

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PINAL

**Establishment of Modified)
Policies and Procedures for)
Court-Appointed Counsel)
And Providers of Related)
Services)**
_____)

ADMINISTRATIVE ORDER

No. 2016-0007

Whereas the Presiding Judge has general administrative authority over the Judicial Branch of government in Pinal County;

Whereas the Judicial Branch has statutory authority, pursuant to *A.R.S. § 13-4013*, and inherent authority to select and set reasonable compensation for court-appointed attorneys and court-appointed providers of related services,¹ except when the Board of Supervisors acts on its authority that is expressly provided or necessarily implied by statute;

Whereas the Pinal County Board of Supervisors has exercised its authority by appointing a Public Defender, who is adequately staffed to receive a portion of the court-appointments in the Superior Court and Justice Courts, such that private attorneys and private providers of related services are appointed to the remaining assignments;

Whereas the court-appointment system and processes of Pinal County have not been administratively reviewed or significantly modified for a number of years;

¹ "Providers of related Services" include authorized resources or support services that are required by court-appointed attorneys in appropriate circumstances, including but not limited to the services of an investigator or expert witness.

Accordingly, following a thorough evaluation of the court-appointment practices of Pinal County,

The Presiding Judge **FINDS** that the existing system of appointment and compensation of court-appointed private attorneys and providers of related services requires substantial revision. Existing practices do not provide sufficiently robust administrative control, include no periodic review or performance measure of court-appointed attorneys and providers, lack meaningful alignment with case-processing standards adopted by the Supreme Court, tolerate inequity in compensation, and can occasionally create the appearance of a conflict of interest for an assigned trial judge;

The Presiding Judge further **FINDS** that meaningful productivity metrics are not currently available that compare the relative efficiency of the Public Defender to the alternative of contracting with the private sector, when such data might aid the Board of Supervisors in determining the optimal funding balance between the public and private delivery of indigent defense services.

To implement a new system of selecting, retaining, monitoring, and compensating court-appointed attorneys and providers, the Presiding Judge **ADOPTS** the following core principles that give structure to the attached policy:²

- I. The Court has a first and fundamental constitutional and statutory obligation to secure competent legal representation and related services for indigent persons in litigation where a person has a right to court-appointed counsel, and the court has a secondary responsibility to deliver such mandated services in as cost-effective a manner as practical.
- II. Attorneys and providers of related services will be selected and retained for court-appointment based upon merit, rather than as a matter of right or past practice, following a public process, which will be administered by a standing *Selection Committee*.
- III. As a general matter, in such circumstances when a person is entitled to court-appointed counsel, an attorney will be appointed to represent a particular person, not just represent a person in a particular matter, and an attorney will be compensated for the entire engagement when an engagement is substantially completed.

² Core principles are introductory and explanatory in nature, but not controlling authority if in conflict with the *Court-Appointment Policy of the Presiding Judge in the Superior Court and Justice Courts of Pinal County*.

- IV. Calculation of compensation will become objective, to the extent practical, such that a fee calculation can be replicated by court staff and other contracting parties, and will generally consist of a flat-fee (based upon the scope of the engagement) and an hourly rate for defined additional services, if any.
- V. For certain engagements, such as juvenile dependency litigation and matters involving vulnerable persons, the Court may choose to retain counsel who will receive a significant portion of such appointments on a priority basis and be compensated by a fixed monthly retainer.³ In exchange for this retainer, attorneys must reserve a substantial portion of their practice time and resources to this role, not accept any other engagements that will materially conflict with serving as retained counsel, commit to developing special expertise in the field, and demonstrate a deep personal commitment to the needs of children, parents, and vulnerable persons in such proceedings.
- VI. Extraordinary cases, such as Class 1 felonies and other cases designated on a case-by-case basis, will be compensated by a straight hourly rate. These representations are atypical by nature, and will therefore be managed by an *Extraordinary Case Scheduling Order*, approved in advance by a *Billing Special Master*. This order will establish a case schedule of work to be performed, authorized time budget, and billing frequency, typically based upon milestones completed.
- VII. Engagements and standing assignments that are handled more efficiently by an hourly fee, such as circumstances where a representation is of a brief duration, will have no flat-fee.
- VIII. A claim for compensation or reimbursement, to the extent allowable, must be submitted during a six month claim period, commencing when a claim may first be filed, which is generally after an engagement is substantially completed, using standardized claim forms prescribed by a *Billing Special Master*. Any claim not submitted within six months shall be forfeited.
- IX. Reimbursement for costs will be limited to those expenditures approved in advance, but minor costs are not separately reimbursable since such minor costs will be a consideration in establishing the flat-fee and/or hourly fee.
- X. As compared to current contracts, certain flat-fees and hourly rates must be modified or increased to reflect new performance standards and metrics, recognizing that the average complexity of general assignments has increased as simple matters are separately handled as specialty assignments

³ The fixed monthly retainer may be augmented with additional compensation under clearly defined circumstances, as appropriate, based upon objective measures of productivity.

on a straight hourly basis. As a consequence, however, general assignments will no longer qualify for supplemental compensation, except as set forth in the adopted policy.

- XI. Productivity metrics will be a feature of the revised policy, if the Board of Supervisors elects to have the Public Defender participate, which shall provide meaningful data to assist County Administration in its decision-making when allocating court-appointment funds between a public agency and private firms.

Furthermore, the Presiding Judge **FINDS** that the attached policy satisfactorily advances the core principles set forth above, better aligns the needs of the Court, attorneys, their clients, and providers, through the identification, selection, compensation, and retention of capable attorneys and providers of related services who efficiently deliver quality services to indigent clients, while enhancing the Court's capacity to proactively manage the total system cost of indigent representation and comply with the case processing standards promulgated by the Supreme Court of Arizona.

Now, therefore, following significant input from the Judiciary, consultation with each County Supervisor, County Manager, and Public Defender, and following a meaningful opportunity for public comment,

IT IS HEREBY ORDERED adopting the attached *Court-Appointment Policy of the Presiding Judge in the Superior Court and Justice Courts of Pinal County*, which is incorporated herein by this reference and becomes effective as set forth in the policy.

IT IS FURTHER ORDERED that the *Billing Special Master* and members of the *Selection Committee*, which are set forth in this policy, shall be appointed by a subsequent administrative order.

DATED this 14th day of January, 2016.

HONORABLE STEPHEN F. McCARVILLE
PRESIDING JUDGE

Original filed with: Hon. Amanda Stanford,
Clerk of the Superior Court

Copies to: Superior Court Judges
Justices of the Peace
Pinal County Board of Supervisors
Hon. Lando Voyles, County Attorney
Greg Stanley, County Manager
James Mannato, Public Defender
Pinal County Bar Association
Todd Zweig, Court Administrator
Administrative Office of the Courts (AOC)

COURT-APPOINTMENT POLICY OF THE PRESIDING JUDGE

IN THE SUPERIOR COURT AND JUSTICE COURTS OF PINAL COUNTY

Adopted the 14th day of January, 2016

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Section 1. General Policies and Procedures:

1.1 **SCOPE AND DEFINITIONS.** This policy shall apply to court-appointed attorneys and providers of related services in the Superior Court and Justice Courts of Pinal County but not municipal courts, except as otherwise provided in this policy. In this policy, unless the context otherwise requires:

1.1.1 “Attorneys” includes both individual lawyers and law firms.

1.1.2 “Providers” includes all persons and firms who render related services that support the work of court-appointed attorneys, including but not limited to the services of an investigator or expert witness, such as a healthcare professional.

1.1.3 “Contractors” includes both private attorneys and providers.

1.1.4 A “Full and Proper Conflict Check” describes an inquiry that meets ethical standards to determine whether an attorney has a conflict that prevents the attorney from accepting the appointment, such an inquiry includes reviewing records and case information that are reasonably available to the attorney.

1.2 **PUBLIC PROCUREMENT.** The selection of private attorneys and providers for court-appointment contracts shall be by a public procurement process on a regular basis but no less frequently than every two years unless extended by the Presiding Judge for an additional year, and all interested attorneys and providers shall have an equal opportunity to apply. However, in the event of an exigency, the Presiding Judge reserves the discretion to directly select and contract with any qualified attorney or provider, until such time as the next public procurement process can satisfy the resource deficiency. All court-appointment contracts shall be non-exclusive since multiple contractors may be awarded any given contract.

1.3 **SELECTION COMMITTEE.** Except as otherwise provided in this Order, the recruitment, screening, selection, review, removal and retention of any private attorney or provider is delegated to a standing committee, named the *Selection Committee*, chaired by the Presiding Judge, as a non-voting member⁴, and three voting members, two of whom shall be required for a quorum. Meetings of the *Selection Committee* shall comply with the *Open Meeting Law*, pursuant to A.R.S. § 38-431, *et seq.*

NOTE: Any headings or subheadings in this policy are provided for the convenience of the reader but shall not limit or modify the language of this policy.

⁴ Although the Presiding Judge is nominally a non-voting member, the Presiding Judge may break any tie if a voting member is absent or recuses.

1.3.1 COMMITTEE VOTING MEMBERS. The Presiding Judge shall appoint the voting members of the *Selection Committee*, who shall serve staggered two year terms⁵ at the pleasure of the Presiding Judge, as follows:

1.3.1.1 A current or former judicial officer of the Pinal County Superior Court;

1.3.1.2 The County Manager⁶ as an *ex officio* member (the County Manager may grant a standing proxy upon prior approval of the Presiding Judge); and,

1.3.1.3 An at-large member with no material conflict or financial interest related to the decisions of the *Selection Committee*.

1.3.2 COMMITTEE ADVISORS. The *Selection Committee*, including sitting as a committee or as individual members, may obtain technical assistance and data from non-voting advisors, including:

1.3.2.1 The *Billing Special Master*;

1.3.2.2 The *Director of Treatment Services*;

1.3.2.3 The *Dependency Supervisor*;

1.3.2.4 Any member of court staff;

1.3.2.5 Any volunteer with no financial interest but specialized technical knowledge or information related to the subject matter under consideration by the *Selection Committee*.

1.3.3 COMMITTEE REPORTS. Committee advisors shall prepare such reports as directed by the Presiding Judge or by a majority vote of the *Selection Committee*, and such reports are public records.

1.4 **BILLING SPECIAL MASTER.** The *Billing Special Master* shall be a licensed Arizona Attorney with substantial experience in the Superior Court of Arizona, but no

⁵ The Presiding Judge may appoint voting members for less than two years in order to establish staggered terms. The County Manager is designated by policy, not appointed by the Presiding Judge, and therefore not subject to a staggered term, but any approved standing proxy is subject to a staggered term.

⁶ If the County Manager declines to participate and does not designate a proxy within ten days of a request to do so, the Presiding Judge shall appoint a substitute voting member.

court-appointment contract with Pinal County and no more than a limited private practice in the Pinal County Superior Court and Justice Courts. The *Billing Special Master* shall be appointed by the Presiding Judge⁷ and compensated by salary or an hourly rate as periodically authorized by the Presiding Judge. In addition to those duties set forth in this policy, the *Billing Special Master* may serve as legal counsel to the *Selection Committee*, in the discretion of the *Selection Committee* and with the consent of the Attorney General.

1.5 MERIT SELECTION OF ATTORNEYS AND PROVIDERS. A court-appointment contract with a contractor shall not be a matter of right but shall be based upon merit, although due consideration shall be given to attorneys and providers who are providing quality service under an existing contract. The number of contractors selected for any given contract shall be recommended by the *Billing Special Master* and approved by the Presiding Judge, from time-to-time, but recruitment and selection shall respect specialization, such as permitting attorneys to limit their appointments to trial engagements or appellate engagements, subject to § 1.14. The objectives are to have a sufficient pool of contractors that can satisfy the regular court-appointment needs of the court, while still keeping the pool small enough that contracting attorneys and providers receive a sufficient number of appointments to warrant participation in a contract.

1.6 SELECTION AND RETENTION PROCESS. No contractor shall be selected for any contract without a majority vote of the *Selection Committee*, nor shall any contractor be eligible for future court-appointments without a majority vote of the *Selection Committee* following a periodic review.⁸ When making its determinations, the committee shall consider the best information available, including but not limited to the contractor's experience in the subject matter of the contract⁹, the quality of services previously rendered, prior compliance with any court-appointed contract and billing practices, existence of a qualifying "regular office presence"¹⁰ in Pinal County for

⁷ If the *Billing Special Master* declares a conflict in any matter or is unavailable to perform assigned duties, the Presiding Judge shall appoint an alternative or interim special master.

⁸ The *Selection Committee* or Presiding Judge may remove a contractor at any time, regardless of whether suspension or disciplinary action was imposed for the same cause, and removal may be considered during or after any period of suspension imposed pursuant to § 1.24.

⁹ The Committee may consider the resources of an attorney's firm, since the contract shall be awarded to both the attorney and the firm; but should the relationship be severed between an attorney and firm, or should there be a material change in the attorneys who are associated with the firm, the Presiding Judge shall be the final authority to approve any substitution of attorneys or the continuation of the firm on the contract.

¹⁰ A "regular office presence" in Pinal County is defined as having an office where the attorney regularly and routinely conducts business and, as needed, meets with persons such as clients, which may be satisfied by obtaining access to shared space. This is not a contract requirement but a preferred service-delivery standard that is not satisfied by a token professional presence in Pinal County.

attorneys, relative efficiency in delivering contract services, professional reputation, past professional performance in Pinal County courts, past and pending disciplinary matters before any regulatory body, and any other matters deemed relevant by the committee or any individual members of the committee. Committee members may receive private input on the selection or retention of contractors.

1.7 WAITING LIST. The *Selection Committee* may establish an approved waiting list of ranked alternate candidates for any given contract, such that contractors on a waiting list may be granted a contract between procurement cycles, in the discretion of the Presiding Judge, but such contracts shall expire if not renewed during the next procurement cycle.¹¹

1.8 CONTRACT MANAGEMENT AND ADMINISTRATION. The *Billing Special Master* shall manage the contracts on behalf of the court and advise and consult with trial court judges, as requested, including approving any claims for compensation or reimbursement. Court Administration shall provide administrative support to the *Billing Special Master* and the *Selection Committee*, as requested.

1.9 APPLICABILITY OF COUNTY PROCUREMENT CODE. To the fullest extent practical and consistent with this policy, while respecting that the Judicial Branch is an equal but separate branch of government, contractor selection shall voluntarily comply with the procurement policies of Pinal County Government.

1.10 GENERAL APPOINTMENT REQUIREMENTS. Unless otherwise authorized by the Presiding Judge, any contractor shall comply with all applicable laws, regulations, court rules, and professional standards, including but not limited to the following general appointment requirements:

1.10.1 Contractor shall maintain insurance coverage, to the extent required by Arizona law or Pinal County Procurement Policy.

1.10.2 Licensed professionals shall maintain professional liability insurance with not less than \$250,000 per claim and \$500,000 aggregate, which shall be kept in force for any claims within two years after completion of any contract work.

1.10.3 Contractor shall indemnify and hold harmless Pinal County and the State of Arizona, as well as its officers, employees, and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault, or negligence by contractor or its agents, employees, subcontractors, or anyone under

¹¹ To the extent practical, the Presiding Judge shall give preference to appointing contractors on a waiting list for relevant non-contract appointments, pursuant to Section 10.

contractor's direction or control or on its behalf in connection with performance under this policy.

1.10.4 Contractor acknowledges its status as an independent contractor, not an employee of Pinal County or the Court, and acknowledge that it shall be responsible for payment of all federal, state, and local taxes associated with compensation under this policy, and shall be entitled to no benefits that are typically available to employees. Contractor accepts the compensation provided by this policy in lieu of any other claim, demand, request or compensation for the services that contractor provides, and contractor may not solicit or accept private or additional compensation of any kind, including but not limited to professional fees, in any matter that relates or arises out of a court-appointed assignment or representation, except as set forth in this policy or approved by the *Billing Special Master*.

1.10.5 The venue for any claim or litigation shall be in Pinal County, Arizona, and the governing law shall be the State of Arizona.

1.10.6 Contractor agrees to comply with all federal and state anti-discrimination standards, laws, and regulations, including but not limited to any applicable Arizona Executive Orders.

1.10.7 Contractor shall comply with the *Americans with Disabilities Act* and all applicable federal and state laws and regulations.

1.10.8 Contractor shall promptly advise Court Administration and the *Billing Special Master* of any change in insurance coverage, any non-compliance with any requirement set forth in this policy, any change in physical office location(s), any change in the status of any professional license, and provide Court Administration with designated U.S. Mail, email, and FAX information. Such notice shall be provided in writing.

1.10.9 Contractor shall create and maintain detailed and accurate case files, including time records relating to the representation.

1.10.10 Contractor's obligations under this policy, including but not limited to the duty of continuing representation by an attorney, shall survive the termination or expiration of a court-appointment contract.

1.11 RIGHT OF ADMINISTRATIVE APPEAL UNDER THIS POLICY. Any dispute in the procurement, selection, appointment, compensation, suspension, or removal of an attorney or provider may be timely appealed in writing to the Presiding Judge, but only after exhausting a good faith effort to obtain a favorable reconsideration of the challenged decision, pursuant to the following procedure:

1.11.1 **PROCEDURE TO REQUEST RECONSIDERATION.** Within ten (10) court days after notice is provided to a contractor of a decision or an action under the claimed authority of this policy, the contractor may seek reconsideration by filing a written request for reconsideration with Court Administration, detailing the disputed matter, specifying the requested relief, and including any supporting documentation that may assist in reconsideration. Notice is deemed to have been provided at the earlier of actual notice, date of mailing, or date of transmission by email or FAX to any currently designated address on file with Court Administration. An appeal is barred if a timely request for reconsideration is not filed with Court Administration, and no extension of time to request reconsideration may be granted.

1.11.2 **RECONSIDERATION.** Upon receipt by Court Administration of a request for reconsideration, the request shall be promptly forwarded by Court Administration to the authority that made the decision or took the action. The authority may deny the request, approve the request, or modify its prior decision or action. The authority shall have thirty (30) calendar days to make a decision following receipt of the request for reconsideration by Court Administration, or the request shall be deemed¹² to be denied.

1.11.3 **APPEAL TO THE PRESIDING JUDGE.** Following exhaustion of a request for reconsideration but within sixty calendar days after notice is provided to a contractor of a decision or action under the claimed authority of this policy, a contractor may appeal to the Presiding Judge by filing a written appeal with Court Administration, attaching a copy of the request for reconsideration, as well as a copy of any written decision on reconsideration.

1.11.4 **APPEAL.** Upon receipt by Court Administration of a timely appeal, following exhaustion of reconsideration, the appeal shall be promptly forwarded by Court Administration to the Presiding Judge. The Presiding Judge may grant or deny the appeal without hearing, may modify the prior decision without hearing, or may grant a formal or informal hearing on the appeal. The Presiding Judge may personally hear and decide an appeal, delegate the appeal for decision by another judicial officer, or appoint a hearing officer, who shall conduct any hearing and submit recommended findings of facts and conclusions to the assigned judge.

1.11.5 **STANDARD OF REVIEW.** The standard of review on appeal shall be for an alleged abuse of discretion, not a *de novo* review.

¹² Reconsideration permits the authority who made the relevant decision an opportunity to change, modify, or explain that decision, which may make a further appeal moot. However, if the authority does not respond, such that reconsideration is “deemed” to be denied, such a denial shall have no negative inference in a subsequent appeal.

1.11.6 DECISION. In all such appeals, the Presiding Judge or delegee shall be the final authority on any dispute arising from the operation of this policy or any resulting contract.

1.11.7 FINALITY OF ANY DECISION BY THE PRESIDING JUDGE. Any decision by the Presiding Judge under this policy is deemed final and not subject to administrative appeal, including any decision by the Presiding Judge or designee on an administrative appeal or any other matter where the decision is reserved in this policy to the Presiding Judge.¹³

1.12 DUTY TO REPORT. In addition to any other obligation to give notice as set forth in this policy, all contractors who are eligible for court-appointments under this policy shall promptly report in writing to the Presiding Judge any arrest, order of protection, injunction against harassment, substance abuse, criminal charge, disciplinary proceeding or action by any state bar association or other regulatory body (whether formal or informal), written or otherwise documented allegation of ineffective assistance of counsel, court sanction, malpractice claim, lawsuit naming a licensed professional or a member of immediate family, any lapse of required insurance coverage, and any other material information that may be reasonably relevant to the question of whether a contractor is currently qualified to receive or continue with court-appointments. Notwithstanding any other section in this policy, failure to timely report any such reportable event may result in any sanction up to and including removal and disqualification of a contractor from court-appointment contract(s) and reassignment of all pending cases, including forfeiture or reduction of any claim for compensation on any such pending cases, in the sole discretion of the Presiding Judge, in order to minimize any duplication of costs incurred as a result of reassignment of such court-appointments.

1.13 PROFESSIONAL LICENSURE TIME AND EXPENSES. Any licensed professional appointed under this policy, including but not limited to attorneys and healthcare professionals, must remain licensed in good standing at their own expense, and a licensed professional must provide proof of good standing upon request of the *Billing Special Master*. All time and expenses to obtain, defend, or remain licensed, including but not limited to continuing education and license fees, are not compensable time or reimbursable costs.

1.14 OBLIGATION OF CONTRACTING ATTORNEYS TO ACCEPT OTHER APPOINTMENTS. By accepting a contract pursuant to this policy, attorneys are expressly consenting to accept an appointment to any court-appointment case-type, if needed by the trial court, under the terms of that other contract, provided the attorney is competent to accept the appointment.

¹³ This section does not preclude an informal request for reconsideration by the Presiding Judge, but there is no right to an administrative appeal.

1.15 DEFERENCE TO BOARD OF SUPERVISORS. This policy shall apply to all court-appointments, except when an expressly provided or necessarily implied statutory authority is vested in the Board of Supervisors, and the Board of Supervisors has exercised that authority.

1.16 APPOINTMENT OF ATTORNEYS. Since the Board of Supervisors has exercised its authority to appoint a Public Defender, the Public Defender shall be appointed, to the extent authorized by law and to the extent that the Public Defender can accept such appointments, pursuant to Rule 6.5(b), *Ariz.R.Crim.P.*, and as set forth in § 12.1. Thereafter, contracting private attorneys shall be appointed as provided in this policy.

1.17 REFERENCES TO PRESIDING JUDGE. Any reference to the Presiding Judge in this policy means the then-current Presiding Judge, unless the decision falls within the scope and responsibilities of the then-current Presiding Juvenile Judge, but the Presiding Judge reserves the discretion to designate another judicial officer to act in lieu of the Presiding Judge.

1.18 NO CONTRACT RIGHT TO FUTURE APPOINTMENTS OR FUTURE COMPENSATION. This policy and compensation plan may be changed at any time in the sole discretion of the Presiding Judge. In the event of a material change in the compensation plan during a contract period, contractors may terminate their contract upon reasonable notice and may decline future appointments under the revised policy or compensation plan. Any past appointments shall be compensated under the terms that were in effect at the time of the appointment.

1.19 STANDARD HOURLY RATE. The Presiding Judge shall from time-to-time adopt a *Standard Hourly Rate*, as set forth in *Appendix A* to this policy, and that rate is used in this policy to compute compensation for attorneys and guardians *ad litem*, as applicable. The *Standard Hourly Rate* for any engagement shall be the rate that is in effect at the time of the original appointment; any subsequent revision to the *Standard Hourly Rate* shall only apply to new engagements.

1.20 INHERENT AUTHORITY OF THE COURT TO LIMIT CLAIMS TO REASONABLE COMPENSATION AND REASONABLE EXPENSE REIMBURSEMENT. Notwithstanding any other provision to the contrary, nothing in this policy shall preclude or limit the inherent authority of the judiciary to review claims for compensation or reimbursement on a case-by-case basis and reduce or deny any claim that is found to be unreasonable or excessive, including discretion to require the submission of additional information or documentation before considering any claim.

1.21 APPOINTMENT OF ATTORNEYS AND PROVIDERS. The *Billing Special Master* shall maintain a list of contractors who are qualified to accept the various categories of appointments under this policy, and the *Billing Special Master* may stratify or prioritize the appointment of contractors based upon objective performance factors

identified in the discretion of the *Billing Special Master* which are consistent with the core principle of securing competent services that are rendered as cost-effectively and timely¹⁴ as practical. The trial court and the *Billing Special Master* may use the resulting list in the selection of contractors, which may result in additional appointments to contractors that perform optimally. Any list that will stratify or prioritize the appointment of contractors shall be disclosed to any contractors who are adversely impacted, who may appeal this action, pursuant to § 1.11.

1.22 APPOINTMENT AND WITHDRAWAL AUTHORITY OF THE BILLING SPECIAL MASTER. Except as otherwise provided in this policy, the *Billing Special Master* is authorized to appoint, grant withdrawal, or substitute contractors; however, the *Billing Special Master*, may not grant the withdrawal or substitution of contractors without approval of the assigned trial judge, unless the contractor was appointed to the engagement within the preceding sixty (60) days. Nothing in this section shall require disclosure to the trial judge of privileged information.

1.23 REQUESTS BY AN ATTORNEY FOR APPOINTMENT OF A PROVIDER. Any request for the appointment of a provider, such as an investigator or expert, must be made in writing on an approved form to the *Billing Special Master*, and that request must comply with § 8.8. If the request is denied, the denial is not subject to an administrative appeal, pursuant to § 1.11, but the attorney may seek approval from the assigned trial judge, subject to § 11.12. Requests from the Public Defender must include a certification by the requesting attorney that the Board of Supervisors does not provide a budget for the required category of expense.

1.24 SUSPENSION AND DENIAL OF CLAIMS. The *Billing Special Master* may suspend a contractor and/or deny a claim upon any objective and material failure of the contractor to comply with this policy or a court order. Such action shall be promptly disclosed to the relevant contractor, who may appeal, pursuant to § 1.11. A suspension imposed by the *Billing Special Master* shall not exceed (90) days, and the *Billing Special Master* may stay an order of suspension during any appeal.¹⁵

1.25 INHERENT AUTHORITY OF PRESIDING JUDGE. Notwithstanding any other provision of this policy to the contrary, the Presiding Judge retains and reserves all inherent authority and discretion conferred upon the Presiding Judge by statute or administrative order of the Supreme Court, and that authority may be fully exercised in the sole discretion of the Presiding Judge.

¹⁴ When evaluating the relative case-assignments and the pending caseload of an attorney, the *Billing Special Master* shall employ objective factors, such as the Case Processing Standards adopted by the Arizona Supreme Court, when evaluating whether services are being rendered in a timely manner.

¹⁵ The *Billing Special Master* may exercise discretion in taking action or deferring action, and the exercise of this discretion shall not waive any provision of this policy or preclude future action against that contractor or another contractor for a similar cause.

Section 2. General Adult Criminal Engagements:

2.1 DEFINITION. *General Adult Criminal Engagements* include defense of all adult criminal prosecutions in Superior Court or Justice Court, if a person is entitled to court-appointed counsel, regardless of whether an engagement includes new charge(s), juveniles transferred to adult court, and/or probation violation petition(s), except for any appointment that qualifies for compensation as a *General Guardian ad Litem Engagement*, *General Hourly Engagement*, *Extraordinary Case* or *Non-Contract Engagement*, pursuant to sections 6, 7, 9 or 10 of this policy.

2.2 APPOINTMENT TO ONE ENGAGEMENT. Unless otherwise ordered by the trial court, an appointment under this section is a general appointment to represent a person in all adult criminal cases pending in Superior Court or Justice Courts, or that become pending during the period of representation,¹⁶ Thus, if a person has multiple matters pending, all of the court-appointed matters represent one engagement, which shall be compensated when the engagement is substantially completed, as set forth in Section 11 of this policy. If two or more attorneys are appointed to represent one person in different matters, counsel shall immediately bring this to the attention of the respective trial courts or the *Billing Special Master*, and one attorney shall be withdrawn and only one fee shall be paid.¹⁷

2.3 FLAT-FEE. A flat-fee shall be paid for the entire engagement, and that flat-fee shall cover all time and all minor costs¹⁸ incurred, except for any additional hourly compensation set forth in § 2.4. The amount of the single flat-fee for the entire engagement shall be based upon the original charging instrument(s)¹⁹, and shall be the greater flat-fee of the alternative calculations for a *Tier One Engagement*, *Tier Two Engagement*, *Probation Violation Engagement*, or *Misdemeanor Engagement*, as set forth in *Appendix A* to this policy. If an attorney is appointed to an engagement that does not result in a charging approval by the prosecution agency, the flat-fee shall be calculated as provided in § 2.5.

2.4 ADDITIONAL HOURLY COMPENSATION. The *Standard Hourly Rate* shall be paid for the following additional time, if any, which shall compensate counsel for

¹⁶ If a person has one or more other pending cases where counsel was privately retained, not court-appointed, such case(s) remains separate from the court-appointed engagement.

¹⁷ See § 2.5

¹⁸ See § 11.6

¹⁹ An original charging instrument is the indictment or information, whichever is first; and if no indictment or information is filed, the original complaint.

additional time that is not otherwise included in the flat-fee, and which is measured by the time record kept by the Clerk of the Court, as recorded in the minutes²⁰:

2.4.1 Time spent preparing and litigating a jury trial or bench trial shall be compensated at three (3.0) billable hours for every hour of court time in session from the start of opening statements until the conclusion of closing arguments or declaration of a mistrial, whichever occurs first. Jury selection is not separately compensable.²¹

2.4.2 Time spent preparing and litigating a Probation Violation Hearing, Juvenile Transfer Hearing (§13-501), or other contested evidentiary hearing shall be compensated at two (2.0) billable hours for every hour of court time in session during the hearing, **excluding** the first two hours of any hearing which is compensated and included in the flat-fee.

2.4.3 Excluded from the compensated hourly time is any motion hearing during the course of the trial or hearing, if the motion was filed or could have been filed before the start of the trial or hearing; such motion practice is included in the calculated total fee, except if separately compensable pursuant to § 2.4.2.

2.5 **COMPENSATION ON CONFLICT OR WITHDRAWAL.** If an attorney is unable to substantially complete an engagement due to a conflict or withdrawal, such as the appointment or retention of other counsel, no compensation shall be earned or paid for any services rendered before counsel performs and documents a full and proper conflict check. The *Standard Hourly Rate* shall be paid for all reasonable services rendered after a full and proper conflict check, not to exceed seventy-five (75%) percent of the regular fees otherwise earned, pursuant to §§ 2.3 and 2.4. Any claim under this section may be wholly or partially approved or denied in the discretion of the *Billing Special Master*, which may be appealed as set forth in § 1.11.

2.6 **COMPENSATION ON VOLUNTARY SUBSTITUTION.** If an attorney is unable to substantially complete an engagement, such as may result when leaving private practice, a substitution of counsel shall not occur without prior approval of the Presiding Judge, which shall include authorization on the proration of any fees, if any, such that only one fee shall be paid for each engagement.²²

²⁰ The official time record for § 2.4 shall be documented in the minutes, evidencing the time when the court is actually in session, which is routinely recorded by the Clerk of the Superior Court and shall be documented by justice court clerks for trials and contested hearings in justice court.

²¹ Time expended to select a jury is already compensated by the flat-fee and the additional hourly compensation, which is calculated as a multiple of certain trial hours, such that jury selection is compensated but not as an additional input in the additional hourly time multiplier.

²² See § 11.11

2.7 CLAIMS UPON SUBSTANTIAL COMPLETION. Except as otherwise provided in this policy, claims may be submitted when an engagement is substantially completed. “Substantially completed” generally describes an engagement where all of a client’s appointed cases have been resolved. For example, in a *General Adult Criminal Engagement*, a substantially completed criminal engagement means a defendant has been acquitted, sentenced, deferred or dismissed in all cases that comprise the engagement, and any probation violation petition is fully adjudicated. Although minor additional legal tasks may remain and are included in the representation, such as the resolution of a final restitution amount, the matter may be billed, but no additional compensation shall be paid on the engagement at a later date.

2.8 PCR & APPEALS. Rule 32 Petitions and Criminal Appeals²³ shall constitute a separate engagement, even if the client is represented by counsel on other matters, and are compensated at the *Standard Hourly Rate*, but time spent through the completion of briefing shall not exceed twenty-four (24) compensable hours if the Rule 32 Petition or Criminal Appeal follows a trial, and otherwise shall not exceed twelve (12) compensable hours. However, if oral argument is ordered on a Criminal Appeal, time spent in preparation for oral argument through completion of the oral argument are compensable at the *Standard Hourly Rate*, not to exceed twelve (12) compensable hours, and a contested Rule 32 hearing shall be compensated by additional hourly compensation pursuant to § 2.4.2. A claim for compensation may be filed when a matter is fully briefed to the initial reviewing court and again following oral argument on a Criminal Appeal. Nothing in this section shall preclude a request to treat a Rule 32 Petition or Criminal Appeal as an “Extraordinary case”, pursuant to Section 9.

²³ Interlocutory appeals, such Special Action, are included in the flat-fee of the underlying engagement.

Section 3. General Juvenile Delinquency/Incorrigibility Engagements:

3.1 DEFINITION. *General Juvenile Delinquency/Incorrigibility Engagements* include all juvenile delinquency and incorrigibility proceedings in the Juvenile Court, regardless of whether an engagement includes new or subsequent petition(s), pending requests to transfer a juvenile to adult court, and/or probation violation petition(s), except for any appointment that qualifies for compensation as a *General Adult Criminal Engagement*, *General Hourly Engagement*, *Extraordinary Case* or *Non-Contract Engagement*, pursuant to sections 2, 7, 9 or 10 of this policy.

3.2 APPOINTMENT TO ONE ENGAGEMENT. Unless otherwise ordered by the trial court, an appointment under this section is a general appointment to represent the juvenile in all juvenile delinquency and incorrigibility proceedings in Pinal County Superior Court, including any juvenile matters pending in Justice Courts for which court-appointed counsel is required, including such matters that are pending or become pending before the substantial completion of all matters. Thus, if a juvenile has one or more matters pending, including any additional petitions that are filed before the engagement is substantially completed, all such matters represent **one engagement**, which shall be billed when the entire engagement is substantially completed, as set forth in Section 11 of this policy. If two or more attorneys are appointed to represent one juvenile in different matters, counsel shall immediately bring this to the attention of the respective trial courts or the *Billing Special Master*, and one attorney shall be withdrawn and only one fee shall be paid.²⁴

3.3 FLAT-FEE. A flat-fee shall be paid for the entire engagement, unless the juvenile is transferred to adult court²⁵, and that flat-fee shall cover all time and all minor costs²⁶ incurred, except for any additional hourly compensation, as set forth in § 3.4. The amount of the single flat-fee for the entire engagement shall be based upon the original charging instrument(s), and shall be the greater flat-fee of the alternative calculations for a *Delinquency Engagement*, *Incorrigibility Engagement*, *Probation Violation Engagement*, or *Justice Court Engagement*, as set forth in *Appendix A* to this policy. If an attorney is appointed to an engagement that does not result in a charging approval by the prosecution agency, the flat-fee shall be calculated as provided in § 3.5.

²⁴ See § 3.5

²⁵ Following the transfer of a juvenile to adult court, the transferred case shall be treated as a *General Criminal Adult Engagement* and shall be compensated pursuant to Section 2 of this policy, unless the engagement is designated as an *Extraordinary Case*, pursuant to Section 9. If a juvenile is transferred to adult court but is then returned to the juvenile court, the engagement is compensated exclusively under the provisions of this section.

²⁶ See § 11.6

3.4 ADDITIONAL HOURLY COMPENSATION. The *Standard Hourly Rate* shall be paid for the following additional time, if any, which shall compensate counsel for additional time that is not otherwise included in the flat-fee, and which is measured by the time record kept by the Clerk of the Court, as recorded in the minutes²⁷:

3.4.1 ADJUDICATION HEARING. Time spent preparing and litigating an adjudication of a delinquency or incorrigibility petition shall be compensated at three (3.0) billable hours for every hour of court time in session from the start of opening statements and until the conclusion of closing arguments or declaration of a mistrial, whichever occurs first, but **excluding** the first hour of any hearing which is included in the calculated total fee.

3.4.2 CONTESTED HEARING. Time spent preparing and litigating a transfer hearing to adult court, pursuant to A.R.S. §13-501, or other contested hearing shall be compensated at two (2.0) billable hours for every hour of court time in session during the hearing, **excluding** the first two hours of any hearing which is included in the calculated total fee.

3.4.3 EXCLUDED TIME. Excluded from the compensated hourly time is any motion hearing during the course of the hearing, if the motion was filed or could have been filed before the start of the hearing; such motion practice is included in the calculated total fee, except if separately compensable pursuant to § 3.4.2.

3.5 COMPENSATION ON CONFLICT OR WITHDRAWAL. If an attorney is unable to substantially complete an engagement due to a conflict or withdrawal, such as the appointment or retention of other counsel, no compensation shall be earned or paid for any services rendered before counsel performs and documents a full and proper conflict check. The *Standard Hourly Rate* shall be paid for all reasonable services rendered after a full and proper conflict check, but not to exceed seventy-five (75%) percent of the regular fees otherwise calculated pursuant to §§ 3.3 and 3.4. Any claim under this section may be wholly or partially approved or denied in the discretion of the *Billing Special Master*, which may be appealed as set forth in § 1.11.

3.6 COMPENSATION ON VOLUNTARY SUBSTITUTION. If an attorney is unable to substantially complete an engagement, such as may result when leaving private practice, a substitution of counsel shall not occur without prior approval of the Presiding Judge, which shall include authorization on the proration of any fees, if any, such that only one fee shall be paid on each engagement.²⁸

²⁷ The official time record for § 3.4 shall be documented in the minutes, evidencing the time when the court is actually in session, which is routinely recorded by the Clerk of the Superior Court and shall be documented by the court clerks for hearings in justice court.

²⁸ See § 11.11

3.7 CLAIMS UPON SUBSTANTIAL COMPLETION. Except as otherwise provided in this policy, claims may be submitted when an engagement is substantially completed, as provided in Section 11. “Substantially completed” generally describes an engagement where all of a client’s appointed cases have been resolved. For example, in a *General Juvenile Delinquency/Incorrigibility Engagement*, a substantially completed engagement means a juvenile’s petitions are fully adjudicated by final disposition. Although minor additional legal tasks may remain and are included in the representation, such as the resolution of a final restitution amount, the matter may be billed, but no additional compensation shall be paid on the engagement at a later date.

3.8 APPEALS. Juvenile Appeals²⁹ shall constitute a separate engagement, even if the client is represented by counsel on other matters, and are compensated at the *Standard Hourly Rate*, but time spent through the completion of briefing shall not exceed sixteen (16) compensable hours if the Appeal follows a contested adjudication or contested transfer hearing, and otherwise shall not exceed twelve (12) compensable hours. However, if oral argument is ordered on a Juvenile Appeal, time spent in preparation for oral argument through completion of the oral argument are compensable at the *Standard Hourly Rate*, not to exceed twelve (12) compensable hours. A claim for compensation may be filed when a matter is fully briefed to the initial reviewing court and again following oral argument on a Juvenile Appeal. Nothing in this section shall preclude a request to treat a Juvenile Appeal as an “Extraordinary case”, pursuant to § 9.7.

²⁹ Interlocutory appeals, such Special Action, are included in the flat-fee of the underlying engagement.

Section 4. Juvenile Dependency Retained Counsel:

4.1 DEFINITION AND SCOPE. *Juvenile Dependency Retained Counsel* (hereinafter “*Retained Counsel*”) are selected by the *Selection Committee*, subject to the consent of the Presiding Juvenile Judge, and shall be compensated primarily on a monthly retainer basis, rather than receiving compensation by the engagement, and shall have the principal role of providing high-quality representation to parties in juvenile dependency proceedings.³⁰ Attorneys who are selected as *Retained counsel* shall receive primary and discretionary appointments, as follows:

4.1.1 PRIMARY APPOINTMENTS. *Retained Counsel* shall have first priority for appointment in juvenile dependency proceedings, representing a party or serving as a guardian *ad litem*, and such appointments shall be made from the roster of *Retained Counsel*, except as otherwise provided in this policy or prohibited by an ethical rule.

4.1.2 DISCRETIONARY APPOINTMENTS. At the discretion of the trial judge or the *Billing Special Master*, *Retained Counsel* may be appointed to *General Guardian ad Litem Engagements*, as defined in § 6.1, and *Common Case-Types*, as defined in § 7.1.1., which shall be compensated pursuant to this section.

4.1.3 PRACTICE COMMITMENT. In consideration of a fixed monthly retainer and the potential to earn additional compensation based upon productivity, *Retained Counsel* shall commit a substantial majority of their practice time and resources to this service, not accept any other court-appointed contracts or private representations that will materially conflict with their duties as *Retained Counsel*, commit to developing their skill as a subject-matter expert in the field of juvenile dependency and available social service resources, as well as demonstrate a continuing, deep personal commitment to the needs of children, parents, and vulnerable persons in juvenile dependency and related proceedings.

4.2 APPOINTMENT TO ONE ENGAGEMENT. Unless otherwise ordered by the juvenile court, an appointment under this section is a general appointment to represent a client or ward in all proceedings in Pinal County Superior Court for which the person is authorized a court-appointed attorney or guardian *ad litem*. If two or more attorneys are appointed to represent one client or ward in different matters, counsel shall immediately bring this to the attention of the respective trial courts or the *Billing Special Master*, who shall determine if one attorney shall be withdrawn and only one attorney compensated, in compliance with § 1.22.

³⁰ All references to juvenile dependency in this section include dependency, termination, adoption, and related proceedings, including representation of a party or service as a *guardian ad litem* in such proceedings.

4.3 MONTHLY RETAINER. A fixed monthly retainer shall be paid to *Retained Counsel* for services rendered in the preceding month, which shall also serve to reimburse the *Retained Counsel* for all minor costs³¹ incurred. The amount of the monthly retainer is set forth in *Appendix A*.³²

4.4 PRODUCTIVITY CREDITS. As a quantitative measure of performance and to equitably compensate *Retained Counsel*, the relative caseload and activity of *Retained Counsel* is measured by a system of *Productivity Credits*. This system provides additional compensation to *Retained Counsel* after exceeding the *Annual Productivity Standard* upon which the monthly retainer is based. Credits are earned for certain activities, based upon the intensity of the engagement, and shall be reported on a simplified standard monthly reporting form that is adopted by the *Billing Special Master*.

4.4.1 EVENTS IN JUVENILE DEPENDENCY FOR STANDARD PRODUCTIVITY CREDITS. Subject to § 4.7, *Retained Counsel* earn *Standard Productivity Credits* in Juvenile Dependency engagements for the following events, as set forth in the matrix in *Appendix A*:

- A. COURT HEARING OR EVENT, which shall be awarded at various levels depending on the circumstances and type of hearing or event.³³
- B. FIELD VISIT WITH A CHILD. Prior to any hearing, credit may be claimed by the guardian *ad litem* or attorney for the child(ren) for each ordinary and necessary field visit by the assigned attorney, provided that the field visit is not included in any claim for credit pursuant to § 4.4.3. A “field visit” is defined as requiring travel to the child, such as a residential or school visit, but not more than one field visit may be claimed between any court hearings.
- C. IN-PERSON CONSULTATION WITH WARD OR CLIENT. Prior to any hearing, credit may be claimed by a guardian *ad litem* or attorney for each ordinary and necessary in-person consultation with a ward or client,

³¹ See § 11.6

³² If *Retained Counsel* is reassigned a full caseload at the start of the attorney’s service, a full monthly retainer will be earned from the first month of service; if *Retained Counsel* is not initially reassigned a full caseload, the monthly retainer may phase-in over a period of time or the *Retained Counsel* may initially be compensated pursuant to Section 5, as negotiated between *Retained Counsel* and the *Billing Special Master*.

³³ When an attorney appears for more than one party, productivity credits are awarded to only one engagement. For example, if an attorney attends a hearing on behalf of a client(s) and provides a courtesy appearance for another party, the attending attorney earns productivity credit for the appearance on behalf of his or her client(s), but the non-attending attorney does not earn productivity credit for the appearance of the attending attorney.

respectively, that does not otherwise qualify for productivity credit, provided that the visit is not included in any claim for credit pursuant to § 4.4.3. No productivity credit is earned pursuant to this subsection for any consultation at the courthouse on the day of a hearing, but no more than two in-person consultations may be claimed between any court hearings.³⁴

- D. LIMITATION ON STANDARD PRODUCTIVITY CREDITS. The maximum standard productivity credits earned in any calendar day shall not exceed eight (8), and the maximum standard productivity credits earned in any calendar week shall not exceed forty (40). This limitation does not impact any hourly productivity credits or substitute productivity credits.

4.4.2 *HOURLY PRODUCTIVITY CREDITS.* *Hourly Productivity Credits* are earned for the following additional time, if any, which shall compensate counsel for additional time that is not otherwise included in the *Standard Productivity Credits*, to wit:

4.4.2.1 CONTESTED HEARINGS. Time spent preparing and litigating any contested hearing in a dependency engagement, excluding the first two (2) hours of any contested hearing and excluding any time spent on any unrelated motion or issue, shall be compensated by three (3) *Hourly Productivity Credits* for each qualifying hour of court time when an attorney represents a child(ren), represents a parent who is present for the hearing, or serves as a guardian *ad litem*; any attorney representing any other party shall earn one and one-half (1½) *Hourly Productivity Credits* for each qualifying hour of court time. Court time shall be measured using the time record kept by the Clerk of the Court, as recorded in the minutes. No *Standard Productivity Credits* are earned during any day when *Hourly Productivity Credits* are claimed in the same engagement, pursuant to this subsection.

4.4.2.2 MEDIATION. Time spent preparing and participating in a court mediation in a dependency engagement shall be compensated by two (2) hourly productivity credits for each qualifying hour of mediation time when an attorney represents a child(ren), represents a parent who is present for the mediation, or serves as a guardian *ad litem*; any attorney representing any other party shall earn one and one (1) hourly productivity credits for each qualifying hour of mediation time. Court time shall be measured using the time record kept by court staff, as recorded in the

³⁴ An in-person consultation that would qualify as a field visit if a field visit was not already claimed between the court hearings is eligible for credit as an in-person consultation, pursuant to and subject to the limitations of § 4.4.1(C).

mediation report. No *Standard Productivity Credits* are earned for any mediation time.

4.4.3 *SUBSTITUTE PRODUCTIVITY CREDITS FOR DISCRETIONARY APPOINTMENTS.* Following substantial completion of a *Discretionary Appointment*, such as a *General Guardian ad Litem Engagement* or *Common Case-Type* engagement, the resulting *Productivity Credit(s)* shall equal the amount of compensation that would ordinarily be payable to a court-appointed attorney who is not *Retained Counsel*, as calculated in Sections 6 and 7 of this policy (excluding any time or costs that are compensable by standard or hourly *Productivity Credits*), divided by the *Standard Hourly Rate*, to wit:

$$\frac{\text{Compensation payable if not Retained Counsel}}{\text{Standard Hourly Rate}} = \text{Productivity Credit(s)}$$

4.4.4 *PRODUCTIVITY CREDITS ON CONFLICT OR WITHDRAWAL.* If an attorney is unable to substantially complete an engagement due to a conflict or withdrawal, such as the appointment or retention of other counsel, no *Productivity Credits* shall be earned for any services rendered before counsel performs and documents a full and proper conflict check. The *Productivity Credits* earned for all reasonable services rendered after a full and proper conflict check shall be limited to seventy-five (75%) percent of the regular *Productivity Credits* otherwise calculated for an engagement pursuant to § 4.4. Any claim under this section may be wholly or partially approved or denied in the discretion of the *Billing Special Master*, which may be appealed as set forth in § 1.11.

4.5 *ALTERNATIVE MINIMUM PRODUCTIVITY CREDITS.* Any engagement under this section is eligible for an alternative calculation of *Productivity Credits*, at the rate of one-half (½) *Productivity Credits* for each compensable hour of attorney services, or fraction thereof, calculated pursuant to the *Hourly Billing Standards* set forth in § 7.3. The *Alternative Minimum Productivity Credits* may be calculated and any additional *Productivity Credits* are awarded once the engagement is substantially completed.

4.6 *STANDARD MONTHLY CALCULATION OF ADDITIONAL COMPENSATION.* Subject to § 4.13 and as otherwise provided in this policy, following completion of one (1) uninterrupted year of service as *Retained Counsel*, additional compensation will be paid in any month where the sum of all *Productivity Credits* earned during the preceding twelve calendar months exceeds the *Annual Productivity Standard*, as set forth in *Appendix A*. Any additional compensation is calculated by dividing the net sum of *Productivity Credits* by the *Annual Productivity Standard*, which is multiplied against the average Monthly Retainer during the same period, to wit:

$$\frac{\text{Sum of 12 months' credits} - \text{Annual Productivity Credit}}{\text{Annual Productivity Standard}} \times \text{Average Monthly Stipend} = \text{Add'l Compensation}^{35}$$

4.7 NO CONTRACT RIGHT TO FUTURE PRODUCTIVITY CREDITS OR FUTURE COMPENSATION. Notwithstanding any other provision of this policy, the compensation plan for *Retained Counsel* may be changed at any time in the sole discretion of the Presiding Judge, as set forth in § 1.18, which includes but is not limited to future *Productivity Credits* or future compensation of *Retained Counsel*. Retained Counsel have no contract right to future productivity credits or future compensation, including monthly additional compensation. However, in the event of a material change in this compensation plan during a contract period, including exercise of the discretion vested in the *Billing Special Master* to equitably adjust earned *Standard Productivity Credits* pursuant to § 4.13, *Retained Counsel* may withdraw from the contract upon reasonable notice and move to withdraw from existing engagements, subject to ethical considerations and the approval of the trial judge.

4.8 FRACTIONAL CONTRACT. The *Billing Special Master* may negotiate a higher or lower fractional contract with a *Retained Counsel*, such as half the monthly retainer, half the *Annual Productivity Standard*, a reduced number of appointments, and a smaller commitment of time and resources to the contract. Any change from a full contract to a fractional contract, or vice versa, shall be prorated by the *Billing Special Master* in the calculation of any *Monthly Calculation of Additional Compensation*.

4.9 PERIODIC REVIEW. Notwithstanding this Policy, the Presiding Juvenile Judge retains full authority to decline future appointments, suspend appointments, or reassign cases previously assigned to *Retained Counsel*, and the *Billing Special Master* may suspend appointments if the caseload of *Retained Counsel* becomes too large, exceeds case processing standards of the Supreme Court, or for other qualitative considerations in the discretion of the *Billing Special Master*. In the event of such action, the *Billing Special Master* may reduce or decline the payment of future monthly retainers if materially below the *Annual Productivity Standard*, but *Retained Counsel* may withdraw from the contract upon reasonable notice and move to withdraw from existing engagements, subject to the discretion of the trial judge, or may appeal the decision, pursuant to § 1.11.

4.10 DUTY OF RETAINED COUNSEL TO PERSONALLY APPEAR, BE PREPARED, AND MEANINGFULLY COVER HEARINGS. Juvenile Dependency proceedings involve the expenditure of substantial public resources and the appearance of multiple persons, such that *Retained Counsel* is expected to personally appear on a regular basis and is expected to be prepared to meaningfully participate in all hearings. Compliance with this requirement is an essential performance standard for an attorney

³⁵ The Additional Compensation calculated pursuant to § 4.6 is limited, such that the sum of all *Productivity Credits* during the preceding twelve months shall not exceed the *Maximum Annual Productivity Credits*, as set forth in *Appendix A*.

to remain as *Retained Counsel*. For this reason, in the rare circumstance where *Retained Counsel* cannot personally appear for a hearing, counsel shall make thorough arrangements for alternate counsel, and such counsel must be knowledgeable about the case, knowledgeable about the status, and prepared to fulfill the objectives of the scheduled hearing.

4.11 APPEALS. An attorney appointed to represent a party in a Juvenile Dependency Appeal³⁶ shall provide a an hourly time report when the appeal is fully briefed and for any additional time when a mandate issues or the appeal is dismissed, consistent with the standards set forth in this policy for hourly claims, including specifically § 7.3, and shall earn one (1) *Productivity Credit* for each approved billable hour, as determined in the discretion of the *Billing Special Master*.

4.12 RESIGNATION OR SEPARATION OF *RETAINED COUNSEL*. Upon the resignation or separation of *Retained Counsel*, the monthly retainer shall end or phase-out with the assignment, as determined by the *Billing Special Master*. To the extent that *Retained Counsel* has earned any additional compensation, pursuant to § 4.6, such amount shall be calculated and compensated until it produces no further compensation, if any. The retention of any assignments shall be a matter of negotiation between the attorney and the *Billing Special Master*, which shall thereafter be compensated pursuant to Section 5.

4.13 IMPLEMENTATION OF EARNED STANDARD PRODUCTIVITY CREDITS. In the process of developing this policy, a significant effort was expended to model this compensation plan against past case experience, but there remains a risk that the actual number of *Standard Productivity Credits* awarded will be materially higher or lower than predicted. For this reason, until this risk is resolved by experience or revisions in the methodology to prospectively award productivity credits, the *Billing Special Master* shall provide quarterly reports to the Presiding Judge and *Retained Counsel*, which shall include disclosure of any decision by the *Billing Special Master* to equitably adjust the earned *Standard Productivity Credits*, notwithstanding any other provision of this policy. Any equitable adjustment of the earned *Standard Productivity Credits* by the *Billing Special Master* may be appealed, pursuant to § 1.11.

³⁶ Interlocutory appeals, such Special Action, are included in the underlying engagement.

Section 5. General Juvenile Dependency Engagements:

5.1 DEFINITION. *General Juvenile Dependency Engagements* include all juvenile dependency proceedings in the Juvenile Court, regardless of whether an engagement includes new or subsequent petition(s), except for any appointment that qualifies for compensation as *Juvenile Dependency Retained Counsel, General Hourly Engagement, Extraordinary Case* or *Non-Contract Engagement*, pursuant to sections 4, 7, 9 or 10 of this policy.³⁷

5.2 APPOINTMENT TO ONE ENGAGEMENT. Unless otherwise ordered by the trial court, an appointment under this section is a general appointment to represent a party or serve as a guardian *ad litem* in all juvenile dependency proceedings in Pinal County Superior Court for which court-appointed counsel is required, including such matters that are pending or become pending before the substantial completion of all matters, such as the filing of a new or amended dependency petition for the same child or children. Thus, if a person has multiple matters pending, including any petitions that are filed before the engagement is substantially completed, all such matters represent **one engagement**. If two or more attorneys are appointed to represent one party or serve as guardian *ad litem* in different matters, counsel shall immediately bring this to the attention of the respective trial courts or the *Billing Special Master*, and one attorney shall be withdrawn and only one fee shall be paid.³⁸

5.3 HOURLY COMPENSATION. The *Standard Hourly Rate* shall be paid for each earned *Productivity Credit*, or fraction thereof, regardless of the actual time expended, as calculated pursuant to §§ 4.4.1 and 4.4.2, which shall be reported on a simplified standard monthly reporting form that is adopted by the *Billing Special Master*.

5.4 COMPENSATION ON CONFLICT OR WITHDRAWAL. If an attorney is unable to substantially complete an engagement due to a conflict or withdrawal, such as the appointment or retention of other counsel, no compensation shall be earned or paid for any services rendered before counsel performs and documents a full and proper conflict check. The *Standard Hourly Rate* shall be paid for all reasonable services rendered after a full and proper conflict check, but not to exceed seventy-five (75%) percent of the regular fees otherwise calculated for an engagement pursuant to § 5.3. Any claim under this section may be wholly or partially approved or denied in the discretion of the *Billing Special Master*, which may be appealed as set forth in § 1.11.

³⁷ All references to juvenile dependency in this section include dependency, termination, adoption, and related proceedings, including representation of a party or service as a *guardian ad litem* in such proceedings.

³⁸ See § 5.4

5.5 COMPENSATION ON VOLUNTARY SUBSTITUTION. If an attorney is unable to substantially complete an engagement, such as may result when leaving private practice, a substitution of counsel shall not occur without prior approval of the Presiding Juvenile Judge, which shall include authorization on the proration of any fees, if any, such that only one fee shall be paid on each engagement.³⁹

5.6 CLAIMS. Claims shall be submitted on a monthly basis, reporting all juvenile dependency activity on a simplified standard monthly form that is adopted by the *Billing Special Master*.

5.7 ALTERNATIVE MINIMUM FEE. An individual engagement that consumes more time than is contemplated by the calculation set forth in § 5.3, resulting in an effective hourly rate below one-half ($\frac{1}{2}$) of the Standard Hourly Rate, is eligible for an *Alternative Minimum Fee*, pursuant to § 11.10, once the engagement is substantially completed.

5.8 APPEALS. Juvenile Dependency Appeals⁴⁰ shall constitute a separate engagement, even if the client is represented by counsel on other matters, and are compensated at the *Standard Hourly Rate*, but time spent through the completion of briefing shall not exceed twelve (12) compensable hours. However, if oral argument is ordered on a Juvenile Dependency Appeal, time spent in preparation for oral argument through completion of the oral argument are compensable at the *Standard Hourly Rate*, not to exceed twelve (12) compensable hours. A claim for compensation may be filed when a matter is fully briefed to the initial reviewing court and again following oral argument on a Juvenile Appeal. Nothing in this section shall preclude a request to treat a Juvenile Appeal as an “Extraordinary case”, pursuant to § 9.7.

³⁹ See § 11.11

⁴⁰ Interlocutory appeals, such Special Action, are included in the flat-fee of the underlying engagement.

Section 6. General *Guardian ad Litem* Engagements:

6.1 DEFINITION. *General Guardian ad Litem Engagements* include all court-appointments as a guardian *ad litem*, best interest attorney, or attorney for a witness (hereinafter collectively referred to throughout this policy as a “GAL”) except if expressly compensated by a different section of this policy.⁴¹

6.2 APPOINTMENT TO ONE ENGAGEMENT. Unless otherwise ordered by the trial court, an appointment under this section is a general appointment to serve as a GAL in all proceedings in Pinal County Superior Court where a court-appointed GAL is required, including such matters that are pending or become pending before the substantial completion of all matters. Thus, if a person has multiple matters pending, including any new matters that are commenced before the engagement is substantially completed, all such matters represent **one engagement**, which shall be billed when the entire engagement is substantially completed, as set forth in Section 11 of this policy. If two or more persons are appointed to serve as GAL for the same person(s) in different matters, the guardians ad litem shall immediately bring this to the attention of the respective trial courts or the *Billing Special Master*, and one GAL shall be withdrawn and only one fee shall be paid.⁴²

6.3 HOURLY FEE. An hourly fee shall be paid to a GAL, subject to the fee cap set forth below in § 6.4 and the *Hourly Billing Standards* set forth in § 7.3, which shall compensate the GAL for the entire engagement, including all time and all minor costs⁴³ incurred, as follows:

6.3.1 ATTORNEY GUARDIAN AD LITEM. A GAL who is a licensed member of the Arizona Bar and qualified to represent the ward in Superior Court, shall be paid the *Standard Hourly Rate*, subject to the fee cap set forth in § 6.4.

6.3.2 NON-ATTORNEY GUARDIAN AD LITEM. Any GAL who is not a licensed member of the Arizona Bar and/or not qualified to represent the ward in Superior Court, shall be paid one-half ($\frac{1}{2}$) of the *Standard Hourly Rate*, subject to the fee cap set forth in § 6.4.3.

6.4 FEE CAP. The total hourly fee paid to a GAL under this section shall not exceed the following separate fee limitations, if any:

⁴¹ In Juvenile Dependency matters, a GAL, who is a licensed member of the Arizona Bar and qualified to represent the ward in Superior Court, is compensated as set forth in Sections 4 and 5.

⁴² See § 6.5

⁴³ See § 11.6

6.4.1 LIMITATION ON COMPENSATION TYPICALLY COVERED BY A FLAT-FEE. All services rendered by a GAL during an engagement that, if rendered by a court-appointed attorney representing a party in such an engagement would be compensated by a flat-fee shall not exceed the highest flat-fee for the applicable case types.

6.4.2 LIMITATION ON COMPENSATION TYPICALLY COVERED BY ADDITIONAL HOURLY COMPENSATION. All services rendered by a GAL during an engagement that, if rendered by a court-appointed attorney representing a party in such an engagement, could be compensated by additional hourly compensation shall be compensated at one and one-half (1½) billable hours for every such hour of court time, calculated in the same manner and **excluding** any time that would be excluded by a court-appointed attorney.

6.4.3 NON-ATORNEY GUARDIAN AD LITEM LIMITATION. In addition to the limitations set forth above, a GAL who is not a licensed member of the Arizona Bar and/or not qualified to represent the ward in Superior Court, shall be limited to one-half (½) of the limitations calculated in §§ 6.4.1 and 6.4.2.

6.4.4 ENGAGEMENTS WITHOUT A STATED LIMIT. If all or part of the services rendered by a GAL are not otherwise limited by § 6.4, such engagements and claims for compensation remain subject to the inherent authority of the court to pay reasonable compensation and shall comply with the hourly billing standards set forth in § 7.3.

6.5 COMPENSATION ON CONFLICT OR WITHDRAWAL. If a GAL is unable to substantially complete an engagement due to a conflict or withdrawal, such as the appointment or retention of another GAL, no compensation shall be earned or paid for any services rendered before the GAL performs and documents a full and proper conflict check. The applicable hourly rate shall be paid for all reasonable services rendered after a full and proper conflict check, but not to exceed seventy-five (75%) percent of the regular fees otherwise calculated pursuant to §§ 6.3 and 6.4. Any claim under this section may be wholly or partially approved or denied in the discretion of the *Billing Special Master*, which may be appealed as set forth in § 1.11.

6.6 COMPENSATION ON VOLUNTARY SUBSTITUTION. If a GAL is unable to substantially complete an engagement, such as may result when leaving private practice, a substitution of GAL may not occur without prior approval of the Presiding Judge, which shall include a proposal on the proration of any fees, if any, such that only one fee shall be paid on each engagement.⁴⁴

6.7 CLAIMS UPON SUBSTANTIAL COMPLETION. Except as otherwise provided in this policy, claims may be submitted when an engagement is substantially completed,

⁴⁴ See § 11.11

as provided in Section 11. “Substantially completed” generally describes an engagement where all of a client’s appointed cases have been resolved. No additional compensation is payable for such an engagement after a claim is submitted.⁴⁵

6.8 APPEALS. Appeals⁴⁶ shall constitute a separate engagement, and such services will be limited to reasonable compensation, as determined by the *Billing Special Master*.

⁴⁵ In the event that *Retained Counsel* is appointed to serve as GAL in a non-juvenile dependency case, *Retained Counsel* is eligible for Substitute Productivity Credits, pursuant to § 4.4.3, not a separate claim for compensation.

⁴⁶ Interlocutory appeals, such Special Action, are included in the flat-fee of the underlying engagement.

Section 7. General Hourly Engagements:

7.1 DEFINITION. Except as otherwise provided in this policy, all remaining contract assignments are *General Hourly Engagements*, including:

7.1.1 COMMON CASE-TYPES. *Common Case-Types* include any remaining case-type that requires the appointment of a court-appointed attorney which does not qualify for compensation under another section of this policy, and counsel shall be appointed by a trial judge or the *Billing Special Master*, using a rotating list of qualified contract attorneys, at the *Standard Hourly Rate*. The compensation under this section shall be calculated separate and apart from any other engagement involving the same client that is compensated under a separate section of this policy. Current qualifying *Common Case-Types* include, but are not limited to the appointment of counsel in appropriate guardianship, conservatorship, mental health, or domestic relations proceedings.

7.1.2 STANDING ASSIGNMENTS. The Presiding Judge may select and appoint any qualified contract attorney on an hourly basis to a standing assignment at the *Standard Hourly Rate*, including establishing any additional terms of compensation, such as any authorized minimum hours. Current examples of standing assignments include, but are not limited to appointment to the *Early Disposition Court, Probation & Restoration Court, Domestic Violence calendars, therapeutic courts, arraignment calendars, and initial appearance calendars*.

7.2 HOURLY COMPENSATION ONLY. Counsel appointed pursuant to this section shall receive an hourly rate, not a flat-fee, and that hourly rate shall cover all time and all minor costs⁴⁷ incurred.

7.3 HOURLY BILLING STANDARDS. Court-appointed counsel may bill actual time expended solely for a particular court-appointed engagement or assignment, which must be supported by a detailed billing statement, describing the specific work performed in furtherance of the court-appointment, in compliance with the following standards:

7.3.1 Travel time to and from a courthouse is excluded.

7.3.2 Travel time is excluded for any travel within Pinal County, within the attorney's county of residence, and within any county where the attorney has an office. If an attorney must travel beyond this area, that portion of any travel time within the excluded area is excluded from any compensable travel time, as measured from the nearest practical point of departure from an excluded county.

⁴⁷ See § 11.6

7.3.3 Travel time that can be productive, such as time while being driven, waiting, or in flight is excluded.

7.3.4 Travel time is limited to no more than eight (hours) per day, less any time that can productively expended for other public or private engagements.

7.3.5 Waiting time is excluded.

7.3.6 Missed appointments are excluded, except one hour of travel time may be billed if the missed appointment was an external appointment requiring travel time, unless greater travel time is otherwise permitted by this section.

7.3.7 Value and block billing are prohibited.

7.3.8 Minimum billing increment is no greater than 1/10 of an hour.

7.3.9 Pretrial time may not exceed forty (40) hours without prior written approval by the trial judge or the *Billing Special Master*, but any approval remains tentative and is subject to final review upon the submission of a claim, pursuant to § 1.20.

7.3.10 Any time that is excluded, if excluded by another section of this policy.

7.3.11 Non-attorney time is excluded, such as clerical, secretarial, support, or paralegal services, unless approved in advance by the *Billing Special Master* for resource-intensive engagements that are more cost-effectively delivered at a reduced hourly rate by support staff.

7.4 COORDINATION BETWEEN *STANDING ASSIGNMENT* AND A SUBSEQUENT REGULAR APPOINTMENT. Counsel appointed to a *Standing Assignment* shall receive no advantage or preference in the regular appointment of any regular court-appointment, and any regular appointment that occurs during a *Standing Assignment* shall be recognized in the equitable rotation of future appointments, but any compensation earned during a *Standing Assignment* shall not diminish or offset any compensation resulting from a subsequent regular appointment.

7.5 COMPENSATION ON CONFLICT OR WITHDRAWAL FROM A COMMON CASE-TYPE. If an attorney is unable to substantially complete an engagement due to a conflict or withdrawal, such as the appointment or retention of other counsel, no compensation shall be earned or paid for any services rendered before counsel performs and documents a full and proper conflict check. The *Standard Hourly Rate* shall be paid for all reasonable services rendered after a full and proper conflict check, but not to exceed seventy-five (75%) percent of the regular fees otherwise calculated pursuant to §§ 2.3 and 2.4. Any claim under this section may be wholly or partially approved or denied in the discretion of the *Billing Special Master*, which may be appealed as set forth in § 1.11.

7.6 COMPENSATION ON VOLUNTARY SUBSTITUTION FROM A COMMON CASE-TYPE. If an attorney is unable to substantially complete an engagement, as may result when leaving private practice, a substitution of counsel may not occur without the prior approval of the Presiding Judge, which shall include authorization on the proration of any fees, if any, such that only one fee shall be paid on each engagement.⁴⁸

7.7 CLAIMS. Claims may be submitted as follows:

7.7.1 Claims may be submitted when a *Common Case-Type* engagement is substantially completed, as provided in Section 11. “Substantially completed” generally describes an engagement where all of a client’s appointed *Common Case-Type* cases have been resolved. Minor additional legal tasks may still remain when a claim is deemed substantially completed, and those tasks are included in the representation, but no additional compensation shall be paid on the engagement once a claim is presented.⁴⁹

7.7.2 Claims for *Standing Assignments* may be submitted on a monthly basis.

7.8 APPEALS. Appeals⁵⁰ shall constitute a separate engagement and are compensated at the *Standard Hourly Rate*, if within the scope of the original or subsequent appointment, subject to a review for reasonableness.

⁴⁸ See § 11.11

⁴⁹ In the event that *Retained Counsel* is appointed to a *Common Case-Type* engagement, *Retained Counsel* is eligible for Substitute Productivity Credits, pursuant to § 4.4.3, not a separate claim for compensation.

⁵⁰ Interlocutory appeals, such Special Action, are included in the underlying engagement.

Section 8. General Provider of Related Services (Experts and Investigators):

8.1 DEFINITION. Unless other terms are included in a provider's contract, all contracting general providers of related services are compensated under the terms and conditions of this policy.

8.2 COMPENSATION. Contracting providers shall receive an hourly rate, as stated in the provider's contract, unless the contract provides a flat-fee, and that compensation shall cover all time and all minor costs⁵¹ incurred.

8.3 HOURLY BILLING STANDARDS. Except as otherwise agreed in a provider's contract, providers who bill an hourly rate shall bill actual time expended, which must be supported by a detailed billing statement, describing the specific work performed in furtherance of the court-appointment, in compliance with the following standards:

8.3.1 Travel time to and from a courthouse is excluded.

8.3.2 Travel time is excluded for any travel within Pinal County, within the provider's county of residence, and any county where the provider has an office. If a provider must travel beyond this area, that portion of any travel time within the excluded area is excluded from any compensable travel time, as measured from the nearest practical point of departure from an excluded county.

8.3.3 Travel time that can be productive is excluded, such as time while being driven, waiting, or in flight is excluded.

8.3.4 Travel time is limited to no more than eight (hours) per day, less any time that can productively expended for other public or private engagements.

8.3.5 Waiting time.

8.3.6 Missed appointments are excluded, except one hour of travel time may be billed if the missed appointment was an external appointment requiring travel time, unless greater travel time is otherwise permitted by this section.

8.3.7 Value and block billing are prohibited.

8.3.8 Minimum billing increment is no greater than 1/10 of an hour.

⁵¹ See § 11.6

8.3.9 Time in excess of the hours authorized in advance by the trial judge or the *Billing Special Master* is excluded, but any approval remains tentative and is subject to final review upon the submission of a claim, pursuant to § 1.20.

8.3.10 Time not expended by the appointed provider is excluded, such as clerical, secretarial, support, or paraprofessional services, unless approved in advance by the *Billing Special Master* for resource-intensive engagements that are more cost-effectively delivered at a reduced hourly rate by support staff.

8.4 COMPENSATION ON CONFLICT OR WITHDRAWAL. If a provider is unable to substantially complete an engagement due to a conflict or withdrawal, such as the appointment or retention of another provider, no compensation shall be earned or paid for any services rendered before the provider performs and documents a full and proper conflict check. The contract rate shall be paid for all reasonable services rendered after a full and proper conflict check, but not to exceed seventy-five (75%) percent of the regular fees otherwise calculated pursuant to § 8.3. Any claim under this section may be wholly or partially approved or denied in the discretion of the *Billing Special Master*, which may be appealed as set forth in § 1.11.

8.5 COMPENSATION ON VOLUNTARY SUBSTITUTION. If a provider is unable to substantially complete an engagement, such as may occur when leaving private practice, a substitution of provider may not occur without prior approval of the Presiding Judge, which shall include authorization on the proration of any fees, if any, such that only one fee shall be paid on each engagement.⁵²

8.6 CLAIMS. Except as otherwise provided in this policy, claims may be submitted when the provider's engagement is substantially completed, as provided in Section 11, unless a different frequency is authorized.

8.7 RESTRICTION ON NEW APPOINTMENTS. Except upon a waiver granted by the Presiding Judge for good cause shown, providers shall receive no new appointments under this section if assignments are not completed in a timely manner, as determined by the *Billing Special Master*, which may be appealed as set forth in § 1.11.

8.8 PRIORITY FOR APPOINTMENT OF CONTRACT PROVIDERS. If counsel requires the services of a provider, such as an investigator or expert witness, and if the county has a suitable provider under contract, the appointing authority (the trial court or the *Billing Special Master*) shall appoint such a provider. If no such services are available under a county contract, the appointing authority shall appoint a suitable provider who has a contract with the Court. If no suitable provider has a contract with the county or the Court, the appointing authority may appoint any appropriate provider,

⁵² See § 11.11

pursuant to Section 10, by a signed order detailing the terms of the engagement with the non-contracting provider.

Section 9. Extraordinary Cases:

9.1 DEFINITION. *Extraordinary Cases* shall automatically include cases involving one or more counts of a Class 1 felony, as well as such other cases approved by the *Billing Special Master*, pursuant to § 9.2.

9.2 PETITION TO DESIGNATE EXTRAORDINARY CASE. Upon written petition to the *Billing Special Master*, which shall include a proposed *Extraordinary Case Scheduling Order*, a case may be prospectively designated and prospectively compensated as an *Extraordinary Case*, if the case requires an exceptional time commitment by the appointed private counsel, which is not adequately compensated by the general contract terms. However, a petition may not be filed until an attorney has dedicated not less than fifty (50) hours of service, as measured by the *Hourly Billing Standards* pursuant to § 7.3, and the *Billing Special Master* shall only grant a petition if a case imposes a substantial financial hardship on an attorney's practice and if the time-commitment is reasonably expected to equal or exceed an additional fifty (50) hours of service. Designation of a case as extraordinary is a rare exception to the standard compensation plan set forth in this policy.⁵³

9.3 TEMPORARY DISQUALIFICATION FROM NEW APPOINTMENTS. If counsel petitions for a case to be designated an *Extraordinary Case* or is assigned a case that automatically qualifies as an *Extraordinary Case*, counsel shall receive no further appointments of any type until the *Billing Special Master* confers with the attorney and is satisfied that the impact of an *Extraordinary Case* will not materially and adversely impact counsel's ability to devote sufficient and timely attention to all current and prospective engagements.

9.4 EXTRAORDINARY CASE SCHEDULING ORDER ("ECS Order"). *Extraordinary Cases* are compensated at an hourly rate, as set forth in § 9.5, pursuant to the terms and limits of an ex parte *Extraordinary Case Scheduling Order* (hereinafter *ECS Order*) approved in advance by the *Billing Special Master*. The *ECS Order* is an ex parte order that defines the scope of work and an authorized time budget, as well as billing milestones/frequency, in a form approved by the *Billing Special Master*.⁵⁴ Compensation will not be paid in excess of the current *ECS Order*, and total compensable time may not be claimed in excess of \$2,000 before a proposed *ECS Order* is submitted and approved by the *Billing Special Master*.

⁵³ A case that involves a significant time-commitment but does not qualify for designation as an *Extraordinary Case* may be eligible for enhanced compensation as a result of the *Alternative Minimum Fee*, pursuant to § 11.10.

⁵⁴ The role of the *Billing Special Master* in approving an *Extraordinary Case Scheduling Order* is similar to the role of a judge in a Civil Rule 16 scheduling order, concerning deadlines and milestones, and it has the purpose of establishing a reasonable schedule that will keep a case moving toward a timely adjudication in compliance with the Criminal Rules. All permissible strategic or tactical decisions remain vested solely in defense counsel in determining how best to represent the interests of the client.

9.5 HOURLY RATE & PROCEDURES. An hourly rate shall be paid for authorized hourly time in compliance with the *Hourly Billing Standards* pursuant to § 7.3, which the *Billing Special Master* authorizes in advance, pursuant to the terms and requirements of the *ECS Order*, including the following standard requirements:

9.5.1 The *Standard Hourly Rate* applies in non-capital cases, including any hourly time in a capital case after the State withdraws a notice of intent to seek the death penalty.

9.5.2 In capital cases, absent a different hourly rate or terms approved in advance by a joint order of the trial judge and Presiding Judge, the *Standard Capital 1st Chair Rate* and the *Standard Capital 2nd Chair Rate* shall apply, as set forth in *Appendix A*, and the terms of the engagement shall comply with this policy.

9.5.3 Amendment(s) to an *ECS Order* shall be freely granted by the *Billing Special Master*, upon a finding of diligence in the representation and for good cause shown, but any amended *ECS Order* shall only apply prospectively, not retroactively.

9.5.4 The *Billing Special Master* may order the Clerk of the Court to seal an *ECS Order*.

9.5.5 Any denial of an *ECS Order* may be appealed to the Presiding Judge, pursuant to § 1.11.

9.6 CLAIM FREQUENCY. Counsel shall submit bills for authorized hourly work at a frequency authorized by the *Billing Special Master*, which will typically be based upon milestones reached, as specified in the *ECS Order*.

9.7 COMPENSATION UPON WITHDRAWAL. If an attorney is unable to conclude an Extraordinary Case, no compensation shall be earned or paid for any services rendered before counsel performs and documents a full and proper conflict check, and **Counsel shall not earn any fee for any work that must be duplicated or repeated by subsequent appointed counsel, if a conflict could have been identified earlier by the exercise of reasonable diligence.** A claim may be made for all reasonable services rendered after a full and proper conflict check, which shall not exceed the regular fees authorized pursuant to §§ 9.4 and 9.5. Any claim under this section shall be approved or denied in the discretion of the *Billing Special Master*, which may be appealed as set forth in § 1.11.

9.8 PCR & APPEALS. Rule 32 Petitions and Appeals that are designated as Extraordinary Cases⁵⁵ shall constitute a separate engagement but shall be administered the same as any other “Extraordinary Case” and shall require an *ECS Order* before any billable time is compensable. Such appointments shall generally be paid upon two milestones: first, after the matter is fully briefed; and second, when the appointment is substantially completed, which occurs when a final order is issued by the reviewing court. Special action petitions are part of the underlying engagement and must be included in the trial court *ECS Order*.

⁵⁵ Appointed counsel may petition the *Billing Special Master* to designate a qualifying Rule 32 or Appeal as an *Extraordinary Case*, pursuant to the procedure and standard of §§ 9.1 and 9.2, regardless of whether a case was designated an *Extraordinary Case* at the trial stage of proceedings.

Section 10. Non-Contract Engagements:

10.1 NON-CONTRACT APPOINTMENT OF ATTORNEY OR PROVIDER BY PRESIDING JUDGE. As set forth in § 1.2, the Presiding Judge retains discretion to directly appoint any qualified attorney or provider in appropriate circumstances, notwithstanding any conflicting provision of this policy.

10.2 NON-CONTRACT APPOINTMENT OF ATTORNEY. If the trial court or the *Billing Special Master* identifies the need for a non-contract attorney, such request must be remanded to the Presiding Judge for consideration and appointment.

10.3 NON-CONTRACT APPOINTMENT OF PROVIDER. Pursuant to § 8.8, the trial court or the *Billing Special Master* may appoint a provider who does not have a contract with the county or the Court, but only if there is no available or suitable provider who has such a contract with the county or the Court, and may authorize a reasonable hourly rate or compensation terms for non-contracting providers.

10.4 PETITION FOR APPOINTMENT AND CERTIFICATION. If counsel seeks the appointment of a non-contracting provider, counsel's petition must include language in the title of the petition clearly identifying that the request is for a non-contract provider, and the petition must certify that no contracting provider is available or explain why a contracting provider is not suitable, and the petition must include the proposed terms of the appointment. Nothing in this section shall preclude the filing of an ex parte petition with the *Billing Special Master* in appropriate circumstances.

10.5 TERMS. Unless different terms are authorized at the time of appointment and included in the order of appointment, non-contract attorneys and providers shall be subject to the same terms and compensation as set forth in this policy for similar contract engagements. Notwithstanding the language of any appointment order, all court-appointments remain subject to the inherent authority of the court to limit claims to reasonable compensation and reasonable expense reimbursement, pursuant to § 1.20.

Section 11. Billing and Cost Reimbursement Procedures:

11.1 SUBMISSION OF GENERAL CLAIMS. Except for *Extraordinary Cases*, all claims are to be submitted to Court Administration, utilizing standardized forms approved by the *Billing Special Master*, and Court Administration shall administer the payment process, consistent with standard county practices and the direction of the *Billing Special Master*, but the *Billing Special Master* remains authorized to approve, modify, or decline any claim, which may be appealed as set forth in § 1.11.

11.2 SUBMISSION OF CLAIMS ON EXTRAORDINARY CASES. Claims for an *Extraordinary Case* shall be submitted directly to the *Billing Special Master*, who shall approve, modify, or decline the claim, which may be appealed as set forth in § 1.11. The *Billing Special Master* may order the Clerk of the Court to file a detailed billing statement under seal and may issue a summary statement to Court Administration to process payment.

11.3 ELIGIBILITY TO SUBMIT A CLAIM. A claim may be submitted upon the following milestones or stages of a court appointment:

11.3.1 If counsel has earned *Additional Hourly Compensation*, and if the entire engagement is not reasonably expected to be substantially completed within sixty days after earning the *Additional Hourly Compensation*, counsel may submit a claim for partial compensation for the *Additional Hourly Compensation*;

11.3.2 At a frequency authorized in an *Extraordinary Case* by an ECS Order, pursuant to § 9.4;

11.3.3 At a frequency authorized by contractual agreement, pursuant to Sections 8 or 10.

11.3.4 Upon substantial completion of the engagement, unless a different frequency is authorized in this policy.

11.3.5 If an engagement is not substantially completed due to an interruption in the proceedings, such as may occur if a person has a warrant outstanding or if a person is receiving treatment to restore competency, and if such interruption continues for more than ninety (90) continuous days, a claim may be submitted as if the engagement was substantially completed. If the engagement resumes within one (1) year from the date of the claim, the attorney shall accept the reappointment, but no duplicate flat-fee shall be paid. Any subsequent interruption shall be handled in the same manner.

11.4 FORFEITURE OF CLAIM. Any claim for compensation or reimbursement must be submitted within six month of eligibility to submit a claim, or the claim is forfeited.

11.5 DETAILED HOURLY BILLING. All hourly billing shall be submitted in compliance with the *Hourly Billing Standards* set forth in §§ 7.3 and 8.3, as applicable, which shall be in sufficient detail to meet *China Doll* standards, excluding *Additional Hourly Compensation* which is derived from the record of the Clerk of the Court.

11.6 COSTS: Court-appointed attorneys and providers shall receive no reimbursement for minor costs of representation, which includes communications, copies, office supplies, office services, parking, mileage within a 100 mile radius of the Pinal County Superior Courthouse in Florence, or the first \$50.00 of other aggregate costs, except as authorized by a contractual agreement, pursuant to Sections 8 or 10. Any other reimbursable costs must be approved **in advance** by written request to and written order signed by the assigned trial judge or the *Billing Special Master* (which shall be attached to any claim), and any claim for costs is forfeited if not submitted with the claim for services rendered.

11.7 COORDINATION OF SECTIONS OF POLICY. A prime goal of this policy is that one attorney will typically be appointed to represent a given client in all pending cases where that client is eligible for a court-appointed attorney, and the attorney will receive compensation for the entire engagement, rather than piecemeal compensation in multiple cases. To this end, except as otherwise provided in this policy, if an attorney is representing a client in cases of different case types, the attorney is eligible for compensation under each relevant section of the policy. For example, if an attorney represents a client in a criminal case and a dependency case, the attorney is eligible for compensation for the criminal engagement under the relevant section of the policy and eligible for compensation for the dependency engagement under that section of the policy. In no circumstance will the attorney be compensated for the same work under two or more sections of this policy.

11.8 RIGHT TO OFFSET OR REIMBURSEMENT. If an attorney or provider is paid an incorrect amount or if a fee has not been earned, as determined in the discretion of the *Billing Special Master*, that amount may be offset against any future claim or shall be promptly reimbursed, in the discretion of Court Administration.

11.9 ERRONEOUS OR ABUSIVE BILLING PRACTICE. If an attorney or provider submits erroneous bills on a repeated basis or engages in any abusive or dishonest billing practice, the *Billing Special Master* shall have broad discretion to sanction and remedy the conduct, including but not limited to suspending or removing the attorney or provider and disallowing erroneous or abusive claims.

11.10 ALTERNATIVE MINIMUM FEE. An attorney engagement compensated in whole or in part by a flat-fee is eligible for an alternative compensation plan which is calculated at one-half (½) of the *Standard Hourly Rate* for each compensable hour of attorney services, pursuant to the *Hourly Billing Standards* set forth in § 7.3. The purpose of the

Alternative Minimum Fee is to provide a floor below which the effective hourly rate of compensation in any particular engagement will not occur, since any flat-fee set forth in this policy will inherently result in varying effective hourly rates of compensation.

11.11 INCOMPLETE REPRESENTATION. Despite a full and proper conflict check, a contractor may not be able to substantially complete an engagement. Within the meaning of this policy, a “withdrawal” may result in a duplication of costs to substantially complete the engagement and compensation is therefore reduced or possibly denied, while a “substitution” results in an approved fee sharing arrangement that avoids any duplication of costs, as respectively set forth in the applicable sections of this policy.

11.12 REQUESTS FOR COURT AUTHORIZATION. Notwithstanding any other provision of this policy, any request made by or on behalf of a contractor to any court for any order directing any action or authorizing any compensation or payment by the *Billing Special Master*, Court Administration, or Pinal County shall be made in writing and must be served upon the *Billing Special Master* by delivery to Court Administration not less than ten (10) judicial days before the motion shall be heard. Upon receipt by Court Administration of such a motion, the motion shall be promptly forwarded to the *Billing Special Master*. Failure to comply with this provision may result in either suspension or termination of a contract.

Section 12. Public Defender:

12.1 PUBLIC DEFENDER COURT-APPOINTMENTS. Since the Board of Supervisors has acted on its express authority to establish a Public Defender, and absent further direction from the Board of Supervisors with respect to the role of the Public Defender, court-appointments shall continue to the Public Defender, as follows:

12.2.1 The Public Defender shall be appointed to represent persons entitled to court-appointed counsel, as set forth in *Appendix B*.

12.2.2 Nothing in § 12.2.1 shall require the Public Defender to accept all such appointments or assignments, due to resource considerations, upon reasonable prior notice to the Presiding Judge. Nothing in this section shall preclude, relieve, or limit the right and responsibility of the Public Defender to move to withdraw in appropriate cases.

12.2 COMPARATIVE PERFORMANCE PROGRAM. If the Board of Supervisors elects to participate, the Judiciary shall participate with County Administration in implementing a *Comparative Performance Program* to measure the relative efficiency of the Public Defender and court-appointed private counsel in the delivery indigent defense.

12.2.1 The purpose of the *Comparative Performance Program* shall be to create competitive performance pressures that improve efficiency in the delivery of quality indigent legal services by public and private lawyers, as well as to provide data to the Board of Supervisors in determining the optimal allocation of resources between the Public Defender, a public agency, and court-appointed counsel, the private sector, based upon relative efficiency.

12.2.2 If directed to participate in the *Comparative Performance Program* by the Board of Supervisors, the Public Defender shall comply with this Policy, without distinction from private contract counsel (except selection), including all relevant contract performance standards and provide simulated billing reports⁵⁶. No privileged or protected information shall be required.

12.2.3 Court Administration and the *Billing Special Master* shall provide *Comparative Performance Program* reports to the Presiding Judge, Board of Supervisors, County Manager, Public Defender, and *Selection Committee*, as each may from time-to-time request.

⁵⁶ Simulated billings reports shall not require hourly time logs, except as required in any claim for hourly compensation, consistent with § 11.5.

Section 13. Effective Dates and Coordination with Existing Contracts⁵⁷:

13.1 GENERAL EFFECTIVE DATE. This policy is effective immediately, except as set forth below.

13.2 CONTINUED OPERATION OF EXISTING COURT-APPOINTMENT CONTRACTS. All existing and future⁵⁸ court-appointments made under any pre-existing contract, shall be compensated in accordance with the existing terms in effect for that contract, including the existing flat-fee and hourly rates, not the flat-fee and hourly rates established by this policy.

13.3 COORDINATION OF COMPENSATION BETWEEN EXISTING AND NEW CONTRACTS. If an attorney or provider is selected for a new contract, any compensation earned under an existing contract shall be solely compensated by the terms of the existing contract, and any compensation for appointments awarded by a contract under this policy shall be solely compensated under the terms of this policy.

13.4 COORDINATION FOLLOWING THE EXPIRATION OF ANY EXISTING FLAT-FEE TERM OF SERVICE. Notwithstanding any provision to the contrary, any existing court-appointment under any contract or agreement that compensates an attorney or provider by a flat-fee in exchange for service for a specific period of time, shall give the trial court and the *Billing Special Master* thirty (30) days advance written notice of any expiring term of compensation, and the trial court may either affirm the existing appointment, which shall be compensated for the next period of time in accordance with the existing terms in effect at the time of the appointment, or the trial court may appoint an attorney or provider who has a new contract under this policy, which shall result in no additional compensation under the original court-appointment contract or agreement.⁵⁹

⁵⁷ The term "Existing Contracts" refers to legacy contracts that predate this policy.

⁵⁸ Future court-appointments shall be made under an existing contract or agreement until procurement is completed, as provided in this policy, and until new court-appointment contracts are in place for the relevant case-type.

⁵⁹ For example, attorneys are currently compensated in advance by a flat-fee in Juvenile Dependency or Juvenile Delinquency proceedings, as well as certain guardian *ad litem* engagements, typically for a year of service. By § 13.4, once the current term of service is complete and the prior flat-fee has been fully earned, the trial court reserves the right to substitute an attorney compensated under this policy (which does not preclude re-appointment of the same attorney or firm, if selected for a new contract) or the trial court may reaffirm the existing engagement under the existing compensation plan. If counsel is substituted, no additional compensation is due under the original court-appointment.

13.5 COORDINATION WITH EXISTING HOURLY ENGAGEMENTS.

Notwithstanding any provision to the contrary, any existing court-appointment under any contract or agreement that compensates an attorney or provider by a straight hourly rate, excluding capital cases, shall give the trial court and the *Billing Special Master* written notice of the existing engagement every twelve (12) months, calculated from the effective date of this policy, and the trial court may either affirm the existing appointment, which shall be compensated for the next twelve (12) month period of time in accordance with the existing terms in effect at the time of the appointment, or the trial court may appoint an attorney or provider who has a new contract under this policy.⁶⁰

13.6 TRIAL COURT DECISION WHETHER TO REAFFIRM AN EXISTING APPOINTMENT. Any written notice provided under §§ 13.4 or 13.5, shall be acted upon by the trial court within thirty (30) days of receiving notice, following consultation between the trial court and the *Billing Special Master*. Notwithstanding this deadline, no appointment is automatically reaffirmed, and the attorney or provider shall promptly bring any outstanding notice to the attention of the trial court or the *Billing Special Master*.

13.7 COORDINATION FOR AN ATTORNEY WITH AN EXISTING CONTRACT WHO BECOMES *RETAINED COUNSEL*. Any attorney who has an existing juvenile dependency contract and who accepts appointment as *Retained Counsel* shall continue under the terms of the existing contract until the expiration of the current annual flat-fee term of service.⁶¹ *Retained Counsel* shall prospectively earn *Productivity Credits* for the appointment, but no further compensation under an existing contract. Nothing in the section shall preclude the appointment or reappointment of other matters to the *Retained Counsel*.

13.8 IMPLEMENTATION. Court Administration, *Selection Committee*, and the *Billing Special Master* shall take such steps and commence procurement of the various contracts, as soon as practicable, as set forth in this policy, which may include a rolling implementation plan that implements one section of the policy at a time. Upon request, the *Billing Special Master* shall grant a temporary exception to § 11.3 during the first one hundred twenty (120) days of a contract with an attorney, and the *Billing Special Master* shall have discretion to grant a further temporary exception to § 11.3 during an

⁶⁰ Typically, following the second year of service in the examples provided in the preceding footnote, such attorneys and firms are currently compensated at an hourly rate of pay. By § 13.5, on an annual basis, the trial court likewise reserves the right to substitute an attorney compensated under this policy or reaffirm the existing engagement under the existing compensation plan. If counsel is substituted, no additional compensation is due under the original court-appointment beyond the twelve month period, including no compensation for any additional time before thirty (30) days written notice.

⁶¹ For example, if an attorney has an existing dependency contract and was paid a flat-fee for a year of service, no additional compensation or productivity credits are earned until the expiration of the period compensated by the flat-fee; however, if the attorney is being compensated on an hourly basis for the juvenile dependency, the existing contract engagement shall immediately terminate and any future services shall earn productivity credits.

additional one hundred twenty (120) days of a contract with an attorney, for the limited purpose of addressing cash-flow requirements of newly engaged attorneys.

Appendix A - Compensation Schedule

SECTION 1.19: Standard Hourly Rate : **\$75.00**

SECTION 2.3: General Adult Criminal Flat-Fees:

TIER ONE ENGAGEMENT. Any engagement that includes a new felony case with a class 2 felony except a violation of Title 13 Chapter 34, or any classification of a dangerous crime or dangerous crime against children, shall receive a flat-fee in the amount of \$1,200, plus \$450 for each additional new felony case in a separate case number that does not arise out of the same facts or event, plus a total of \$150 if the engagement includes any number of Probation Revocation petition(s) and/or misdemeanors in any number of Justice Courts;

TIER TWO ENGAGEMENT. Any engagement that includes a new felony case shall receive a flat-fee in the amount of \$900, plus \$450 for each additional new felony case in a separate case number that does not arise out of the same facts or event, plus a total of \$150 if the engagement includes any number of Probation Revocation petition(s) and/or misdemeanors in any number of Justice Courts;

PROBATION VIOLATION ENGAGEMENT. Any engagement that includes one or more Probation Revocation petitions, regardless of number of petitions, shall receive a flat-fee in the amount of \$300, plus \$150 for each Justice Court where any number of matters are pending;

MISDEMEANOR ENGAGEMENT. Any misdemeanor or Justice Court engagement shall receive a minimum flat-fee in the amount of \$225, plus \$150 for each additional Justice Court beyond a first court where any number of matters are pending.

SECTION 3.3: General Juvenile Delinquency/Incorrigibility Flat-Fees:

DELINQUENCY ENGAGEMENT. Any engagement that includes a new delinquency petition shall receive a flat-fee in the amount of \$600, plus \$300 for each additional new delinquency petition that does not arise out of the same facts or event(s), plus \$150 if the engagement includes any number of Probation Revocation petition(s) and/or misdemeanors in Justice Court;

INCORRIGIBILITY ENGAGEMENT. Any engagement that includes a new incorrigibility petition shall receive a flat-fee in the amount of \$300, plus \$150.00

if the engagement includes any number of Probation Revocation petition(s) and/or misdemeanors in Justice Court;

PROBATION VIOLATION ENGAGEMENT. Any engagement that includes one or more Probation Revocation petitions, regardless of number of petitions, shall receive a flat-fee in the amount of \$300;

JUSTICE COURT ENGAGEMENT. Any Justice Court engagement shall receive a minimum flat-fee in the amount of \$225, plus \$150 for each additional Justice Court beyond a first court where any number of matters are pending.

SECTION 4: Retained Counsel:

The Selection Committee has discretion to set a *Monthly Retainer* equal to one-twelfth of the contracted *Annual Productivity Standard* at the *Standard Hourly Rate*, such that the predicted rate of pay for any contract remains unchanged from the *Standard Hourly Rate*. The *Annual Productivity Standard* may not be set below 800 and may not exceed 1,600, but the *Maximum Annual Productivity Credits* shall in all circumstances be limited to 1,800.

For example, the Selection Committee may set the *Monthly Retainer* at a presumptive level of \$7,500 per month in exchange for an *Annual Productivity Standard* of 1,200, or the Selection Committee may establish a proportionately higher or lower retainer and productivity standard. Furthermore, the Selection Committee may establish the same contract level for all *Retained Counsel* or may establish different retainers and productivity standards with any individual contracting attorney. The range of sample contracts is set forth below:

RETAINED COUNSEL	Sample Contracts		
	<i>Minimum Contract</i>	<i>Presumptive Contract</i>	<i>Maximum Contract</i>
Section 4.3: Monthly Retainer	\$5,000	\$7,500	\$10,000
Section 4.5: Annual Productivity Standard	800	1,200	1,600
Section 4.5: Maximum Annual Productivity Credits	1,800	1,800	1,800

As background, *Retained Counsel* are required to reserve a substantial portion of their practice time and resources, and *Retained Counsel* are restricted from accepting other engagements that will materially conflict with serving as *Retained Counsel*. For this reason, a Presumptive Contract with a *Monthly Retainer* of \$7,500 is matched to an *Annual Productivity Standard* of 1,200 productivity credits, which is designed to equate to approximately 1,200 billable hours of

service each year. If an attorney earns more productivity credits by rendering additional service, the policy provides for additional compensation, pursuant to § 4.6, which effectively maintains the *Standard Hourly Rate* for all services rendered.

Thus, since the *Monthly Retainer* has a primary objective of aiding the recruitment and retention of high-quality and high-efficiency attorneys to serve as *Retained Counsel*, the Selection Committee shall have the discretion to find the optimal balance in setting the *Monthly Retainer*.

SECTION 4.4.1: Matrix of Standard Productivity Credits:

STANDARD PRODUCTIVITY CREDITS	Attorney for Child(ren)	Guardian <i>ad Litem</i>	Attorney for Parent	
			Client Present	Client Absent
Pre-Protective Conference:	1/2*	1/2*	1/2*	1/4*
Dependency Court Hearing:	1/2*	1/2*	1/2*	1/4*
General Monthly Fee for appointed counsel during the first SIX (6) calendar months following PPC/PPH.	3/4	3/4	3/4	
Field Visit with a Child(ren):	1**	1**		
In-Person Consultation with Ward or Client:	1/2**	1/2**	1/2**	
*If a coverage attorney is appearing at the hearing, not an attorney who has filed a notice of appearance and routinely appears in the case, the <i>Standard Productivity Credit</i> for the hearing is reduced by fifty (50%) percent. Notwithstanding the reduced Standard Productivity Credits, a coverage attorney must always be prepared to meaningfully cover any hearing, pursuant to § 4.10.				
**If a coverage attorney visits or consults with a child(ren) or client, not an attorney who has filed a notice of appearance and routinely appears in the case, no <i>Standard Productivity Credit</i> is earned.				

SECTION 9.5.2: Extraordinary Cases Capital Case Hourly Rates:

Standard Capital 1 st Chair Hourly Rate	\$125.00
Standard Capital 2 nd Chair Hourly Rate	\$100.00**

**As a general policy, an attorney appointed as 2nd Chair should not be qualified for appointment as a 1st Chair, thereby maintaining a sufficient roster of 1st Chair attorneys to accept future appointments, while enhancing the opportunity for other attorneys to become qualified to serve as a 1st Chair. However, if special circumstances exist that warrant the appointment of two attorneys who are each independently qualified to serve as a 1st Chair, the *Billing Special Master* shall have the discretion to authorize the 2nd Chair to receive the *Standard Capital 1st Chair Hourly Rate*; in the event the *Billing Special Master* declines such a request, this determination may be appealed to the Presiding Judge, pursuant to § 1.11.

Appendix B - Assignment of the Public Defender

1. All cases that are assigned to the Early Disposition Court (EDC);
2. All cases in the Probation & Restoration Court (PRC);
3. All cases with one or more charge of First Degree Murder or Second Degree Murder (except capital cases);
4. Any other specialty courts that currently exist or may in the future be established;
5. All cases in the Justice Courts;
6. All juvenile delinquency/incorrigibility cases;
7. Fifty (50%) percent of all remaining Superior Court general adult criminal cases, as measured by new case arraignments;
8. All mental health cases; and,
9. The Public Defender shall also continue with all existing minor assignments and appointments.