



CITY MANAGER'S OFFICE MEMORANDUM
#34-2022

DATE: May 23, 2022

TO: Honorable Mayor Meredith Leighty and City Council Members

THROUGH: Heather Geyer, City Manager 

FROM: Jason Johnson, Municipal Court Supervisor
Rupa Venkatesh, Assistant to the City Manager 

SUBJECT: CR-93 – State of Colorado Office of Alternate Defense Counsel IGA

PURPOSE

To consider CR-93, a resolution approving an Intergovernmental Agreement (IGA) with the State of Colorado Office of the Alternate Defense Counsel (OADC) for providing representation for indigent defendants in criminal and traffic cases. This agreement would be effective until Dec. 31, 2022.

BACKGROUND

Defendants who are indigent, in or out of custody, can qualify for court-appointed counsel. If defendants qualify, they are afforded representation at no cost to them. Since August 2018, the Municipal Court has contracted with Flesch and Beck Law to provide this service. The last contract with this firm expired in December 2021. Currently, the Municipal Court is operating on a month-to-month basis and the City is billed a flat fee for services regardless of how much time is utilized. Staff is recommending the City partner with the Office of Alternate Defense Counsel to improve service provided to individuals needing court-appointed counsel.

The Office of Alternate Defense Counsel

To provide appropriate legal rights to defendants, the Municipal Court must provide a consistent service to the indigent population. The process of determination of indigent defendants can be found in Attachment 1 to this memorandum. The OADC Municipal Court Program operates pursuant to Colorado statute and was created to ensure that indigent defendants charged with a municipal ordinance violation carrying any possibility of incarceration are represented by independent and constitutionally adequate counsel.

OADC lawyers apply to be a part of this program by going through an evaluation process with the Municipal Court Program. They are re-evaluated formally every three years or more frequently based on feedback from municipalities. If the lawyer is approved by the OADC, they are placed on an "approved list" from which municipalities choose. The Municipal Court Program finds the best match for Northglenn based on criteria determined by the needs of the Municipal Court (dates, rate of pay, services provided, in-person or virtual hearings, etc.).

Currently, Westminster and Thornton municipal courts are utilizing this program and staff has received positive feedback about the service they are receiving.

BUDGET/TIME IMPLICATIONS

The contract amount is \$15,000 and funding is available in the 2022 Budget. The IGA agreement will bill the Municipal Court on an hourly basis contrary to the flat fee utilized in recent years.

If approved, the agreement would continue until Dec. 31, 2022, or the expiration of maximum funds allowed. There is the possibility to extend the IGA should the program prove to be successful.

STAFF RECOMMENDATION

Staff recommends approval of CR-93, a resolution that, if approved, would authorize the Mayor to execute the State of Colorado Office of Alternate Defense Counsel Intergovernmental Agreement on behalf of the City.

STAFF REFERENCE

If Council members have any questions, please contact:

- Jason Johnson, Court Supervisor, at jjohnson@northglenn.org or 303.450.8703
- Rupa Venkatesh, Assistant to City Manager, at rvenkatesh@northglenn.org or 720.376.8069

ATTACHMENT

1. Exhibit A - Appointment of State-Funded Counsel

SUPREME COURT OF COLORADO**OFFICE OF THE CHIEF JUSTICE****APPOINTMENT OF STATE-FUNDED COUNSEL IN
CRIMINAL CASES AND FOR
CONTEMPT OF COURT**

This policy is adopted to assist the administration of justice with respect to the appointment of counsel in criminal cases pursuant to Titles 16 and 18 and for the appointment of counsel to an indigent person cited for contempt where a jail sentence is contemplated. This policy does not cover appointments made for juvenile delinquency cases pursuant to Title 19, except to the extent necessary to address appointments made prior to November 1, 2014 for which the Judicial Department is responsible for payment of counsel. For appointments of counsel for juvenile delinquency cases after November 1, 2014, see Chief Justice Directive 14-01.

I. CONSTITUTIONAL AND STATUTORY AUTHORITY

- A. The federal and state constitutions provide that an accused person has the right to be represented by counsel in criminal prosecutions. This constitutional right has been interpreted to mean that counsel will be provided at state expense for indigent persons in all cases in which actual incarceration is a likely penalty or there is a waiver of the right to counsel at the advisement.
- B. State funds are appropriated to the Office of the Public Defender to provide for the representation of indigent persons in criminal cases pursuant to §21-1-103, C.R.S. (2014).
- C. State funds are appropriated to the Office of Alternate Defense Counsel to provide for the representation of indigent persons in criminal cases in which the Public Defender declares a conflict of interest pursuant to §21-2-101, C.R.S. (2014).
- D. Prior to November 1, 2014, Section 19-2-706(2), C.R.S. (2014), provided for the representation of juveniles in delinquency cases in which (1) the parent or legal guardian refused to retain counsel for the juvenile, or (2) the court found such representation was necessary to protect the interest of the juvenile or other parties involved in the case. When such an appointment was necessary and the juvenile did not qualify for representation by the Public Defender or the Office of Alternate Defense Counsel, the Judicial Department was authorized to pay for the costs of counsel and investigator services. House Bill 14-1032 established that, effective November 1, 2014, the Public Defender or OADC if there is a conflict, shall be appointed to represent juveniles in such cases. Reimbursement to the state is authorized for parental refusal, as outlined in §19-2-706(2)(b), C.R.S. and Chief Justice Directive 14-01.
- E. Colorado Rules of Civil Procedure 107 and 407 provide for the appointment of counsel to an indigent person cited for contempt where a jail sentence is contemplated. If the court appoints private counsel to prosecute a contempt action or to represent an indigent party for contempt charges, the Judicial Department will pay for counsel, as there is no statutory authority for the

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Public Defender or the Alternate Defense Counsel to represent clients for the sole purpose of addressing contempt charges.

II. INDIGENCY DETERMINATION – OUT OF CUSTODY

- A. All parties requesting court-appointed counsel pursuant to this Chief Justice Directive must be indigent to be represented at state expense, except as otherwise provided in section III. Such person(s) must also be indigent or otherwise qualify for court-appointed counsel as described in Section IV for the court to authorize the payment of certain costs/expenses. Any party requesting court-appointed representation on the basis of indigency must complete Form JDF208, Application for Public Defender, Court-Appointed Counsel or Guardian ad Litem, signed under oath.
- B. An indigent person is one whose financial circumstances prevent the person from having equal access to the legal process (Attachments A, B, and C).
- C. Pursuant to §21-1-103 (3), C.R.S., the initial determination of indigency in criminal cases shall be made by the Public Defender subject to review by the court. Therefore, all persons seeking court-appointed representation in criminal matters shall complete form JDF208 and shall first apply with the Office of the Public Defender. In all matters described in Section IV.C of this Directive, the party must complete form JDF208 and submit it to the court for approval.
- D. In all cases, the court retains jurisdiction to determine whether the person is indigent based on all the information available. Upon receipt of the finding by the Public Defender on the issue of eligibility for representation in accordance with the fiscal standards, the court shall review the person's application for Public Defender, including any requests for exception to the determination of the Public Defender. Based on a review of all information available, the court shall enter an order either granting or denying the person's request for appointment of the public defender. The court may use the judicial district's Collections Investigator(s) to provide a recommendation to the court relative to the above determinations, if additional analysis is needed.
- E. If the court finds the person indigent and appoints counsel at State expense, the court may consider ordering the person to make reimbursement in whole or in part to the State of Colorado pursuant to law using the process described in Section VI. of this Chief Justice Directive.
- F. An attorney or other person appointed by the court on the basis of a person's inability to pay the costs of the appointment shall provide timely notice to the court in the event financial related information is discovered that would reasonably call into question the person's inability to pay such costs. The court shall have the discretion to reassess indigence, and for purposes of possible reimbursement to the state, the provisions of Section VI. of this Chief Justice Directive shall apply. Based upon a reassessment of a party's financial circumstances, the court may terminate a state-paid appointment, require reimbursement to the State of Colorado of all or part of the costs incurred or to be incurred, or continue the appointment in its current pay status.

III. INDIGENCY DETERMINATION – IN CUSTODY AND CANNOT POST/IS NOT ALLOWED BAIL

If a person is in custody and cannot post or is not allowed bail, the Public Defender, or Alternate Defense Counsel if the Public Defender has determined that a conflict exists and has notified ADC that conflict representation is necessary, may automatically elect to represent that person and will notify the court, either verbally or in writing, of the circumstances. The person need not complete a JDF208 until and unless the person is released from custody. If the person is released from custody, then all provisions under Section II, Indigency Determination – Out of Custody, apply.

IV. GUIDELINES FOR APPOINTMENT OF COUNSEL

A. Appointment of Public Defender

1. Appointments on the Basis of Indigency: To be eligible for representation by the Public Defender (PD), a defendant must be indigent **or eligible for automatic representation**, as defined above and determined by the PD, subject to review by the court. If such person is indigent **or is eligible for automatic representation**, the court shall appoint the PD, except as otherwise provided in paragraph IV.B.
2. Appointments to Assist in Motions Under Rule 35 of the Colorado Rules of Criminal Procedure: An indigent defendant may be entitled to representation by the PD to assist in motions under Rule 35 if the court does not deny the motion under Crim. P. 35(c)(3)(IV). If another attorney represents the defendant and withdraws, the PD may be appointed if the defendant is indigent and there is no conflict with such representation.
3. Appointments for Appeals:
 - a. The court or the PD shall reassess the indigency status of a defendant who requests court-appointed counsel, as described in Section II.A., for purposes of appeal.
 - b. When an indigent person has an Alternate Defense Counsel attorney for the trial of a criminal case, the PD shall be appointed to represent the defendant on appeal unless the court determines that the PD has a conflict of interest.

B. Appointment of Alternate Defense Counsel

The Office of Alternate Defense Counsel (OADC) shall maintain a list of qualified attorneys for use by the courts in making appointments. Upon appointment of an Alternate Defense Counsel attorney, the clerk shall notify the OADC's designee. No more than one attorney may be appointed as counsel for an indigent person except in specific exceptional circumstances. Accordingly, upon specific written request by counsel for appointment of an additional attorney to assist in the defense of an indigent person, the OADC may approve appointment of an additional attorney for good cause shown. Such requests should be made in writing and directed to the OADC. Alternate Defense Counsel shall be appointed under the following circumstances:

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1. Conflict-of-Interest Appointments: The PD shall file a motion or otherwise notify the court to withdraw in all cases in which a conflict of interest exists. The court shall appoint an Alternate Defense Counsel attorney to represent indigent persons in cases in which the court determines that the PD has a conflict of interest and removes the PD from the case. The OADC is responsible by statute to handle all PD conflict cases. Therefore, the OADC shall establish policies and procedures to cover instances when Alternate Defense Counsel has a conflict.
2. Appointments To Assist in Motions Under Rule 35 of the Colorado Rules of Criminal Procedure: An indigent defendant may be entitled to conflict-free counsel to assist in motions under Rule 35 if the court does not deny the motion under Crim. P. 35(c)(3)(IV) and if the PD notifies the court that a conflict of interest exists. The provisions of IV.B.1. above shall be followed in appointing an Alternate Defense Counsel attorney.
3. Appointments for Appeals: If the court determines that the PD has a conflict of interest, it shall set forth in a written order the reason for the conflict of interest and the court shall appoint an Alternate Defense Counsel attorney to represent the defendant.

C. Appointment of Other Counsel

1. The Clerk of Court or the District Administrator shall maintain a list of qualified private attorneys from which appointments shall be made under this section. Private counsel appointed under the following circumstances will be paid by the Judicial Department as established in this directive:
 - a. Appointments of Advisory Counsel: There is no constitutional right to the appointment of advisory counsel to assist a *pro se* defendant. However, pursuant to case law, the court may appoint private advisory counsel either 1) at the request of an indigent *pro se* defendant, or 2) over the objections of an indigent *pro se* defendant to ensure orderly proceedings and to provide assistance to the defendant. If the court appoints private advisory counsel for an indigent *pro se* defendant in a criminal case, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to advise *pro se* defendants.
 - b. Appointments of Contempt Counsel: Private counsel may be appointed as a special prosecutor or as counsel for an indigent person facing contempt charges when punitive sanctions may be imposed, in accordance with Rule 107(d) and 407(d) of the Colorado Rules of Civil Procedure. Costs and reasonable attorney's fees in connection with the contempt proceeding may be assessed at the discretion of the court.
 - c. Appointments of Counsel for Grand Jury Witnesses: A witness subpoenaed to appear and testify before a grand jury is entitled to assistance of counsel pursuant to §16-5-204, C.R.S. (2014). For any person financially unable to obtain adequate assistance, counsel may be appointed at state expense. Pursuant to case law, no

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attorney who provides counsel in the grand jury room may represent more than one witness in a single investigation without grand jury permission. If the court appoints counsel for an indigent witness before a grand jury, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to represent grand jury witnesses.

- d. Appointments of Counsel for Witnesses: An indigent witness subpoenaed to appear and testify in a court hearing may be appointed counsel if the witness requests counsel and the judge determines the appointment of counsel is necessary to assist the witness in asserting his or her privilege against self-incrimination. If the court appoints counsel for an indigent witness for this purpose, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to represent a witness.
2. For appointments under this section, the appointing judge or magistrate shall, to the extent practical and subject to attorney-client privilege, monitor the actions of the appointee to ensure compliance with the duties and scope specified in the order of appointment.
 3. Attorneys appointed under this section shall notify the State Court Administrator, in writing, within five (5) days of any malpractice suit or grievance brought against them.
 4. Appointees shall maintain adequate professional liability insurance for all work performed. In addition, appointees shall notify the State Court Administrator, in writing, within five (5) days if they cease to be covered by said liability insurance and shall not accept court appointments until coverage is reinstated.

V. GUIDELINES FOR PAYMENT

A. Public Defender Costs

The Public Defender's Office has attorneys on staff (Deputy Public Defenders) to accept appointments. Court costs and other expenses incurred by the Public Defender shall be billed to the Public Defender's Office in accordance with that office's policies and procedures.

B. Office of Alternate Defense Counsel Costs

Claims for payment of counsel and investigator fees and expenses shall be filed with the OADC. A schedule of maximum hourly rates and maximum total fees for OADC state-funded counsel and investigators is shown in Attachment D (1). Court costs incurred by Alternate Defense Counsel attorneys and investigators shall be billed to the OADC in accordance with that office's policies and procedures.

C. Other Court-Appointee's Costs

The fees and costs associated with appointments described under section IV. C. shall be paid by the Judicial Department as follows:

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1. Fees and Expenses: Appointments may be made by the courts on a non-contract hourly fee basis or contract basis as set forth by the State Court Administrator's Office. A schedule of maximum hourly rates and maximum total fees for state-funded counsel and investigators is shown in Attachment D (2). Upon appointment of counsel or other appointee, court staff shall enter the appointment in the ICON/Eclipse computer system and complete the appointment on the CAC system for payment and tracking purposes. Claims for payment on hourly appointments shall be entered in the Department's **Internet-based payment system (CACS)**; or, if the Financial Services Division of the State Court Administrator's Office has granted the appointee an exception to the requirement to invoice using CACS, claims for payment shall be filed with the District Administrator in the respective judicial district on the Request and Authorization for Payment of Fees (form JDF207). Claims for payment on flat-fee, contract appointments shall be entered in the Department's Internet-based payment system (CACS); or, if the Financial Services Division of the State Court Administrator's Office has granted the appointee an exception to the requirement to invoice using CACS, such claims for payment shall be filed with the State Court Administrator's Office using the process and format required by that office. All requests for hourly payment must be in compliance with Guidelines for Payment of Court-Appointed Counsel and Investigators Paid by the Judicial Department for Itemized Fees and Expenses on an Hourly Basis (Attachment E) and shall follow the Court-Appointed Counsel and Investigators Procedures for Payment of Fees and Expenses (Attachment F). All hourly payment requests shall be reviewed by the District Administrator or his/her designee to ensure that all charges are appropriate and in compliance with this directive and applicable fiscal policies and procedures, before authorizing the request. The Office of the State Court Administrator may review, verify, and revise, when appropriate, authorizations for payment. All incomplete or erroneous claims will be returned to the attorney or investigator with an explanation concerning the issue(s) identified.
2. Court Costs, Expert Witness Fees, and Related Expenses: Costs incurred by counsel shall be pre-approved, billed to and paid by the appointing court. Court costs include such items as: expert and standard witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. Payment of all court costs shall be in accordance with applicable statutes, Chief Justice Directives, and other policies and procedures of the Judicial Department. Appropriate travel receipts must accompany out-of-state investigation travel expenses incurred by the appointee.
3. Investigator Appointments: If a court-appointed attorney paid by the Judicial Department requires the services of an investigator, he or she shall submit a motion to the court requesting authority to hire an investigator. The court shall authorize such appointments as the judge or magistrate deems necessary, and shall issue an order authorizing the amount of investigator fees and expenses that may be incurred, not to exceed the maximum fees set forth in Attachment D (2). The Judicial Department shall pay for investigator services under these circumstances.
4. Online Appointee Billing: Appointees paid by the Judicial Department shall invoice the Department using the Department's Internet-based system (CACS) according to the policies and procedures set forth by the State Court Administrator's Office. An appointee

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may request an exception to this requirement by contacting the Financial Services Division at the State Court Administrator's Office. In the request, the appointee shall describe the extenuating circumstances preventing the use of CACS for invoicing. The Director of Financial Services or his/her designee shall review such requests and shall have final decision authority concerning the granting or denial of the request. Failure of an appointee to learn or avail him/herself of training on the use of CACS is not sufficient cause to warrant an exception.

5. To maintain the security and integrity of CACS, appointees shall immediately notify the Director of Financial Services, or his/her designee, in writing, of any changes in appointee's staffing or practice that may require cancellation or other changes in the CACS login authority or credentials of appointee or appointee's staff.
6. Failure of appointee to appropriately use CACS shall be sufficient grounds for denial of payment and may result in removal from consideration for future appointments.

D. Court Costs, Expert Witness Fees and Investigator Fees of an Indigent Party who is Not Appointed Counsel

1. In certain circumstances, a defendant's court costs, expert witness fees, and/or investigator fees may be paid by the Judicial Department even though the defendant is not represented by state-funded counsel (i.e., Public Defender; Alternate Defense Counsel; Judicial-paid counsel). Payment by the local court is appropriate if any of the following statements apply:
 - a) The defendant is indigent and proceeding *pro se*;
 - b) The defendant is indigent and receiving *pro bono*, private counsel;
 - c) The defendant is receiving private counsel but becomes indigent during the course of the case, and the court has determined that the defendant lacks sufficient funds to pay for court costs, and that it would be too disruptive to the proceedings to assign the Public Defender or Alternate Defense Counsel to the case.
2. Court costs include such items as: expert and standard witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. An investigator appointed by the court under this section shall be paid in accordance with the rates and maximum fees established in Attachment D (2). A motion requesting authorization to hire an investigator, to pay court costs, or for expert witness fees shall be submitted to the court. The Court shall authorize such appointments or payments as the judge or magistrate deems necessary, and shall issue an order authorizing the amount of the costs, fees and expenses that may be incurred under this section. For maximum rates for payment of expert witnesses, see CJD 12-03, as amended.

- E. In instances in which fees for activity such as travel time, waiting time, and mileage expenses were incurred simultaneously for more than one court appointment, appointees shall apportion the fees or expenses across cases, as applicable (for example, traveling to/from court would be billed 50% on the client A appointment and 50% on the client B appointment if the appointee made one trip to cover both clients' hearings).

VI. REIMBURSEMENT TO THE STATE

- A. If the court determines, at any time before, during the course of the appointment (at the court's discretion if questions concerning indigence arise), or after the appointment of state-funded counsel, that the person has the ability to pay all or a part of the expenses for representation including related ancillary costs, the court shall enter a written order that the person reimburse all or a part of said expenses and inform the responsible party of this obligation. Such order shall constitute a final judgment including costs of collection, and may be collected by the state in any manner authorized by law. The court's financial review concerning ability to pay counsel fees and costs may be accomplished with the use of the judicial district's Collections Investigator. If the defendant is placed on probation, the court may require payment for the costs of representation as one of the conditions of probation.
- B. Collection of fees and costs related to court-appointed representation may be referred to the Collections Investigator or a private collector that has an agreement for such collection services with the State Court Administrator's Office.
- C. Costs for representation provided may be assessed against the responsible party(ies) at the fixed hourly rate for state-funded private counsel for the number of hours reported to the court, or at a flat fee rate established by the Public Defender or Alternate Defense Counsel. Other costs incurred for the purposes of prosecution and representation of the case may also be assessed including, for example, costs for transcripts, witness fees and expenses, and costs for service of process. In addition, the responsible party(ies) may be required to pay costs of collection. Costs incurred for accommodations required under the Americans with Disabilities Act, such as hearing interpreter fees, may not be assessed.

VII. COMPLAINTS

- A. All written complaints and documentation of verbal complaints regarding the performance of any state-paid counsel shall be submitted to the District Administrator.
- B. All complaints shall be referred by the District Administrator to the appropriate agency or person. Public Defender complaints shall be submitted to the Public Defender's Office. Complaints against an Alternate Defense Counsel attorney shall be submitted to the Alternate Defense Counsel Office. The District Administrator will forward all other complaints to the presiding judge or, if appropriate, the Chief Judge of the district unless a conflict exists due to the judge's involvement in a pending case. If a conflict exists, the District Administrator will forward the complaint to another judge designated for that purpose.
- C. If the complaint involves an attorney and the reviewing judge or District Administrator determines that the person may have violated the Colorado Rules of Professional Conduct, the information shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel. The Regulation Counsel shall advise the reporting judge or District Administrator and the State Court Administrator of the final outcome of the investigation.

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- D. Copies of all written complaints and documentation of verbal complaints regarding state-paid counsel shall be forwarded by the District Administrator to the State Court Administrator's Office. The State Court Administrator may investigate a complaint and take action he/she believes is necessary to resolve any concerns or issues raised by the complaint. Such action may include, but is not limited to, terminating the contract with the attorney.

VIII. SANCTIONS

- A. All contracts with the Judicial Department for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with this Chief Justice Directive. Failure to comply with this Directive may result in termination of any associated contract and/or removal from the appointment list.
- B. Judges and Magistrates shall notify appointees that acceptance of the appointment requires compliance with this Directive, and that failure to comply may result in termination of the current appointment and/or removal from the appointment list.

CJD 04-04 is amended and adopted effective July 1, 2018.

Done at Denver, Colorado this 26 day of June, 2018.

/s/

Nancy E. Rice, Chief Justice

EXHIBIT A

Attachment A
Chief Justice Directive 04-04
Amended July 2006

Applicant Name _____ Court _____

Case Number _____ Case Name _____

FISCAL STANDARDS - ELIGIBILITY SCORING INSTRUMENT

Use information from Form JDF208 and information provided by applicant during screening interview. Circle the points in the category that applies and transfer to the "Points" column. Total at end.

Table with 5 columns: Factor, At or below guidelines, Up to 10% above guidelines, 11% to 75% above guidelines, Points. Rows include Income Guidelines, Expenses vs. Income, Charge vs. Assets, and a detailed breakdown of asset levels.

TOTAL POINTS

Summary section with checkboxes for '150 or greater' and 'Less than 150', and eligibility options for Public Defender and State-Funded Counsel.

EXCEPTION REQUESTED TO [ALLOW / DISALLOW] APPOINTMENT OF [PUBLIC DEFENDER / ALTERNATE DEFENSE COUNSEL (if PD conflict)] NOTWITHSTANDING THE ABOVE SCORE. (Documentation justifying request is attached.)

Evaluated by _____ Print/Type Name _____ Evaluator Signature _____ Date _____

EXHIBIT A

Attachment B
Chief Justice Directive 04-04
Amended March 2022

INCOME ELIGIBILITY GUIDELINES (amended February 2022)

Family Size	Annual Poverty	Monthly Poverty	Monthly Income*	Monthly Income plus 10%	Monthly Income plus 75%	Yearly Income*	Yearly Income plus 10%	Yearly Income plus 75%
1	\$ 13,590	\$ 1,133	\$ 1,416	\$ 1,557	\$ 2,477	\$ 16,988	\$ 18,686	\$ 29,728
2	\$ 18,310	\$ 1,526	\$ 1,907	\$ 2,098	\$ 3,338	\$ 22,888	\$ 25,176	\$ 40,053
3	\$ 23,030	\$ 1,919	\$ 2,399	\$ 2,639	\$ 4,198	\$ 28,788	\$ 31,666	\$ 50,378
4	\$ 27,750	\$ 2,313	\$ 2,891	\$ 3,180	\$ 5,059	\$ 34,688	\$ 38,156	\$ 60,703
5	\$ 32,470	\$ 2,706	\$ 3,382	\$ 3,721	\$ 5,919	\$ 40,588	\$ 44,646	\$ 71,028
6	\$ 37,190	\$ 3,099	\$ 3,874	\$ 4,261	\$ 6,779	\$ 46,488	\$ 51,136	\$ 81,353
7	\$ 41,910	\$ 3,493	\$ 4,366	\$ 4,802	\$ 7,640	\$ 52,388	\$ 57,626	\$ 91,678
8	\$ 46,630	\$ 3,886	\$ 4,857	\$ 5,343	\$ 8,500	\$ 58,288	\$ 64,116	\$ 102,003

* 125% of poverty level as determined by the Department of Health and Human Services.

*For family units with more than eight members, add \$492 per month to the "monthly income" or \$ 5,900 per year to "yearly income" for each additional family member.

Source: Federal Register (87 FR 3315, 02/01/2022)

FISCAL STANDARDS: PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY FOR COURT-APPOINTED COUNSEL ON THE BASIS OF INDIGENCY

A determination of indigency is necessary for certain appointments addressed in Chief Justice Directive 04-04. Any defendant in a criminal case or a person involved in matters described under IV.C requesting court-appointed counsel on the basis of indigency must apply for counsel as described below. The Public Defender and court staff will determine the applicant's eligibility for appointment of counsel in accordance with the following procedures:

- In Criminal cases, the defendant shall apply for the Public Defender by completing the Application for Court-Appointed Counsel, form JDF208 (Judicial Department Form).
- If the defendant is in custody and cannot post or is not allowed bail, the Public Defender may automatically elect to represent the defendant, and will notify the court either verbally or in writing of the circumstances.
- If the person's income is at or below the income eligibility guidelines and he or she has no assets, as determined on form JDF208, the Public Defender or other counsel shall be appointed.
- If the person's income is more than 75 percent above the income eligibility guidelines, they are not eligible for State-paid counsel. In criminal matters, the Public Defender will note that the defendant is ineligible for court-appointed counsel, and will submit the form JDF208 to the court to demonstrate ineligibility.
- If eligibility or ineligibility cannot be determined as described above, the eligibility-scoring instrument (Attachment A, CJD 04-04) will be completed, using information obtained on form JDF208. The form is designed to use income and expenses to determine basic eligibility, with an added factor for assets available to pay for an attorney. The points assigned in the "asset" category take into account both the dollar value of the assets and the class type of charges against the defendant. This is to address variations in the types of expenses that might be incurred due to the nature of the charges.
- The total score will determine whether the person will be represented at state expense, or whether the person is not eligible for state-paid representation on the basis of indigency. The Public Defender or defendant may request an exception to the eligibility determination based on the score and may submit documentation of the reasons for the exception to the court, which then has the opportunity to make an appointment decision based on all of the information.

EXHIBIT A

Attachment D (1)
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**ALTERNATE DEFENSE COUNSEL
MAXIMUM HOURLY RATES ¹**

<u>ADC Fees</u>	<u>No Distinction of In/Out of Court Hours</u>	<u>Effective Date*</u>
Death Penalty Case		
Attorney	\$95.00 per hour	July 1, 2018
Investigator	\$47.00 per hour	July 1, 2018
Type A Felonies	\$85.00 per hour	July 1, 2018
Type B Felonies	\$80.00 per hour	July 1, 2018
Juvenile Felonies	\$80.00 per hour	July 1, 2018
Misdemeanor & Traffic (Adult & Juvenile)	\$75.00 per hour	July 1, 2018
Authorized Investigator	\$44.00 per hour	July 1, 2018
Authorized Paralegal/Legal Assistant	\$33.00 per hour	July 1, 2018
Travel (regardless of type of case)		
Attorney	\$75.00 per hour	July 1, 2018
Investigator	\$44.00 per hour	July 1, 2018

Mileage at rate defined by §24-9-104 C.R.S. Reimbursement paid per OADC policy.

* For work performed on or after this date (July 1, 2018)

MAXIMUM TOTAL FEES PER APPOINTMENT

<u>Appointment Type</u>	<u>With Trial / Without Trial</u>	<u>Effective Date</u>
Class 1 Felonies	\$ 30,000 / 15,000	July 1, 2018
Class 2 Felonies & DF 1 Felonies	\$ 13,000 / 6,500	July 1, 2018
Class 3, 4, 5, and 6 Felonies & DF 2, 3, and 4 Felonies	\$ 8,000 / 4,000	July 1, 2018
Misdemeanors, Traffic, & Petty Offenses	\$ 3,000 / 1,500	July 1, 2018
Juvenile Cases	\$ 5,500 / 2,750	July 1, 2018

Juvenile and Misdemeanor Appeals: Refer to OADC web site for minimums/maximms based on case classification.

Felony Appeals and Post-conviction: Refer to OADC web site for minimums/maximms based on case classification.

Investigator maximum fee is what has been previously authorized by the OADC.

¹ Rates may vary pursuant to Chief Justice Directive or OADC Order. The appointee should contact the Office of the Alternate Defense Counsel or visit the web site at www.coloradoadc.org if there is a question concerning the current authorized rate.

EXHIBIT A

Attachment D (2)
Chief Justice Directive 04-04
Amended, Effective July 2018

JUDICIAL PAID APPOINTMENTS

MAXIMUM HOURLY RATES¹

<u>All Case Types</u>	<u>In-Court and Out-of-Court</u>	<u>Effective Date*</u>
Court-Appointed Counsel Fee	\$80.00 per hour	July 1, 2018
Authorized Investigator	\$44.00 per hour	July 1, 2018
Paralegal / Legal Assistant Time	\$32.00 per hour	July 1, 2018

*** For work performed on or after this date**

MAXIMUM TOTAL FEES PER APPOINTMENT

<u>Appointment Type</u>	<u>With Trial / Without Trial</u>	<u>Effective Date</u>
Class 1 felonies & unclassified felonies where the maximum possible penalty is death, life or more than 51 years	\$ 29,855 / 14,959	July 1, 2018
Class 2 felonies & unclassified felonies where the maximum possible penalty is 41 through 50 years	\$ 14,959/ 7,912	July 1, 2018
Class 3, 4, 5 and 6 felonies and unclassified felonies where the maximum possible penalty is from 1 to 40 years	\$ 10,558 / 5,292	July 1, 2018
Class 1, 2, and 3 misdemeanors, unclassified misdemeanors, and petty offenses	\$ 2,646 / 1,787	July 1, 2018
Juvenile Cases with appointment before November 1, 2014	\$ 3,315 / 2,480	July 1, 2014
Appeal	\$ 10,558	July 1, 2018
Contempt and Witness	\$ 1,787	July 1, 2018

- Billable time for appeals begins on the date of appointment and is for the appeal portion of the case only
- Investigator maximum fee allowed is calculated from the preceding chart using the case classification and the “without trial” maximum, exclusive of expenses.

¹Rates may vary pursuant to Chief Justice Directive or Order. The appointee should contact the local district court, State Court Administrator’s Office or visit the web site at www.courts.state.co.us if there is a question concerning the current authorized rate.

**GUIDELINES FOR ITEMIZED HOURLY PAYMENT: JUDICIAL PAID
APPOINTMENTS ONLY****COURT-APPOINTED COUNSEL AND INVESTIGATORS**

- A) Claims for payment on an hourly basis by shall be submitted using the Judicial Department's online CAC System (if the appointee is authorized to use this system) or submitted to the appointing court on form JDF207 ("Colorado Judicial Department Request and Authorization For Payment Of Fees") including attachments, and shall be in compliance with these guidelines. For appellate counsel only, claims for payment shall be submitted directly to the Court of Appeals. The claims and attachments shall conform to the Procedures for Payment of Fees and Expenses (Attachment F, this CJD). In accordance with this CJD and all other applicable Department policies and procedures, and upon review and approval by the appointing court, the request for payment will be sent to the State Court Administrator's Office (SCAO) for processing. The SCAO may review, verify, and revise, when appropriate, such authorized requests for payment.
- B) A schedule of maximum hourly rates for court-appointed counsel is established by the Supreme Court in Attachment D (2) and/or by Chief Justice Order. **No payment shall be authorized for hourly rates in excess of the Chief Justice Directive or Order. The maximum total fee that may be paid to court-appointed private counsel for representation on a case is established in Attachment D (2). This maximum includes appointee fees (both contract flat fees plus hourly, as applicable), allowable incidental expenses, paralegal, legal assistant, and law clerk time. To find the allowed maximum total fee for investigators, exclusive of expenses, use the case classification type and the "without trial" maximum from the chart in Attachment D(2).**
1. If there are unusual circumstances involved in the case and the appointee determines that additional work must be completed that will create fee charges over the maximum allowed, pre-approval for fees in excess is to be obtained by submitting a Motion to Exceed the Maximum to the presiding judge/magistrate (while there may be exceptions in which pre-approval is not possible before additional work is performed, seeking pre-approval should be the norm.). If satisfied that the excess fees are warranted and necessary, the presiding judge/magistrate should approve such motion. The District Administrator (or designee) should deny further payment unless accompanied by a Motion to Exceed the Maximum and an order granting the Motion by the presiding judge or magistrate.
 2. The Motion to Exceed the Maximum must cite the specific special and extraordinary circumstances that justify fees in excess. The judge or magistrate, in his or her discretion, may grant approval with an Order for Fees in Excess which provides a maximum up to 150% of the established maximum as outlined in Attachment D(2) of this Chief Justice Directive. A subsequent Motion to Exceed Maximum must be submitted for the same appointment if total fees are expected to further exceed the maximum established by the judge or magistrate.
- C) **All court appointees and investigators must submit invoices using CACS, or a JDF 207, as applicable, to the court within six months of the earliest date of billed activity.** Any court appointee or investigator desiring to request an exception to the 6-month rule based on

EXHIBIT A

Attachment E
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Amended July 2014

unusual circumstances shall make such request in writing to the Director of Financial Services at the SCAO, or the Director's designee, whose decision concerning payment shall be final. Before an exception will be considered, the request must detail the extraordinary circumstances concerning a bill or portion of a bill wherein the activity does not fall within the six-month rule.

- D) The District Administrator or his/her designee will carefully review all hourly payment requests submitted for approval. To assist in this review, attorneys and investigators must submit a detailed itemization of in-court and out-of-court hours with each request for payment as outlined in Procedures for Payment of Fees and Expenses, Attachment F. Authorization for payment is not automatic, and the District Administrator (or designee) must be satisfied that the number of hours billed and expenses charged are appropriate and necessary for the complexity of the issues involved. If there are questions concerning the reasonableness of the bill, the appropriate judge or magistrate will be consulted. If reimbursement to the state is to be ordered and such order is not already entered, the District Administrator or his/her designee shall notify the appropriate judge.
- E) Requests by appointees for reimbursement of expenses must include itemized statements and accompany the request for payment. In addition, such requests must comply with Maximum Hourly Rates/Maximum Fees Per Appointment as set forth in Attachment D (2). When practical, a paralegal or legal assistant should be used for tasks that require legal expertise but can be done more cost-effectively by an assistant, such as drafting court motions or performing some legal research. The billable hourly rate for a paralegal or legal assistant time is found in Attachment D(2). The Judicial Department does not pay for the time of administrative support staff. Therefore, charges for time spent on administrative activities, such as setting up files, typing, copying discovery or other items, faxing documents, making deliveries, preparing payment requests, and mailing letters are not reimbursable costs. Attorneys are expected to have sufficient administrative support for these activities.
1. Certain court costs are paid individually by the appointing court (not SCAO) with prior court approval. The appointing court pays court costs incurred by counsel. Counsel or investigators should submit the bills for items listed below directly to the local court and should not include these costs for reimbursement in the CAC system, or on the Request for Payment form (JDF207), if applicable.

Costs Paid Locally by the Individual Court

- Cost of subpoenas;
 - Fees and expenses of witnesses;
 - Service of process;
 - Language interpreters;
 - Mental Health examinations/evaluations;
 - Transcripts;
 - Discovery Costs (including: LexisNexis research charges, medical records, etc.)
2. Court-appointed counsel and investigators may request reimbursement for certain reasonable out-of-pocket expenses that are incurred on behalf of their clients. The following expenses may be claimed via the CAC system, or on JDF207, as applicable.

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Other Allowable Expenses

- Copy charges at the rate of \$0.10 per page (specify the number of copies made);
- Mileage at the rate defined by §24-9-104 C.R.S. (the actual number of miles must be specified for each trip);
- Long-distance telephone calls at cost (if total billing exceeds \$50, it must include a copy of the telephone bill with the following information highlighted: date, phone number, and charges);
- Postage at cost (regular 1st class mail charges);
- Reimbursement for delivery and express mail charges are only reimbursable for a case on appeal. A receipt or invoice for these charges must be attached to the order for payment;
- Requests for payment of overnight travel or out-of-state travel require prior authorization by the court and must be in accordance with state travel regulations as described in the Travel section of the Colorado Judicial Department's Fiscal Policies and Procedures manual. Out-of-state travel expenses incurred by the appointee shall be submitted to the court using the online CAC system. All appropriate copies of travel receipts shall be provided directly to court staff.

3. The following items are not authorized for payment or reimbursement.

Non-Allowable Expenses

- Phone calls when no contact is made (i.e., no answer, client not available or message left to call back, etc.);
 - Fax charges;
 - Parking Fees;
 - Items purchased for indigent (or other) persons represented which includes meals, books, clothing, and other personal items;
 - Administrative activities (as previously discussed);
 - Electronic filing fees for which state funded counsel appointments are exempt;
 - Any other cost or expense not authorized under Colorado law or Chief Justice Directive for payment by the state or reimbursement to counsel or other party.
- F) In any case in which a payment has been made to the attorney by a party who is later determined to be indigent, the state will reimburse the attorney for the total number of hours expended on the case, less any payments received from the party for fees incurred prior to the determination of indigence. The payment calculation is at the allowed Chief Justice Directive and/or Chief Justice Order hourly rate applicable to when the activity occurred.
- G) Attorneys shall maintain records of all work performed relating to court appointments and make all such records available to the Judicial Branch for inspection, audit, and evaluation in such form and manner as the Branch in its discretion may require, subject to attorney/client privilege.
- H) The Judicial Department will review and respond promptly to any question or dispute concerning a bill received, submitted, or paid. However, due to research time and record

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retention limitations, there is a time restriction of two years for billing questions and disputes. The two-year restriction starts from the activity date (or date of service) that is in question. For prompt resolution concerning questions or disputes concerning hourly or contract payment requests, all questions and disputes must be directed to the local court or State Court Administrator's Office immediately when issues arise.

JUDICIAL PAID APPOINTMENTS

* PROCEDURES FOR PAYMENT OF FEES AND EXPENSES *

GENERAL INFORMATION

These procedures apply to requests for payment of fees and expenses for court-appointed counsel, other appointees, and investigators paid by the Judicial Department on an hourly basis. Payment requests shall be submitted via the Department's online CAC System (CACs) in accordance with the policies and procedures set forth by the State Court Administrator's Office or, if an exception has been granted pursuant to Section V.C.4. of this Chief Justice Directive, by using the standardized "Colorado Judicial Department Request and Authorization For Payment of Fees" form JDF207 (Judicial Department Form). Completion, including attachments, should adhere to the procedures described below. Requests for payment that do not include the necessary information will be returned to the appointee or to the court for completion or correction.

All appointees, both hourly and contract, who have not yet received payment from the Judicial Department must submit a completed W-9 form and, if applicable, an "Authorization to Pay a Law Firm" form before a payment can be issued. Payments are issued/submitted to whomever the attorney has authorized and approved on W-9 and "Authorization to Pay a Law Firm" forms. Therefore, if an attorney is no longer with the law firm indicated on a prior W-9 and/or Authorization to pay a Law Firm, he/she must complete a new form(s) and submit them to the Financial Services Division at SCAO. The forms are available from the court or from the Financial Services Division by e-mailing CACpayments@judicial.state.co.us. To change only the mailing address, send the address change to the Colorado Judicial Department, Financial Services Division, 1300 Broadway, Suite 1200, Denver, CO 80203, or call for e-mail instructions.

Billing for Representation of Client with Multiple Cases: When billing for multiple cases in representation of the same client (i.e., companion cases), the appointee should work with the Financial Services Division at the State Court Administrator's Office to ensure the appointments/cases are designated as "concurrent" for billing purposes. Appointees must use the "Concurrent Appointment Notification" form, which is available from the Financial Services Division upon request. This applies to situations in which activity occurs simultaneously in the representation of the party across the multiple cases (example: the appointee attends a single court hearing during which more than one of the client's cases is discussed) and allows for the activity to be billed once via a "master" case. Cases in which the appointee's activity does not overlap multiple cases should not be billed concurrently, and should instead be billed by submitting separate invoices for each respective case.

When an attorney is appointed to continue on a case for the purposes of appeal, payment shall be on an hourly basis even if the original appointment was on a contract, flat fee basis.

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Attachment F
Chief Justice Directive 04-04
Amended November 2014
Amended, Effective July 2018

A. PROCEDURES FOR BILLING

1. Detail of Itemized Billing

Itemized detail is to be submitted through CACS. If an exception has been made and the JDF207 is being used, time sheets must be attached to support the summarized hours billed. Time must be described in sufficient detail to justify the amount of time spent on the activity. Time reported must include all time spent between the beginning and ending dates of the billing and must be in chronological order. Time sheets must be legible – preferably typed. Expenses must be described. A sample itemization is shown on the next page.

Rates may vary pursuant to Chief Justice Directive or Order. The appointee should contact the local district court, State Court Administrator's Office or visit the web site at www.courts.state.co.us if there is a question concerning the current authorized rates.

- a. The billing detail and itemization needs to include a date, distinguish between out-of court and in-court time, and a description of service performed. Time must be billed in *tenths* of an hour using the decimal system. One-tenth of an hour is equal to six (6) minutes. For example, 12 minutes is charged as 0.2 hours.
- b. Mileage itemization must include the date of the trip, the purpose of the trip, and the number of miles traveled for each trip.

2. Other Attachments

- a. Investigators must include the order of appointment appointing the attorney for whom the investigator is working, the court's order authorizing an investigator, and the amount of expenses the investigator may incur.
- b. If the total fee request (including past payments and the current invoice) exceeds the maximum fee allowed by this Directive as specified in Attachment D(2), a copy of the court's order authorizing fees beyond the maximum must be submitted. Submitting this copy once is sufficient as long as subsequent billings remain within the newly authorized amount.
- c. If total expenses exceed \$50, all receipts or invoices for those expenses must be submitted with the invoice. If using CACS online billing, submit the receipts to the local court and clearly indicate the case number and billing time frame for which the receipts relate.
- d. All receipts for any expenses outside of the guidelines and an explanation for the additional costs must be submitted.

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John Sample, Attorney at Law

Date	Activity	In-court	Out-of-court	Paralegal	
07/06/18	Court appearance: Contempt Citation	0.4			
07/06/18	Conference with client		1.1		
08/05/18	Review motions		0.5		
08/09/18	Court appearance	0.3			
08/10/18	Meet with client		1.0		
08/11/18	Prepare motion			0.2	
09/07/18	Travel to court round trip (57 miles)		1.4		
09/07/18	Conf. With client in custody		1.0		
09/07/18	Draft motion			0.2	
09/14/18	Contempt Hearing	0.3			
Dates of service 07/06/18 – 09/14/18		Total hours	1.0	5.0	0.4

SUMMARY OF FEES	Activity:	
	6.0 hours @ \$80 per hour	\$480.00
	0.4 hours @ \$32 per hour	\$12.80
	TOTAL FEES	\$492.80
TOTAL MILEAGE	57 miles @ \$0.50 per mile (or rate defined by §24-9-104 C.R.S.)	\$28.50
SUMMARY OF OTHER EXPENSES	Copies: case file = 12 pages @ \$0.10	\$1.20
	Postage	\$0.50
	TOTAL OTHER EXPENSES	\$1.70
	TOTAL BILLING	\$523.00

COMPLETION OF THE JDF207 (Hourly Billing if not billing online)

Completion of the JDF207 form is required by the Judicial Department for payment of court appointees appointed on an hourly basis unless the appointee has been authorized to invoice using CACS (online system). The appointee should keep a copy and submit the original plus one copy. All applicable sections of the form should be completed as indicated in the instructions. Attach all required documents before submitting to the local court. All incomplete Requests for Payment will be returned to the appointee for correction(s).

Section I.

Enter the case number of the charges being billed. When billing for multiple cases in representation of the same client (i.e., companion cases), enter all applicable case numbers. If the bill is for appellate charges, include the appeal case number and the original case number being appealed.

Include the name and number of person/(s) represented, the name of the case, applicable county, name of appointing judge/magistrate and current judge/magistrate. Indicate if the case jurisdiction is district or county.

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Section II.

Enter all applicable appointee information, attorney registration number, name, complete address, phone, fax, e-mail. If the address has changed, check new address box. For more information concerning changes, review the General Information section in this attachment.

The Social Security Number or Tax Id Number must be included on each JDF207 (for more information concerning authorized payee changes, review the General Information section in this attachment).

Indicate the appointment date, if you are an original or substitute appointee, if the case has or has not gone to trial, if the case was originally under contract. If originally under contract, explain why an hourly bill is being submitted and the date circumstances changed resulting in hourly billing.

Section III.

Indicate the type of representation provided.

Section IV.

Indicate the authority/statute title allowing for the appointment. This is indicated on the original appointment form/order.

Section V.

The indigency status of the person represented must be noted. If the person is found indigent, use the date of determination. If the person is not indigent, indicate which statement is applicable to the party represented and if reimbursement is to be ordered by the presiding judge. This information is usually included in the order of appointment or may be found in the application for court-appointed counsel (form JDF208) or another affidavit of indigence, as requested by the court.

Section VI.

Under this section all charges are to be summarized.

For the activity *from date*, enter the first chronological date of activity billed from the itemized detail document. For the activity *to date*, enter the last chronological date in which activity occurred as itemized in the detail document. Group the *start* and *to date* for activities in which the effective date of the rates (as set by Chief Justice Directive or Chief Justice Order) are the same.

Instructions for summarizing attorney hours and fees are located on the reverse side of the Request and Authorization for Payment of Fees form (JDF207) #5.

For non-attorney billing activity, summarize all non-attorney hours by category. Next, apply the rate as set by Chief Justice Directive or Chief Justice Order and enter the total charge requested in the right column. Summarize all expenses by type, apply the correlating rates and/or receipts and enter the total charge per category. Charges must correspond to attached receipts.

Total all charges and calculate total amount billed.

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Include all prior amounts invoiced for the appointment in the “Total Amount Previously billed” line, (excluding the current request).

Determine the cumulative total of fees charged by appointee for the case by adding the “Total Amount Previously billed” plus the current request amount. If the cumulative total is over the authorized maximum, check the indicator box “Exceeds allowed maximum”. Include the Motion to Exceed Maximum and the approved Order to Exceed Maximum (if possible, this should be judge/magistrate pre-approved and not requested after services are performed).

Appointee signature and date are required.

If this is the final bill, check the “Final Bill” box.

SPONSORED BY: MAYOR LEIGHTY

COUNCIL MEMBER'S RESOLUTION

RESOLUTION NO.

No. CR-93
Series of 2022

Series of 2022

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND THE STATE OF COLORADO OFFICE OF THE ALTERNATE DEFENSE COUNSEL REGARDING COURT-APPOINTED COUNSEL FOR INDIGENT PERSONS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the City of Northglenn and the State of Colorado Office of the Alternate Defense Counsel, attached hereto as **Exhibit 1**, regarding court-appointed counsel for indigent persons is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED at Northglenn, Colorado, this ____ day of _____, 2022.

MEREDITH LEIGHTY
Mayor

ATTEST:

LISA ANDREWS, CMC
Senior Deputy City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF NORTHGLENN,
COLORADO, AND THE OFFICE OF THE ALTERNATE DEFENSE COUNSEL**

THIS INTERGOVERNMENTAL AGREEMENT, effective as of the date set forth on the City's signature page ("Effective Date") (the "Agreement") is made by and between the CITY OF NORTHGLENN, COLORADO (the "City"), a home-rule city of the State of Colorado, and the STATE OF COLORADO OFFICE OF THE ALTERNATE DEFENSE COUNSEL ("OADC"), a body corporate duly organized and existing under the laws of the State of Colorado (together, the "Parties").

WITNESSETH:

WHEREAS, the City is a home-rule city and municipal corporation duly organized and existing under and pursuant to Article XX, of the Colorado Constitution and the Charter of the City;

WHEREAS, the Office of the Alternate Defense Counsel ("OADC") is an agency of the judicial department of the state government that has been duly created, organized, established and authorized to transact business and exercise its powers pursuant to Sections 21-2-101, *et seq.*, C.R.S., as amended;

WHEREAS, § 21-2-103(c), C.R.S. authorizes the OADC to provide representation to indigent persons charged with violations of municipal code violations for which there is a possible sentence of incarceration pursuant to a contract between a requesting municipality and the OADC, such as this Agreement;

WHEREAS, the City desires the OADC to provide representation to indigent persons charged with violations of municipal code for which there is a possible sentence of incarceration;

WHEREAS, the City hereby agrees to be financially responsible for services rendered and expenses incurred by contractors to defend persons charged with such municipal code violations pursuant to the terms of this Agreement as required by § 21-2-103(c), C.R.S.; and

WHEREAS, the OADC hereby agrees to provide such representation.

AGREEMENT

In consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

1. **COORDINATION AND LIAISON:** The OADC shall fully coordinate all services under the Agreement with the Northglenn Court Administrator (referred to herein as the "City Representative").

2. WORK TO BE PERFORMED:

A. Services: The OADC shall diligently and professionally provide representation to eligible indigent persons charged with violations of municipal code violations and traffic offenses for which there is a possible sentence of incarceration. The OADC shall faithfully perform the work required under this Agreement in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement. Any professional services specified under this Agreement which requires the employment of or contracting with licensed or registered personnel shall be performed by licensed or registered personnel. All services provided hereunder are subject to any applicable requirements or limitations contained within the Colorado Rules of Professional Conduct and no provision of this contract shall be interpreted to waive any such requirement or limitation.

B. Conflict of Interest: OADC shall provide the services under this Agreement with the highest ethical standards. In the event that the proposed undertaking creates a conflict of interest or a potential for conflict of interest, as may be determined in the sole discretion of the City Representative, the City may terminate this Agreement immediately. The OADC shall notify the City Representative immediately upon becoming aware of any circumstances that create a conflict of interest or potential for conflict of interest. In the event that during the term of this agreement, circumstances arise to create a conflict of interest or a potential for conflict of interest, the City may terminate this Agreement immediately.

3. TERM: The term of the Agreement is from May 1, 2022, until December 31, 2022, or until the Maximum Contract Amount specified in sub-section 4.A below is expended and all of the services specified herein have been satisfactorily performed, whichever is sooner, unless this Agreement is terminated earlier as provided in this Agreement or is extended as provided in a separate amendment to this Agreement ("Term"). Subject to the City Representative's prior written authorization and with adequate funding, the OADC shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed.

4. COMPENSATION AND PAYMENT:

A. Maximum Contract Amount: The Maximum Contract Amount to be paid by the City to the OADC for the performance of the work shall in no event exceed the sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00) unless this Agreement is modified to increase said amount by a duly authorized and written amendment to this Agreement executed by the Parties in the same manner as this Agreement.

B. Payments: The City shall compensate OADC for services in accordance with the scheduled rates as set forth in Chief Justice Directive 04-04 ("the Directive") as it may be amended or any successor document. The current version of the Directive is attached hereto and

incorporated herein as **Exhibit A**. The City shall pay at the commencement of the Term a retainer of three thousand six hundred dollars (\$3,600) to cover the estimated costs for the quarter. Thereafter, upon the earlier of the exhaustion of the retainer or the start of a new quarter, subject to the not to exceed amount, the City shall pay to OADC an amount sufficient to return the retainer to three thousand six hundred dollars (\$3,600). Monthly reports submitted by the OADC to the City Representative must fully document services rendered and any other authorized and actually incurred expenses. Such reports shall be subject to review by the City Representative and the Parties shall promptly confer to resolve any discrepancies. Upon expiration or termination of this Agreement, in the event the City has made a payment in excess of amounts owed to OADC hereunder, any excess amount shall be returned to the City within thirty (30) days of the termination of OADC's work under the contract.

C. Subject to Appropriation: No Multiple Year Obligation: It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Northglenn City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The OADC acknowledges that (i) the City does not, by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-year fiscal obligation of the City.

D. Amendment: The OADC acknowledges that the City is not obligated to execute an amendment to this Agreement for any further phase of work by the OADC other than the work described herein, and that any further phase of work performed by OADC beyond that specifically described or without an amendment to this Agreement is performed at OADC's risk and without authorization under this Agreement.

5. TERMINATION:

A. Termination for Convenience of the City: The City Representative, upon giving twenty (20) calendar days written notice (unless a longer period is given), may terminate this Agreement, in whole or part, when it is in the best interest of the City as determined by the City Representative. Any unfinished portion of the work shall be faithfully and timely performed by the OADC to the extent directed by the City Representative (in the City Representative's discretion), and compensation for all such authorized work performed shall be paid to the OADC in accordance with this Agreement.

B. Termination for Cause: The City and the OADC shall each have the right to terminate this Agreement, with cause, upon written notice to the other party. A termination shall be deemed "with cause" when it is based on a material breach of the covenants or a substantial default under this Agreement which has not been corrected or resolved to the satisfaction of the non-breaching or non-defaulting party within a reasonable time specified by the non-breaching or non-defaulting party in a written notice to the breaching or defaulting party. Nothing herein shall

be construed as giving the OADC the right to continue performing work under this Agreement beyond the time when the City Representative notifies the OADC that the OADC's work has become unsatisfactory to the City Representative and the City Representative is terminating the Agreement, except to the extent that the City Representative specifies certain work to be completed prior to terminating this Agreement.

C. Compensation: If this Agreement is terminated, the OADC shall be compensated for all work satisfactorily completed, and such compensation shall be limited to: (1) the sum of the amounts contained in reports already submitted and approved by the City Representative and (2) the cost of any work which the City Representative authorizes in writing which the City Representative determines is needed to accomplish an orderly termination of the work. Upon termination of this Agreement by the City, the OADC shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

D. Product Delivery: If this Agreement is terminated for any reason, the City shall take possession of all materials, equipment, tools, and facilities owned by the City which the OADC is using by whatever method the City deems expedient. The OADC shall deliver to the City all drafts or other documents the OADC has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City. These documents and materials shall be the property of the City. Copies of work product incomplete at the time of termination shall be marked "DRAFT-INCOMPLETE."

6. RIGHTS AND REMEDIES NOT WAIVED: In no event shall any action or inaction, including any payments to the OADC, by the OADC constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of the OADC, and the City's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. No assent expressed or implied, to any breach or default shall be deemed or taken to be a waiver of any other breach or default.

7. INDEPENDENT CONTRACTOR: It is understood and agreed that the status of the OADC shall be that of an independent contractor and an entity or person retained on a contractual basis to perform professional or technical services for limited periods of time. It is not intended, nor shall it be construed, that the OADC or the OADC's employees, agents, or subcontractors are employees or officers of the City for any purpose whatsoever. The OADC is responsible for the operational management, errors, and omissions of the OADC's employees, agents, and subcontractors. Without limiting the foregoing, the OADC understands and acknowledges that the OADC and the OADC's employees, agents, and subcontractors: a) are not entitled to workers' compensation benefits through the City; b) are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the OADC or some other entity

besides the City; and c) are obligated to pay federal and state taxes on any monies earned pursuant to this Agreement. Furthermore, it is understood and agreed that nothing in this Agreement is intended, or shall be construed, to constitute a joint venture between the Parties.

8. INSURANCE:

A. At all times during the term of this Agreement, including any renewals or extensions, the OADC shall maintain such Workers' Compensation insurance as required by Statute, and liability insurance, by commercial policy or self-insurance, as is necessary to meet their liabilities under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S. ("CGIA"). This obligation shall survive the termination of this Agreement.

B. OADC subcontractors performing work under this agreement shall carry Professional Liability Insurance.

C. In agreeing to the foregoing insurance requirements, neither the City nor the OADC intend to waive any provision of the CGIA.

9. DEFENSE AND INDEMNIFICATION: Neither party shall indemnify the other under this agreement.

10. COLORADO GOVERNMENTAL IMMUNITY ACT: The Parties hereto understand and agree that the City and the OADC are relying upon, and have not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S.

11. PERMITS, LICENSES, TAXES, CHARGES AND PENALTIES: The OADC agrees to pay promptly all taxes, excises, license fees, and permit fees of whatever nature applicable to its operations or activities under this Agreement, and to take out and keep current all required licenses or permits (federal, state, or local) required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises, or license or permit fees to become delinquent. The OADC further agrees to pay promptly when due all bills, debts, and obligations incurred by it in connection with its operations and the performance of this Agreement and not to permit the same to become delinquent. The City shall not be liable for the payment of taxes, late charges, or penalties of any nature. The City is a tax-exempt entity.

12. EXAMINATION OF RECORDS AND AUDITS: Any authorized agent of the City has the right to access, and the right to examine, copy, and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers, and records related to the OADC's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The OADC shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during

reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. No examination of records and audits pursuant to this paragraph shall require the OADC to make disclosures in violation of state or federal privacy laws.

13. SUBCONTRACTING: The OADC may subcontract its performance obligations under this Agreement without obtaining the City Representative's prior written consent. In the event of any subcontracting: (i) the OADC shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any contractor or subcontractor.

14. NO THIRD-PARTY BENEFICIARY: The Parties understand and expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the Parties that any person other than the City or the OADC receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15. NO AUTHORITY TO BIND CITY TO CONTRACTS: The OADC lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Municipal Code.

16. INTEGRATION & AMENDMENTS: This Agreement, including the exhibits and attachments hereto (each of which is specifically incorporated herein), is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification hereto shall have any force or effect, unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other modification shall have any force of effect unless embodied in a written amendment to this Agreement properly executed by the Parties. Any oral representation by any officer or employee of the City at variance with terms and conditions of this Agreement or any written amendment to this Agreement shall not have any force or effect nor bind the City.

17. SEVERABILITY: The Parties agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the total amount payable by the City, the validity of the remaining portions or provisions shall not be affected, if the intent of the Parties can be fulfilled.

18. CONFLICT OF INTEREST:

A. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the OADC shall not hire, or contract for services with, any employee or officer of the City

B. The OADC shall not engage in any transaction, activity, or conduct which would result in a conflict of interest under this Agreement. The OADC represents that the OADC has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions, or work of the OADC by placing the OADC's own interests, or the interests of any party with whom the OADC has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after the City has given the OADC written notice which describes the conflict.

19. NOTICES: All notices required by the terms of the Agreement must be in writing and either hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, and delivered by electronic mail:

By the OADC to:

Court Administrator
11701 Community Center Drive
Northglenn, CO 80233

With a copy to:

Hoffmann, Parker, Wilson, and Carberry, P.C.
511 16th Street, Suite 610
Denver, CO 80202

By the City to:

Municipal Court Coordinator
Office of the Alternate Defense Counsel
1300 Broadway, #330
Denver, CO 80203
muni@coloradoadc.com

All notices are effective upon personal delivery or upon placing in the United States mail or with the courier service.

20. GOVERNING LAW; COMPLIANCE WITH LAW; VENUE:

A. Governing Law: This Agreement shall be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter and Municipal Code of the City of Northglenn, and the ordinances, and regulations enacted and/or promulgated pursuant thereto, including any amendments. The Charter and Municipal Code of the City of Northglenn, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference.

B. Compliance with Law: The OADC shall perform or cause to be performed all services and work under this Agreement in full compliance with all applicable laws, ordinances, codes, rules, regulations, and executive orders of the United States of America, the State of Colorado, and the City of Northglenn.

C. Venue: Venue for any legal action relating to this Agreement shall lie in the District Court in and for Adams County, Colorado.

21. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Agreement, the OADC agrees not to refuse to hire, contract with, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

22. PROPRIETARY OR CONFIDENTIAL INFORMATION; OPEN RECORDS:

A. City Information: The OADC acknowledges and accepts that, in performance of all work under the terms of this Agreement, the OADC may have access to proprietary data or confidential information that may be owned or controlled by the City, and that the disclosure of such proprietary data or confidential information may be damaging to the City or third parties. The OADC agrees that all proprietary data or confidential information provided or otherwise disclosed by the City to the Contractor shall be held in confidence and used only in the performance of the OADC's obligations under this Agreement. The OADC shall exercise the same standard of care to protect such proprietary data and confidential information as a reasonably prudent party would to protect its own proprietary data or confidential information. Proprietary data and confidential information shall include, but not limited to, any materials or information which is designated or marked "Proprietary" or "Confidential" by the City or its agents, provided to or made available to the OADC by the City subject to a confidentiality agreement or notice of confidentiality, or used by the City under a licensing agreement or other authorization by the owner of the materials or information. Proprietary data and confidential information may be in hardcopy, printed, digital, or electronic format.

(1) Use of Proprietary Data or Confidential Information: Except as required by law or expressly provided by the terms of this Agreement and subject to written permission of the City Representative, the OADC agrees that the OADC shall not disclose, disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the proprietary data or confidential information, or any part thereof, or any repackaged form of the proprietary data or confidential information, or any part thereof, to any other person, party, or entity in any form or media for any purpose other than performing the OADC's obligations under this Agreement. The OADC further acknowledges that by providing this proprietary data or confidential information, the City is not granting to the OADC any right or license to use such data or information except as provided in this Agreement. The OADC agrees that any ideas, concepts, knowledge, computer programs, or data processing techniques developed by the OADC or provided by the City in connection with this Agreement, including any proprietary data or any confidential information, shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The OADC agrees, with respect to the proprietary data and confidential information, that: (i) the Contractor shall not copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the City Representative; (ii) the OADC shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data or information; (iii) the OADC shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or information or work products incorporating such data or information to the City.

(2) Employees and Subcontractors: The OADC shall inform the OADC's employees and officers of the obligations under this Agreement, and all requirements and obligations of the OADC under this Agreement shall survive the expiration or earlier termination of this Agreement. The OADC shall not disclose proprietary data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

(3) Disclaimer: Notwithstanding any other provision of this Agreement, the City is furnishing proprietary data and confidential information on an "as is" basis, without any support whatsoever, and without representation, warranty, or guarantee, including but not in any manner limited to, fitness, merchantability, or the accuracy and completeness of the proprietary data or confidential information. The OADC is hereby advised to verify the OADC's work performed in reliance upon the proprietary data or confidential information. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any

substitute program, claims by third parties, or for similar costs. If discrepancies are found, the OADC agrees to contact the City immediately.

B. Contractor's Information: The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72- 201, *et seq.*, C.R.S., and that in the event of a request to the City for disclosure of such information, the City may advise the OADC of such request in order to give the OADC the opportunity to object to the disclosure of any of the OADC's proprietary or confidential material. In the event of the filing of a lawsuit to compel a disclosure to which the OADC has objected, the City will tender all such material to the court for judicial determination of the issue of disclosure and the OADC agrees to intervene in such lawsuit to protect and assert the OADC's claims of privilege and against disclosure of such material or waive the same.

23. WORKERS WITHOUT AUTHORIZATION:

A. Effective Date: This section shall only be effective until July 1, 2022, as required by Article 17.5 of Title 8, Colorado Revised Statutes. Until that date, the OADC shall be liable for any violations as provided under that Article.

B. Certification: By entering into this Agreement, the OADC hereby certifies that, at the time of this certification, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement and that the OADC will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

C. Prohibited Acts: The OADC shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

D. Verification:

(I) The OADC has confirmed the employment of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

(II) The OADC shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screen of job applicants while this Agreement is being performed.

(III) If the OADC obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization who is performing work under this Agreement, the OADC shall: notify the subcontractor and the City within 3 days that OADC has actual knowledge that the subcontractor is employing or contracting with a worker without authorization who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the worker without authorization who is performing work under this Agreement; except that the OADC shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization who is performing work under this Agreement.

E. Duty to Comply with Investigations: The OADC shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation

F. Affidavits: If the OADC wishes to verify the lawful presence of newly hired employees who perform work under this Agreement via the Department Program, the OADC shall sign the "Department Program Affidavit" attached hereto.

24. NO CONSTRUCTION AGAINST DRAFTING PARTY: The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

25. SURVIVAL OF CERTAIN PROVISIONS: The Parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or earlier termination of this Agreement, shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the OADC's and its subcontractor's obligations for the provision of insurance and/or to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

26. NO ASSIGNMENT: No party may assign any of its rights or obligations under this Agreement.

27. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

28. CITY EXECUTION OF AGREEMENT: This Agreement shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City of Northglenn.

29. COUNTERPARTS OF THIS AGREEMENT: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

30. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: The OADC consents to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Signature page follows.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

OFFICE OF THE ALTERNATIVE DEFENSE COUNSEL

By: Lindy Frolich
Printed Name: Lindy Frolich
Title: Director

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 28th day of April, 2022, by Lindy Frolich as Director of OADC.

Witness my hand and seal.

(Seal)

[Signature]
Notary Public

SYDNEY JEAN ORWIG
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184042314
MY COMMISSION EXPIRES OCTOBER 29, 2022

CITY OF NORTHGLENN
By: _____
Printed Name: _____
Title: _____

ATTEST

City Clerk

SUPREME COURT OF COLORADO

OFFICE OF THE CHIEF JUSTICE

**APPOINTMENT OF STATE-FUNDED COUNSEL IN
CRIMINAL CASES AND FOR
CONTEMPT OF COURT**

This policy is adopted to assist the administration of justice with respect to the appointment of counsel in criminal cases pursuant to Titles 16 and 18 and for the appointment of counsel to an indigent person cited for contempt where a jail sentence is contemplated. This policy does not cover appointments made for juvenile delinquency cases pursuant to Title 19, except to the extent necessary to address appointments made prior to November 1, 2014 for which the Judicial Department is responsible for payment of counsel. For appointments of counsel for juvenile delinquency cases after November 1, 2014, see Chief Justice Directive 14-01.

I. CONSTITUTIONAL AND STATUTORY AUTHORITY

- A. The federal and state constitutions provide that an accused person has the right to be represented by counsel in criminal prosecutions. This constitutional right has been interpreted to mean that counsel will be provided at state expense for indigent persons in all cases in which actual incarceration is a likely penalty or there is a waiver of the right to counsel at the advisement.
- B. State funds are appropriated to the Office of the Public Defender to provide for the representation of indigent persons in criminal cases pursuant to §21-1-103, C.R.S. (2014).
- C. State funds are appropriated to the Office of Alternate Defense Counsel to provide for the representation of indigent persons in criminal cases in which the Public Defender declares a conflict of interest pursuant to §21-2-101, C.R.S. (2014).
- D. Prior to November 1, 2014, Section 19-2-706(2), C.R.S. (2014), provided for the representation of juveniles in delinquency cases in which (1) the parent or legal guardian refused to retain counsel for the juvenile, or (2) the court found such representation was necessary to protect the interest of the juvenile or other parties involved in the case. When such an appointment was necessary and the juvenile did not qualify for representation by the Public Defender or the Office of Alternate Defense Counsel, the Judicial Department was authorized to pay for the costs of counsel and investigator services. House Bill 14-1032 established that, effective November 1, 2014, the Public Defender or OADC if there is a conflict, shall be appointed to represent juveniles in such cases. Reimbursement to the state is authorized for parental refusal, as outlined in §19-2-706(2)(b), C.R.S. and Chief Justice Directive 14-01.
- E. Colorado Rules of Civil Procedure 107 and 407 provide for the appointment of counsel to an indigent person cited for contempt where a jail sentence is contemplated. If the court appoints private counsel to prosecute a contempt action or to represent an indigent party for contempt charges, the Judicial Department will pay for counsel, as there is no statutory authority for the

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Public Defender or the Alternate Defense Counsel to represent clients for the sole purpose of addressing contempt charges.

II. INDIGENCY DETERMINATION – OUT OF CUSTODY

- A. All parties requesting court-appointed counsel pursuant to this Chief Justice Directive must be indigent to be represented at state expense, except as otherwise provided in section III. Such person(s) must also be indigent or otherwise qualify for court-appointed counsel as described in Section IV for the court to authorize the payment of certain costs/expenses. Any party requesting court-appointed representation on the basis of indigency must complete Form JDF208, Application for Public Defender, Court-Appointed Counsel or Guardian ad Litem, signed under oath.
- B. An indigent person is one whose financial circumstances prevent the person from having equal access to the legal process (Attachments A, B, and C).
- C. Pursuant to §21-1-103 (3), C.R.S., the initial determination of indigency in criminal cases shall be made by the Public Defender subject to review by the court. Therefore, all persons seeking court-appointed representation in criminal matters shall complete form JDF208 and shall first apply with the Office of the Public Defender. In all matters described in Section IV.C of this Directive, the party must complete form JDF208 and submit it to the court for approval.
- D. In all cases, the court retains jurisdiction to determine whether the person is indigent based on all the information available. Upon receipt of the finding by the Public Defender on the issue of eligibility for representation in accordance with the fiscal standards, the court shall review the person's application for Public Defender, including any requests for exception to the determination of the Public Defender. Based on a review of all information available, the court shall enter an order either granting or denying the person's request for appointment of the public defender. The court may use the judicial district's Collections Investigator(s) to provide a recommendation to the court relative to the above determinations, if additional analysis is needed.
- E. If the court finds the person indigent and appoints counsel at State expense, the court may consider ordering the person to make reimbursement in whole or in part to the State of Colorado pursuant to law using the process described in Section VI. of this Chief Justice Directive.
- F. An attorney or other person appointed by the court on the basis of a person's inability to pay the costs of the appointment shall provide timely notice to the court in the event financial related information is discovered that would reasonably call into question the person's inability to pay such costs. The court shall have the discretion to reassess indigence, and for purposes of possible reimbursement to the state, the provisions of Section VI. of this Chief Justice Directive shall apply. Based upon a reassessment of a party's financial circumstances, the court may terminate a state-paid appointment, require reimbursement to the State of Colorado of all or part of the costs incurred or to be incurred, or continue the appointment in its current pay status.

III. INDIGENCY DETERMINATION – IN CUSTODY AND CANNOT POST/IS NOT ALLOWED BAIL

If a person is in custody and cannot post or is not allowed bail, the Public Defender, or Alternate Defense Counsel if the Public Defender has determined that a conflict exists and has notified ADC that conflict representation is necessary, may automatically elect to represent that person and will notify the court, either verbally or in writing, of the circumstances. The person need not complete a JDF208 until and unless the person is released from custody. If the person is released from custody, then all provisions under Section II, Indigency Determination – Out of Custody, apply.

IV. GUIDELINES FOR APPOINTMENT OF COUNSEL

A. Appointment of Public Defender

1. Appointments on the Basis of Indigency: To be eligible for representation by the Public Defender (PD), a defendant must be indigent **or eligible for automatic representation**, as defined above and determined by the PD, subject to review by the court. If such person is indigent **or is eligible for automatic representation**, the court shall appoint the PD, except as otherwise provided in paragraph IV.B.
2. Appointments to Assist in Motions Under Rule 35 of the Colorado Rules of Criminal Procedure: An indigent defendant may be entitled to representation by the PD to assist in motions under Rule 35 if the court does not deny the motion under Crim. P. 35(c)(3)(IV). If another attorney represents the defendant and withdraws, the PD may be appointed if the defendant is indigent and there is no conflict with such representation.
3. Appointments for Appeals:
 - a. The court or the PD shall reassess the indigency status of a defendant who requests court-appointed counsel, as described in Section II.A., for purposes of appeal.
 - b. When an indigent person has an Alternate Defense Counsel attorney for the trial of a criminal case, the PD shall be appointed to represent the defendant on appeal unless the court determines that the PD has a conflict of interest.

B. Appointment of Alternate Defense Counsel

The Office of Alternate Defense Counsel (OADC) shall maintain a list of qualified attorneys for use by the courts in making appointments. Upon appointment of an Alternate Defense Counsel attorney, the clerk shall notify the OADC's designee. No more than one attorney may be appointed as counsel for an indigent person except in specific exceptional circumstances. Accordingly, upon specific written request by counsel for appointment of an additional attorney to assist in the defense of an indigent person, the OADC may approve appointment of an additional attorney for good cause shown. Such requests should be made in writing and directed to the OADC. Alternate Defense Counsel shall be appointed under the following circumstances:

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1. Conflict-of-Interest Appointments: The PD shall file a motion or otherwise notify the court to withdraw in all cases in which a conflict of interest exists. The court shall appoint an Alternate Defense Counsel attorney to represent indigent persons in cases in which the court determines that the PD has a conflict of interest and removes the PD from the case. The OADC is responsible by statute to handle all PD conflict cases. Therefore, the OADC shall establish policies and procedures to cover instances when Alternate Defense Counsel has a conflict.
2. Appointments To Assist in Motions Under Rule 35 of the Colorado Rules of Criminal Procedure: An indigent defendant may be entitled to conflict-free counsel to assist in motions under Rule 35 if the court does not deny the motion under Crim. P. 35(c)(3)(IV) and if the PD notifies the court that a conflict of interest exists. The provisions of IV.B.1. above shall be followed in appointing an Alternate Defense Counsel attorney.
3. Appointments for Appeals: If the court determines that the PD has a conflict of interest, it shall set forth in a written order the reason for the conflict of interest and the court shall appoint an Alternate Defense Counsel attorney to represent the defendant.

C. Appointment of Other Counsel

1. The Clerk of Court or the District Administrator shall maintain a list of qualified private attorneys from which appointments shall be made under this section. Private counsel appointed under the following circumstances will be paid by the Judicial Department as established in this directive:
 - a. Appointments of Advisory Counsel: There is no constitutional right to the appointment of advisory counsel to assist a *pro se* defendant. However, pursuant to case law, the court may appoint private advisory counsel either 1) at the request of an indigent *pro se* defendant, or 2) over the objections of an indigent *pro se* defendant to ensure orderly proceedings and to provide assistance to the defendant. If the court appoints private advisory counsel for an indigent *pro se* defendant in a criminal case, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to advise *pro se* defendants.
 - b. Appointments of Contempt Counsel: Private counsel may be appointed as a special prosecutor or as counsel for an indigent person facing contempt charges when punitive sanctions may be imposed, in accordance with Rule 107(d) and 407(d) of the Colorado Rules of Civil Procedure. Costs and reasonable attorney's fees in connection with the contempt proceeding may be assessed at the discretion of the court.
 - c. Appointments of Counsel for Grand Jury Witnesses: A witness subpoenaed to appear and testify before a grand jury is entitled to assistance of counsel pursuant to §16-5-204, C.R.S. (2014). For any person financially unable to obtain adequate assistance, counsel may be appointed at state expense. Pursuant to case law, no

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attorney who provides counsel in the grand jury room may represent more than one witness in a single investigation without grand jury permission. If the court appoints counsel for an indigent witness before a grand jury, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to represent grand jury witnesses.

- d. Appointments of Counsel for Witnesses: An indigent witness subpoenaed to appear and testify in a court hearing may be appointed counsel if the witness requests counsel and the judge determines the appointment of counsel is necessary to assist the witness in asserting his or her privilege against self-incrimination. If the court appoints counsel for an indigent witness for this purpose, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to represent a witness.
2. For appointments under this section, the appointing judge or magistrate shall, to the extent practical and subject to attorney-client privilege, monitor the actions of the appointee to ensure compliance with the duties and scope specified in the order of appointment.
 3. Attorneys appointed under this section shall notify the State Court Administrator, in writing, within five (5) days of any malpractice suit or grievance brought against them.
 4. Appointees shall maintain adequate professional liability insurance for all work performed. In addition, appointees shall notify the State Court Administrator, in writing, within five (5) days if they cease to be covered by said liability insurance and shall not accept court appointments until coverage is reinstated.

V. GUIDELINES FOR PAYMENT

A. Public Defender Costs

The Public Defender's Office has attorneys on staff (Deputy Public Defenders) to accept appointments. Court costs and other expenses incurred by the Public Defender shall be billed to the Public Defender's Office in accordance with that office's policies and procedures.

B. Office of Alternate Defense Counsel Costs

Claims for payment of counsel and investigator fees and expenses shall be filed with the OADC. A schedule of maximum hourly rates and maximum total fees for OADC state-funded counsel and investigators is shown in Attachment D (1). Court costs incurred by Alternate Defense Counsel attorneys and investigators shall be billed to the OADC in accordance with that office's policies and procedures.

C. Other Court-Appointee's Costs

The fees and costs associated with appointments described under section IV. C. shall be paid by the Judicial Department as follows:

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1. Fees and Expenses: Appointments may be made by the courts on a non-contract hourly fee basis or contract basis as set forth by the State Court Administrator's Office. A schedule of maximum hourly rates and maximum total fees for state-funded counsel and investigators is shown in Attachment D (2). Upon appointment of counsel or other appointee, court staff shall enter the appointment in the ICON/Eclipse computer system and complete the appointment on the CAC system for payment and tracking purposes. Claims for payment on hourly appointments shall be entered in the Department's **Internet-based payment system (CACs)**; or, if the Financial Services Division of the State Court Administrator's Office has granted the appointee an exception to the requirement to invoice using CACS, claims for payment shall be filed with the District Administrator in the respective judicial district on the Request and Authorization for Payment of Fees (form JDF207). Claims for payment on flat-fee, contract appointments shall be entered in the Department's Internet-based payment system (CACs); or, if the Financial Services Division of the State Court Administrator's Office has granted the appointee an exception to the requirement to invoice using CACS, such claims for payment shall be filed with the State Court Administrator's Office using the process and format required by that office. All requests for hourly payment must be in compliance with Guidelines for Payment of Court-Appointed Counsel and Investigators Paid by the Judicial Department for Itemized Fees and Expenses on an Hourly Basis (Attachment E) and shall follow the Court-Appointed Counsel and Investigators Procedures for Payment of Fees and Expenses (Attachment F). All hourly payment requests shall be reviewed by the District Administrator or his/her designee to ensure that all charges are appropriate and in compliance with this directive and applicable fiscal policies and procedures, before authorizing the request. The Office of the State Court Administrator may review, verify, and revise, when appropriate, authorizations for payment. All incomplete or erroneous claims will be returned to the attorney or investigator with an explanation concerning the issue(s) identified.
2. Court Costs, Expert Witness Fees, and Related Expenses: Costs incurred by counsel shall be pre-approved, billed to and paid by the appointing court. Court costs include such items as: expert and standard witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. Payment of all court costs shall be in accordance with applicable statutes, Chief Justice Directives, and other policies and procedures of the Judicial Department. Appropriate travel receipts must accompany out-of-state investigation travel expenses incurred by the appointee.
3. Investigator Appointments: If a court-appointed attorney paid by the Judicial Department requires the services of an investigator, he or she shall submit a motion to the court requesting authority to hire an investigator. The court shall authorize such appointments as the judge or magistrate deems necessary, and shall issue an order authorizing the amount of investigator fees and expenses that may be incurred, not to exceed the maximum fees set forth in Attachment D (2). The Judicial Department shall pay for investigator services under these circumstances.
4. Online Appointee Billing: Appointees paid by the Judicial Department shall invoice the Department using the Department's Internet-based system (CACs) according to the policies and procedures set forth by the State Court Administrator's Office. An appointee

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may request an exception to this requirement by contacting the Financial Services Division at the State Court Administrator's Office. In the request, the appointee shall describe the extenuating circumstances preventing the use of CACS for invoicing. The Director of Financial Services or his/her designee shall review such requests and shall have final decision authority concerning the granting or denial of the request. Failure of an appointee to learn or avail him/herself of training on the use of CACS is not sufficient cause to warrant an exception.

5. To maintain the security and integrity of CACS, appointees shall immediately notify the Director of Financial Services, or his/her designee, in writing, of any changes in appointee's staffing or practice that may require cancellation or other changes in the CACS login authority or credentials of appointee or appointee's staff.
6. Failure of appointee to appropriately use CACS shall be sufficient grounds for denial of payment and may result in removal from consideration for future appointments.

D. Court Costs, Expert Witness Fees and Investigator Fees of an Indigent Party who is Not Appointed Counsel

1. In certain circumstances, a defendant's court costs, expert witness fees, and/or investigator fees may be paid by the Judicial Department even though the defendant is not represented by state-funded counsel (i.e., Public Defender; Alternate Defense Counsel; Judicial-paid counsel). Payment by the local court is appropriate if any of the following statements apply:
 - a) The defendant is indigent and proceeding *pro se*;
 - b) The defendant is indigent and receiving *pro bono*, private counsel;
 - c) The defendant is receiving private counsel but becomes indigent during the course of the case, and the court has determined that the defendant lacks sufficient funds to pay for court costs, and that it would be too disruptive to the proceedings to assign the Public Defender or Alternate Defense Counsel to the case.
2. Court costs include such items as: expert and standard witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. An investigator appointed by the court under this section shall be paid in accordance with the rates and maximum fees established in Attachment D (2). A motion requesting authorization to hire an investigator, to pay court costs, or for expert witness fees shall be submitted to the court. The Court shall authorize such appointments or payments as the judge or magistrate deems necessary, and shall issue an order authorizing the amount of the costs, fees and expenses that may be incurred under this section. For maximum rates for payment of expert witnesses, see CJD 12-03, as amended.

- E. In instances in which fees for activity such as travel time, waiting time, and mileage expenses were incurred simultaneously for more than one court appointment, appointees shall apportion the fees or expenses across cases, as applicable (for example, traveling to/from court would be billed 50% on the client A appointment and 50% on the client B appointment if the appointee made one trip to cover both clients' hearings).

VI. REIMBURSEMENT TO THE STATE

- A. If the court determines, at any time before, during the course of the appointment (at the court's discretion if questions concerning indigence arise), or after the appointment of state-funded counsel, that the person has the ability to pay all or a part of the expenses for representation including related ancillary costs, the court shall enter a written order that the person reimburse all or a part of said expenses and inform the responsible party of this obligation. Such order shall constitute a final judgment including costs of collection, and may be collected by the state in any manner authorized by law. The court's financial review concerning ability to pay counsel fees and costs may be accomplished with the use of the judicial district's Collections Investigator. If the defendant is placed on probation, the court may require payment for the costs of representation as one of the conditions of probation.
- B. Collection of fees and costs related to court-appointed representation may be referred to the Collections Investigator or a private collector that has an agreement for such collection services with the State Court Administrator's Office.
- C. Costs for representation provided may be assessed against the responsible party(ies) at the fixed hourly rate for state-funded private counsel for the number of hours reported to the court, or at a flat fee rate established by the Public Defender or Alternate Defense Counsel. Other costs incurred for the purposes of prosecution and representation of the case may also be assessed including, for example, costs for transcripts, witness fees and expenses, and costs for service of process. In addition, the responsible party(ies) may be required to pay costs of collection. Costs incurred for accommodations required under the Americans with Disabilities Act, such as hearing interpreter fees, may not be assessed.

VII. COMPLAINTS

- A. All written complaints and documentation of verbal complaints regarding the performance of any state-paid counsel shall be submitted to the District Administrator.
- B. All complaints shall be referred by the District Administrator to the appropriate agency or person. Public Defender complaints shall be submitted to the Public Defender's Office. Complaints against an Alternate Defense Counsel attorney shall be submitted to the Alternate Defense Counsel Office. The District Administrator will forward all other complaints to the presiding judge or, if appropriate, the Chief Judge of the district unless a conflict exists due to the judge's involvement in a pending case. If a conflict exists, the District Administrator will forward the complaint to another judge designated for that purpose.
- C. If the complaint involves an attorney and the reviewing judge or District Administrator determines that the person may have violated the Colorado Rules of Professional Conduct, the information shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel. The Regulation Counsel shall advise the reporting judge or District Administrator and the State Court Administrator of the final outcome of the investigation.

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- D. Copies of all written complaints and documentation of verbal complaints regarding state-paid counsel shall be forwarded by the District Administrator to the State Court Administrator’s Office. The State Court Administrator may investigate a complaint and take action he/she believes is necessary to resolve any concerns or issues raised by the complaint. Such action may include, but is not limited to, terminating the contract with the attorney.

VIII. SANCTIONS

- A. All contracts with the Judicial Department for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with this Chief Justice Directive. Failure to comply with this Directive may result in termination of any associated contract and/or removal from the appointment list.
- B. Judges and Magistrates shall notify appointees that acceptance of the appointment requires compliance with this Directive, and that failure to comply may result in termination of the current appointment and/or removal from the appointment list.

CJD 04-04 is amended and adopted effective July 1, 2018.

Done at Denver, Colorado this 26 day of June, 2018.

/s/
Nancy E. Rice, Chief Justice

EXHIBIT A

Attachment A
Chief Justice Directive 04-04
Amended July 2006

Applicant Name _____ **Court** _____

Case Number _____ **Case Name** _____

FISCAL STANDARDS - ELIGIBILITY SCORING INSTRUMENT

Use information from Form JDF208 and information provided by applicant during screening interview. Circle the points in the category that applies and transfer to the "Points" column. Total at end.

Factor				Points
1. Income Guidelines Gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workman's Compensation Benefits, Unemployment Benefits, and alimony. Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, and veteran's benefits earned from a disability, child support payments or other public assistance programs. NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the Applicant's income in a fashion which would allow the applicant proprietary rights to the roommate's income.)	At or below guidelines	Up to 10% above guidelines	11% to 75% above guidelines (Not eligible if income is more than 75% above guidelines.)	
	150	100	0	
2. Expenses vs. Income (Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall <u>not</u> be included.)	Monthly expenses exceed income by over \$100	Monthly expenses are within \$100 of income	Monthly income exceeds expenses by over \$100	
	50	25	0	
3. Charge (most severe) vs. Assets which could be used to pay defense costs (Assets to include cash on hand or in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant's ability to maintain home and employment.)	Class 1 - Class 3 Felony or Habitual Offender related	Class 4 - Class 6 Felony	Class 1 - Class 3 Misdemeanor or jailable Traffic	
	Assets \$0 - \$750	150	125	50
	Assets \$751 - \$1,500	125	100	25
	Assets \$1,501 - \$2,500	100	75	0
	Assets \$2,501 - \$5,000	75	50	0
	Assets \$5,001 - \$7,500	50	25	0
	Assets \$7,501 - \$10,000	25	0	0
	Assets over \$10,000	0	0	0
TOTAL POINTS				
150 or greater		Less than 150		
<input type="checkbox"/> Indigent - Eligible for Public Defender (Note: Reimbursement of costs of representation may be ordered by the court pursuant to Section 21-1-106, C.R.S.)		<input type="checkbox"/> Not Eligible for State-Funded Counsel		

EXCEPTION REQUESTED TO [ALLOW / DISALLOW] APPOINTMENT OF [PUBLIC DEFENDER / ALTERNATE DEFENSE COUNSEL (if PD conflict)] NOTWITHSTANDING THE ABOVE SCORE. (Documentation justifying request is attached.)

Evaluated by _____ **Evaluator Signature** _____ **Date** _____
Print/Type Name Evaluator Signature Date

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Attachment B
Chief Justice Directive 04-04
Amended March 2022

INCOME ELIGIBILITY GUIDELINES (amended February 2022)

Family Size	Annual Poverty	Monthly Poverty	Monthly Income*	Monthly Income plus 10%	Monthly Income plus 75%	Yearly Income*	Yearly Income plus 10%	Yearly Income plus 75%
1	\$ 13,590	\$ 1,133	\$ 1,416	\$ 1,557	\$ 2,477	\$ 16,988	\$ 18,686	\$ 29,728
2	\$ 18,310	\$ 1,526	\$ 1,907	\$ 2,098	\$ 3,338	\$ 22,888	\$ 25,176	\$ 40,053
3	\$ 23,030	\$ 1,919	\$ 2,399	\$ 2,639	\$ 4,198	\$ 28,788	\$ 31,666	\$ 50,378
4	\$ 27,750	\$ 2,313	\$ 2,891	\$ 3,180	\$ 5,059	\$ 34,688	\$ 38,156	\$ 60,703
5	\$ 32,470	\$ 2,706	\$ 3,382	\$ 3,721	\$ 5,919	\$ 40,588	\$ 44,646	\$ 71,028
6	\$ 37,190	\$ 3,099	\$ 3,874	\$ 4,261	\$ 6,779	\$ 46,488	\$ 51,136	\$ 81,353
7	\$ 41,910	\$ 3,493	\$ 4,366	\$ 4,802	\$ 7,640	\$ 52,388	\$ 57,626	\$ 91,678
8	\$ 46,630	\$ 3,886	\$ 4,857	\$ 5,343	\$ 8,500	\$ 58,288	\$ 64,116	\$ 102,003

* 125% of poverty level as determined by the Department of Health and Human Services.

*For family units with more than eight members, add \$492 per month to the "monthly income" or \$ 5,900 per year to "yearly income" for each additional family member.

Source: Federal Register (87 FR 3315, 02/01/2022)

**FISCAL STANDARDS: PROCEDURES FOR THE DETERMINATION OF
ELIGIBILITY FOR COURT-APPOINTED COUNSEL ON THE BASIS OF
INDIGENCY**

A determination of indigency is necessary for certain appointments addressed in Chief Justice Directive 04-04. Any defendant in a criminal case or a person involved in matters described under IV.C requesting court-appointed counsel on the basis of indigency must apply for counsel as described below. The Public Defender and court staff will determine the applicant's eligibility for appointment of counsel in accordance with the following procedures:

- In Criminal cases, the defendant shall apply for the Public Defender by completing the Application for Court-Appointed Counsel, form JDF208 (Judicial Department Form).
- If the defendant is in custody and cannot post or is not allowed bail, the Public Defender may automatically elect to represent the defendant, and will notify the court either verbally or in writing of the circumstances.
- If the person's income is at or below the income eligibility guidelines and he or she has no assets, as determined on form JDF208, the Public Defender or other counsel shall be appointed.
- If the person's income is more than 75 percent above the income eligibility guidelines, they are not eligible for State-paid counsel. In criminal matters, the Public Defender will note that the defendant is ineligible for court-appointed counsel, and will submit the form JDF208 to the court to demonstrate ineligibility.
- If eligibility or ineligibility cannot be determined as described above, the eligibility-scoring instrument (Attachment A, CJD 04-04) will be completed, using information obtained on form JDF208. The form is designed to use income and expenses to determine basic eligibility, with an added factor for assets available to pay for an attorney. The points assigned in the "asset" category take into account both the dollar value of the assets and the class type of charges against the defendant. This is to address variations in the types of expenses that might be incurred due to the nature of the charges.
- The total score will determine whether the person will be represented at state expense, or whether the person is not eligible for state-paid representation on the basis of indigency. The Public Defender or defendant may request an exception to the eligibility determination based on the score and may submit documentation of the reasons for the exception to the court, which then has the opportunity to make an appointment decision based on all of the information.

EXHIBIT A

Attachment D (1)
Chief Justice Directive 04-04
Amended, Effective July 2018

**ALTERNATE DEFENSE COUNSEL
MAXIMUM HOURLY RATES ¹**

<u>ADC Fees</u>	<u>No Distinction of In/Out of Court Hours</u>	<u>Effective Date*</u>
Death Penalty Case		
Attorney	\$95.00 per hour	July 1, 2018
Investigator	\$47.00 per hour	July 1, 2018
Type A Felonies	\$85.00 per hour	July 1, 2018
Type B Felonies	\$80.00 per hour	July 1, 2018
Juvenile Felonies	\$80.00 per hour	July 1, 2018
Misdemeanor & Traffic (Adult & Juvenile)	\$75.00 per hour	July 1, 2018
Authorized Investigator	\$44.00 per hour	July 1, 2018
Authorized Paralegal/Legal Assistant	\$33.00 per hour	July 1, 2018
Travel (regardless of type of case)		
Attorney	\$75.00 per hour	July 1, 2018
Investigator	\$44.00 per hour	July 1, 2018

Mileage at rate defined by §24-9-104 C.R.S. Reimbursement paid per OADC policy.

* For work performed on or after this date (July 1, 2018)

MAXIMUM TOTAL FEES PER APPOINTMENT

<u>Appointment Type</u>	<u>With Trial / Without Trial</u>	<u>Effective Date</u>
Class 1 Felonies	\$ 30,000 / 15,000	July 1, 2018
Class 2 Felonies & DF 1 Felonies	\$ 13,000 / 6,500	July 1, 2018
Class 3, 4, 5, and 6 Felonies & DF 2, 3, and 4 Felonies	\$ 8,000 / 4,000	July 1, 2018
Misdemeanors, Traffic, & Petty Offenses	\$ 3,000 / 1,500	July 1, 2018
Juvenile Cases	\$ 5,500 / 2,750	July 1, 2018
Juvenile and Misdemeanor Appeals:	Refer to OADC web site for minimums/maximums based on case classification.	
Felony Appeals and Post-conviction:	Refer to OADC web site for minimums/maximums based on case classification.	

Investigator maximum fee is what has been previously authorized by the OADC.

¹ Rates may vary pursuant to Chief Justice Directive or OADC Order. The appointee should contact the Office of the Alternate Defense Counsel or visit the web site at www.coloradoadc.org if there is a question concerning the current authorized rate.

EXHIBIT A

Attachment D (2)
Chief Justice Directive 04-04
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JUDICIAL PAID APPOINTMENTS

MAXIMUM HOURLY RATES¹

<u>All Case Types</u>	<u>In-Court and Out-of-Court</u>	<u>Effective Date*</u>
Court-Appointed Counsel Fee	\$80.00 per hour	July 1, 2018
Authorized Investigator	\$44.00 per hour	July 1, 2018
Paralegal / Legal Assistant Time	\$32.00 per hour	July 1, 2018

*** For work performed on or after this date**

MAXIMUM TOTAL FEES PER APPOINTMENT

<u>Appointment Type</u>	<u>With Trial / Without Trial</u>	<u>Effective Date</u>
Class 1 felonies & unclassified felonies where the maximum possible penalty is death, life or more than 51 years	\$ 29,855 / 14,959	July 1, 2018
Class 2 felonies & unclassified felonies where the maximum possible penalty is 41 through 50 years	\$ 14,959/ 7,912	July 1, 2018
Class 3, 4, 5 and 6 felonies and unclassified felonies where the maximum possible penalty is from 1 to 40 years	\$ 10,558 / 5,292	July 1, 2018
Class 1, 2, and 3 misdemeanors, unclassified misdemeanors, and petty offenses	\$ 2,646 / 1,787	July 1, 2018
Juvenile Cases with appointment before November 1, 2014	\$ 3,315 / 2,480	July 1, 2014
Appeal	\$ 10,558	July 1, 2018
Contempt and Witness	\$ 1,787	July 1, 2018

- Billable time for appeals begins on the date of appointment and is for the appeal portion of the case only
- Investigator maximum fee allowed is calculated from the preceding chart using the case classification and the “without trial” maximum, exclusive of expenses.

¹Rates may vary pursuant to Chief Justice Directive or Order. The appointee should contact the local district court, State Court Administrator’s Office or visit the web site at www.courts.state.co.us if there is a question concerning the current authorized rate.

**GUIDELINES FOR ITEMIZED HOURLY PAYMENT: JUDICIAL PAID
APPOINTMENTS ONLY****COURT-APPOINTED COUNSEL AND INVESTIGATORS**

- A) Claims for payment on an hourly basis by shall be submitted using the Judicial Department’s online CAC System (if the appointee is authorized to use this system) or submitted to the appointing court on form JDF207 ("Colorado Judicial Department Request and Authorization For Payment Of Fees") including attachments, and shall be in compliance with these guidelines. For appellate counsel only, claims for payment shall be submitted directly to the Court of Appeals. The claims and attachments shall conform to the Procedures for Payment of Fees and Expenses (Attachment F, this CJD). In accordance with this CJD and all other applicable Department policies and procedures, and upon review and approval by the appointing court, the request for payment will be sent to the State Court Administrator’s Office (SCAO) for processing. The SCAO may review, verify, and revise, when appropriate, such authorized requests for payment.
- B) A schedule of maximum hourly rates for court-appointed counsel is established by the Supreme Court in Attachment D (2) and/or by Chief Justice Order. **No payment shall be authorized for hourly rates in excess of the Chief Justice Directive or Order. The maximum total fee that may be paid to court-appointed private counsel for representation on a case is established in Attachment D (2). This maximum includes appointee fees (both contract flat fees plus hourly, as applicable), allowable incidental expenses, paralegal, legal assistant, and law clerk time. To find the allowed maximum total fee for investigators, exclusive of expenses, use the case classification type and the “without trial” maximum from the chart in Attachment D(2).**
1. If there are unusual circumstances involved in the case and the appointee determines that additional work must be completed that will create fee charges over the maximum allowed, pre-approval for fees in excess is to be obtained by submitting a Motion to Exceed the Maximum to the presiding judge/magistrate (while there may be exceptions in which pre-approval is not possible before additional work is performed, seeking pre-approval should be the norm.). If satisfied that the excess fees are warranted and necessary, the presiding judge/magistrate should approve such motion. The District Administrator (or designee) should deny further payment unless accompanied by a Motion to Exceed the Maximum and an order granting the Motion by the presiding judge or magistrate.
 2. The Motion to Exceed the Maximum must cite the specific special and extraordinary circumstances that justify fees in excess. The judge or magistrate, in his or her discretion, may grant approval with an Order for Fees in Excess which provides a maximum up to 150% of the established maximum as outlined in Attachment D(2) of this Chief Justice Directive. A subsequent Motion to Exceed Maximum must be submitted for the same appointment if total fees are expected to further exceed the maximum established by the judge or magistrate.
- C) **All court appointees and investigators must submit invoices using CACS, or a JDF 207, as applicable, to the court within six months of the earliest date of billed activity.** Any court appointee or investigator desiring to request an exception to the 6-month rule based on

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Attachment E
Chief Justice Directive 04-04
Amended July 2014

unusual circumstances shall make such request in writing to the Director of Financial Services at the SCAO, or the Director's designee, whose decision concerning payment shall be final. Before an exception will be considered, the request must detail the extraordinary circumstances concerning a bill or portion of a bill wherein the activity does not fall within the six-month rule.

- D) The District Administrator or his/her designee will carefully review all hourly payment requests submitted for approval. To assist in this review, attorneys and investigators must submit a detailed itemization of in-court and out-of-court hours with each request for payment as outlined in Procedures for Payment of Fees and Expenses, Attachment F. Authorization for payment is not automatic, and the District Administrator (or designee) must be satisfied that the number of hours billed and expenses charged are appropriate and necessary for the complexity of the issues involved. If there are questions concerning the reasonableness of the bill, the appropriate judge or magistrate will be consulted. If reimbursement to the state is to be ordered and such order is not already entered, the District Administrator or his/her designee shall notify the appropriate judge.
- E) Requests by appointees for reimbursement of expenses must include itemized statements and accompany the request for payment. In addition, such requests must comply with Maximum Hourly Rates/Maximum Fees Per Appointment as set forth in Attachment D (2). When practical, a paralegal or legal assistant should be used for tasks that require legal expertise but can be done more cost-effectively by an assistant, such as drafting court motions or performing some legal research. The billable hourly rate for a paralegal or legal assistant time is found in Attachment D(2). The Judicial Department does not pay for the time of administrative support staff. Therefore, charges for time spent on administrative activities, such as setting up files, typing, copying discovery or other items, faxing documents, making deliveries, preparing payment requests, and mailing letters are not reimbursable costs. Attorneys are expected to have sufficient administrative support for these activities.
1. Certain court costs are paid individually by the appointing court (not SCAO) with prior court approval. The appointing court pays court costs incurred by counsel. Counsel or investigators should submit the bills for items listed below directly to the local court and should not include these costs for reimbursement in the CAC system, or on the Request for Payment form (JDF207), if applicable.

Costs Paid Locally by the Individual Court

- Cost of subpoenas;
 - Fees and expenses of witnesses;
 - Service of process;
 - Language interpreters;
 - Mental Health examinations/evaluations;
 - Transcripts;
 - Discovery Costs (including: LexisNexis research charges, medical records, etc.)
2. Court-appointed counsel and investigators may request reimbursement for certain reasonable out-of-pocket expenses that are incurred on behalf of their clients. The following expenses may be claimed via the CAC system, or on JDF207, as applicable.

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Other Allowable Expenses

- Copy charges at the rate of \$0.10 per page (specify the number of copies made);
- Mileage at the rate defined by §24-9-104 C.R.S. (the actual number of miles must be specified for each trip);
- Long-distance telephone calls at cost (if total billing exceeds \$50, it must include a copy of the telephone bill with the following information highlighted: date, phone number, and charges);
- Postage at cost (regular 1st class mail charges);
- Reimbursement for delivery and express mail charges are only reimbursable for a case on appeal. A receipt or invoice for these charges must be attached to the order for payment;
- Requests for payment of overnight travel or out-of-state travel require prior authorization by the court and must be in accordance with state travel regulations as described in the Travel section of the Colorado Judicial Department's Fiscal Policies and Procedures manual. Out-of-state travel expenses incurred by the appointee shall be submitted to the court using the online CAC system. All appropriate copies of travel receipts shall be provided directly to court staff.

3. The following items are not authorized for payment or reimbursement.

Non-Allowable Expenses

- Phone calls when no contact is made (i.e., no answer, client not available or message left to call back, etc.);
 - Fax charges;
 - Parking Fees;
 - Items purchased for indigent (or other) persons represented which includes meals, books, clothing, and other personal items;
 - Administrative activities (as previously discussed);
 - Electronic filing fees for which state funded counsel appointments are exempt;
 - Any other cost or expense not authorized under Colorado law or Chief Justice Directive for payment by the state or reimbursement to counsel or other party.
- F) In any case in which a payment has been made to the attorney by a party who is later determined to be indigent, the state will reimburse the attorney for the total number of hours expended on the case, less any payments received from the party for fees incurred prior to the determination of indigence. The payment calculation is at the allowed Chief Justice Directive and/or Chief Justice Order hourly rate applicable to when the activity occurred.
- G) Attorneys shall maintain records of all work performed relating to court appointments and make all such records available to the Judicial Branch for inspection, audit, and evaluation in such form and manner as the Branch in its discretion may require, subject to attorney/client privilege.
- H) The Judicial Department will review and respond promptly to any question or dispute concerning a bill received, submitted, or paid. However, due to research time and record

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retention limitations, there is a time restriction of two years for billing questions and disputes. The two-year restriction starts from the activity date (or date of service) that is in question. For prompt resolution concerning questions or disputes concerning hourly or contract payment requests, all questions and disputes must be directed to the local court or State Court Administrator's Office immediately when issues arise.

JUDICIAL PAID APPOINTMENTS

* PROCEDURES FOR PAYMENT OF FEES AND EXPENSES *

GENERAL INFORMATION

These procedures apply to requests for payment of fees and expenses for court-appointed counsel, other appointees, and investigators paid by the Judicial Department on an hourly basis. Payment requests shall be submitted via the Department's online CAC System (CACs) in accordance with the policies and procedures set forth by the State Court Administrator's Office or, if an exception has been granted pursuant to Section V.C.4. of this Chief Justice Directive, by using the standardized "Colorado Judicial Department Request and Authorization For Payment of Fees" form JDF207 (Judicial Department Form). Completion, including attachments, should adhere to the procedures described below. Requests for payment that do not include the necessary information will be returned to the appointee or to the court for completion or correction.

All appointees, both hourly and contract, who have not yet received payment from the Judicial Department must submit a completed W-9 form and, if applicable, an "Authorization to Pay a Law Firm" form before a payment can be issued. Payments are issued/submitted to whomever the attorney has authorized and approved on W-9 and "Authorization to Pay a Law Firm" forms. Therefore, if an attorney is no longer with the law firm indicated on a prior W-9 and/or Authorization to pay a Law Firm, he/she must complete a new form(s) and submit them to the Financial Services Division at SCAO. The forms are available from the court or from the Financial Services Division by e-mailing CACpayments@judicial.state.co.us. To change only the mailing address, send the address change to the Colorado Judicial Department, Financial Services Division, 1300 Broadway, Suite 1200, Denver, CO 80203, or call for e-mail instructions.

Billing for Representation of Client with Multiple Cases: When billing for multiple cases in representation of the same client (i.e., companion cases), the appointee should work with the Financial Services Division at the State Court Administrator's Office to ensure the appointments/cases are designated as "concurrent" for billing purposes. Appointees must use the "Concurrent Appointment Notification" form, which is available from the Financial Services Division upon request. This applies to situations in which activity occurs simultaneously in the representation of the party across the multiple cases (example: the appointee attends a single court hearing during which more than one of the client's cases is discussed) and allows for the activity to be billed once via a "master" case. Cases in which the appointee's activity does not overlap multiple cases should not be billed concurrently, and should instead be billed by submitting separate invoices for each respective case.

When an attorney is appointed to continue on a case for the purposes of appeal, payment shall be on an hourly basis even if the original appointment was on a contract, flat fee basis.

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Amended November 2014
Amended, Effective July 2018

A. PROCEDURES FOR BILLING

1. Detail of Itemized Billing

Itemized detail is to be submitted through CACS. If an exception has been made and the JDF207 is being used, time sheets must be attached to support the summarized hours billed. Time must be described in sufficient detail to justify the amount of time spent on the activity. Time reported must include all time spent between the beginning and ending dates of the billing and must be in chronological order. Time sheets must be legible – preferably typed. Expenses must be described. A sample itemization is shown on the next page.

Rates may vary pursuant to Chief Justice Directive or Order. The appointee should contact the local district court, State Court Administrator's Office or visit the web site at www.courts.state.co.us if there is a question concerning the current authorized rates.

- a. The billing detail and itemization needs to include a date, distinguish between out-of court and in-court time, and a description of service performed. Time must be billed in *tenths* of an hour using the decimal system. One-tenth of an hour is equal to six (6) minutes. For example, 12 minutes is charged as 0.2 hours.
- b. Mileage itemization must include the date of the trip, the purpose of the trip, and the number of miles traveled for each trip.

2. Other Attachments

- a. Investigators must include the order of appointment appointing the attorney for whom the investigator is working, the court's order authorizing an investigator, and the amount of expenses the investigator may incur.
- b. If the total fee request (including past payments and the current invoice) exceeds the maximum fee allowed by this Directive as specified in Attachment D(2), a copy of the court's order authorizing fees beyond the maximum must be submitted. Submitting this copy once is sufficient as long as subsequent billings remain within the newly authorized amount.
- c. If total expenses exceed \$50, all receipts or invoices for those expenses must be submitted with the invoice. If using CACS online billing, submit the receipts to the local court and clearly indicate the case number and billing time frame for which the receipts relate.
- d. All receipts for any expenses outside of the guidelines and an explanation for the additional costs must be submitted.

EXHIBIT A

Attachment F
Chief Justice Directive 04-04
Amended November 2014
Amended, Effective July 2018

John Sample, Attorney at Law

Date	Activity	In-court	Out-of-court	Paralegal	
07/06/18	Court appearance: Contempt Citation	0.4			
07/06/18	Conference with client		1.1		
08/05/18	Review motions		0.5		
08/09/18	Court appearance	0.3			
08/10/18	Meet with client		1.0		
08/11/18	Prepare motion			0.2	
09/07/18	Travel to court round trip (57 miles)		1.4		
09/07/18	Conf. With client in custody		1.0		
09/07/18	Draft motion			0.2	
09/14/18	Contempt Hearing	0.3			
Dates of service 07/06/18 – 09/14/18		Total hours	1.0	5.0	0.4

SUMMARY OF FEES	Activity:	
	6.0 hours @ \$80 per hour	\$480.00
	0.4 hours @ \$32 per hour	\$12.80
	TOTAL FEES	\$492.80
TOTAL MILEAGE	57 miles @ \$0.50 per mile (or rate defined by §24-9-104 C.R.S.)	\$28.50
SUMMARY OF OTHER EXPENSES	Copies: case file = 12 pages @ \$0.10	\$1.20
	Postage	\$0.50
	TOTAL OTHER EXPENSES	\$1.70
	TOTAL BILLING	\$523.00

COMPLETION OF THE JDF207 (Hourly Billing if not billing online)

Completion of the JDF207 form is required by the Judicial Department for payment of court appointees appointed on an hourly basis unless the appointee has been authorized to invoice using CACS (online system). The appointee should keep a copy and submit the original plus one copy. All applicable sections of the form should be completed as indicated in the instructions. Attach all required documents before submitting to the local court. All incomplete Requests for Payment will be returned to the appointee for correction(s).

Section I.

Enter the case number of the charges being billed. When billing for multiple cases in representation of the same client (i.e., companion cases), enter all applicable case numbers. If the bill is for appellate charges, include the appeal case number and the original case number being appealed.

Include the name and number of person/(s) represented, the name of the case, applicable county, name of appointing judge/magistrate and current judge/magistrate. Indicate if the case jurisdiction is district or county.

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Section II.

Enter all applicable appointee information, attorney registration number, name, complete address, phone, fax, e-mail. If the address has changed, check new address box. For more information concerning changes, review the General Information section in this attachment.

The Social Security Number or Tax Id Number must be included on each JDF207 (for more information concerning authorized payee changes, review the General Information section in this attachment).

Indicate the appointment date, if you are an original or substitute appointee, if the case has or has not gone to trial, if the case was originally under contract. If originally under contract, explain why an hourly bill is being submitted and the date circumstances changed resulting in hourly billing.

Section III.

Indicate the type of representation provided.

Section IV.

Indicate the authority/statute title allowing for the appointment. This is indicated on the original appointment form/order.

Section V.

The indigency status of the person represented must be noted. If the person is found indigent, use the date of determination. If the person is not indigent, indicate which statement is applicable to the party represented and if reimbursement is to be ordered by the presiding judge. This information is usually included in the order of appointment or may be found in the application for court-appointed counsel (form JDF208) or another affidavit of indigence, as requested by the court.

Section VI.

Under this section all charges are to be summarized.

For the activity *from date*, enter the first chronological date of activity billed from the itemized detail document. For the activity *to date*, enter the last chronological date in which activity occurred as itemized in the detail document. Group the *start* and *to date* for activities in which the effective date of the rates (as set by Chief Justice Directive or Chief Justice Order) are the same.

Instructions for summarizing attorney hours and fees are located on the reverse side of the Request and Authorization for Payment of Fees form (JDF207) #5.

For non-attorney billing activity, summarize all non-attorney hours by category. Next, apply the rate as set by Chief Justice Directive or Chief Justice Order and enter the total charge requested in the right column. Summarize all expenses by type, apply the correlating rates and/or receipts and enter the total charge per category. Charges must correspond to attached receipts.

Total all charges and calculate total amount billed.

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Include all prior amounts invoiced for the appointment in the “Total Amount Previously billed” line, (excluding the current request).

Determine the cumulative total of fees charged by appointee for the case by adding the “Total Amount Previously billed” plus the current request amount. If the cumulative total is over the authorized maximum, check the indicator box “Exceeds allowed maximum”. Include the Motion to Exceed Maximum and the approved Order to Exceed Maximum (if possible, this should be judge/magistrate pre-approved and not requested after services are performed).

Appointee signature and date are required.

If this is the final bill, check the “Final Bill” box.