



# DEPARTMENT POLICIES AND PROCEDURES

Title

**CAPACITY CONTRACT POLICY**

Department/Issuing Agency

**DEPARTMENT OF PUBLIC DEFENSE**

Effective Date

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**Matthew Sanders, Interim Director**

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## I. PURPOSE

To create unified and transparent guidelines that govern the King County Department of Public Defense (DPD) capacity contract program. These contracts provide indigent legal representation when a DPD division lacks the operational capacity to accommodate the case(s) and no other DPD division can accept the case for any reason, as determined by DPD per the requirements of the Washington State Bar Association (WSBA) Standards for Indigent Defense Services and the Washington State Rules of Professional Conduct (RPC).

## II. APPLICABILITY

This policy is applicable to the King County DPD capacity contracting program, which includes any potential or current capacity contractors from initial solicitations to monitoring contract compliance for all capacity contracts entered into by the County. This includes all future amendments, extensions, and new contracts. Executed capacity contract provisions shall supersede any provision of this policy that is contrary to or inconsistent with terms contained in that contract. The provisions of this policy shall be incorporated into and be considered part of the established policies of the capacity contract.

## III. REFERENCES

King County Code Chapter 2.60 ([KCC 2.60](#))

King County Procurement of Goods and Services Policy [CON 7-24-EP](#)

[National Legal Aid & Defender Association \(NLADA\) Defender Standards](#), including the Administration of Assigned Counsel Systems (1989), Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (1984).

Revised Code of Washington Chapter 10.101 ([RCW 10.101](#))

[Washington State Bar Association \(WSBA\) Standards for Indigent Defense](#) (revised March 8, 2024). Pending adoption by the Washington State Supreme Court pursuant to [CrR 3.1](#), [CrRLJ 3.1](#), and [JuCR 9.2](#).

## IV. DEFINITIONS

**Assigned Counsel:** Attorney(s) who have been named to the King County Assigned Counsel Panel (AC Panel) to provide indigent defense legal services when a conflict of interest prevents DPD from representation under the RPC.

**Capacity Counsel/Contractor:** Attorney(s) who have entered formal capacity contracts to provide a defined volume and body of indigent defense legal services that DPD lacks the operational capacity to accommodate.

**Special Counsel for Expert Services and Legal Contracting:** Attorney named by the Director of DPD (“Director”) to oversee capacity contracting. The Special Counsel shall be responsible for all aspects of the contracting program to include identifying operational needs, contract solicitation, reviewing submitted contract materials, contract negotiation, tracking capacity assignments under the contracts, conducting ongoing review of Capacity Counsel, approving Capacity Counsel invoices, and other matters as determined by the Director. The Director shall name an alternate designee to engage in one or any of the above activities in the event of a conflict of interest with the current Special Counsel.

**Immediately:** Within forty-eight (48) hours of a designated event, exclusive of weekends and holidays.

**“Written” or “In Writing”:** Includes email communication.

## V. CONTRACTING SOLICITATION AND NEGOTIATIONS

### A. Solicitations by DPD

1. DPD will seek to contract with well qualified private defense counsel when necessary for operational capacity needs as determined by the Special Counsel and DPD. DPD may advertise in publications, websites, or other media in seeking potential capacity contracts as well as engage in direct contract with well qualified private defense counsel DPD becomes aware of and believes may be interested in contracting.

### B. Solicitations by Potential Capacity Contractors

1. Solicitations for capacity contracts may be considered and reviewed at any time by DPD. However, DPD will only enter into capacity contracts when necessary to maintain operational requirements.

2. DPD will consider solicitations or requests made by well-qualified criminal defense counsel licensed or capable of becoming licensed by the WSBA in advance of the commencement of any potential contract.
3. DPD will not consider solicitations or requests made by current employees of DPD. DPD will also not discuss future potential contracting with current employees of DPD and will refer them to this policy and other Department policies and rules that govern the DPD Capacity Contract Program.

### C. Solicitation Review

1. Special Counsel will name a panel of DPD staff to review solicitations that includes the Director or Deputy Director, Special Counsel, and a Managing Attorney that rotates per calendar quarter review cycle. The decision to move forward with contract term negotiations will be by consensus of the panel. Contract terms will be negotiated with the Special Counsel or designee as named by the Director, in consultation with the Deputy Director and Chief Financial Officer.
2. Selection of Capacity Contractors will be based on experience, training, and demonstrated proficiency in representation and litigation skills as set out in the American Bar Association (ABA) Criminal Justice Standards for the Defense Function, the National Legal Aid and Defender Association (NLADA) Standards for the Defense, and the WSBA Standards for Indigent Defense Services.
3. DPD will also consider the duration the potential Contractor has been in private criminal defense practice, demonstrating law firm stability and longevity. This includes time spent as a solo practitioner or principal in a law firm.
4. DPD will also consider the capacity, type, and volume of work contracted for, and any demonstrated expertise in a specific area of criminal law. This includes relevant Federal and Immigration law.
5. DPD will also consider other relevant factors, such as the existence of, or potential for, conflicts of interest with potential clients and cases.
6. DPD may request the potential Contractor submit a formal Assigned Counsel Application to include references, casework history, and work product.
7. DPD may also consider time spent as a successful member of the DPD Assigned Counsel Panel.

8. Nothing in this policy shall create a right of any attorney to enter into capacity contracts with DPD. The willingness of DPD to consider potential capacity contracts does not guarantee any particular contract provisions or that an agreement will be reached to contract for any specific amount or type of work.

#### D. Ongoing Review of Capacity Contractors

1. To ensure that indigent clients are provided high-quality representation, Special Counsel or a designee will evaluate the performance of Capacity Contractors and compliance with the contract. Such evaluation may include, but is not limited to:
  - Observing the Capacity Contractor's performance in court;
  - Soliciting and receiving comments from clients, judges, other counsel, and court staff regarding the Capacity Contractor's performance; and
  - Examining documents filed by the Capacity Contractor in court or submitted to DPD for billing or other DPD processes or requirements.

## VI. CAPACITY COUNSEL AS INDEPENDENT CONTRACTORS

### A. Relationship to DPD

1. The relationship of Capacity Counsel to DPD and King County, by reason of an assignment under a contract, shall be that of an independent contractor. An assignment does not authorize Capacity Counsel to act as the agent or legal representative of DPD or King County, for any purpose whatsoever and neither the Capacity Contractor nor their employees shall be deemed employees of DPD or King County. Capacity Counsel is not granted any express or implied right to assume or create any obligation or responsibility on behalf of or in the name of DPD or King County, or to bind DPD or King County, in any manner whatsoever.

### B. Current DPD Employees

1. DPD will not consider nor negotiate any potential future capacity contracts with current DPD employees.

### C. Independent Representation

1. Nothing in this policy shall be construed to impair or inhibit the exercise of independent professional judgment by Capacity Counsel with respect to the representation of clients.

## VII. CAPACITY CONTRACTOR REQUIREMENTS

### A. Licensing and Certification Requirements

1. Capacity Counsel must be licensed and a member in good standing of the WSBA.
2. Capacity Counsel shall satisfy all ongoing requirements for practicing law as determined by the Washington State Supreme Court, including continuing legal education (CLE) requirements. Seven (7) hours of the annual CLE requirement shall be courses related to criminal law or courses relevant to the Capacity Counsel's practice area panel assignment(s).
3. Capacity Counsel shall demonstrate competence in all areas of the law relevant to their practice areas, including knowledge and familiarity with:
  - The Washington State statutes and Seattle ordinances, Supreme Court and local court rules, and case law relevant to the practice area;
  - All relevant consequences of a conviction, including possible immigration and other collateral consequences;
  - Mental health issues;
  - The process of identifying and obtaining appropriate expert services; and
  - Performing legal research.
4. Capacity Counsel must submit quarterly certifications to DPD demonstrating compliance with Washington State Supreme Court Standards for Indigent Defense pursuant to CrR 3.1, CrRLJ 3.1, and JuCr 9.2. Failure to submit timely certifications can result in breach of the contract and delay or denial of any quarterly administrative fees as well as submitted hourly billing invoices.
5. Pursuant to RCW 10.101.050, Capacity Counsel must report to DPD by February 1 of each year the number of hours billed for non-public defense legal services in the previous calendar year, including the number and types of private cases.

### B. Professional Standards

1. Capacity Counsel shall provide services to all clients in a professional, skilled manner consistent with minimum standards set forth by the WSBA RPC, applicable court rules, and case law defining the duties of counsel and the rights of defendants in criminal cases.

2. The primary and most fundamental responsibility of Capacity Counsel is to provide vigorous and effective representation as required by the State and Federal Constitutions and the RPC. Capacity Counsel must also be available when contracted to accept case assignments and provide immediate representation to those clients.

### C. Office Access, Resources, and Contact Requirements

1. Capacity Counsel shall maintain a functioning email address and check that email daily. When Capacity Counsel is unavailable to check email, another person shall be designated to make daily email checks, acknowledge receipt of capacity contract assignments, and be provided with instructions on how to contact Capacity Counsel or a designated coverage attorney, if needed.
2. Capacity Counsel are solely responsible for finding coverage for any cases assigned at any time pursuant to the provisions of the capacity contract. This includes holidays, vacations, medical leave, or any other unforeseen unavailability of Capacity Counsel. Capacity Counsel shall notify DPD in advance of any known unavailability and provide contact information for coverage counsel.
3. Capacity Counsel must submit a King County Substitute W-9 Form to DPD upon entry of a capacity contract. This form is available on the DPD website or upon request.
4. Capacity Counsel are responsible for notifying DPD of any change in contact or billing information, including but not limited to new telephone number, address, email address, employer, or tax ID number within one (1) day of any such change and supply an updated Substitute W-9.
5. Capacity Counsel shall also have:
  - a. Access to an office or meeting space that accommodates confidential meetings with clients and is easily accessible by public transportation for the client population.
  - b. A postal address and adequate telephone services to ensure prompt response to client contact. Telephone service must allow the caller to leave a message if the attorney is unavailable.
  - c. A telephone account with King County Correctional Facilities where clients can call Capacity Counsel at no cost on a confidential “do not record”



telephone number. DPD can provide such an account at no cost to Capacity Counsel.

6. Capacity Counsel shall maintain suitable technology resources, including the ability to send and receive scanned and other electronic materials and documents, access to electronic legal research materials, and the capability to handle electronic discovery and video. Capacity Counsel shall also regularly back up data in the event of loss of or damage to computer(s) containing client files and information.
7. Capacity Counsel shall maintain a copy of the client file consistent with the [WSBA recommendations](#) for client file retention after a Notice of Withdrawal is filed and provide a copy of that file to the client upon request. Capacity Counsel can bill hourly at the contract rate for the attorney time spent preparing and providing a copy of the client file. Quarterly administrative fees under the contract are to be used for any other costs associated with client file retention or production.
8. Capacity Counsel must utilize and maintain commonly used software and programs to effectively submit billings, expert services requests, or other exchanges of data with DPD and the court. This includes any necessary case management system used by DPD. Commonly used software currently includes eDefender, Adobe Acrobat, Microsoft Excel and any other programs in the Microsoft Office Suite. (This list is subject to change as announced by DPD).

#### D. Insurance Coverage and Indemnification Requirements

1. Capacity Counsel must maintain insurance coverages per the Contract or at a minimum:
  - a. Professional Liability Insurance Coverage in the amount of \$1,000,000 for each claim and \$1,000,000 in the aggregate, with a maximum deductible of \$10,000;
  - b. If an employer, statutory Worker's Compensation Coverage in compliance with the Industrial Act of the State of Washington;
  - c. If an employer, Employer's Liability/Stop Gap Endorsement at a limit of \$1,000,000.
2. Compliance with DPD insurance requirements shall be met by submitting the DPD Capacity Counsel Certification of Capacity Counsel Requirements form to DPD by

March 1 of each year. The form can be found in Appendix B to this Policy and on the DPD website. Capacity Counsel must provide a certificate of such coverage or a complete copy of the insurance policy at DPD request.

3. Capacity Counsel shall protect, defend, indemnify, and hold harmless the County, the City, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages or attorney fees, arising out of or in any way resulting from any acts or omissions regardless of whether such acts arise from, without limitation, negligence, gross negligence, inadvertence, intention conduct, misfeasance, malfeasance, or excusable neglect with the Capacity Counsel's representation of indigent clients as a result of an appointment by DPD. Capacity Counsel agrees that their obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any employees or agents. For this purpose, Capacity Counsel, by mutual negotiation, hereby waives, with respect to the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the County incurs any judgment, award, and/or cost arising therefrom, including attorney's fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Capacity Counsel.

## VIII. CASE AND CLIENT ELIGIBILITY

### A. Eligible Cases

1. Capacity Counsel will be paid only for representation of eligible clients assigned pursuant to the capacity contract assigned by DPD. Eligibility is established pursuant to RCW 10.101. DPD is responsible for certifying a client's eligibility.
2. Capacity Counsel is responsible for representing eligible clients and cases only. Capacity Counsel must notify Special Counsel or DPD immediately if it is reasonable to believe a case has been assigned in error or in breach of the provisions and terms of the capacity contract.
3. Capacity Counsel are responsible for returning case assignments back to DPD immediately if they believe they were assigned in error or in breach of the provisions and terms of the capacity contract.

## IX. CASE ASSIGNMENT PROCESS AND RESPONSIBILITIES

### A. Appointment of Counsel

1. Cases will be assigned based upon the Special Counsel's assessment of the best interest of each client and DPD operational needs, subject to the terms of the capacity contract.
2. If Capacity Counsel refuses to accept a case in breach of the terms of the capacity contract, DPD may decline to pay any outstanding administrative fee invoices or request that paid administrative fees be returned for that quarter. DPD may terminate the contract or consider renegotiating terms if in the best interest of the DPD. The breach of any contract terms may be considered by DPD in future contracting with Capacity Counsel.
3. Upon assignment of a capacity case under the terms of the contract, Capacity Counsel shall immediately determine whether there is a conflict of interest that prevents representation of an assigned client and immediately notify DPD in writing if a conflict exists and the nature of the conflict pursuant to the RPC.

### B. Scope of Work

1. Capacity Counsel shall provide effective representation until a case is completed or a court has permitted the attorney to withdraw. A complete case involves all necessary legal action from arraignment or first appearance through disposition or the completion of legal services necessary to fulfill the purposes of assignment.
2. When a client requests appellate review, Capacity Counsel shall file notice of appeal and assist in perfecting the record, consistent with the Washington State Courts Rules of Appellate Procedure (RAP). For misdemeanor appeals under RALJ 2.2, Capacity Counsel shall immediately provide Special Counsel a copy of the Notice of Appeal for DPD to appoint appellate counsel.
3. Capacity Counsel must obtain prior written approval from Special Counsel for DPD to pay for work performed on drafting and filing a motion for discretionary review under RAP 2.3. If this work is approved, any work or representation subsequent to filing the motion for discretionary review will not be compensated by DPD subject to the terms of the capacity contract.
4. Capacity Counsel must obtain prior written approval from Special Counsel for DPD to pay for work performed on an interlocutory appeal subject to the terms of the

capacity contract. Failure to obtain prior approval can result in non-payment under the terms of the capacity contract. Such a request for DPD payment authorization should address the following:

- The issue on appeal, both factually and legally;
  - How the issue impacts the case;
  - Why the issue is appropriate for interlocutory appeal as opposed to post-disposition review;
  - The anticipated outcome of the interlocutory appeal; and
  - The approximate number of hours for the interlocutory appeal.
5. Capacity Counsel and their staff shall not solicit or accept any compensation, gifts, gratuities, or services for work performed on cases assigned by DPD in accordance with the Washington State RPC.
  6. Capacity Counsel shall not convert a case assigned by DPD under a contract into a private pay case.

#### C. Coverage Counsel

1. Cases are assigned pursuant to the terms of the capacity contract. Capacity Counsel may not subcontract representation of assigned clients unless provided in the terms of the contract.
2. Capacity Counsel is solely responsible for finding coverage to accept case assignments and for any necessary legal work if Capacity Counsel is unavailable for any reason. This includes holidays, vacation, medical leave or other unforeseen unavailability of Capacity Counsel.
3. Capacity Counsel must notify DPD for anticipated leave and designate coverage counsel that DPD shall communicate with during the absence.
4. Capacity Counsel must attempt to locate coverage counsel as soon as possible for unanticipated leave or unavailability and communicate to DPD any case coverage that will be required and performed by coverage counsel.
5. Capacity Counsel may, in limited circumstances, bill for work done by coverage counsel pursuant to this policy under Section G.

#### D. Appointment of Co-Counsel

1. A request for the appointment of co-counsel must be submitted in writing to Special Counsel. If denied, Capacity Counsel may move for the appointment of co-counsel with the court hearing the case.
2. Co-counsel must be a current member of the DPD Assigned Counsel Panel or current DPD Capacity Counsel and will be subject to all DPD policies and procedures applicable to Capacity Counsel and Assigned Counsel.
3. Co-counsel will be paid the Assigned Counsel Panel hourly rates based upon case type and will not be paid any additional administrative costs other than those allowed in the Assigned Counsel Policy.
4. If approved co-counsel is current DPD Capacity Counsel, they will be compensated at the DPD Assigned Counsel Panel hourly rates and will not be paid any additional administrative costs other than those allowed in the DPD Assigned Counsel Policy. The assignment as co-counsel will not be considered or count as a case assignment under their current capacity contract.
5. A request for co-counsel must specify the circumstances justifying such appointment and should include or address the following:
  - A copy of the Information and Certification of Probable Cause;
  - The number and seriousness of counts and sentencing range(s);
  - The volume, formats, and nature of discovery;
  - The number, novelty, and complexity of legal issues;
  - The number of witnesses, including any special needs such as language or travel issues;
  - The number and nature of any expert witnesses;
  - The complexity of the evidence (e.g., DNA evidence, crime lab work, or computer forensics); and
  - A case plan for the distribution of work between counsel, including plans for minimizing the duplication of work.
6. Capacity Counsel must also provide the name of proposed co-counsel and confirm that the proposed attorney is willing to join as co-counsel under the provisions above, including agreement to the hourly Assigned Counsel rates. Special Counsel will inform Capacity Counsel and co-counsel in writing of the decision whether to appoint co-counsel.

## X. CHANGES IN COUNSEL OR CLIENT STATUS

### A. Conflict of Interest

1. In the event a conflict of interest is discovered during the course of representation, Capacity Counsel shall discuss the conflict with Special Counsel prior to filing a Motion to Withdraw. Capacity Counsel shall remain assigned and responsible as provided for in the RPC of the Washington State Supreme Court until the withdrawal and substitution of counsel is granted by the court.

### B. Therapeutic Courts

1. Capacity Counsel may represent clients referred to therapeutic courts (such as Drug Diversion Court, Mental Health Court, or Veterans' Court) during any initial probationary or observation period.
2. Capacity Counsel shall withdraw and coordinate substitution of counsel with the DPD therapeutic court calendar counsel once the client is formally accepted into the therapeutic court program.
3. In those instances where withdrawal of Capacity Counsel from representation in the therapeutic court will harm the client, Capacity Counsel may seek approval for ongoing representation in therapeutic courts by submitting a written request to Special Counsel.
4. The provisions and terms of the capacity contract will determine whether the case will constitute a case assignment.

### C. New Cases, Charges, or Hearings

1. Capacity Counsel must notify Special Counsel if additional charges are filed under a new cause number for an assigned client. Special Counsel will determine whether current Capacity Counsel will be appointed as a companion case under the terms of the capacity contract, constitute a new case assignment under the terms of the Capacity contract, or be assigned elsewhere.
2. Capacity Counsel must notify Special Counsel immediately if appointed by the court to additional cases or charges.
3. Capacity Counsel must notify Special Counsel immediately if, at a sentencing or disposition hearing, the court orders post-sentencing or post-disposition hearings

for matters other than restitution. Capacity Counsel should not assume continued representation or reappointment for work performed post-disposition and must seek prior approval from Special Counsel.

4. Capacity Counsel must notify Special Counsel immediately when notified by the court of a filing resulting in a new hearing for a former client. Capacity Counsel may seek assignment from DPD but may not assume continued representation or reappointment.

#### D. Bench Appointments

1. Whenever Capacity Counsel is appointed from the bench, a copy of the Order Appointing Counsel must be sent immediately to DPD and Special Counsel. No billing will be processed or paid without prior notice and confirmation from Special Counsel that the case is eligible for assignment under the Contract.

#### E. Withdrawal of Counsel

1. Capacity Counsel may move to withdraw only in accordance with the Washington RPC and must give advance notice to Special Counsel in writing, along with a copy of the motion to be filed. Capacity Counsel also must notify Special Counsel if the withdrawal will result in the case not being a case assignment under the Contract.
2. Capacity Counsel must obtain a written court order allowing withdrawal from the Chief Criminal Judge or Chief MRJC Judge after a motion pursuant to King County Court Criminal Department Manual rule 6.2 to withdraw from any criminal case assigned that has a trial date set in King County Superior Court after the first omnibus has been held. A copy of the order must be provided to Special Counsel for new counsel to be appointed.

#### F. Change in Client Status

1. Capacity Counsel are responsible for notifying DPD and Special Counsel of changes in case representation or court hearings where the client is seeking modification of representation, including:
  - The client seeking or obtaining *pro se* status;
  - The client seeking or obtaining discharge of counsel; and
  - The client retaining private counsel.

2. If a client successfully moves to proceed *pro se* and Capacity Counsel is ordered to act as standby counsel, Capacity Counsel must immediately notify Special Counsel.

#### G. Failures to Appear

1. Capacity Counsel must remain attorney of record on any assigned cases for 180 days if client fails to appear or a warrant is issued. If an assigned client fails to appear for a hearing and has not reappeared within 180 days, Capacity Counsel must notify Special Counsel in writing, file a motion to withdraw, and indicate such on the Payment Affidavit closing the case once discharged by the court.
  - a. Capacity Counsel must notify Special Counsel when a motion to withdraw is filed regardless of whether there is any final billing to submit.
  - b. An assigned client who reappears more than 180 days following a failure to appear in court must rescreen for eligibility and reassignment.
  - c. The provisions of the capacity contract will determine if this would constitute a new case assignment.

## XI. CAPACITY COUNSEL RESPONSIBILITIES AND CASE MANAGEMENT

### A. Attorney/Client Relationship

1. Capacity Counsel will establish an attorney/client relationship with the client and shall determine what services to provide to the client in order to ensure high-quality representation.
2. Capacity Counsel shall visit an in-custody client within one (1) business day of the case assignment and shall make initial contact with an out-of-custody client within five (5) business days of the case assignment. Capacity Counsel shall make reasonable efforts to meet clients in person to discuss case plans in advance of hearings. Waiting until the scheduled court hearing to discuss case plans and options should be avoided.
3. Capacity Counsel shall visit in-custody adult clients at least once every six (6) weeks during representation. Capacity Counsel shall visit in-custody juvenile clients at least once every four (4) weeks during representation.
4. Capacity Counsel shall use care in the management of cases and the calendaring and scheduling of appearances. Capacity Counsel are responsible for the



organization and management of case files and assigned cases, including discovery and other case file materials.

5. Capacity Counsel must file a Notice of Appearance within two (2) business days of receiving the case assignment and must file a Notice of Withdrawal within thirty (30) days of disposition.

## B. Complaints

1. Capacity Counsel who is the subject of a WSBA complaint concerning any case assigned by DPD shall immediately provide Special Counsel a copy of the complaint. If the complaint concerns any issue other than a case assigned by DPD, Capacity Counsel shall immediately notify Special Counsel of the basic nature of the complaint.
  - a. Any complaint concerning a case assigned by DPD will result in a conference between Capacity Counsel and Special Counsel.
  - b. Capacity Counsel must respond in a timely fashion to all WSBA requests and cooperate in the investigation of a complaint.
2. DPD may receive complaints or concerns from clients or others with an interest in the case. Special Counsel will provide Capacity Counsel a written summary of any complaint and may follow up with Capacity Counsel via telephone. Capacity Counsel must provide a preliminary written response to Special Counsel within two (2) business days of being informed of a written complaint, within the confines of RPC 1.6.
3. Special Counsel will screen complaints. Depending on the nature of the complaint, Special Counsel will work with Capacity Counsel, client, court, or other interested party to address the issues. Special Counsel may reassign the case subject to Court rules without client approval based on extraordinary circumstances of the case or attorney/client relationship.

## XII. BILLING PROCESS AND PROCEDURES

### A. General Payment Process

1. Capacity Counsel will be notified of case assignments by email and must follow all DPD payment processes and procedures in effect at the time of assignment.

2. Capacity Counsel must use any software or case management system necessary for the receipt of case assignments and submission of any billing documents and invoices.
  - a. Capacity Counsel will be paid upon receipt and approval of billing invoices subject to the policies and procedures of DPD at the time of billing submission. Billing invoices delivered to DPD by other means will not be processed nor paid.
  - b. Capacity Counsel shall allow DPD thirty (30) days from the date of receipt for payment of all policy-compliant billing.
3. Capacity Counsel shall submit quarterly administrative fee invoices pursuant to the provisions of the contract and current DPD procedures on or as close to the first day of the billed quarter as possible.
4. Noncompliance with any billing processes, procedures or timelines may result in non-payment of services or expenses and/or termination of the contract with DPD.

#### B. Billing Requirements

1. Timesheets of all case activity must accompany invoices. Timesheets must be word processed, not handwritten.
2. Timesheets should include a one or two-word description of each case activity by date, along with the amount of time for each. All invoices can be considered matters of public record. Short case activity descriptions are necessary to protect client confidences. Timesheets from Capacity Counsel’s own billing system may be used provided they do not disclose client confidences.
3. Time spent on each case activity must be reported separately and not as a single time for multiple case activities.
4. Time must be reported in tenth-of-an-hour increments only and should not be billed in lesser increments. See time conversion table below:

01 – 06 minutes	0.1 hour
07 – 12 minutes	0.2 hour
13 – 18 minutes	0.3 hour
19 – 24 minutes	0.4 hour

25 – 30 minutes	0.5 hour
31 – 36 minutes	0.6 hour
37 – 42 minutes	0.7 hour
43 – 48 minutes	0.8 hour
49 – 54 minutes	0.9 hour
55 – 60 minutes	1.0 hour

5. Time spent on multiple cases that require overlapping services (e.g., research, attendance in court, travel to visit clients) should not be billed in full to each case but must be prorated among the cases with reference to each case where the time is apportioned. Capacity Counsel may submit a single billing invoice on one case that includes time for companion cases. The timesheets must make it clear that casework for companion cases is being billed under one case number and must itemize the work completed on each case.
6. Capacity Counsel must submit monthly interim billings unless the total balance due is less than \$500. Billings must be submitted once the total amount due for multiple months exceeds \$500. Billing should not be submitted if the total amount due is less than \$50, unless the invoice is for a final billing, case activity is over 90 days old, or it is the final bill for the calendar year.
7. Only one invoice may be submitted for a case per month. Multiple calendar months may be included in a single invoice, but billings should always be in full-month increments, with the only exception being the first and last bill on a case. See Billing Period guidelines below:

<b>Bill Type</b>	<b>Billing Period Start Date</b>	<b>Billing Period End Date</b>
First	Date of assignment	MM/(Last Day of Month)/YYYY
Interim	MM/01/YYYY	MM/(Last Day of Month)/YYYY
Last	MM/01/YYYY	Last date of work on case

8. Prior to the end of each calendar year, DPD will notify Capacity Counsel of a deadline for submitting billings for all case activity performed in that calendar year. This deadline is normally the second week of January. Services and expenses not submitted by this deadline may result in non-payment. This deadline is imposed as a critical requirement for DPD to meet King County Office of Finance deadlines for year-end accounting and budgeting purposes. Capacity Counsel should plan to submit year-end billing early to avoid a processing rush and the possibility of non-payment on post-deadline submissions.

9. DPD will not pay hourly invoices submitted for the previous calendar year once this deadline has passed.

### C. Billing Standards

1. Special Counsel will review all Capacity Counsel billings for sufficiency of documentation and reasonableness of claims and reported time. DPD reserves the right to reduce bills or deny payment if the time claimed is unreasonable or Capacity Counsel fails to provide an adequate explanation for the use of time or expenses.
2. Capacity Counsel will carefully review all invoices for accuracy and completeness prior to submission. Additional information may be requested if billing materials are incomplete or if the time claimed seems outside customary and usual limits. If Special Counsel or DPD staff must request additional information, the 30-day payment period will be extended in order to resolve the claim.

### D. Cases with More Than 300 Hours

1. Capacity Counsel are required to submit a Case Planning Report for criminal and juvenile offender cases with either:
  - More than 300 hours billed already; or
  - Expected billing of more than 300 hours.

If a case with more than 300 hours billed already is scheduled for plea and/or sentencing, no Case Planning Report is necessary, and the current billing will be reviewed for reasonableness.

2. For newly assigned criminal and juvenile offender cases where Capacity Counsel anticipates billing more than 300 hours, Capacity Counsel must provide a Case Planning Report to Special Counsel via email within one (1) month of assignment. Up to 1.5 hours can be billed for filling out the Case Planning Report. The Case Planning Report should contain the following information:
  - Estimated number of pages of discovery/documents, number/hours of audio tapes, and number/hours of videotapes;
  - Estimated number of hours for preliminary hearings (including detention/bail, arraignment, case settings), discovery hearings, evidence/charge-related hearings, and sentencing-related hearings including hours in court, travel time, and preparation outside of court;

- Estimated number of hours for interviews (including witnesses and family members but excluding experts) and other investigation;
- Estimated number of hours for client consultation, including face-to-face meetings and phone calls, emails, and letters;
- Estimated number of experts;
- Estimated hours for other meetings and consultations, including meetings with prosecutors, investigators, paralegals, counsel for co-defendants, or others (specify);
- Estimated length of trial in days and estimated number of in-court hours and out-of-court preparation hours; and
- Estimated total hours.

#### E. Final Billings

1. Capacity Counsel must submit a final bill within thirty (30) days of case disposition, except in cases where restitution is pending. These cases must be submitted for final billing within thirty (30) days of resolution of restitution issues.
2. When submitting a final bill, Capacity Counsel must designate or notify DPD in the submission that the bill is final and includes all work for a completed case. Capacity Counsel must provide all relevant disposition information in the field provided, including the final case disposition, plea information, and sentencing information subject to the RPC.

#### F. Reimbursable Costs

1. Hourly invoices are subject to the limitations below and may be returned if the costs are not itemized or do not have the required supporting documentation. Receipts are required for all expenses over \$10.00 and should be attached to the correlated invoice.
2. Capacity Counsel may not expense parking, copy expenses, or technology expenses on monthly hourly billing invoices.
3. Expenses permitted under the provisions in the contract or this policy totaling \$500.00 or more are not reimbursable on monthly invoices without prior written approval of Special Counsel. Any expense, either as a single expense of \$500.00 or more, or as a culmination of multiple expenses totaling \$500.00 or more on a single invoice, must be submitted as an Expert Services Request.

4. Telephone charges from the King County Jail will not be reimbursed due to the availability of no-cost jail phone services provided through DPD.
5. Capacity Counsel may not bill for work completed by support staff. Capacity Counsel may submit an expert services request for the assistance of a paralegal or legal assistant pursuant to DPD's Expert Services Policy for those cases with voluminous discovery, trial preparation, or other administrative work that is necessary.

#### G. Coverage Counsel Billing Policies

1. Capacity Counsel may bill for the work performed by coverage counsel under limited circumstances.
  - a. Coverage of attorney work can only be performed by another current active member of the Assigned Counsel Panel or Capacity Counsel. Coverage by other private counsel requires prior written approval of Special Counsel in advance of the hearing.
  - b. Billing for coverage work must include the specific task that was covered and the name of the coverage attorney providing the coverage work.
  - c. Coverage may not be for substantive hearings such as guilty pleas, sentencing hearings, or any motions under CrR 3.5 or CrR 3.6.
  - d. Coverage may not include drafting or preparation of any substantive legal documents such as motions to suppress, trial memorandum, sentencing memorandum, or any other materials outside of basic procedural orders involved in the scheduling or administrative aspects of case work.
  - e. Special Counsel will carefully review billing for coverage work. Additional information may be requested to determine whether the coverage work is necessary and complies with this policy. DPD reserves the right to reduce bills or deny payment for coverage work if the time claimed is unreasonable or does not comply with this Policy.

# APPENDIX A: CAPACITY COUNSEL CERTIFICATION OF COMPLIANCE



## Department of Public Defense

### CAPACITY COUNSEL CERTIFICATION OF COMPLIANCE

Attorney Name: Enter Full Name Here. Click or tap to enter text.

Business Address: Address Line 1. Click or tap to enter text.  
Address Line 2. Click or tap to enter text.  
City, State + ZIP. Click or tap to enter text.

Email: Enter Email Address Here. Click or tap to enter text.

Phone: Enter Phone Number Here. Click or tap to enter text.

Initials I certify that I am in compliance with the Department of Public Defense’s requirements for **Capacity Counsel caseloads**.

Initials I certify that I am in compliance with the Department of Public Defense’s requirements for **Capacity Counsel insurance coverage**.

Initials I certify that I am in compliance with the Department of Public Defense’s requirements for **Capacity Counsel yearly Continuing Legal Education**.

I, Enter Full Name Here, am a Capacity Contract Attorney with the King County Department of Public Defense and certify that the above information is correct, and that I am in compliance with the Department’s Assigned Counsel Panel requirements.

s/E-Signature Here  
Signature

City, ST  
Place

MM/DD/YY  
Date