

**PLACER COUNTY INDIGENT CRIMINAL DEFENSE
ASSIGNED COUNSEL AND OTHER EXPERTS
PROGRAM**



**POLICIES & PROCEDURES
FOR
ASSIGNED COUNSEL**

(Revised September 14, 2015)

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1.0 Background:

1.1 Pursuant to Penal Code Section 987.2, the County is obligated to pay for the costs associated with the representation of indigent defendants in certain case types. Indigent defendants are initially referred to the Public Defender, but are subsequently referred to the Conflict Defender if a conflict of interest presents itself. Representation by the conflict attorney in indigent criminal cases ranges from first appearance date and pleas to re-trials, preliminary hearings, and jury trials. The cases for which conflict attorneys may be appointed include misdemeanors, felonies, LPS Conservatorship and other matters where juvenile and adult indigent legal services are allowed by law.

1.2 When Placer County's contracted primary Public Defender and first and second level conflict firms must declare a legal conflict of interest, the Assigned Counsel Program establishes a process which enables the Superior Court of California, Placer County (herein referred to as "the Superior Court" or "the Court") and appoint an attorney from a list of pre-qualified attorneys to provide defense services.

1.3 The following procedures shall be used in fixing, invoicing and reimbursing allowable fees for attorneys appointed by the Court to represent individuals who are unable to employ counsel and who cannot be represented by the primary Public Defender firm, or the conflict firms, or attorneys who are otherwise appointed by court order.

2.0 Application Process:

2.1 Membership in Placer County's Conflict Indigent Defense Panel of Attorney's:

A. Application and certification for attorney participation :

1. Attorneys who wish to participate in the Assigned Counsel Program are asked to first submit a letter of interest to the Court. Those who are subsequently asked to participate, must submit a resume with their area of specialty including their California State Bar Number.
2. Resumes and any pertinent documentation should be sent and addressed to the Presiding Judge at the Superior Court P.O. Box 619072, Roseville, CA 95661-9072. Attention: Presiding Judge
 - i. Applications submitted are then reviewed by the Presiding Judge and other members of the Bench. Those accepted in as an Assigned Counsel Program attorney will be notified by mail. Attorneys will be appointed to one of four class levels, pursuant to Superior Court of California, Placer County Local Rules (Rule 60.1). For a description of the class levels see the table listed in section 3.2. Maximum Hourly Compensation Rates.
3. Once appointed (and if a County vendor number has not been assigned – the vendor # is located on the County check stub), the attorney must complete an [IRS form W-9](#) and a [State CA-590](#) form (available online and through hardcopy via packet), and submit those forms to the Placer County Auditor-Controller, 2970 Richardson Drive, Auburn, CA 95603. Submitting the [IRS form W-9](#) and [CA-590](#) is required only once every two years to establish the attorney as a vendor doing business with Placer County.
 - i. California nonresidents, corporations, limited liability companies, and partnerships that do not have a permanent place of business in California are

subject to state income tax withholding (California Revenue and Taxation Code 18662).

- ii. Nonresident providers are also required to complete and submit a California [Form 587](#) (Nonresident Withholding Allocation Worksheet), or [Form 588](#) (Withholding Waiver Request) or [Form 590](#) (Withholding Exemption Certificate). These forms are downloadable from IRS and California Franchise Tax Board websites or vendors may contact the Placer County Auditors/Controllers Office at (530) 889-4160 to request a mailing.

- B. Application and certification Investigators representing pro per clients participation :
 1. Investigators representing pro per clients shall follow the outlined procedure for application process listed in section 2.1 Membership.
 2. Investigators representing pro per clients shall follow the outlined procedure for compensation listed in section 3.1 Payment.

Note: Requests for specific exemptions from the requirements must be made to the Presiding Judge. [Effective date 7/01/2015]

3.0 Attorney Compensation:

3.1 Payment:

- A. To receive payment for services on a case-by-case basis through the Placer County Assigned Counsel Program, the attorney must complete a [Payment Voucher](#).
 1. Requests for payments must be submitted on the proper form and comply with current processes. Any other requests for payment form will be rejected. [Effective 7/1/08]
- B. Procedures for Payment Voucher Submittal:
 1. All attorney claims must be submitted in writing for approval to the Court department where the case is located (Pursuant to Penal Code § 987.9).
 2. All experts shall submit their claims, for approval, to the attorney defending the case, who will then forward claims to the County. Investigators acting for pro per clients shall receive their authorization from the judge presiding over the case.
 3. Approved vouchers with ***an original signature*** must be submitted to:
 - i. Placer CEO – Fiscal Unit Attn: Indigent Defense Program Accounts Payable
175 Fulweiler Avenue, Auburn, CA 95603.
 4. Written court orders specific to services rendered and maximum amount of funding available (with the exception of attorneys) must be attached to the Payment Voucher and invoice. Invoices and receipts for miscellaneous expenses must be original – **photocopies are unacceptable**.
 5. *A copy of the Court’s Minute Order must be attached to the Payment Voucher* (transcripts must be in the court order).
- C. Payment Frequency:
 1. Application for payment of attorney fees shall ordinarily be made at the time of the final court disposition, or no more often than *monthly* for those attorneys who are carrying multiple Placer County Cases.

2. Upon special application to, and approved by the Court, pre-trial interim fees may be reimbursed in cases involving the death penalty or life without parole, or in exceptionally complex or lengthy cases. However, no pre-trial interim authorization for, and payment of, fees shall exceed monetary values unless expressly increased in the interest of justice. [Effective date 1/1/06]

D. Invoice:

1. Original invoices for services must be written on a unique letterhead and detailed to include-
 - i. Name of Vendor, address and phone #
 - ii. An invoice date and case #
 - iii. Billed to Placer County
 - iv. Breakdown of time by the tenth of an hour
 - v. Descriptions of work sufficient to substitute billing amounts relevant to the case complexity and degree of skill and effort in handling the matter, to include:
 - a. Interviews and conference with client
 - b. Witness interviews
 - c. Consulting with investigators and experts
 - d. Obtaining and reviewing documents and other evidence
 - e. Legal research and writing
 - f. *Mileage expense per IRS rate at the time of service
 - g. Work timeline
 - h. Other work

*Attorney and other experts may bill for mileage at the current county approved rate but cannot bill for travel time unless an exception is stated in the application court order. Due to the nature of the work, investigators and interpreters may bill for reasonable travel time and mileage costs. Proof of mileage shall be provided through a print-out travel route from a web mapping service.

3.2 Maximum Hourly Compensation Rates:

SCHEDULE OF REIMBURSABLE HOURLY RATES FOR PUBLIC DEFENDERS ASSIGNED TO A CRIMINAL CASE	
Schedule of Cases	Maximum Compensation
Class 1 (Class A-2 Felonies): All capital and non-capital homicides, and all offense having a sentence of life or life without possibility of parole, or in the discretion of the Courts, an aggregate state prison sentence of thirty (30) years or more.	\$75.00
Class 2 (Class B Felonies): All crimes for which the upper term of the punishment is five (5) years or more, but less than Class 1.	\$65.00
Class 3 (Class C Felonies): All other felonies and juvenile matters.	\$60.00
Class 4 (Misdemeanors): Misdemeanor and Civil cases.	\$50.00

3.3 Fees and Expenditures:

The Court shall allow attorney's fees and costs for services rendered and expenditures made by counsel properly appointed in criminal, juvenile, or other matters while such matters are pending before the Court. Such fees shall not include time spent traveling from one location to another. [Effective 1/1/06]

A. Application for fees and expenses:

1. Application for investigations fees and expense shall be made in writing as follows:
 - i. To the judge of the department to which the case has been assigned
 - ii. To the judge of the department to which the matter has been referred pursuant to Penal Code § 987.9;
 - iii. In all other cases to the Presiding Judge.
2. Amount of fees:
 - i. Non-Capital or Life-Sentence Cases:
 1. The initial application shall not exceed the sum of \$1,000.00. Additional applications may be made upon showing that further investigation is necessary in an amount not to exceed \$500.00 per application. All additional applications shall be approved by the Judge on the assigned case.
 - ii. Capital and Life-Sentences Cases:
 1. Applications for fees in capital cases shall be governed by the provisions of Penal Code § 987.9. The initial application for capital and life-sentence cases shall not exceed \$3,000.00. Additional application may be made upon a showing that further investigation is necessary in an amount not to exceed \$1,000.00 per application. All additional applications shall be approved by the Judge on the assigned case.
3. Claims for Payment:
 - i. At the close of a case in which investigation expenses have been authorized under Penal Code Section 987.9, the attorney shall report to the authorizing judge the actual expenses incurred. The report shall be in writing and shall show the expenditures distributed within the following categories:
 - a. Witness Fees
 - b. Court Appointed Counsel
 - c. Doctors
 - d. Investigators
 - e. Professional Special Services
 - f. Travel and Transportation
 - ii. Submission of claims:
 1. Claims for investigation fees and expenditures shall be made on a form approved by the Court. A copy of the court order awarding fees, as well as a detailed accounting of all claimed fees and expenses must be attached. The attorney of record shall certify the accuracy of the claim and appropriateness of the fees incurred. The claim shall be submitted to the Court's Finance Division for subsequent approval.

2. Claims for services in adult and juvenile cases shall be submitted with all necessary supporting documentation.
 3. Dates of activity must specify month, day and year.
 4. Mathematical errors, incorrect rates or activity categories, will be automatically corrected without notice to attorney.
 5. The statement of the nature of the case shall include sufficient information for the reviewer to determine the appropriateness of the amount claimed, and must include a brief factual description and current case status.
 6. Should the class of the offense change prior to the completion of the case, separate claims shall be submitted for each offense class reflecting the dates of activities at the appropriate rates for each class. In the event of a plea to a lesser charge, that charge won't be deemed to take effect until all representation has concluded. All offenses charged must be specifically identified on the claim.
4. Application for the Payment of Fees and Costs - Procedures and Exceptions:
- i. Application for payment of such fees and costs shall ordinarily be made at the time of the final court disposition of the proceeding in which court-appointed counsel served, or within a reasonable time thereafter. [Effective date 1/1/11] For details see Section 3.1(C) of this document.
 - ii. Application for fees and costs shall be submitted to the Court for subsequent approval by the department which approved the assignment. [Effective date 7/1/08]
 - iii. The Court may allow a reasonable alternative hourly fee, in consideration of the nature and complexity of the case and the degree of skill and effort required of counsel. [Effective date 7/1/05] In all cases, and provided that requisite invoice complies with current procedures, the final fees allowed shall be determined on the nature and complexity of the case and the degree of skill and effort in handling the matter. The Court may adjust fee claims in accordance with the herein stated standard. [Effective date 7/1/08] For details see Section 3.1(B) of this document.
 - iv. Attorneys and other experts may bill for mileage at the IRS rate but cannot bill for travel time unless an exception is stated in court order. [Effective date 7/1/05] For detail see Section 3.1(E) of this document.

3.4 Case Transfer to Another County:

- A. In the event that an attorney appointed by this Court must appear in a court of another county on a case transferred from this Court, the attorney shall be entitled to reasonable travel and living expenses necessarily incurred in connection with appearances in the court of the other county. Unless pre-approved in writing by the Presiding Judge in advance, the attorney shall: not be reimbursed for time spent traveling; travel by private automobile, and reimbursed for necessary mileage at the rate allowed by the County of Placer at the time of travel. In no event shall the

attorney seek payment of fees for the time spent by the attorney while traveling. [Effective date 7/1/05]

- B. The attorney’s living expenses will be allowed at the rate provided by the Judicial Council of California. [Effective date 7/1/05]
- C. Any requests for reimbursement of travel or living expenses shall be made by written declaration and submitted to the Presiding Judge. All requests for such reimbursement shall at least include a complete inventory of costs and expenses, with all applicable original receipts attached. [Effective date 7/1/08]

4.0 Categories of Crimes and Qualifications:

4.1 Minimum Eligibility Requirements by Classification:

Categories of Crimes or Other Matters	
Schedule of Cases	Minimum Eligibility Requirements
<p>Class 1 (Class A-2 Felonies): All homicides, whether capital or non-capital, and all offense having a sentence of life or life without possibility of parole, or in the discretion of the Courts, an aggregate state prison sentence of thirty (30) years or more.</p>	<ul style="list-style-type: none"> • Certified criminal law specialist or equivalent.
<p>Class 2 (Class B Felonies): All crimes for which the upper term of the punishment is five (5) years or more, but less than Class 1.</p>	<p>Those who, as chief counsel:</p> <ul style="list-style-type: none"> • Have handled twenty (20), or more, cases.* • Five (5) of which were submitted to a jury for decision. • Five (5) of which included contested Superior Court factual hearings such as Penal Code Section 1583.5 or Penal Code Section 995 motions. • And the remainder of which proceeded to disposition. <p><i>*A maximum of ten (10) juvenile cases charged as felonies may be counted toward the requirement of the twenty (20) cases.</i></p>
<p>Class 3 (Class C Felonies): All other felonies and juvenile matters where petition seeks jurisdiction under Welfare and Institutions Code Sections 300, 601, and 602.</p>	<p>Those who, as chief counsel:</p> <ul style="list-style-type: none"> • Handled five (5) felonies, all of which proceeded to disposition. • Or twenty-five (25) cases charged as a misdemeanor, all of which proceeded to disposition. • Any two (2) felony or misdemeanor cases submitted to a jury for decision and any two (2) of which included a contested factual hearing under Penal Code Section 1583.5.
<p>Class 4 (Misdemeanors): Misdemeanor and Civil cases.</p>	<ul style="list-style-type: none"> • Each member of the panel must be an active member in good standing of the State

	Bar of California. For the purposes of these rules, “good standing” shall mean no record of any discipline, including but not limited to probation, suspension, and disbarment; or failure to pay State Bar dues, within the preceding twelve (12) months.
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- A. Upon a proper showing, a person may be eligible for class by virtue of showing of equivalent experience as determined by the Presiding Judge. Notwithstanding that an attorney meets the minimum qualifications for a particular class; the Court may exercise its discretion in assignment of any particular attorney to a particular case. [Effective date 7/1/03]

5.0 Attorney Case Assignment Restrictions:

5.1 An attorney shall be prohibited from receiving assignments to Conflict Criminal Defenders cases if any of the following occur:

- A. The attorney has been suspended, disbarred or has resigned from the State Bar.
- B. Cancellation of lapse or Errors and Omissions liability insurance.
- C. As a result of recommendation made by the Indigent Defense Panel Committee.
- D. Resignation from the Indigent Defense Panel.

5.2 Regardless of an attorney’s status on the Indigent Defense Panel, the Court may refuse to assign Conflict Criminal Defender cases to an attorney, either temporarily, or permanently, for good cause. Good cause includes, but is not limited to, the following:

- A. Conviction of a criminal charge involving moral turpitude.
- B. Falsification of any material statement made to qualify for Indigent Defense Panel or made in connection with or and/or in any report, authorization requests, and/or claim submitted to Conflict Criminal Defenders by the attorney.
- C. Failure to maintain eligibility and qualifications under these rules.
- D. Failure to comply with the State Bar Act or the Rules of Professional Conduct.
- E. Failure to abide by the Local Rules of the Court.
- F. Failure to comply with Indigent Defense Program rules.
- G. Conduct that the Court deems inappropriate;
- H. Failure to personally represent the client at substantive court proceedings.
- I. Inability to function as an effective criminal defense attorney.
- J. Referring Conflict Criminal Defender cases to other attorneys, or subcontracting to other attorneys.
- K. Maintaining a caseload that interferes with the rendering of quality representation or leads to the breach of ethical obligations to clients.
- L. Failure to represent clients with professionalism, competence, and diligence.

- M. Failure to sign and return the State Bar of California Attorney Guidelines of Civility & Professionalism Attorney Pledge [Effective date 1/1/08]
 - N. For removal from the list, a formal written letter addressed to the Presiding Judge of the Court is required.
 - O. The onus is on the attorney to notify the judge presiding over the case in the event of disbarment.
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*For more information regarding forms and payment, please contact the Assigned Counsel, Indigent Defense staff with the County Executive Office at 530-889-4030

Attorneys who participate in the assigned Counsel Program perform an important and necessary role in the legal system. Placer County officials, the Superior Court of California, Placer County, and its citizens appreciate their efforts.