

**THE RULES AND REGULATIONS OF THE CRIMINAL CONFLICT PROGRAM
OF THE CONTRA COSTA COUNTY BAR ASSOCIATION**

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**THE RULES AND REGULATIONS OF THE CRIMINAL CONFLICT PROGRAM
OF THE CONTRA COSTA COUNTY BAR ASSOCIATION**

I. ORGANIZATIONAL STRUCTURE OF THE CRIMINAL CONFLICT PROGRAM

A. PURPOSE

1. Appointment of attorneys to represent clients.

The Program¹ exercises the Court's delegated discretion to select qualified attorneys for appointment when the Public Defender and Alternate Defender are not available. Selection is based upon a rotational system, providing as far as practicable equal access to appointments by all attorney members. The Program compensates these attorneys pursuant to fee schedules established in its funding contracts.

2. Execution of funding contracts

The Program executes one or more contracts between the Bar Association and the County, or the Court, for the provision of legal services to clients.

3. Other purposes

The Program has the following additional purposes: to maintain a high standard of practice by member attorneys, and to assist member attorneys in the maintenance and improvement of their law practices.

B. THE BAR ASSOCIATION

The Program shall operate under the auspices of the Bar Association. The Board has the ultimate responsibility for administration of the Program.

C. THE CRIMINAL CONFLICT COMMITTEE

1. The Board shall direct the President to appoint a committee consisting of nine active members of the Bar Association. This committee shall be called the "Criminal Conflict Committee." The Committee shall be the basic policy-making body for the Program.
2. Five members of the Committee shall constitute a quorum.

¹Definitions are in [Part XII](#).

3. Any member of the Committee may be removed at any time without cause by the Board.
4. The Committee shall have the responsibility to review the rules and make such changes or additions thereto as may, from time to time, be deemed appropriate to carry out the purposes of the Program, subject to approval of the Board, and by the County and/or the Court if the changes or additions will result in a material increase in expenses under a contract to which they are a party.

D. THE DIRECTOR

The Board shall appoint an administrator, also called the "Director," to whom it shall delegate its responsibility to administer the Program. The Director's duties shall generally be defined as those duties customarily performed by a chief administrative officer, including all staffing, accounting and reporting responsibilities.

In any case in which the Director receives an appointment through the program, the following conflict of interest rules shall apply, in addition to all other applicable provisions of these rules and the Rules of Professional Conduct:

1. The Director shall receive case appointments through the rotation system.
2. The Director shall submit the following to members of the Committee for review:
 - A. Attorney bills.
 - B. Requests for authorization for outside service expenses.
3. Outside services bills on the Director's cases shall be submitted to members of the Committee for review.
4. The Director shall receive no preferential treatment in any respect pertaining to case appointments, including but not limited to relative position in the appointments rotations, receipt of case appointments, approval and payment of attorney bills, approval of requests for authorization for outside services expenses, and approval of outside service providers' bills.
5. The Director shall perform a conflicts check prior to accepting any case appointment, to determine whether the client's interests conflict with the interests of any past or present CCP client. If such a conflict exists, the Director shall determine whether he or she has actual knowledge of any privileged information or communications of or about the CCP client(s). If the Director has such actual knowledge he or she shall decline the appointment. If the Director does not have such knowledge, he or she may accept the appointment, in which case the Director shall have no access to any information in CCP's files about the other client or clients. The CCP files shall be placed in a locked file cabinet to which only CCP staff have the key, and CCP staff shall be instructed not to provide those files or disclose any information from those files to the Director. In addition, the Director

shall not discuss the other clients' cases with the client's attorney, or any person employed by the attorney, without first disclosing the conflict of interest.

E. THE MEMBERSHIP

1. Duties

a. Skilled and effective representation

In each case in which an attorney is appointed by the Program, the attorney shall provide skilled and effective legal representation, consistent with the attorney's qualifications and fiscal prudence.

b. Duties specific to case classes

Duties specific to case classes are stated in [Part II](#) of these Rules.

c. Delegation of duties

Except in cases of emergency and with the prior approval of the Director, a member shall not delegate responsibility for an appointed case to anyone, and shall personally perform all necessary services except court appearances for continuances and settings, which may be referred to any member. Payment for other members' services is the responsibility of the appointed attorney, who may bill for those services.

2. Eligibility requirements

An attorney is eligible for membership in the Program if he or she:

a. is an active member in good standing of the California State Bar and the Bar Association;

b. timely pays the required annual membership fee, which shall be \$75.00 for attorneys in practice five years or more. For attorneys in practice less than five years, the fee is \$50.00. The membership fee is due at the beginning of each fiscal year (July 1) and/or at the time an application for membership is submitted for consideration. For those who have not received any appointments in the previous year, the membership fee may be waived at the time of renewal in the Director's discretion;

c. maintains his or her principal office in the County, signs a declaration under penalty of perjury to that effect, and lists this office with the State Bar and the attorney's malpractice insurance carrier;

- d. conducts a majority of his or her practice in the County and signs a declaration under penalty of perjury to that effect;
- e. if that person maintains more than one office in the County, designates the office which shall be his or her principal office where the person is available more than 50% of the time and lists the designated office with the State Bar and the attorney's malpractice insurance carrier;
- f. maintains all appropriate attorney case records and assures prompt inspection or transmission of copies of the same upon order of the Court to any successor assigned attorney, the State Public Defender, private counsel on appeal, or the person represented;
- g. maintains proper records to enable the County and the Court to file claims for State reimbursement, to the extent that doing so does not violate the attorney-client and/or attorney work-product privileges;
- h. maintains records of case activity and expenditure information necessary for the Bar Association to provide the County and the Court with reports and to make claims for reimbursement from the County. Except as otherwise authorized by California Penal Code sections 987, *et seq.*, and California Government Code sections 27707, *et seq.*, nothing herein shall be construed to permit the County or the Court to examine individual case files, or as being a waiver any privilege;
- i. maintains attorneys' professional liability insurance with coverage limits of not less than \$100,000.00 per claim and \$300,000.00 in the aggregate, applicable to all cases received through appointment by the Program;
- j. Agrees to indemnify, hold harmless, and waive any and all claims against the Bar Association and its officers, directors, members, agents and employees, the Committee, the administration and staff of the Program, the Court, and the County, for any liability for loss arising out of the operation of the Program, the legal and related services provided, or out of referrals, assignments and appointments.
- k. agrees in writing under penalty of perjury to abide by the Rules of the Program, and does in fact abide by these Rules.
- l. is a member of the Criminal Law Section of the Contra Costa Bar Association, unless the member is not in any adult criminal or juvenile delinquency rotation.

II. APPOINTMENTS PANELS

A. APPOINTMENTS TO BE MADE FROM PANELS

The Committee shall establish a case classification system as stated in the applicable funding contract or contracts, and shall establish a panel of attorneys for each case class. An attorney shall be appointed to provide representation in a case only if the attorney is a member of the panel for that case's class.

B. THE ROTATIONAL SYSTEM OF APPOINTMENT

1. Appointments to be made on rotational system

Members shall where feasible receive appointments on a rotational system on cases for which they are qualified. An attorney who receives an appointment shall move to the lowest position in the applicable panel. The attorney whose most recent appointment was the earliest in time shall be in the highest position. A new admittee shall be placed in the rotation as if that attorney had received an appointment on the day of admission. The Director may allocate appointments outside the rotational system only in extraordinary circumstances, and shall report the same in writing to the Committee.

2. Panels subdivided by geography

Many panels are subdivided geographically. A member who is otherwise qualified for such a panel shall be placed in a rotation for the geographical area where the member's principal office (as defined in [Part I\(E\)2\(e\)](#) above) is located. The Director may allocate appointments outside a geographical rotation only as provided in these rules, or where necessary to avoid a substantial disservice to the client, for example when no attorney is available from the applicable panel. In homicide cases only, a geographical rotation shall be suspended whenever the number of open cases from that rotation is three times the number of open cases in any other rotation.

3. Refusal of appointments

If a member refuses an appointment, the member shall maintain his or her position in the applicable rotation; however, the Director shall have the discretion to place a member at the bottom of any rotation if the member refuses three consecutive appointments. Members shall not refuse to accept appointments based on the party status, race, religion, ethnicity or sexual preference of the client.

C. GENERAL PROCEDURE FOR MAKING APPOINTMENTS

Upon receipt of written notice from the Public Defender, Alternate Defender Office, or any Judge or clerk of the Court, that a conflict exists and that an affidavit of conflict has been or will be filed concerning a person, or written notice from any Judge or Clerk of the Family Law or Probate Divisions of the Court that counsel is needed, the Director shall appoint an attorney to represent that person, pursuant to these Rules.

D. THE CRIMINAL CASE PANELS

1. In general

The criminal case panels shall consist of those attorneys eligible to perform the services called for in contract number 3167100 between the County and the Bar Association, and any subsequent contract(s) with substantially the same purpose, in criminal and/or juvenile delinquency cases.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)2](#), each member of a criminal case panel must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate for each rotation in which the member participates. These requirements are stated in [Part X](#). The Committee shall have the discretion to depart from these requirements, including but not limited to consideration of “second chair” services, consideration of other relevant training and experience, and consideration of the high or low quality of the attorney’s services in previous cases, to determine whether an attorney is qualified for a classification based on experience and judgment equivalent to those stated in Part X. However, the Committee shall not find an attorney to be qualified for class 1 cases if the attorney does not meet the requirements of Rule 4.117.

3. Membership in multiple panels

Attorneys who are qualified to receive appointments in any case class shall necessarily be qualified for any lower classification. Attorneys shall be placed in the panel for each class for which they are qualified, except that attorneys qualified for Class I, II, or III cases shall not be placed in a Class V panel. The Director may appoint an attorney not in a Class V panel to provide representation in a Class V case for good cause.

4. New cases involving existing clients

a. Attorney not qualified for new case

If an attorney represents a client through appointment by the Program, and a new case is filed against that client for which the attorney is not qualified, the attorney shall promptly move to

withdraw as counsel, and the Director shall appoint a qualified attorney to represent the client on all cases subject to Program appointment

b. Attorney qualified for new case

If an attorney represents a client through appointment by Program, a new case is filed anywhere in Contra Costa County against the client, and the attorney is qualified to provide representation in that case, the attorney shall be appointed to represent that client in the new case, regardless of the case's class or geographical area.

5. Changes in sentence exposure

When a charging document is amended, or a successor charging document is filed in the same case, the attorney shall immediately notify CCP. If CCP determines that the client's sentence exposure has changed, resulting in a change in the case classification, the case shall immediately be closed and a new case opened in the appropriate class. All billing after the change in sentence exposure shall be at the rates applicable to the new case classification, unless the attorney has failed to notify CCP promptly of an increase in sentence exposure, in which case the attorney shall be required to bill at the lower rates during the time the case was incorrectly classified. If an attorney fails to report a reduction in the client's sentence exposure and thereby bills at a rate higher than appropriate, the Director shall report this circumstance to the Committee for appropriate action including discipline. If an increase in the client's sentence exposure has increased the case classification, and the attorney is not qualified to accept appointments in that classification, the attorney shall move to withdraw and a new attorney shall be appointed, unless each of the following are true:

- A. The attorney has made full disclosure to the client of CCP's rules on case classifications and has obtained the client's informed, written consent to continue representing the client, and
- B. The Director has determined that the best interests of the client appear to be furthered by continuity of representation by the assigned attorney.

6. Duties of attorneys on the criminal case panel

In addition to those duties stated in [Part I\(E\)\(1\)](#) above, an attorney receiving an appointment in a criminal or juvenile delinquency case shall provide the following legal and related services, until disposition of the case and in no event after the expiration of the period for filing a Notice of Appeal:

- a. all necessary court appearances;
- b. legal research;
- c. investigative services;
- d. interpreting services required out of Court, or for witnesses called by the attorney,
- e. medical, psychiatric, laboratory and other diagnostic services, and fees for expert witnesses not statutorily mandated;
- f. preparation of documents and necessary filings and appearances in pretrial or during-trial writ proceedings necessary to effective representation of the client;
- g. preparation of necessary legal documents;
- h. motion practice;
- i. discovery review and analysis;
- k. assistance to the client in filing of Notice of Appeal and other documents pursuant to Section 1240.1 of the Penal Code, and
- l. all other legal representation consistent with Section 22207(a) of the Government Code, exclusive of post-trial appeals and writs

E. THE DEPENDENCY CASE PANELS

1. In general

The dependency case panels shall consist of those attorneys eligible to perform the dependency case representation services called for in any contract between the Court and the Bar Association.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#) above, each attorney receiving appointments through the Program in dependency cases must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate, for each rotation in which the panel member participates. These requirements are stated in Part X.

3. Duties of attorneys on the dependency case panels

In addition to those duties stated in Part I(F)(1) above, each attorney

receiving appointments through the Program in dependency cases shall provide all legal services required for the effective representation of the client, consistent with section 27706(a) of the Government Code and Welfare and Institutions Code section 317.

a. telephonic contact with social worker

Each attorney receiving appointments through the Program in dependency cases shall make telephonic contact with the assigned social worker promptly upon receipt of an appointment.

b. home visits for minor clients

Attorneys representing minors shall visit the minor's residence whenever necessary, and in no event less than twice per calendar year, either personally or by utilizing the services of a qualified social worker or probation officer

c. attorneys' responsibility to determine court dates

At the time of appointment, the Program will inform the assigned attorney of all court appearances in the case based upon information from the referring agency, usually the Alternate Defender's Office. This information cannot be assumed to be reliable, and the assigned attorney has the responsibility to ascertain all scheduled court appearances.

F. THE WITNESS REPRESENTATION PANEL

1. In general

The witness representation panels shall consist of those attorneys eligible to receive appointments to represent witnesses pursuant to any contract between the Court and the Bar Association.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), each member of a witness representation panel must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate, for each rotation in which the panel member participates. These requirements are stated in Part X.

3. Duties of attorneys on the witness representation panels

In addition to the duties stated in [Part I\(E\)\(1\)](#), members of the witness representation panels shall provide all legal representation necessary to

effective representation of the witness, through the conclusion of the hearing or trial at which the witness is then appearing. Members shall provide outside services if necessary pursuant to [Part XI\(M\)](#) below. Members shall where feasible cooperate with the Court's or County's cost recovery efforts.

G. THE JUVENILE DEPENDENCY IMMIGRATION PANEL

1. In general

The juvenile dependency immigration panel shall consist of those attorneys eligible to receive appointments to represent dependent minors in immigration proceedings pursuant to any contract between the Court and the Bar Association.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), each member of the juvenile dependency immigration panel must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate. These requirements are stated in [Part X](#).

3. Duties of attorneys on the juvenile dependency immigration panel

In addition to the duties stated in [Part I\(E\)\(1\)](#), members of the juvenile dependency immigration panel shall provide all legal representation necessary to effective representation of the dependent minor concerning immigration matters, through the conclusion of immigration procedures. Members shall provide outside services if necessary pursuant to [Part XI\(M\)](#) below. Members shall where feasible cooperate with the Court's or County's cost recovery efforts.

H. THE GUARDIAN AD LITEM PANEL

1. In general

The guardian ad litem panel shall consist of those attorneys eligible to receive appointments to serve as guardian ad litem pursuant to any contract between the Court and the Bar Association.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), each member of the guardian ad litem panel must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate. These requirements are stated in [Part X](#).

3. Duties of attorneys on the guardian ad litem panel

In addition to the duties stated in [Part I\(E\)\(1\)](#), members of the guardian ad litem panel shall provide all services required of a guardian ad litem. Members shall provide outside services if necessary pursuant to [Part XI\(M\)](#) below. Members shall where feasible cooperate with the Court's or County's cost recovery efforts.

I. THE MINOR'S COUNSEL IN FAMILY LAW PANELS

1. In general

The minor's counsel in family law panels shall consist of those attorneys eligible to receive appointments to represent minors in family law cases pursuant to any contract between the Court and the Bar Association.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), members of the minor's counsel in family law panels must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate, for each rotation in which the panel member participates. These requirements are stated in [Part X](#).

3. Duties of attorneys on the minor's counsel in family panels

In addition to the duties stated in [Part I\(E\)\(1\)](#), members of the minor's counsel in family law panels shall provide all legal representation necessary to effective representation of the minor, through the conclusion of the hearing or trial at which the witness is then appearing. Members shall provide outside services if necessary pursuant to [Part XI\(M\)](#) below. Members shall where feasible cooperate with the Court's or County's cost recovery efforts.

4. Membership in multiple panels

Attorneys who are qualified to receive appointments in any case class shall necessarily be qualified for any lower classification. Attorneys shall be placed in the panel for each class for which they are qualified, except that only attorneys in the mentored case class shall be placed in the mentored class rotation.

J. THE PROBATE GUARDIANSHIP PANELS

1. In general

The probate guardianship panels shall consist of those attorneys eligible to

receive appointments to represent minors in probate guardianship cases pursuant to any contract between the County and the Bar Association.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), members of the probate guardianship panels must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate, for each rotation in which the panel member participates. These requirements are stated in [Part X](#).

3. Duties of attorneys on the probate guardianship panels

In addition to the duties stated in [Part I\(E\)\(1\)](#), members of the probate guardianship panels shall provide all legal representation necessary to effective representation of the minors in probate guardianship cases. Members shall provide outside services if necessary pursuant to [Part XI\(M\)](#) below. Members shall where feasible cooperate with the Court's or County's cost recovery efforts.

4. Membership in multiple panels

Attorneys who are qualified to receive appointments in the complex experience level shall necessarily be qualified for the standard experience level. Attorneys shall be placed in the panel for each class for which they are qualified.

K. THE CONSERVATORSHIP PANELS

1. In general

The conservatorship panels shall consist of those attorneys eligible to receive appointments to represent conservatees in conservatorship cases pursuant to any contract between the Court and the Bar Association.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), members of the conservatorship panels must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate, for each rotation in which the panel member participates. These requirements are stated in [Part X](#).

3. Duties of attorneys on the probate guardianship panels

In addition to the duties stated in [Part I\(E\)\(1\)](#), members of the conservatorship panels shall provide all legal representation necessary to

effective representation of conservatees in conservatorship cases. Members shall provide outside services if necessary pursuant to [Part XI\(M\)](#) below. Members shall where feasible cooperate with the Court's or County's cost recovery efforts.

4. Membership in multiple panels

Attorneys who are qualified to receive appointments in the complex experience level and/or the public benefits level shall necessarily be qualified for the standard experience level. Attorneys shall be placed in the panel for each class for which they are qualified.

L. THE IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS PANEL

1. In general

The immigration consequences of criminal convictions ("ICCC") panel shall consist of those attorneys eligible to receive appointments to advise panel attorneys on the potential immigration consequences of convictions in any case in which the original appointment was made pursuant to any contract between the County and the Bar Association.

2. Committee to establish case classifications and qualifications

In addition to the requirements stated in [Part I\(E\)\(2\)](#), each member of the immigration consequences of criminal convictions panel must satisfy the experience and other requirements the Committee, in its sound discretion, shall approve and promulgate. These requirements are stated in [Part X](#).

3. Duties of attorneys on the immigration consequences of criminal convictions panel

In addition to the duties stated in [Part I\(E\)\(1\)](#), members of the immigration consequences of criminal convictions panel shall perform all services necessary to advise the appointed attorney of potential immigration consequences of criminal convictions in a case in which the original appointment was made pursuant to any contract between the County and the Bar Association. Members of this panel shall provide no other services, and the responsibility for representing the client shall not be delegated from the attorney handling the underlying case to the ICCC attorney. Members of this panel shall where feasible cooperate with the Court's or County's cost recovery efforts.

4. Compensation of attorneys on the immigration consequences of criminal convictions panel.

Attorneys appointed under this provision shall be compensated at the rate of pay applicable to the underlying case.

5. Special procedures for appointment of attorneys from the immigration consequences of criminal convictions panel.

No attorney shall be appointed from the immigration consequences of criminal convictions panel unless an attorney currently representing a client through appointment by the Criminal Conflict Program submits an outside services request form establishing the need for consultation with an attorney with expertise in the immigration consequences of criminal convictions. If the request is approved, CCP shall appoint an attorney from the subdivision of the ICCC panel corresponding to the class of the case.

III. APPLICATION AND RECERTIFICATION

A. WRITTEN APPLICATION

Membership in any panel shall be by written application only, submitted on a form provided by the Committee. Members shall be required to apply to renew their panel membership(s) at the beginning of each fiscal year. Members may at any time submit an amendment to an application stating the member's eligibility for additional panels and/or classification(s) within a panel. Such amendments do not require an additional fee. Each applicant shall:

1. state the applicant's eligibility for membership, geographical choice, and qualifications for the panel(s) and classification(s) desired;
2. state the applicant's familiarity with and agreement to abide by these Rules, together with such other and further rules and regulations as may be adopted by the Committee in the future, and the applicable fee schedules;
3. state that the applicant indemnifies, holds harmless, and waives any and all claims against the Bar Association and its officers, directors members, employees, the Committee, the administration and staff of the Program, the Court, and the County for any liability for loss arising out of the operation of the Program, the legal and related services provided, or out of referrals, assignments and appointments; and
4. remit the annual membership fee with the completed application.

B. CERTIFICATION AND RECERTIFICATION

1. Committee to review applications

The Committee shall evaluate and certify applicant attorneys for all

appropriate panels. All new applications for membership, and all amendments to applications, shall be evaluated for certification upon submission. Applications to renew memberships without changing panels may be evaluated for recertification at the discretion of the Committee. Members may be evaluated for certification or recertification at any time in the discretion of the Committee.

2. Review of Committee's certification decisions

An applicant or member who has been denied certification in any panel shall, upon written request to the Committee, have the right to appear and be heard and present evidence before the Committee of the member's competence to represent clients in the panel for which certification was denied. The decision of the Committee shall be final.

IV. VOLUNTEER SERVICES

- A. A member may volunteer to handle a case for which he or she is eligible. In such event, the member shall receive no pay. Such service may count toward eligibility for certification for a panel. A member volunteering for a case for which he or she is eligible shall immediately be placed at the top of the list in that panel in order to receive an appointment as a volunteer. A member shall not lose his or her regular place on the rotation list by volunteering.
- B. A member may continue to volunteer to handle cases provided, however, no member shall be assigned more than two volunteer cases at any time.
- C. If more than one member volunteers within the same panel, the members' names shall be placed at the top of the list in the order in which the Program received the requests to volunteer.
- D. Members may volunteer to serve as "second chair" attorneys in any case, except a capital case, if the assigned attorney consents and continues to accept full responsibility for the delivery of legal services to the client. Volunteer second chair services shall not be compensated. The nature and extent of second chair services shall be within the discretion of the assigned attorney.

V. REPORTING REQUIREMENTS

- A. The Director shall account for all funds the Program disburses, and shall compile statistics on the number and classification of all cases in which the program makes appointments, and shall make periodic reports to the Committee, the Board, the County and the Court. The Director shall compile other statistical information and make reports of the same as directed by the Committee and the Board.

- B. If contract expenditures appear likely to exceed the payment limit of the contract before its termination, the Director shall promptly notify the Committee and the County and/or the Court.

VI. SUSPENSION, TERMINATION AND RECLASSIFICATION

- A. A member may be subject to suspension, termination or reclassification at any time for any substantial violation of these Rules, in the discretion of the Committee
- B. A member shall be subject to suspension, termination or reclassification at any time for any substantial violation of the Rules of Professional Conduct or upon publically disclosed disciplinary action by the California State Bar.
- C. A member may withdraw from the Program at any time upon written notice to the Director, but no portion of any fee paid to the Program will be returned, nor will any unpaid fee due the Program be discharged. The member resigning will be expected, whenever possible, to complete the cases to which the member has been appointed.
- D. Immediately upon receipt of a complaint from a judicial officer concerning a member's professional competence in the representation of minor clients, the member shall be placed on inactive status, causing the member to be ineligible for new referrals to represent minors. The member's existing caseload shall not be affected by this action. The Committee shall thereafter investigate the matter and take such action as it deems appropriate, including but not limited to discipline under [Parts VI\(A\) and \(B\)](#) above, or reinstatement of the member's active status. The Committee shall communicate to the complaining judicial officer the results of its investigation and any discipline, reinstatement or other action taken by the Committee in response to the complaint.

VII. MONITOR PROGRAM

A. APPOINTMENT OF MONITORING ATTORNEY

The Committee shall have the discretion to appoint an attorney to monitor the legal representation being provided by an appointed attorney in any case in which the best interests of the client and/or the Committee will be served thereby. In any case n which the Committee determines to appoint a monitoring attorney, the appointed attorney, by accepting the appointment with knowledge of the appointment of a monitoring attorney, is deemed to have agreed to the appointment of a monitoring attorney, and to all the provisions of this Part.

B. DUTIES OF MONITORING ATTORNEY

The duties of the monitoring attorney shall include all activities which will in reason serve the best interests of the client and/or the Committee, including but not

limited to:

1. becoming familiar with the factual circumstances of the case;
2. becoming familiar with the legal issues in the case;
3. suggesting overall strategy, particular tactics, legal arguments both pretrial and trial, factual arguments both pretrial and trial, avenues of investigation, and techniques of client relations;
4. learning the strategy, tactics, legal and factual arguments, investigation, and techniques of client relations the appointed attorney employees in the case, and the results thereof;
5. reporting to the Committee on the appointed attorney's representation in the case.

C. QUALIFICATIONS OF MONITORING ATTORNEY

The monitoring attorney shall be qualified to accept cases of the classification of the case in which the monitoring attorney is appointed.

D. DUTIES OF MONITORED ATTORNEY

The duties of the monitored attorney shall include the duty to communicate fully and cooperate fully with the monitoring attorney.

E. COMPENSATION OF MONITORING ATTORNEY

The monitoring attorney shall be compensated as follows:

1. The rate of pay shall be the same as the rate of pay to the appointed attorney for out of court work on the case.
2. The monitoring attorney shall bill for actual time expended, but in no event more than ten hours on any case except class I and II criminal cases without prior approval of the Committee
3. The funds paid the monitoring attorney shall derive from the dues paid by the members of the Program.

F. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

By accepting and/or continuing the appointed representation, the appointed attorney agrees to indemnify and hold harmless the monitoring attorney for any liability the monitoring attorney may incur in providing services under this provision.

VIII. PRIVILEGES

No waiver of the attorney-client privilege and/or the attorney work product privilege shall be made by any communications between members and the Committee, the Director or Program staff necessary to effect the purposes of the Program, including but not limited to billing and payment records and funding requests. All communications between members and the Committee, the Director, or Program staff of or pertaining to attorney-client communications and/or attorney work product shall be confidential.

IX. CASE CLASSIFICATIONS AND PANELS

A. CASE CLASSIFICATIONS

Cases shall be classified as follows:

1. Adult criminal cases

- a. class 1.

Capital cases

- b. class 2.

Non-capital homicides; all cases in which a life sentence may be imposed, and cases in which a State prison sentence of fifteen years or more may be imposed

- c. class 3.

All cases in which the maximum penalty is more than six years and less than fifteen years

- d. class 4.

All other felony cases

- e. class 5.

Misdemeanor cases

2. Juvenile Delinquency cases

- a. class 1.

Capital cases

- b. class 2.

Non-capital homicides; all cases in which a life sentence may be imposed, and cases in which a State prison sentence of fifteen years or more could be imposed against an adult convicted of the same crimes

c. class 3.

All cases in which the maximum penalty which could be imposed on an adult convicted of the same crimes is more than six years and less than fifteen years

d. class 4.

All other felony cases

e. class 5.

Misdemeanor cases

3. Juvenile dependency cases

All cases brought under section 300 of the Welfare and Institutions Code.

4. Witness cases

All witness representation cases

5. Juvenile dependency immigration

All juvenile dependency immigration cases

6. Guardian ad litem

All guardian ad litem cases

7. Minor's counsel in family law cases

a. In General

Minor's counsel in family law cases may be paid by the Program, or by one or both parents. The following classifications apply regardless of the payment source.

b. Class 1

All cases classified as "Complex Experience Level"

- c. class 2
All cases classified as “Experienced Level”
- d. class 3
All cases classified as “Independent Level”
- e. class 4
All cases classified as “Mentored Level”

8. Probate guardianship cases

- a. Class 1
All cases classified as “Complex Experience Level”
- b. class 2
All cases classified as “Standard Experience Level”

9. Conservatorship cases

- a. Class 1
All cases classified as “Complex Experience Level”
- b. Class 2
All cases classified as “Public Benefits Level”
- c. Class 3
All cases classified as “Standard Experience Level”

B. GEOGRAPHICAL SUBDIVISIONS

1. Criminal cases

- a. Bay
Cases initially filed in Richmond
- b. Central
Cases initially filed in Martinez or Walnut Creek

- c. Delta
Cases initially filed in Pittsburg
- 2. Juvenile Delinquency cases
 - a. Richmond
Cases initially filed in Richmond
 - b. Central
Cases initially filed in Martinez
- 3. Juvenile Dependency cases
 - a. Richmond
 - 1. All cases initially filed in Richmond
 - 2. All cases involving the representation of a minor when the minor lives within the geographical area described by the venue of the Richmond Branch of the Court
 - b. Central
 - 1. All cases initially filed in Martinez
 - 2. All cases involving the representation of minors when the minor lives within the geographical area described by the venues of the Martinez, Walnut Creek, and Pittsburg branches of the Court.
- 4. Witness representation cases
 - a. Bay
All cases being heard in the Richmond Branch of the Court
 - b. Central
All cases being heard in Martinez or Walnut Creek
 - c. Delta
All cases being heard in the Pittsburg Branch of the Court

5. Juvenile Dependency Immigration cases

a. Bay

All cases in which the underlying incident occurred within the geographical area described by the venue of the Richmond Branch of the Court

b. Central

All cases in which the underlying incident occurred within the geographical area described by the venues of the Walnut Creek and Martinez branches of the Court

c. Delta

All cases in which the underlying incident occurred within the geographical area described by the venue of the Pittsburg Branch of the Court

6. Guardian ad litem cases

All cases.

7. Minor's counsel in family law cases

All cases.

8. Probate guardianship cases

All cases.

9. Conservatorship cases

All cases.

C. PANELS

The Committee shall establish individual panels for each case classification and geographical subdivision established in these Rules.

D. In criminal and juvenile delinquency cases, sentence exposure shall be calculated based upon the allegations in the current charging document.

X. QUALIFICATIONS FOR APPOINTMENT

A. CLASS ONE CASES

The qualifications for appointment in class 1 cases are set forth in California Rules of Court, Rule 4.117. It provides:

Rule 4.117. Qualifications for appointed trial counsel in capital cases

(a) [Purpose] This rule defines minimum qualifications for attorneys appointed to represent persons charged with capital offenses in the superior courts. These minimum qualifications are designed to promote adequate representation in death penalty cases and to avoid unnecessary delay and expense by assisting the trial court in appointing qualified counsel. Nothing in this rule is intended to be used as a standard by which to measure whether the defendant received effective assistance of counsel.

(b) [General qualifications] In cases in which the death penalty is sought, the court must assign qualified trial counsel to represent the defendant. The attorney may be appointed only if the court, after reviewing the attorney's background, experience, and training, determines that the attorney has demonstrated the skill, knowledge, and proficiency to diligently and competently represent the defendant. An attorney is not entitled to appointment simply because he or she meets the minimum qualifications.

(c) [Designation of counsel]

(1) If the court appoints more than one attorney, one must be designated lead counsel and meet the qualifications set forth in (d) or (f), and at least one other must be designated associate counsel and meet the qualifications set forth in (e) or (f).

(2) If the court appoints only one attorney, that attorney must meet the qualifications set forth in (d) or (f).

(d) [Qualifications of lead counsel] To be eligible to serve as lead counsel, an attorney must:

(1) Be an active member of the State Bar of California;

(2) Be an active trial practitioner with at least 10 years' litigation experience in the field of criminal law;

(3) Have prior experience as lead counsel in either

(A) At least 10 serious or violent felony jury trials, including at least 2 murder cases, tried to argument, verdict, or final judgment; or

(B) At least 5 serious or violent felony jury trials, including at least 3 murder cases, tried to argument, verdict, or final judgment;

(4) Be familiar with the practices and procedures of the California criminal courts;

(5) Be familiar with and experienced in the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence;

(6) Have completed within two years prior to appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and

(7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(e) [Qualifications of associate counsel] To be eligible to serve as associate counsel, an attorney must:

- (1) Be an active member of the State Bar of California;
- (2) Be an active trial practitioner with at least three years' litigation experience in the field of criminal law;
- (3) Have prior experience as
 - (A) Lead counsel in at least 10 felony jury trials tried to verdict, including 3 serious or violent felony jury trials tried to argument, verdict, or final judgment; or
 - (B) Lead or associate counsel in at least 5 serious or violent felony jury trials, including at least 1 murder case, tried to argument, verdict, or final judgment;
- (4) Be familiar with the practices and procedures of the California criminal courts;
- (5) Be familiar with and experienced in the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence;
- (6) Have completed within two years prior to appointment at least 15 hours of capital case defense training approved for minimum continuing legal education credit by the State Bar of California; and
- (7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(f) [Alternative qualifications] The court may appoint an attorney even if he or she does not meet all of the qualifications set forth in (d) or (e) if the attorney demonstrates the ability to provide competent representation to the defendant. If the court appoints counsel under this subdivision, it must state on the record the basis for finding counsel qualified. In making this determination, the court must consider whether the attorney meets the following qualifications:

- (1) The attorney is an active member of the State Bar of California or admitted to practice *pro hac vice* pursuant to rule 983;
- (2) The attorney has demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases;
- (3) The attorney has had extensive criminal or civil trial experience;
- (4) Although not meeting the qualifications set forth in (d) or (e), the attorney has had experience in death penalty trials other than as lead or associate counsel;
- (5) The attorney is familiar with the practices and procedures of the California criminal courts;
- (6) The attorney is familiar with and experienced in the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence;
- (7) The attorney has had specialized training in the defense of persons accused of capital crimes, such as experience in a death penalty resource center;
- (8) The attorney has ongoing consultation support from experienced death penalty counsel;
- (9) The attorney has completed within the past two years prior to appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and
- (10) The attorney has been certified by the State Bar of California's Board of Legal Specialization as a criminal law specialist.

(g) [Public defender appointments] When the court appoints the Public Defender under Penal Code section 987.2, the Public Defender should assign an attorney from that office or agency as lead counsel who meets the qualifications described in (d) or assign an attorney that he or she determines would qualify under (f). If associate counsel is designated, the Public Defender should assign an

attorney from that office or agency who meets the qualifications described in (e) or assign an attorney he or she determines would qualify under (f).

(h) [Standby or advisory counsel] When the court appoints standby or advisory counsel to assist a self-represented defendant, the attorney must qualify under (d) or (f) of this rule.

B. CLASS TWO CASES

State Bar certification as a criminal law specialist, or criminal practice experience equivalent to certification standards within the last seven years.

C. CLASS THREE CASES

Three years of experience as an attorney, and the handling of twenty-five separate felony matters, at least five of which have been jury trials submitted for decision, and five misdemeanor trials submitted for decision all within the last ten years.

D. CLASS FOUR CASES

An attorney who has handled twenty separate criminal matters and three jury trials submitted for decision.

E. CLASS FIVE CASES

All attorneys

F. JUVENILE DEPENDENCY CASES

Attorneys who have handled at least five previous 300 matters within the last seven years, and who meet the applicable standards set forth in California Rules of Court, Rule 1438, and any other mandated qualifications. In addition, all attorneys receiving appointment in juvenile dependency cases must be reachable by fax machine.

G. WITNESS REPRESENTATION CASES

Attorneys may be placed on one or more of the witness representation panels if they satisfy the general requirements for membership in the Program, if they are qualified for appointments in class III cases, and if they meet the following special qualifications:

1. Attendance at the initial Program training seminar on the law and practice of witness representation. If an attorney applies for the witness representation panel after the initial seminar, the attorney must view a videotape of that seminar.

2. Attendance at any subsequent training seminars or workshops as directed by the Program, and review of any materials on the subject as directed by the Program.
3. Demonstrated proficiency in the legal representation of witnesses
4. Because time is often of the essence in responding to requests for attorneys to represent witnesses, attorneys must be reachable by telephone, pager or otherwise and must demonstrate the ability to appear in court within thirty minutes of a call from the Program. Attorneys who receive an appointment to represent a witness, in cases of urgency, and who fail to appear in court within thirty minutes of their appointment, may be dropped from the witness representation panel in the discretion of the Committee.

H. JUVENILE DEPENDENCY IMMIGRATION CASES

The Committee shall consider the attorney's specific experience and training in the field of juvenile dependency immigration matters, and any other relevant factors.

I. GUARDIAN AD LITEM CASES

The Committee shall consider the attorney's specific experience and training as a guardian ad litem, and any other relevant factors.

J. MINOR'S COUNSEL IN FAMILY LAW CASES

1. In general

All attorneys receiving appointments to represent minors in family law cases must have a minimum of five years of continuous active California State Bar membership, including three years of experience representing parties in family law cases, must have completed minor's counsel training as designated by the Court, and must verify prior representation of a minor in at least two cases through resolution of a custody/visitation issues motion pending at the time of appointment.

2. Mentoring

If an attorney has not represented a minor in at least two cases as set forth above, the attorney must be mentored by an attorney with "complex" case experience in at least two cases prior to appointment as minor's counsel without mentorship.

3. Complex experience level (class 1)

An attorney qualifies for this experience level if he or she has at least ten

years of experience in family law and has represented a minor in at least ten family law cases, three of which involve issues pertaining to substantial abuse (i.e. physical abuse (including domestic violence), sexual abuse, substance abuse), or mental illness, or protracted high conflict litigation.

4. Experienced level (class 2)

An attorney qualifies for this experience level if he or she has at least five years of experience in family law and has represented a minor in at least five family law cases, two of which involve issues pertaining to substantial abuse (i.e. physical abuse (including domestic violence), sexual abuse, substance abuse), or mental illness, or protracted high conflict litigation.

5. Independent level (class 3)

An attorney qualifies for this experience level if he or she has at least three years of experience in family law and has represented a minor in at least two family law cases.

6. Mentored level (class 4)

Attorneys described in [Part X\(l\)2](#) above qualify for this experience level.

K. PROBATE GUARDIANSHIP CASES

1. Standard Experience Level

All attorneys receiving appointments to serve as minor's counsel in probate guardianship cases must meet the requirements of California Rules of Court Rule 7.1101.

2. Complex Experience Level

In addition to the above requirements, attorneys in the complex experience level must have acted as lead counsel in at least five contested guardianship matters, and have represented minors in at least five cases, at least three of which were probate guardianship cases.

L. CONSERVATORSHIP CASES.

1. Standard Experience Level

All attorneys receiving appointments to represent parties in conservatorship cases must meet the requirements of California Rules of Court, Rule 7.1101.

2. Complex Experience Level

In addition to the standard experience level requirements, attorneys in the complex experience level must have acted as lead counsel in at least five contested conservatorship matters, have represented a party in at least ten probate conservatorship cases, and have acted as lead counsel in at least two trials.

3. Public Benefits Experience Level

In addition to the standard experience level requirements, attorneys in the public benefits experience level must have particular training and expertise to qualify them to address practical and technical issues involving Medi-Cal, Medic-Aid, SSI, and long term care needs, suitable for representing persons with alleged disability in matters such as Special Needs Trusts or petitions pursuant to Probate Code section 3100 *et seq.*

M. IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS CASES

The Committee shall consider the attorney's specific experience and training in the area of immigration consequences of criminal convictions, and any other relevant factors.

XI. BILLING REGULATIONS

A. FEE SCHEDULE

Attorneys shall be compensated pursuant to the fee schedule applicable to the class of case in which representation is provided at the time of the appointment, except for minor's counsel in family law and probate guardianship cases in which the Court has ordered that the source of payment is a private party.

B. BILLING FORMS

1. Committee to provide standard billing form

The Committee shall provide standard billing forms which must be signed under penalty of perjury for the payment of fees and expenses

2. Program billing form required

At the time of appointment, the Program will provide two copies of an attorney billing form specific to the case. Bills must be submitted on the Program billing form, unless the attorney is advised to use an updated form. Bills submitted on the wrong form may be rejected. Attorneys should retain one copy of the Program billing form for each case, to use as a master in the event multiple interim billings are submitted.

3. Itemization of time expended

Bills must include a clear itemization of the date and nature of each court appearance, and the date, nature and time expended for each out of court task. Bills which are unclear, include surplusage, or for other reasons require excessive time to review, may be rejected.

4. Task-based billing

If an attorney performs more than one task on a case during a single day, the bill shall list each task, and the time required for that task, separately. If a single task requires more than one day, the attorney may choose to list the task only once, specifying each day during which the task was performed and the total time required for the task. If different tasks are performed on the same day, each task must be itemized separately.

5. 0.1 hour increments required

Bills shall account for time in 0.1 hour increments.

C. FEE REVIEW

The Committee shall implement procedures for review of all billing forms, including outside services billings, to determine whether they should be approved, modified, or denied. The Committee shall designate one or more members to review attorney bills. The Committee shall determine whether such persons shall be compensated, and the rate of any compensation. Such compensation shall be paid from members' dues and shall not be a charge against any funding contract. Fee reviewers shall avoid all conflicts of interest in the fee review process.

Reasonable and necessary fees and expenses shall be paid and reimbursed only on approval by the designated fee reviewers. All attorney bills exceeding \$500.00 shall require the approval of two fee reviewers.

The Committee may determine default time and/or flat fee charges for routine services. Such default charges shall be paid unless the attorney justifies in writing a higher charge.

D. FEE REVIEW HEARINGS

In the even the fee review process results in a bill being reduced or denied, the attorney shall be notified and upon request shall receive a statement of reasons for the modification. The attorney may dispute the modification by written notification within fifteen days of notice of the modification. The attorney shall be entitled to a hearing before the Committee at its next scheduled meeting, provided notice is given no later than seven days before the meeting. At such hearing, the

Committee may in its discretion reaffirm or alter its original decision. The bill, as finally approved, shall then be paid.

E. PAYMENT UPON WITHDRAWAL WITHOUT GOOD CAUSE

If any attorney withdraws from a case without good cause, the Committee may refuse to authorize payment or may authorized reduced payment.

F. MULTIPLE CLIENTS IN DEPENDENCY AND WITNESS CASES

1. General rule

When an attorney represents more than one client in a dependency or witness case, the attorney shall bill only once for services which benefit more than one client

2. Billing rates

In the rare instance where different billing rates apply because of differing appointment dates, the attorney may select the case with the highest billing rate.

3. Billing forms

Billing forms will be provided for each client when an attorney represents multiple clients in a dependency or witness case. The attorney should select a "lead" or controlling case and use its billing form; if no such case exists, the attorney select any billing form. If all services benefitted all clients, only the lead case billing form should be submitted. If certain services benefitted fewer than all the clients the attorney represents a case, the attorney should bill all services in the lead case, except services devoted exclusively to the benefit of a client other than the lead client. Services devoted exclusively to the benefit of a client not designated the lead client shall be billed separately.

G. MULTIPLE CASES INVOLVING THE SAME CLIENT

1. General rule

When an attorney represents a client in more than one case, the attorney shall bill only once for services which benefit the client in more than one case.

2. Billing rates

The attorney may designate the case with the highest billing rate as the

“lead” or controlling case.

3. Billing forms

Billing forms will be provided for each case when an attorney represents a client with multiple cases. The attorney should select a “lead” or controlling case and use its billing form; if no such case exists, the attorney may select any billing form. If all services benefitted all cases, the attorney should submit one billing form in the lead case. If certain services were performed on fewer than all the client’s cases, the attorney should bill all services in the lead case, except services devoted exclusively to another case. Services devoted exclusively to a case not designated the lead case shall be billed separately.

H. BILLABLE MATTERS

1. General rule

Attorneys may bill for all time and court appearances reasonably required to represent the client, consistent with these Rules and section 27706(a) of the Government Code and section 317 of the Welfare and Institutions Code, excluding post-trial writs and appeals, from the date of appointment through the conclusion of the case, or until relieved as counsel, whichever occurs first. Attorneys may bill for preparation and filing of a Notice of Appeal and other documents pursuant to Penal Code section 1240.1.

2. Specific billable matters

a. client conferences during court appearances

Client conferences during any half-day period in which the attorney has billed for a court appearance shall not be billed, unless the conference is particularly lengthy or for other unusual reasons.

b. telephone appearances and ex parte appearances in probate cases.

Court appearances by telephone, and ex parte appearances in probate cases, shall be billed at the applicable out of court rate.

c. travel

Attorneys and social workers may bill for travel time only when the destination is outside of Contra Costa County. Travel expenses are reimbursable as set forth in [Part XI\(N\)](#).

d. motions, writs and other pleadings

Time spent in the preparation and filing of necessary motions, writ petitions, and other pleadings, and associated court appearances, excluding post-trial writs and appeals, is billable. A copy of the motion, writ petition or other pleading must be submitted with the attorney's bill.

e. trial related appearances

1. trailing for trial

When a case on the trial calendar is called in the master calendar department and trailed, the attorney shall bill for a calendar appearance.

2. immediate trial assignment

When a case on the trial calendar is called in the master calendar department and assigned to a trial department for an appearance during the same half day, the attorney shall bill for a half-day trial appearance but not a calendar appearance.

3. delayed trial assignment

When a case on the trial calendar is called in the master calendar department and assigned to a trial department during a later half day, the attorney shall bill for a calendar appearance in the master calendar department, and bill for all subsequent trial appearances.

4. trial through jury instructions

The attorney shall bill for all appearances in a trial department through final instruction of the jury at the applicable trial rate, regardless of whether a jury is summoned or jeopardy attaches.

5. deliberations and verdict

The attorney shall bill at the applicable jury trial rate for any half day which includes jury deliberations, readback, jury questions, rendering of the verdict, mistrial, or other courtroom activity.

6. changes of plea during trial

The attorney shall bill for any change of plea in a trial department at the applicable trial rate. If the change of plea

occurs in a calendar department after the case is assigned to trial, and if the change of plea occurs in the same half day as a trial department appearance, the attorney shall bill for a trial appearance but not a calendar appearance. If the change of plea occurs in a calendar department after the case is assigned to trial, and if the change of plea occurs in a half day in which there is no trial department appearance, the attorney shall bill for a calendar appearance.

I. NON-BILLABLE MATTERS

1. Communications with the Program

No communications with the Program, whether by telephone, in writing, or otherwise, are billable.

2. Travel to and from court

Travel to and from court is not billable.

3. Staff time

Secretarial, bookkeeping, paralegal and other services routinely performed in the business of running a law practice are not billable.

4. Services by other attorneys

Pursuant to [Part I\(E\)\(1\)\(c\)](#), the appointed attorney may bill for another attorney's court appearance, but in no event shall the appointed attorney's bill be increased due to necessary communications with the appearing attorney.

J. BILLING RATES

1. General rule

Billing rates shall be those stated in the fee schedule incorporated in the applicable contract on the date the attorney is appointed. Subsequent changes in the fee schedule shall not affect the billing rate for any appointment made prior to the effective date of the new fee schedule.

K. WHEN BILLS SHOULD BE SUBMITTED

1. General Rule

In all cases, bills shall be submitted monthly using CCP's web based billing form. No later than the 7th day of each month, the attorney must certify to the accuracy of the previous month's bill by checking the declaration under penalty of perjury box on the form. If all work has been completed on a case, the attorney shall check the appropriate box on the billing form showing that the case is "final."

2. Special Rule for Conservatorship cases

Conservatorship cases may be billed monthly regardless of whether the Court has designated the case as "County pay" or "private pay." Cases not billed timely as required in paragraph 1 above shall not be paid. Whenever an attorney receives payment on a conservatorship case from a source other than CCP, the attorney shall promptly notify CCP of the payment and make prompt reimbursement of all CCP payments on the case, limited by the amount of the private payment.

3. Outside services bills

Outside service bills shall be submitted promptly upon completion of the services. Outside service bills submitted more than 60 days after completion of services shall not be paid by CCP. Attorneys are strongly encouraged to advise outside services providers of this rule and to insure compliance with it. Attorneys have potential personal liability for outside service expenses when CCP is not obligated by its rules to pay for those services.

L REOPENING CASES

1. General rule

Once a final bill has been submitted, no further attorney's fee shall be paid for that case. If further work is required on a case in which a final bill has been submitted, the case must be reopened as a new case.

2. Procedure for reopening cases

When an attorney becomes aware of the need to reopen a case, the attorney must immediately notify the Program of the need to reopen the case. Failure to notify the Program will result in the Program not making a new appointment, and the Program shall have no obligation to pay for the attorney's services after the final bill.

3. Probation violations

Probation violations are new cases which may be assigned through the normal rotational system. The attorney who provided representation when probation was granted is not automatically assigned the case when a probation violation is alleged.

M. OUTSIDE SERVICES

1. Outside services defined

Outside services are those of investigators, experts, court reporters, interpreters, social workers, and other professionals providing assistance to an attorney in the representation of a client pursuant to appointment through the Program. Outside services do not include secretarial, clerical, bookkeeping, paralegal and other services routinely performed in the business of running a law practice, for which no billing is allowed.

2. Payment for outside services

a. attorney's responsibility

The attorney who retains an outside service provider has the responsibility for payment for the provider's services.

b. Program reimbursement

The Program will reimburse a panel attorney for expenses incurred for outside services. However, whenever prior approval is required, the Program may refuse payment if prior approval was not obtained, and may refuse payment over the authorized amount.

c. direct payments to outside service providers

Whenever reimbursement is authorized for outside services expenses, and the provider has been paid nothing or an amount below that authorized, the program may make payment directly to the outside service provider

3. Prior approval required

Prior approval is required for all outside services expenses, except as provided in these Rules

4. Request and billing forms

Requests for outside services shall be submitted on the standard form approved and promulgated by the Committee. Requests not on the standard form may be rejected. All requests shall be for a specific amount

and a specific outside services provider. Bills for outside services shall be submitted on the blue billing form approved and promulgated by the Committee. Bills not on the blue billing form may be rejected.

5. Special rules for investigators

a. investigators list

The Program shall maintain a list of licensed private investigators who have agreed to work at the Program's contracted rates. These rates are: \$55.00 per hour for professional services, plus expenses. Only investigators on the list may work on Program cases.

b. allowable investigation expenses

Investigators may bill for reimbursement of actual travel and expenses within and without the County without specific prior authorization. Attorneys requesting authorization for investigation must include the investigator's travel time and expenses in the request. Investigators' travel time shall be paid at the standard hourly rate for investigation, not the travel rate payable to attorneys or social workers. Mileage may be reimbursed for use of the investigator's vehicle at the current IRS mileage rate.

c. when investigation bills should be submitted

Investigation bills should be submitted at the conclusion of the case, unless prior approval for interim billing is obtained.

6. Special rules for interpreters

a. interpreters for clients

1. out of court services

In any case in which language problems prevent the client from communicating effectively with an appointed attorney, or an investigator or expert working for the attorney, the attorney shall retain the services of a qualified interpreter to assist in all necessary communications out of court. No prior approval is required for such services, and the interpreter may bill the Program directly, in any form which clearly shows the interpreter's time and charges.

2. in court services

In court interpretive services to facilitate attorney-client

communications are the Court's responsibility. The Program will not pay for such services. To preserve the attorney-client privilege, attorneys should make sure that an interpreter of in court communications between attorney and client is not also serving as a interpreter for a witness or other party.

b. interpreters for witnesses

1. out of court services

In any case in which language problems prevent effective communication between the attorney, expert or investigator and a potentially necessary witness, the attorney shall retain the services of a qualified interpreter to assist in all necessary out of court communications. Prior approval is required for such services.

2. in court services

Unless the Court is obligated to provide in court interpretation services for witnesses, in any case in which language problems prevent effective communication between the attorney, expert or investigator and a trial witness to be called by the attorney, the attorney shall retain the services of a qualified interpreter to assist in all necessary in court communications. Prior approval is required for such services.

7. Special rules for social workers

a. social workers list

The Program shall maintain a list of qualified social workers who have agreed to work at the Program's contracted rates. These rates are: \$40.00 per hour for professional services.

b. allowable social worker travel expenses

This part shall govern payment for social worker travel expenses, notwithstanding the provisions of section L below.

1. professional services while traveling

Professional services while traveling shall be billed and paid the same as other social worker services.

2. reimbursement for travel expenses

Expenses for social worker travel may be reimbursed under the following terms:

- a. travel expenses are reimbursable only if the travel is to a destination outside Contra Costa County
- b. actual expenses shall be reimbursed only if reasonable and necessary
- c. expenses of travel by common carrier are reimbursable at the lowest reasonably available fare. Rental car expenses are reimbursable at the lowest reasonably available rental rate. When overnight travel is required, reasonable lodging expenses are reimbursable, and meals are reimbursable to a maximum of \$30.00 per day.
- d. use of a personal vehicle shall be reimbursed that the prevailing IRS mileage rate
- e. social workers may charge \$15.00 per hour for travel time if the travel is otherwise reimbursable
- f. the social worker billing form, not the blue billing form used for other outside services, shall be used to claim travel expenses

- c. unannounced home visits

When a social worker makes an unannounced home visit, and no one is home, the social worker may charge a flat \$30 fee.

- d. social worker billing forms

The Committee shall promulgate a special billing form for use by social workers. This form must be used to bill for social worker services. Travel and other expenses must be billed using this form rather than the blue billing form used by other outside service providers.

- e. review of social worker bills

The retaining attorney shall review bills from retained social workers for reasonableness and accuracy. If approved, the attorney shall so indicate by signing at the bottom of the billing form. No further Program review is required; however all social worker bills may be subject to further review.

8. Special rules for expert witnesses

- A. To facilitate preparation of a database on expert witnesses, any attorney who receives authorization for expert witness expenses shall complete and submit to CCP a questionnaire about the witness before receiving final payment on the case.
- B. Travel and lodging for expert witnesses shall be arranged by CCP staff.

9. Trial emergencies

Expenses for outside services incurred during the course of a trial or Juvenile Court hearing without prior approval may be reimbursed n a showing that the services were of an urgent nature, reasonable, and necessary, and that a request for authorization could not reasonably have been made prior to incurring the expense.

N. TRAVEL, MEALS AND LODGING

1. Out of county travel only

Attorneys may not bill for travel within the County. Attorneys may bill for necessary travel from their offices to and from locations outside the County. Attorneys may bill for reimbursement of meal expenses only when out of county travel necessarily requires being away from the County at normal meal times. Attorneys may bill for reimbursement of lodging expenses only when out of county travel necessarily requires being away from the County overnight.

2. Allowable charges for travel, meals and lodging

Travel time shall be paid at an hourly rate of \$25.00. Expenses of travel by private car are reimbursable at the prevailing IRS mileage rate. Mileage shall be calculated utilizing the attorney's office within the County as the start and end points of the trip. Expenses of travel by common carrier are reimbursable at the lowest reasonably available fare. Rental car expenses are reimbursable at the lowest reasonably available rental rate. When overnight travel is required, reasonable lodging expenses are reimbursable, and meals are reimbursable to a maximum of \$30.00 per day.

3. Prior authorization required over \$100.00

All bills for travel, meals and lodging over \$100.00 must receive prior authorization. Attorneys shall use the "outside services" request form t request prior authorization for travel, meals and lodging.

4. Billing for travel, meals and lodging

Bills for travel, meals and lodging over \$100.00 shall be submitted on the blue billing form used for outside services bills, not on the standard attorney billing form. These bills may be submitted at any time. Bills for travel, meals and lodging under \$100.00 shall be separately itemized on the standard attorney billing form, and may be submitted whenever the standard attorney billing form may be submitted.

5. Legal services performed while traveling

Legal services performed while traveling shall be billed and paid the same as other legal services.

O. OTHER EXPENSES

1. General rule

All expenses other than reasonable photocopying, telephone and process service expenses must be authorized prior incurring the expense. The standard outside services request form shall be used to obtain such authorization, and the blue billing form shall be submitted to obtain reimbursement.

2. Reasonable photocopying, telephone and process service expenses

Reasonable photocopying, telephone and process service expenses up to \$100.00 are reimbursable without prior authorization. The standard attorney billing form shall be used for such expenses. Receipts must be submitted, except for in-house photocopying, which is reimbursable to a maximum of \$0.10 per page.

3. Trial emergencies

Expenses incurred during the course of a trial or Juvenile Court hearing without prior authorization may be reimbursed on a showing that the expense was reasonable and necessary and that a request for authorization could not reasonably have been made prior to the trial or hearing.

XII. DEFINITIONS

A. The "Program" is the Criminal Conflict Program of the Contra Costa County Bar Association

B. The "Bar Association" is the Contra Costa County Bar Association

- C. The “Board” is the Board of Directors of the Contra Costa County Bar Association
- D. The “President” is the President of the Board of Directors of the Contra Costa County Bar Association.
- E. The “County” is the County Contra Costa
- F. The “Court” is the Superior Court of the State of California, County of Contra Costa
- G. The “Committee” is the Criminal Conflict Committee
- H. The “Director” is the Director of the Criminal Conflict Program of the Contra Costa County Bar Association
- I. A “member” is an attorney who has satisfied the requirements and been approved for membership in the Program
- J. A “client” is any person for whom legal services and/or services as guardian ad litem are provided pursuant to appointment under these Rules.
- K. A “continuance” is a court appearance serving no legal purpose other than the selection of future court dates. The public denomination of the court hearing is irrelevant. “To set,” “further proceedings” and similar hearings are continuances. Continuances obtained at the request of other parties are continuances, regardless of any objection by the billing attorney
- L. A “calendar appearance” is any court appearance other than a continuance, an evidentiary hearing, a preliminary hearing, a court trial, or a jury trial.
- M. An “evidentiary hearing” involves the taking of testimony from at least one live witness
- N. A “preliminary hearing” is also known as a preliminary examination. It is the probable cause hearing in a felony case.
- O. A “court trial” is any trial without a jury.
- P. A “jury trial” is any trial with a jury, including all appearance in an assigned jury trial department, regardless of whether a jury is summoned or jeopardy has attached.
- Q. A “half day” is any portion of the regular court session held either before or after the lunch break.
- R. “Conclusion of the case” is defined as follows:

1 Criminal and juvenile delinquency cases

The conclusion of the case is one of the following events:

- a. Not guilty verdict(s) on all counts
- b. Dismissal of all charged counts
- c. Sentencing (and filing of a Notice of Appeal if necessary)
- d. Disposition in juvenile delinquency cases, unless the client receives a grant of probation, in which case it is the termination of probation.
- e. Thirty days after the issuance of a bench warrant, if the warrant remains outstanding. The member shall remain attorney of record unless relieved by the Court
- f. Successful completion of diversion

2. Juvenile dependency cases

The conclusion of the case occurs when the petition is dismissed.

3. Other cases

The conclusion of the case occurs when all necessary services pursuant to the appointment have been performed.

End