NEW MEXICO
LAW OFFICES OF THE
PUBLIC DEFENDER

Chief Public Defender
Bennett J. Baur

NMPD 200-007

Issue Date: **06/18/2012**
Effective Date: **06/18/2012**
Revised Date: **04/14/2022**

*This policy and procedure replaces any previous policies and procedures pertaining to Contract Counsel Legal Services dated before the above effective date.

TITLE: Contract Counsel Legal Services

AUTHORITY: The New Mexico Procurement Code, Section 13-1-21, NMSA 1978, as amended,
The New Mexico Public Defender Act, Section 31-15-1 through 31-15-12, NMSA 1978, as amended, including Section 31-15-7 B. (11) NMSA 1978 (2018), and
The Indigent Defense Act, Section 31-16-1, NMSA 1978, as amended.

REFERENCES: N/A

PURPOSE: To formulate a fee schedule for attorneys who are not employees of the department who serve as counsel for indigent persons under the Public Defender Act.
To elicit proposals pursuant to the Procurement Code from private attorneys who want to serve as counsel for indigent persons who are charged with criminal offenses or delinquent acts in the State's trial and appellate courts.
To administer the delivery of contract counsel legal services.

APPLICABILITY: New Mexico Public Defender Department and the Contract Counsel Legal Services Division.
New Mexico Public Defender contract counsel.
New Mexico state trial and appellate courts.

ATTACHMENTS: Contract Client Complaint form
Reimbursement and Application Fee Log
Case Assignment Rotation form

DEFINITIONS: *Contract Counsel Legal Services (CCLS)*- The division within the department which oversees and administers the department's contract attorney representation system.

Contract Counsel- Private attorneys who are not department employees who serve as counsel for indigent persons under the Public Defender Act.

Request for Proposals (RFP) - Process under the New Mexico Procurement Code which elicits proposals from private attorneys who want to serve as counsel for indigent persons under the Public Defender Act.

Fee Schedule- The rate of compensation established by the department to pay contract counsel according to case types and judicial districts as delineated in contract counsel's professional services contract.

Professional Services Contract- The agreement entered into by the department and private counsel to provide criminal defense legal services to the department's clients.

Rotation: -The case assignment system used by department offices and judicial districts with no department offices to assign cases on rotating basis to contract counsel.

Contract Attorney Invoices- The monthly billing process based on the fee schedule which contract attorneys employ for payment on assigned cases.

Small Contracts- A professional services contract which is $60,000 or less which is entered into with private counsel to meet emergency needs and/or to fill gaps in contract services.

POLICY:

A. The New Mexico Public Defender Department is statutorily responsible to establish a contract attorney fee schedule.
B. CCLS will conduct an RFP process pursuant to the New Mexico Procurement Code to elicit proposals from private attorneys who are interested in representing indigent persons charged with criminal offenses.
C. CCLS will administer and oversee all contracts awarded to private counsel under the procurement process and those awarded small contracts.
D. CCLS will process contract counsel invoices in a timely manner pursuant to the services contract.
E. CCLS will receive and process all contract attorney client complaints in a timely manner.
F. CCLS will establish contract attorney rotations for all judicial districts.

PROCEDURES:

1. In preparation for the RFP, CCLS will review the current fee schedule and make necessary revisions. The fee schedule will be presented to the Chief Public Defender for his review and approval.
2. CCLS will conduct an RFP for the new yearly contracting period, including the following steps:
   a. Prepare ad for Bar Bulletin,
   b. Obtain quote for Bar Bulletin advertisement,
   c. Send ad to Bar Bulletin to be published,
   d. Advertise RFP in Bar Bulletin,
   e. Pre-proposal conference,
   f. Deadline to submit questions,
   g. Distribution list response,
   h. Response to written questions,
   i. RFP amendments,
   J. Deadline to submit proposals,
   k. Proposal evaluations,
   1. Selection of finalists,
   m. Best of final offers from finalists,
   n. Protest deadline,
   o. Create and mail contracts,
   p. Submit contracts for approval from all necessary parties, and
   q. Begin new contracting period.
3. CCLS will respond to daily issues such as processing expert witness reviews and approvals, obtaining out-of-district contract counsel for multi-defendant cases, processing client complaints and invoices, etc.
4. CCLS will process invoices on a monthly basis, which will require that it:

a. Receive invoices on or before the I5th working day of each month,
b. Receive invoices on or before the 15th working day of each month,
c. Notify contractors who fail to submit invoices in a timely manner,
d. Audit invoices to determine whether cases were properly invoiced according to the fee schedule,
e. Conduct thorough audits of invoices prior to submission to the fiscal unit of the department,
f. Cause the department's fiscal division to create a voucher and submission for payment to DFA,
g. Respond to any invoices rejected by the fiscal division or DFA, and
h. Correct and resubmit rejected invoices for approval.

5. CCLS will process client complaints relating to contracted cases, which will require that it:
   a. Receive client complaints from either clients, family members or other interested parties by phone or in writing,
   b. Address simple complaints through contact with trial counsel as necessary,
   c. Require that more serious or ongoing complaints be submitted on the complaint forms by the client personally,
   d. Upon receipt of written complaints, scan and e-mail complaint to contract attorney,
   e. Require written responses from contractors in five (5) days, and
   f. Provide necessary follow-up with client on a case-by-case basis depending on contractor's response to complaint.