. The first court hearing on a felony Complaint is the arraignment.

At the arraignment, you are informed of the charges, advised of constitutional rights, custodial status is determined, and the procedural steps the case will follow are set. It is at the arraignment that you are first provided a copy of the Complaint. The Complaint is a paper listing the criminal charges filed against you. You will then be informed of your statutory and constitutional rights.

Formal arraignment usually involves acknowledging receipt of the Complaint, waiving formal reading of the Complaint and being read your statutory and constitutional rights, entering a plea of not guilty, and setting the matter for preliminary hearing

and if your case meets certain criteria, for a Superior Court Review (early disposition calendar). There is a statutory right to a preliminary hearing within ten court days from the date of the arraignment. This date can be set out further, but only with waiving, or giving up, the statutory time limit.

Discovery, or information pertaining to physical evidence and statements of witnesses, will be obtained by the attorney and reviewed with you. An investigation will be conducted, if necessary, by experienced investigators, to locate and interview witnesses. It is of great importance for you, the client, to provide complete names, addresses, and phone numbers of potential witnesses. Your case will also be reviewed for any appropriate motions that need to be made.

The Superior Court Review, if your case is one that qualifies for this hearing, is the stage of the case where some cases reach an early resolution. The District Attorney, the Court, and your attorney discuss your case and offers of settlement are made. Your attorney will discuss any offers made with you. It is important to remember that your attorney must discuss the offer made, even if the offer is rejected by you or is otherwise

Jury Trial

You have the right to a Jury Trial where twelve jurors decide if you are guilty or not guilty. You can also choose to have a Court Trial where the Judge alone decides the outcome. Your lawyer will provide you with complete and diligent legal representation throughout the entire legal process, including your trial.

Sentencing

Practically all sentences for misdemeanors include formal or informal probation, a fine, community service, time on a work program, or in some instances, time in custody.

Convictions for some offenses will affect your driving privileges or immigration status and some convictions have long-term registration requirements. Be sure to listen carefully to your lawyer and ask him or her questions about how a plea of guilty or no contest will affect you.

Questions or Concerns:

The Private Defender Program offices are open Monday through Friday, 8:30am-noon and 1:00-5:00pm. There is an Officer of the Day available to receive calls or visits regarding any questions, concerns or complaints you may have about the handling of your case

All complaints will be thoroughly investigated, discussed with you and logged into the Private Defender database. If you are not satisfied with the outcome of that investigation, you will be able to appeal the decision. In that case, the appeals process will be carefully explained to you.



Misd. Arraignment Date _____

PRIVATE DEFENDER PROGRAM

333 Bradford Street, #200
Redwood City, CA 94063

650-298-4000

Mon-Fri 8:30-5:00 pm (closed noon-1:00)

COURT DATES

_____ at _____ am/pm

_____ at _____ am/pm

IF YOU ARE IN CUSTODY: Call the Private Defender Program (#210 from jail) 2 or 3 working days from today during office hours. The receptionist can tell you the name and phone number of the attorney appointed to represent you. The attorney will come to visit you before the next court appearance.

IF YOU ARE OUT OF CUSTODY: Call the Private Defender Program a week from today during office hours. The receptionist can tell you the name and phone number of the attorney appointed to represent you. It is your duty to contact the attorney and set up an appointment.

My Attorney's Name: _____

Phone Number: _____

The Private Defender Program

The Private Defender Program is operated by the San Mateo County Bar Association under a contract with the County of San Mateo. All Private Defenders are experienced criminal lawyers, licensed to practice law in California.

Private Defender lawyers work with well-trained, experienced investigators and experts in a variety of fields. Every person charged with a misdemeanor has the right to be represented by an attorney at all stages of the criminal proceedings. If you cannot afford an attorney, the San Mateo County Superior Court will appoint the Private Defender to represent you.



The Court Process for Misdemeanors

A misdemeanor is a criminal charge that can carry a maximum sentence of up to one year in the county jail and/or a fine of up to \$1,000, plus penalty assessments. Conviction of a misdemeanor can have serious consequences. Therefore, any person charged with a misdemeanor offense should consult with an attorney prior to proceeding with their case.

If you are arrested for a misdemeanor and held **in custody**, you will be brought to your first court appearance within 48 hours of your arrest.

If you were released on a citation or you posted bail and are **not in custody**, you will have been

given a date, time and place for your first court appearance.

Arraignment

The first court appearance is called the Arraignment. During the Arraignment:

- You are informed of the charges against you.
- You are given a copy of the Complaint listing the charges against you.
- You are advised of your constitutional rights.
- You can apply to have the Private Defender Program represent you.
- You enter a plea of not guilty.
- The Court will set a date for a Pre-Trial Conference and a Jury Trial.

Bail or Release on Own Recognizance

If you are in custody, the Private Defender lawyer in court will request you be released on your "own recognizance" or that the court set a reasonable bail – money or some form of property posted with the court in exchange for your release. Information on how to contact a bail bond agency is located in the Maguire and Maple Street Correctional Facilities.

Contacting your Private Defender Lawyer

Within a few days of your Arraignment, a specific lawyer will be assigned to your case. You can learn the name and contact information for your lawyer by calling the Private Defender offices during business hours. It is very important for you to work with your lawyer to achieve the best outcome for your case.

If you are in custody, your lawyer will visit you in the jail before your next court date. **You should not discuss your case on the phone with anyone.** All phone conversations within the jail are recorded and what you say may be used against you in Court.

If you are not in custody, you should arrange to meet with your lawyer before your next court date. You may be asked to provide the names and contact information for potential witnesses. Your lawyer will request investigation and prepare pre-trial motions, as needed. These might include motions to keep evidence out of court, limit the use of certain evidence or to dismiss the charges before trial.

Pre-Trial Conference

At a Pre-Trial Conference, your lawyer will meet with the District Attorney and a Judge to discuss a possible settlement of your case. Your lawyer will present your side of the case in an effort to reduce the charges or the possible sentence. Your lawyer is required to present any offer to settle the case to you, even one you may consider to be unreasonable. You should discuss the offer with your attorney but remember that you have the final decision as to whether you wish to accept or reject the offer. If the offer is rejected your case will be confirmed for trial.

If you enter a plea of guilty or no contest you will usually be sentenced immediately. As a general rule, you will have to complete and sign a "Change of Plea and Waiver of Rights" form prior to entering your plea. Be sure you carefully read and understand this form