



## OFFICE OF COURT APPOINTED COUNSEL

### OCAC PROCEDURE

#### Providing Defense Services

#### Reference:

Arizona Revised Statutes  
Arizona Rules of Criminal Procedure  
American Bar Association Standards

Effective Date: 05/01/2004

Revised: 10/21/05

Director: *[Signature]*

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#### Providing Defense Services

This procedure sets forth the Office of Court Appointed Counsel (OCAC) policy on providing defense services.

#### **I. Objective**

OCAC's objective is to provide effective assistance of counsel to all persons eligible for counsel under Arizona law in a manner that efficiently utilizes limited public resources.

#### **II. Organizational Structure**

Indigent defense services are provided by attorneys in the Public Defender (PD) and Legal Defender Offices (LD) and under contracts administered by OCAC. The trial court makes a probable cause finding and an indigence determination and orders the appointment of counsel if the charges warrant it and the defendant is indigent. If the case is not immediately assigned to the PD or LD it is referred to OCAC for assignment of an attorney and authorization for ancillary services and other case-specific costs when necessary for an adequate defense.

#### **III. Definitions**

- A. Administrative Attorney is the head of OCAC who is responsible for overseeing the operations of the case management process, assignments of attorneys to indigent defense cases, administering contracts, authorizing expenditures, and providing policy analysis on criminal justice issues to the County Administrator.
- B. Ancillary Services are defense services paid for in addition to attorneys' fees including investigator services, paralegal services and mitigation specialist fees.

- C. Case-specific Costs are expenses authorized by OCAC on a case by case basis when reasonably necessary to present an adequate defense. Such costs include expert witness fees, transcription, trial clothing, photocopying and related expenses.
- D. Expert Witness is a person qualified by knowledge, skill, experience, training or education to render an opinion on scientific, technical or other specialized matters.
- E. Investigator is a person licensed by the State of Arizona pursuant to ARS 32-2401*et. seq.* and qualified to secure evidence to be used in the preparation and trial of criminal cases.
- F. Mitigation Specialist is a person qualified by knowledge, skill, experience, or other training as a mental health or sociology professional to investigate, evaluate and present psycho-social and other mitigation evidence.
- G. Paralegal is a person qualified through education, training or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, though not exclusively, performed by a lawyer.
- H. Pima County Guidelines refers to the document prepared by OCAC and approved by the Administrative Attorney setting forth the rules for authorizing expenditures and processing requests for payment.

#### **IV. Contract Attorney Qualifications**

##### **A. First Degree Murder Panel**

1. General Qualifications for appointment in capital case per Arizona Rules of Criminal Procedure: Rule 6.8:
  - a. Member in good standing of the State Bar of Arizona for at least five years immediately preceding the appointment;
  - b. Practiced in the area of state criminal litigation for three years immediately preceding the appointment; and
  - c. Demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.
2. Lead Counsel, in addition to the General Qualifications above:
  - a. Practiced in the area of state criminal litigation for five years immediately preceding the appointment;
  - b. Lead counsel in at least nine felony jury trials that were tried to completion and have been lead counsel or co-counsel in at least one capital murder jury trial;

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- c. Familiar with the American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases; and
      - d. Attended and successfully completed, within one year prior to the initial appointment, at least six hours of relevant training or educational programs in the area of capital defense, and within one year prior to any subsequent appointment, at least twelve hours of relevant training or educational programs in the area of criminal defense.
  3. Co-counsel Qualifications, in addition to the General Qualifications above:
    - a. A member in good standing of the State Bar of Arizona and attended, within one year prior to the initial appointment, at least six hours of relevant training or educational programs in the area of capital defense, and within one year prior to any subsequent appointment, at least twelve hours of relevant training or educational programs in the area of criminal defense.
  4. Appellate and Post-Conviction Counsel Qualifications, in addition to the General Qualifications above:
    - a. Within three years immediately preceding the appointment has been lead counsel in an appeal or post-conviction proceeding in a case in which a death sentence was imposed, as well as prior experience as lead counsel in the appeal of at least three felony convictions and at least one post-conviction proceeding that resulted in an evidentiary hearing. Alternatively, an attorney must have been lead counsel in the appeal of at least six felony convictions, at least two of which were appeals from first or second degree murder convictions, and lead counsel in at least two post-conviction proceedings that resulted in evidentiary hearings; and
    - b. Attended and successfully completed, within one year prior to the initial appointment, at least six hours of relevant training or educational programs in the area of capital defense, and within one year prior to any appointment, at least twelve hours of relevant training or educational programs in the area of criminal defense.
  5. In exceptional circumstances and with the consent of the Supreme Court, an attorney may be appointed who does not meet the qualifications set forth above, providing that the attorney's experience, stature and record enable the Court to conclude that the attorney's ability significantly exceeds the standards set forth in Rule 6.8 and that the attorney associates with himself or herself a lawyer who does meet the standards set forth in this rule.

## B. Felony Panel

1. Group “A” Cases (*all felony cases except first degree murder and those listed in Group B, below*)
  - a. Member in good standing with State Bar of Arizona;
  - b. Experienced and active in criminal law with not less than three years criminal litigation experience;
  - c. Lead or co-counsel in at least three jury trials to verdict of any class of felony or complex serious misdemeanor; and
2. Group “B” Cases (Armed robbery, arson of an occupied structure, attempted murder, second degree murder, manslaughter, negligent homicide, drive-by shooting, sexual offenses pursuant to Chapter 14 involving child victims or multiple victims and dangerous crimes against children)
  - a. Member in good standing with the State Bar of Arizona;
  - b. Experienced and active in criminal law with not less than five years criminal litigation experience;
  - c. At least five jury trials of serious complex cases tried to completion; and

## C. Misdemeanor Panel

1. Member in good standing with State Bar of Arizona; and
2. Experienced and active in criminal law with not less than one year criminal experience.

## D. Post-Conviction Relief Panel

1. Member in good standing with State Bar of Arizona;
2. Experienced in criminal law with not less than three years criminal litigation or criminal appellate/post-conviction experience;

**E. Appeals Panel**

1. Member in good standing with State Bar of Arizona;
2. Experienced in criminal law with not less than three years criminal litigation or appellate experience;

**F. Title 36 Panel**

1. Member in good standing with the State Bar of Arizona;
2. At least three years of courtroom experience;
3. Some appellate experience;
4. Some experience with guardianships and conservatorships; and
5. The ability to identify programs and resources to meet the client's needs.

**G. Juvenile Panel**

1. Member in good standing with the State Bar of Arizona;
2. Delinquency:
  - a. Not less than three years experience in criminal law and/or juvenile law.
  - b. Familiar with dispositional alternatives, services available through the Court, CPS and community agencies.
3. Dependency/Severance:
  - a. Some experience with child welfare system, family law, mental health and/or guardianships;
  - b. Familiar with services available in the areas of mental health, substance abuse, domestic violence, education, job/vocational training;

**V. Ancillary Service Providers Qualifications****A. Investigator**

1. Minimum Qualifications:
  - a. Current Arizona State private investigator license;

- b. Three years experience in criminal investigation and experience interviewing witnesses.

2. Additional Desired Qualifications:

- a. Membership in the Arizona Association of Licensed Private Investigators;
- b. Five hours of continuing education each year; and
- c. Experience working on indigent defense cases in Pima County with emphasis on child abuse, sexual assault, narcotics, fraud and murder.

## B. Paralegal

1. Minimum Qualifications:

- a) Associate Paralegal Degree from an accredited college;
- b) Degree in a related field such as, but not limited to, law, business, or criminal justice;
- c) Paralegal Certificate;
- d) Current law student., or
- e) Four years experience working as a paralegal in criminal law (providing two references)

2. Additional Desired Qualifications:

- a. Eight hours of continuing legal education each year; and
- b. Experience working on indigent defense cases in Pima County.

## C. Mitigation Specialist

1. Minimum Qualifications:

- a. Master's degree or higher in criminal justice, law, psychology, sociology, or related field with one year experience working as a mitigation specialist; or
- b. Bachelor's or higher degree in criminal justice, law, psychology, sociology, or related field with two years of professional experience working as a mitigation specialist; or

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- c. Four years of professional mitigation training/experience under the supervision of a qualified mitigation specialist (providing reference/s).

2. Additional Desired Qualifications:

- a. Twelve hours of continuing education each year; and
- b. Experience working on indigent defense cases in Pima County.

## **VI. Recruitment and Selection of Contract Attorneys**

- A At least annually the County will place an advertisement in its official legal newspaper and the Writ requesting applications from attorneys qualified to provide indigent defense services. The advertisement will include a brief description of the required qualifications or a reference to a website where they can be found.
- B A qualified attorney list will be developed for each category of indigent defense work. The administrative attorney will appoint and convene an evaluation panel to review each of the applications. No member of the evaluation panel will have a pecuniary interest in the outcome of the attorney selection process or be an employee or agent in any capacity to any attorney whose qualifications will be evaluated. The evaluation panel will determine if the applicants meet the minimum qualifications. Only attorneys who meet the minimum acceptable qualifications will be placed on the qualified attorney list for that category.
- C The information considered and documents generated by the evaluation panel are confidential during the evaluation period. After the attorney lists have been approved, all information and documents generated during the evaluation process will be maintained as public records.
- D The lists of qualified attorneys will be valid for one year. New lists of qualified attorneys will be issued each year. Attorneys on the lists may, but are not required to, submit applications in response to the annual advertisement, unless otherwise notified.
- E Each attorney on a qualified attorney list will receive a contract for indigent defense services. The contract will be for one year with up to five one-year renewals. Qualified attorneys may be on more than one qualified attorney list and may enter into more than one Pima County contract for indigent defense services.
- F Attorneys who receive a contract for indigent defense services are not guaranteed a maximum or minimum number of case assignments.

## **VII. Recruitment and Selection of Ancillary Service Providers**

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Contracts for ancillary service providers will be procured and processed in accordance with the Pima County Procurement Code and Board of Supervisors Policies.

### **VIII. Provision of Counsel**

- A. Counsel should be provided to the accused at the Initial Appearance and shall be confirmed at the Arraignment if accused meets eligibility requirements.
- B. In capital cases two qualified trial attorneys will be assigned to represent the defendant. One attorney will be the lead counsel for the case. Co-counsel is appointed subject to the approval of the lead counsel.
- C. Counsel should be provided at every stage of the proceedings including sentencing, appeal, certiorari, post conviction relief and Petition for Review.
- D. Defendants requesting court-appointed counsel will be screened for eligibility pursuant to the indigence standards established by administrative order of the presiding judge of the superior court.
  - 1. OCAC is responsible for screening out of custody felony defendants and misdemeanor DUI defendants.
  - 2. The trial court makes the final determination and assesses partial fee recoupment when appropriate.
- E. Cases are assigned to the PD and LD based on workloads and conflicts of interest. Cases will be assigned to contract attorneys only when there is a documented reason for the assignment. Cases are assigned to contract attorneys as follows:
  - 1. When OCAC has determined that the PD or LD have a conflict;
  - 2. When PD or LD have reached applicable workload limits; or
  - 3. When a contract attorney has an open case with the accused.
- F. Specific requests for permission to withdraw as counsel on a case by case basis are made by the appointed indigent defense attorneys to the trial court. Prior to the withdrawal, the appointed attorney will contact OCAC for the name of the next available attorney and provide that name to the court if the court grants the request. A copy of the court order will be sent to OCAC by the Clerk of the Court.
- G. OCAC will report all court appointed counsel cases to County Administration quarterly. The report will include the reasons cases were assigned to contract attorneys.

**IX. Provision of Ancillary Services**

- A. Ancillary services will be authorized and paid in accordance with the Pima County Guidelines if the services are reasonably necessary to present an adequate defense at trial or sentencing.
- B. OCAC will set the allowable costs for ancillary services on a case by case basis according to the Pima County Guidelines.
- C. Contract attorneys will utilize the services of ancillary service providers on the applicable County panel in accordance with the Pima County Guidelines. Utilization of case-specific service providers that are not on a County contract requires the prior approval of OCAC. Expenditures denied or above the amount approved by OCAC require the approval of the trial judge. A copy of the OCAC denial must be attached to the motion and order submitted to the Court. If approved by the Court, the OCAC denial and Court order must be presented to OCAC with billing. Failure to do so will result in the disallowance of any amount claimed.

**X. Payment Requests for Compensation**

- A. Payment Requests for attorney services will be processed as follows:
  - 1. All bills for attorney's services and reimbursement under a County Contract must be submitted directly to OCAC on a Payment Request form with appropriate documentation.
  - 2. Bills exceeding the maximum contract rate must be accompanied by prior OCAC or court authorization.
  - 3. OCAC is responsible for reviewing and verifying all bills and back-up documentation, and may request additional back-up documentation or explanation.
  - 4. The contract attorney must wait until termination of a case before submitting a Payment Request, except as allowed by the terms of the contract or by court order.
  - 5. All Payment Requests should be submitted to OCAC no later than 30 days after termination of the case. Per ARS §11-622, the County will not pay claims for payment submitted six months after the date of the provision of the last service for which payment is sought.
- B. Payment Requests for ancillary services and case-specific costs will be processed as follows:

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1. All invoices for ancillary services and case-specific costs must be submitted to OCAC on a Payment Request form with appropriate documentation.
  2. All invoices for ancillary services and case-specific costs must be signed by the contract attorney on the case who verifies that the services/items were provided and were necessary to present an adequate defense.
  3. Bills exceeding the Pima County Guidelines must be accompanied by prior OCAC or court authorization.
  4. OCAC is responsible for reviewing and verifying all invoices and back-up documentation, and may request additional back-up documentation or explanation.
  5. All Payment Requests must be submitted to OCAC no later than 30 days after termination of the case. Per ARS §11-622, the County will not pay claims for payment submitted six months after the date of the provision of the last service for which payment is sought.

#### C. Rates of Compensation

1. The Superior Court has authority to set the following rates of compensation in cases with court-appointed counsel:
  - a. Counsel in criminal cases. ARS §13-4013(A);
  - b. Counsel in mental health cases. ARS §13-4013(A);
  - c. Investigators in capital cases. ARS §13-4013(B);
  - d. Expert Witnesses in capital cases. ARS §13-4013(B); and
  - e. Expert Witnesses in mental health cases. ARS §13-4014(A).
2. The Board of Supervisors has authority to set the following rates of compensation in cases with court-appointed counsel:
  - a. Counsel in Juvenile Court delinquency, dependency and termination of parental rights cases. ARS §8-221(F)
3. OCAC sets rates of compensation and the number of hours available for the following services:
  - a. Paralegal;
  - b. Mitigation Specialists;

- c. Investigators in non capital cases; and
  - d. Expert Witnesses in non capital cases and non mental health cases.
4. OCAC Cost Authorizations Subject to Judicial Review:
- a. The number of paralegal hours in each criminal case;
  - b. The number of investigator hours in each criminal case;
  - c. The total expert witness fee in each criminal case;
  - d. The total mitigation specialist fee in each criminal case; and
  - e. Attorneys fees in all cases.