

BROKEN CONTRACTS:

CONTRACT COUNSEL TOOLKIT

Broken Contracts: Contract Counsel Toolkit

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I. Considerations for Contract Counsel Systems

As juvenile defense system stakeholders consider creating or reforming their contract counsel system, it is important to start with a full understanding of the contracting process and system. The considerations and recommendations provided below may need to be modified for the specifics of your jurisdiction.

The Structure of the Contracting Process

What is the contracting agency?

- Depending on how contract counsel systems are structured, the contracting agency may be the county executive office, the court in which the representation will be provided, a higher court, a court administrative office, the state or local public defense agency, or another government entity.

Who are the prospective contractors?

- Will the contract(s) possibly be awarded to individual attorneys, law firms, nonprofit organizations, law school clinics, or others?
- If there are different types of potential contractors, should the contracting process or language be adapted in any way?

What method will be used to procure the contract?

- Contracting agencies can ask applicants to respond to a job posting, a request for proposals (RFP), and/or a request for qualifications (RFQ).
- **Recommendation:** Use the RFQ process to ensure applicants meet the standards and qualifications necessary to provide specialized juvenile defense representation.

How will the contract be advertised?

- Will the contracting agency advertise on their website, in local papers, on national job sites?
- Is there a budget to pay to advertise and attract diverse candidates and organizations?
- **Recommendation:** Post widely on listservs, job posting websites, affinity bar associations, etc. to encourage a diverse pool of applicants.

What is the length of the contract?

- **Recommendation:** Include a specific length in the contract, such as a calendar or fiscal year, to ensure accountability and adherence to standards.

Who is the final decision-maker with respect to awarding or terminating a contract?

- Guidelines for selecting the contractor(s) should be defined and publicly available.

What is the method for awarding a contract with multiple applicants?

Is there a method for applicants to appeal a decision not to award a contract?

What is the renewal process?

- **Recommendation:** Employ a renewal process that evaluates each contract attorney's performance and continued qualifications. Do not allow automatic renewals.

Once a contract ends, what happens to the cases currently held by the contractor?

- If the contracting attorney will continue to represent clients they accepted under the contract, the contract should specify this requirement and allow for payment after the expiration of the contract term.
- If the contractor's cases will transfer to another attorney, the contract should include a requirement for the initial contractor to immediately inform their clients and transfer their case files upon termination or expiration of the contract.
- **Recommendation:** Whenever possible, ensure that youth are continuously represented by the same attorney throughout their court involvement.

Is there a method for ensuring uninterrupted representation if there is a delay in time between the expiration or termination of one contract and the beginning of another?

Qualifications and Scope of Contract

What qualifications must an attorney possess to be eligible for a contract?

- Attorneys who contract to provide juvenile delinquency representation should meet baseline and ongoing requirements for education and experience.
- New contractors may also benefit from court observation and orientation with contracting, payment, and supervising entities.

What are the ongoing requirements for education and practice, and does the contract provide for compensation of contract counsel for training?

- **Recommendation:** Compensate contract counsel for time spent fulfilling training requirements.

Is the contract limited to juvenile delinquency representation or combined with other kinds of representation?

- **Recommendation:** Contract separately for juvenile delinquency representation from child welfare, adult criminal, or other legal work.

In which jurisdiction(s) will the attorney be providing representation?

- Will the attorney be responsible for accepting cases from a single courtroom, a county or multi-county juvenile court, or a judicial district or other jurisdiction?

Does the contract set forth the ethical duties and professional standards to be met by counsel, or incorporate duties and standards by reference?

- **Recommendation:** Include a provision in the contract requiring that counsel meet either the National Juvenile Defense Standards or something similar

What are the guidelines for workload?

- Is the contract defined by the number of cases assigned to an attorney contractor or a weighted consideration of workload?
- Does the contractor serve as the “attorney for the day,” accepting all cases initiated and/or heard in a courtroom on a particular day?
- What is the remedy if an attorney contractor feels they cannot accept additional clients and provide adequate representation?

What communication expectations are expressed in the contract?

- Must the attorney contractor file periodic caseload reports or hourly billing records?
- Must the attorney request permission to accept or decline certain cases, or to engage in specific strategies or activities?

What are the limitations on other legal practice?

- Can the attorney contractor enter into contracts to provide other legal representation (i.e. child welfare or adult criminal cases) in the same jurisdiction?
- Can the attorney contractor enter into contracts to provide juvenile delinquency representation in other jurisdictions?
- Can the attorney contractor accept juvenile delinquency cases via other methods (i.e. privately paying clients or single-case appointments) in the same or another jurisdiction?

What is the expectation of the priority of the contract over other legal work?

- If the attorney contractor may engage in other legal work, how must they prioritize cases engaged under the contract, and how does other legal work weigh in workload considerations?

Scope of Work

What is the scope of the attorney contractor’s duties under the contract?

- At what points do the attorney contractor’s representation begin and end?
- Are post-disposition duties (e.g. filing appeals, reconsideration motions, judicial release motions, etc.) or representation for a child’s ancillary needs (e.g. school suspensions, driver license suspensions, housing needs, etc.) included?

- **Recommendation:** The contract should begin at appointment and extend through all post-disposition proceedings, unless there is another entity or attorney who provides such post-disposition representation in the jurisdiction.

How does the contract address counsel's duties with respect to appellate challenges, including writs and appeals?

If a juvenile case is waived or transferred to adult criminal court, does the juvenile attorney contractor continue to represent the child in adult court?

Are there additional requirements of the contract outside of direct representation?

- Is the attorney contractor required to provide management, oversight, technical support, or training to other attorneys?

Payment

How is payment determined?

- Contract counsel systems generally choose between hourly, fee scale, flat fee, or yearly contract payment schedules.
- **Recommendation:** Adopt an hourly payment schedule that adequately compensates contract counsel for the actual time spent working on each case and does not incentivize closing cases quickly.
- **Recommendation:** The payment schedule, should, at a minimum, have parity with contracts for adult criminal defense, and/or child welfare representation.
- If using a fee scale, flat-fee, or yearly contract payment schedule, the fees must adequately compensate contract counsel for the time needed to provide competent representation to each and every client.

Is there a process for extraordinary pay?

- If the payment schedule limits the number of hours or dollar amount per case or per contract, can the contract counsel request payment in excess of those limits if a case requires extraordinary time, effort, or expertise, or if other extraordinary circumstances arise?

Is there a method for appealing a determination to not award extraordinary pay?

How does the contract address the provision of ancillary services?

- How does contract counsel engage and pay for needed professional services, such as experts, investigators, and social workers?

If counsel is expected to handle appellate challenges and other post-disposition work, how and when is that compensated?

Oversight

What entity is responsible for overseeing and evaluating the quality of representation provided by contract counsel?

What are the standards used to oversee and evaluate the representation provided by contract counsel?

What are the rules for termination?

- Under what conditions may the contracting entity and/or oversight entity terminate a contract prior to its expiration?
- Under what conditions may a contract counsel terminate a contract prior to its expiration?

II. Independent Contractors vs. Employees

One of the hallmarks of juvenile defense delivery systems operating outside a salaried public defender system structure is that the attorneys the state, county, or court appoint are not salaried employees of those entities. Instead, the attorneys are intended to operate as independent contractors outside of a unified salary and benefits system. Simply calling someone a contractor, however, does not make it so.

Contract attorneys must satisfy the criteria set forth by various state and federal agencies to ensure they are properly classified as independent contractors. A worker's classification can have significant impacts on taxes, benefits, and the applicability of certain statutes governing payment of wages and other employment matters. For this reason, many local governments may be reluctant to do anything that makes it likely that a lawyer would be classified as an employee.

Ensuring proper classification can sometimes be complicated, but it is critical to establishing a functional, cost-effective, and stable juvenile defense delivery system that provides quality and constitutional services to young people accused of offenses.

Federal Guidance

State and federal agencies use varying criteria to determine proper classification of workers. The Internal Revenue Service (IRS) interprets classification of workers for federal tax purposes, while the Department of Labor (DOL) interprets classification of workers for the purpose of determining whether individuals are entitled to the protections afforded by the Fair Labor Standards Act (FLSA).

Each state also has its own rules and regulations regarding how to classify appointed attorneys as employees or contractors. Therefore, every contracting system must be assessed with an understanding of both state and federal guidelines. Many state rules mirror the federal guidance summarized below.

IRS Classification Guidelines

Generally, for IRS purposes, the difference between an employee and a contractor is determined using a three-pronged analysis considering the following factors:

1. the extent of behavioral control over the lawyer;
2. the extent of financial control over the lawyer; and
3. the relationship of the parties.¹

These factors and the ultimate classification of the lawyer's engagement have strong implications for quality assessment and training.

Behavioral Control

A lawyer is likely to be an employee, not a contractor, if the appointing entity has the right to direct how the lawyer does their job. The following examples of such direction can weigh in favor of finding an employee relationship:

- providing strict dictates as to where and during what hours the work should be performed;
- outlining what tools, support personnel, and services to engage;
- furnishing detailed instruction on how duties are to be performed;
- establishing evaluation structures for intermediate steps leading to the result; and
- supplying training on the methods necessary to perform the job.²

To ensure that juvenile defense attorneys operate as independent contractors, courts or appointing entities must not get involved in how the lawyers manage their individual businesses or practices, nor can they generally require the lawyers to use specific products or employ specific individuals.

This presents challenges when assessing the quality of an independent contractor's work. For more information regarding the ways assessing quality can be done effectively outside of an employer-employee relationship, please see Toolkit Section III on quality reviews of court-appointed or contract counsel.

Financial Control

A lawyer is more likely to be an employee if the appointing entity directs how funds are expended in order to complete the lawyer's work. In assessing whether a lawyer is under the financial control of the appointing entity, courts often look at factors such as whether the appointing agency invests in the

¹ *Understanding Employee vs. Contractor Designation*, INTERNAL REVENUE SERV., <https://www.irs.gov/newsroom/understanding-employee-vs-contractor-designation> (last visited Dec. 18, 2019).

² *Id.*

equipment or materials the lawyer will need to complete the job; the extent of non-reimbursable expenses the lawyer is expected to take on; the risk of profit or loss the lawyer takes on; the ability to seek legal employment from someone other than the appointing entity; and how payment is apportioned (hourly vs. flat fee).³

For appointed juvenile defense attorneys, most of these factors weigh in favor of being an independent contractor, particularly because defense attorneys outside of salaried public defense offices typically have complete independence over the financial management of their practices, taking all the risk and benefit of being small business owners. While flat-fee payment structures weigh heavily in favor of being independent contractors, hourly-based payment scales in and of themselves do not automatically create an employee relationship. In the end, it is the totality of the circumstances that will determine the classification.⁴

Parties' Relationship

How the lawyer and the appointing entity perceive their relationship is also important in classifying the kind of work the lawyer performs. For example, written contracts that articulate the lawyer's independence as a contractor weigh heavily (though not decisively) toward a contractor relationship. A lack of benefits—such as insurance, paid time off, and retirement plans—also weighs in favor of a contracting relationship, as does a lack of permanency in the relationship. Conversely, if the work the lawyer is performing is a key business function of the appointing agency, then courts and/or agencies are less likely to find that a contracting relationship exists.

With respect to this factor, in juvenile defense delivery systems outside of the salaried public defender structure, the extent of the relationship can often weigh in favor of independent contracting. The individualized defense of young people and advocating for their expressed interest is not the business of courts, which are instead responsible for the fair and neutral arbitration of alleged offenses. As such, the role of the juvenile defense lawyer is critical to the work of the court, but one the court cannot take on for itself.⁵

If court systems expressly contract with independent lawyers and the duration of those contracts are finite and do not include benefits available to other salaried staff, the relationship weighs in favor of appointed lawyers being properly classified as independent contractors.

³ *Id.*

⁴ *See, e.g.,* Mayfield v. County of Merced, No. CV F 13-1619 LJO BAM, 2014 WL 2574791, at *9-12 (E.D. Cal. June 9, 2014) (granting motion to dismiss certain claims brought by juvenile defense attorney operating as independent contractor because she failed to establish employment relationship).

⁵ *See, e.g., In re Gault*, 387 U.S. 1 (1967).

IRS 20 Factor Test

The IRS generally considers many factors when analyzing its three-pronged test.⁶ While addressing all 20 factors is beyond the scope of this brief, several of the factors weigh in favor of classifying juvenile defense attorneys as independent contractors under many circumstances. These factors include:

- *Lack of business integration*: Many of these lawyers are either solo practitioners or work for small firms and have their business operations separate from the court or appointing entity.
- *Retaining control of assistants*: As long as the appointing entity does not interfere with the attorney's decisions about internal hiring or contracting for necessary support staff, this factor weighs in favor of an independent contractor.
- *Flexibility of working schedule*: While all in-court hours are defined by the court's schedule, the hours for out-of-court work necessary for effective juvenile defense is often entirely within the discretion of the individual lawyer.
- *Lack of payment of business or travel expenses*: Many defense systems do not reimburse attorneys for travel or business expenses incurred outside of the payment structure specifically articulated in a contract or court rules.
- *Lack of investment in facilities*: Appointing entities typically do not invest in facilities for defense attorneys beyond those that are necessary for constitutional representation, such as courthouse space that enables confidential meetings with clients on court days or common business centers or law libraries that are open to all attorneys, not just those appointed to provide juvenile defense representation.
- *Assumption of business risk*: Individual attorneys, not the appointing entity, carry the risks associated with increases in overhead costs, lack of clients, problems with contracted support staff, ineffectiveness claims, etc.
- *Freedom to work outside of the contracting system*: As long as contracts or appointment standards do not require exclusivity or make the ability to take on other clients impractical, attorneys are generally free to accept clients on any matters they feel qualified to represent.

Some of the other factors the IRS considers can make jurisdictions reluctant to provide oversight or outline clear expectations of appointed or contracted attorneys, as jurisdictions fear doing so may expose them to liability as an employer, which must provide benefits and other rights to employees. Again, the classification is a balancing test, and for those factors that may weigh in favor of employment, careful planning and development of clear contractual guidance or rules may help dispel these concerns.

⁶ *Independent Contractor (Self-Employed) or Employee?*, INTERNAL REVENUE SERV., <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee> (last visited Dec. 18, 2019).

Examples of ways a jurisdiction may address some of these factors include:

- *Training Provisions:* While structured training programs and training requirements can sometimes weigh against classification of individuals as independent contractors, it is reasonable to expect that those who are contracted to do the work are qualified to do it to the standards required by the contracting entity. Requiring contracted attorneys to (a) meet minimum qualifications, (b) maintain defined core competencies, and (c) keep informed of the ever-changing field of juvenile defense does not necessarily convert a contractor to an employee. Having flexibility and variability in how and when the training may be completed and refraining from requiring attendance at *specific* programs or training events can help maintain a contractor classification, given the totality of the analysis. If there is sufficient choice of how and when to fulfill the requirements within defined parameters, it is not unreasonable to assume lawyers have sufficient independence from the contracting entity in this area.
- *Level of Direction Over and Sequencing of Work:* While requiring work to be performed by specific rules, in a particular order or sequence, can suggest the control equivalent to an employer-employee relationship, the vast majority of sequencing in the legal profession is in line with defined court procedures applicable to all practicing lawyers, not just those contracted to provide the defense of youth. Requiring non-contracted attorneys to adhere to court calendars and procedural deadlines in a specific order does not in and of itself convert them to employees. The same logic applies to attorneys who receive their clients from an appointment system, rather than private marketing efforts.
- *Right to Terminate the Relationship:* In general, the ability to quit a job without explanation or recourse tends to suggest an employee relationship. However, if a contract specifies terms that must be met before a lawyer is released from that contract, such language would weigh in favor of an independent contractor relationship. Even without contracts, courts have the authority to deny an attorney's request for withdrawal from a case, and this authority extends to all defense attorneys, even those who are paid by independent sources. As such, no attorney may unilaterally terminate a juvenile defense relationship, making it less likely that this factor would suggest an employment relationship between the attorney and the court or contracting entity.

DOL Economic Realities Test

While the IRS determines classification for tax purposes, the DOL must consider whether workers are properly classified pursuant to the FLSA. The FLSA only applies to employer-employee relationships. However, the DOL interprets the definition of "employee" broadly and, therefore, economic independence of the lawyer from the contracting entity is critical to the final determination.

The DOL considers five general factors in its “economic realities” balancing test:

1. the degree of control exercised by the contracting entity;
2. the extent of the relative investments of the lawyer and the contracting entity;
3. the risk of loss or profit the lawyer assumes;
4. the skill or initiative required for performing the job; and
5. whether the relationship is permanent or temporary.⁷

As in the IRS analysis, local entities should consider these factors along with any local and state laws, rules, or regulations. However, if defense attorney contracting is limited to a specific time period or engagement, the economic independence a private lawyer has from the court, even if the court or state pays for some of its services, is often relatively easy to demonstrate, particularly if the contracts clearly define the responsibilities of all parties.

Special thanks to Isabel Crosby, Partner at DLA Piper LLC (US), for contributing her research, writing, and expertise to the development of this memo.

⁷ Isabel A. Crosby, *Avoid Misclassification Quagmires by Understanding Differences Between Contractors and Employees*, DLA PIPER (Apr. 23, 2018), <https://www.dlapiper.com/en/us/insights/publications/2018/04/avoid-misclassification-quagmires-by-understanding-differences-between-contractors-and-employees/>.

III. Quality Reviews for Court-Appointed or Contract Counsel Representing Youth in Delinquency Proceedings

One of the key considerations for managing a juvenile defense system that operates outside the traditional supports of a salaried public defense office is how to provide an effective system of quality review of attorney performance. For private attorneys or solo practitioners who are appointed by the court, receive contracts to represent youth, or who are otherwise engaged using public money outside of a strict supervision structure, assessing and supporting the quality of attorney performance can be challenging.

Who Can or Should Conduct Quality Reviews of Court-Appointed or Contract Counsel?

There is a wide array of people who could conduct quality reviews of court-appointed or contract counsel representing youth in delinquency proceedings. Whether they are appropriate depends on a number of factors, including how and under what conditions the attorney is engaged to represent youth, the goal of the review, the structural relationship between the reviewer and the attorney, and the potential quality enforcement mechanisms that exist.

Attorneys who represent youth in delinquency proceedings have a variety of engagement relationships with the state, which is ultimately responsible for providing juvenile defense to youth who cannot afford an attorney. How the juvenile defense attorney is engaged to do the work will affect the level of oversight the entity who pays the attorney's wages will have. In some circumstances, the reviewer may have direct supervisory authority. In others, the reviewer may have influence over whether the state, county, or court terminates or renews an attorney's engagement. In still other situations, the reviewer may have no direct role in whether the attorney continues to receive funding from the state, county, or court, but may be an important source of information for all parties.

In general, however, reviewers fall into two categories: (1) those who are contract monitors or supervisors and (2) those who are mentors or coaches. Monitors and supervisors tend to have influence over ongoing attorney behavior, either because there is a direct supervisory structure or because they are tasked with evaluating compliance with the conditions of the attorney's engagement. The goals of their quality reviews may be to ensure the responsible use of taxpayer dollars, to assess the effectiveness of the attorneys they engage, to influence the quality or diligence of that representation, or to make determinations about future engagement.

Mentor or coach reviewers, on the other hand, are generally used to support juvenile defense attorneys by identifying strengths and gaps in the attorney's representation of youth and to offer advice, counsel, and resources for maintaining or improving quality juvenile defense services. While such reviewers may not have the ability to direct attorney performance or require particular action on the part of the

attorney, their reviews and the attorneys' reaction to it may still be used by those making future contracting and appointment decisions.

What are the Goals of Quality Reviews?

There are two basic types of quality reviews: proactive and reactive.

Proactive quality reviews are initiated to evaluate or guide ongoing attorney performance. They are designed to provide feedback to attorneys on strengths and weaknesses in all aspects of their advocacy. They can provide contract monitors or supervisors with information about whether attorneys are achieving the level of performance anticipated in the contract or payment agreement and can provide insight into individual or systemic needs such as training, administrative support, and coaching, as well as future decisions as to retention or agreement modifications.

For attorney mentors or coaches, proactive reviews provide insight into areas of advice, training, resources, or other supports defense attorneys need to improve practice or surmount systemic obstacles they may be facing.

Proactive reviews are most effective when they are done regularly and are coupled with action plans for improving performance where needed. One advantage of proactive reviews is that they typically provide sufficient time for learning and professional growth to overcome underperformance before the challenges become too harmful or unsustainable. They also provide an opportunity to identify and highlight high performers who might be appropriate for leadership roles, advancement, pay increases, greater responsibilities, or other benefits.

Reactive quality reviews result from a complaint or suspected concern about attorney quality and performance. They are conducted when necessary, rather than at regularly scheduled intervals. These reviews are made with an eye toward assessing the validity of a concern and, if valid, identifying specific areas in which performance needs to improve.

One drawback of reactive reviews is that they are typically less effective in providing sustainable support for optimal practice. Rather, they usually occur when a problem needs to be addressed immediately. As such, the time available for supports and opportunities for professional growth is limited. However, reactive reviews are useful for quickly addressing problematic performance that cannot go unaddressed and may be hurting youth or wasting taxpayer dollars.

A Working Example of Quality Reviews of Contract Counsel

It is possible to both work within the constraints of federal and state regulations regarding independent contractors and employees and institute a system of support and reviews of contract attorneys providing juvenile delinquency defense services. The Youth Advocacy Division (YAD) of the Massachusetts Committee for Public Counsel Services (CPCS) offers a working example.

Broken Contracts: Contract Counsel Toolkit

CPCS's contracts with private attorneys include numerous obligations the contract attorneys must meet, including compliance with CPCS's Performance Standards, adherence to caseload limits and CLE requirements, and supervision and oversight by more experienced contract attorneys.

Since 2011, YAD has required contract attorneys who provide representation in delinquency matters to obtain juvenile delinquency certification, called J Certification, which requires at least one year of district court experience and eight hours of juvenile-specific training within one year prior to initial application. To maintain their J Certification, attorneys must complete at least eight hours of juvenile-specific CLE per year and comply with YAD's Performance Standards. For at least the first year of juvenile practice, the attorneys are required to work with a mentor. Mentors are also available for lawyers that need remedial assistance/oversight and for lawyers who would benefit from expert assistance such as for interlocutory appeals or education advocacy.

CPCS also contracts with experienced contract counsel to serve as Juvenile Supervising Attorneys (JSAs). JSAs supervise the contract attorneys providing delinquency representation within a county, provide technical assistance and support, review cases and monitor court appearances, and handle complaints about the performance of contract counsel. JSAs conduct performance evaluations of contract attorneys and provide monthly reports to YAD leadership. The JSAs themselves receive regular support from YAD staff and are evaluated annually.

CPCS and YAD are able to provide supervision, support, and evaluation of contract attorneys simply by adopting such conditions as terms of the attorneys' contracts to provide services.

For more information about YAD's contract counsel system, visit their website at www.publiccounsel.net/yad.

IV. Core Competencies of Court-Appointed or Contract Counsel Representing Youth in Delinquency Proceedings

What constitutes quality juvenile defense representation is often impacted by features that may be particular to the specific jurisdiction in which an attorney works. For example, caselaw, statutory provisions, and procedural rules may lay out specific tasks or competencies that an attorney who represents youth in delinquency proceedings must be aware of and proficient in for a particular locality.

However, regardless of jurisdiction, there are some core competencies in which every juvenile defense attorney should be proficient. Some of these core competencies are general to defense practice, while others are specific to working with youth clients or juvenile court systems. The following core competencies are drawn from commonalities found in state and local juvenile defense practice standards, national best practices, state rules of professional conduct, and state and federal case law.

Administrators of juvenile defense systems should consider the following in assessing or addressing the quality of juvenile defense practice.

Understanding of and Effective Adherence to the Expressed-Interest Role of Counsel

Does the juvenile defense attorney:

- Practice in accordance with the expressed interest of the client?
- Effectively elicit the client's interests, rather than assume them?
- Refrain from substituting personal judgement or suspected "best interests" for client desires?

Competency in State and Local Delinquency Law and Procedure

Does the juvenile defense attorney demonstrate an effective understanding of:

- Juvenile and criminal codes in the jurisdiction?
- Relevant state and federal case law?
- Juvenile court rules and procedures?

Non-Delinquency Topics Relevant to Representing Youth

Does the juvenile defense attorney demonstrate familiarity with and competency in:

- The local education system and options available to the client?
- The local juvenile mental health system and options available to the client?
- Alternatives to incarceration and youth services available through the court?
- Alternatives to incarceration and youth services outside of the delinquency system?
- Immigration consequences of being in the juvenile court system?

Adolescent Development Principles that Relate to Client Advocacy

Does the juvenile defense attorney demonstrate a level of comfort with and mastery of the basic science of adolescent development in:

- Interactions with the client?
- Advocacy with the judge, prosecutor, or probation officer?
- Adjudicatory competence?
- Motions practice?

Effective Attorney-Client Relationship Management

Does the juvenile defense attorney:

- Communicate with the client in developmentally and age-appropriate language?
- Communicate with the client with sufficient regularity?
- Take the necessary time to explain concepts to the client or answer the client's questions?
- Meet with the client in person?
- Communicate with the client outside of the courthouse or outside of hearing days?
- Safeguard client confidentiality?
- Demonstrate a respect for, sensitivity to, and appreciation of the impact that a facet of the client's individual identity (racial, ethnic, gender, sexual orientation, immigration status, disability, etc.) may have on the client's case and treatment by the system?

Detention/Initial Hearing Advocacy

Does the juvenile defense attorney:

- Meet with the client sufficiently prior to the detention hearing or initial hearing?
- Explain to the client what the hearing is about and what to expect as possible outcomes?
- Understand the client's goals for the hearing?
- Advocate for the client's release under the least restrictive means possible?
- Advocate against probable cause that an offense was committed or that the client was the one who committed it?
- Advocate against the statutory factors that make client eligible for detention (e.g., harm to others, no place else to go, etc.)?
- Advocate for conditions of release that are appropriately tailored and are manageable for the specific client?
- If detained, move for reconsideration/modification at a later date?
- If released, explain the judge's order to the client and help the client understand what success looks like?

Investigation, Discovery, and Pretrial Case Planning

Does the juvenile defense attorney:

- Request initial discovery or initiate the discovery process as required by local procedure?
- Assess the completeness of the discovery provided and, if necessary, litigate the client's right to more complete discovery?
- Sufficiently analyze the discovery?
- Conduct independent defense investigation?
- Conduct witness interviews?
- Conduct visits to the scene of the alleged offense?
- View state-controlled evidence?
- Have a theory of defense that drives pretrial decisions?

Motions Practice

Does the juvenile defense attorney:

- Sufficiently consider and/or file:
 - Suppression Motions?
 - Evidentiary Motions?
 - Release Motions?
 - Discovery Motions / Motions to Compel?
 - Accommodation Motions (petitioning the court for things their client needs to navigate a hearing or the system)?
 - Motions for Expert Funds / Admission of Expert Testimony?
 - Other relevant or case-specific motions?
- Engage in:
 - Appropriate motion hearing advocacy?
 - Hearing preparation?
 - Examination of witnesses?
 - Sanctions advocacy?

Plea Negotiations & Client Advising

Does the juvenile defense attorney:

- Understand the client's desires for how the case is resolved?
- Present all plea offers to the client?
- Spend time with the client discussing the pros and cons of any offer in a way that allows the client to make an informed decision about the plea?
- Demonstrate an understanding of the breadth of collateral consequences resulting from the plea and discuss the long-term implications with the client?
- Proactively offer terms to the prosecutor, with the client's informed consent?
- Negotiate for some benefit for the client in every plea offer? (Sentencing recommendation, dismissed charges, avoiding registration, etc.?)

Trial Prep and Hearing Advocacy

Does the juvenile defense attorney:

- Have an effective handle on the facts of the case? Have a defense theory to address different versions of the facts?
- Have an effective understanding of the law relevant to the issues being litigated?
- Appear sufficiently prepared for each hearing?
- Have an understanding of the client's expressed interests for the hearing and advocate accordingly?
- Witness examinations prepared in advance?
- Have results or analysis of physical evidence?
- Subpoena/secure the attendance of necessary witnesses?
- Conduct necessary informal or out-of-court negotiation with relevant stakeholders prior to the hearing, when appropriate?
- Sufficiently establish the record for appeal, if necessary?

Disposition Advocacy

Does the juvenile defense attorney:

- Have an independent disposition plan, developed in consultation with the client and in accordance with their expressed interests?
- Have an understanding of the other parties' position prior to disposition and arguments to counter them, when appropriate?
- Review reports or documents prepared by third parties (probation, evaluators, etc.) supplied to the court in advance of the disposition hearing?
- Have a sufficient understanding of all community-based conditions or services that could be used to advocate against out-of-home placement?
- Sufficiently establish the record for appeal, if necessary?

Post-Disposition Advocacy

Does the juvenile defense attorney:

- Discuss appeal options with the client and understand client's expressed interest with respect to potential appeal?
- Understand and follow the local procedure necessary for preserving the client's right to appeal, even if the client has not yet made a decision about appealing?
- Sufficiently understand what would be required of the client following disposition and prepare the client for success?
- Maintain communication with the client outside of post-disposition hearings?
- Advise client of collateral consequences and referrals for legal assistance in areas the attorney is not able to represent the client?
- Advise client and the client's family of how and when record clearing may be available to the client?

- Effectively advocate for client at probation/parole revocation hearings by:
 - Having an understanding of the legal and procedural requirements of such hearings and holding other stakeholders to them when it benefits the client (e.g., notice, timing, receipt of reports and evidence, statutory considerations for or against detention, etc.)
 - Having a factual understanding of the allegations and effectively advocating on the client's behalf?
 - Having a disposition plan and argument prepared if the client faces higher restrictions of liberty?

Professionalism, Caseload Management, and Organization Skills

- Does the attorney keep files updated and orderly?
- Is the attorney punctual for court?
- Does the attorney keep scheduled meetings with clients and other stakeholders?
- Does the attorney manage time effectively to keep on top of required tasks?
- Does the attorney act in a professional manner in court?
- Does the attorney reflect ethical standards and expectations of a juvenile defense attorney?
- Does the attorney effectively manage conflicts of interest?

V. Training Checklist

Providing competent legal representation to children in juvenile court requires attorneys to be knowledgeable not only about criminal and juvenile laws, rules, and procedures, but also about numerous legal, social, and scientific issues specific to children and adolescents. Attorneys providing representation to youth as part of a contract counsel system should be required to regularly attend youth-specific training.

Every juvenile defense attorney should receive ongoing training in and master the following foundational issues:

- Delinquency law and procedure
- The role of expressed-interest counsel in delinquency proceedings
- Child and adolescent development
- Youth competence to stand trial
- Communicating with and counseling youth clients
- Probable cause and detention advocacy in delinquency court
- Fourth Amendment challenges specific to youth
- Challenging youth statements
- Guilty pleas and counseling youth clients
- Disposition advocacy
- Defending against transfer to adult court
- Defending juvenile sex cases
- Immigration consequences for youth
- Collateral consequences of delinquency court involvement
- Special education issues
- Defending against school-based offenses
- Adolescent mental health, trauma, and resiliency
- The potential impact on a case of various facets of a client's identity (e.g. race, sexual orientation, gender, disability, immigration status) and how to incorporate into advocacy when relevant

For more on juvenile defender training, please contact NJDC or your regional juvenile defender center. Contact information for NJDC's regional centers is available at <https://njdc.info/about-njdc/regional-centers/>.

VI. Sample Request for Qualifications (RFQ)

Governmental entities are often required to request bids when contracting for services, to ensure the contracting process is open and accountable, available to all qualified vendors, and an appropriate use of taxpayer resources. In a contract counsel system, however, awarding a contract to the lowest financial bid will not satisfy constitutional requirements, if that bidder is not qualified to represent youth in delinquency proceedings.

Instead of using a bidding process based on potential contractors' financial requirements, often called a Request for Proposals (RFP), contract counsel managers should issue a Request for Qualifications (RFQ), a request for bids based on a potential contractor's qualifications to provide representation to youth in delinquency proceedings. The RFQ process allows government agencies to award contracts to attorneys whose experience and training meet minimum qualifications and the jurisdiction's standards for juvenile defense counsel, rather than tying the agency to the lowest financial bid.

In an RFQ, the contracting agency issues a request for bids that includes the minimum qualifications and any preferred qualifications it seeks in contractors. The application or bid submitted by a potential contractor is then focused on how the applicant meets those qualifications.

The following sample RFQ may be useful to jurisdictions to use as a basis for local solicitations.

Request for Qualifications

[JURISDICTION] is issuing this Request for Qualifications to identify qualified defense attorneys to provide representation to children facing delinquency charges in [JURISDICTION] Juvenile Court. Interested applicants should submit their qualifications, using the outline below, by [DATE].

Minimum Qualifications

- Graduate of fully accredited law school
- Licensed by the [STATE ATTORNEY LICENSING AUTHORITY]
- Member in good standing of [STATE ATTORNEY LICENSING AUTHORITY]
- [XX] years of delinquency defense experience

Preferred Qualifications

Training and experience in the following areas:

- Delinquency law and procedure
- The role of expressed-interest counsel in delinquency proceedings
- Child and adolescent development
- Youth competence to stand trial
- Communicating with and counseling youth clients
- Probable cause and detention advocacy in delinquency court
- Fourth Amendment challenges and youth
- Challenging youth statements
- Guilty pleas and counseling youth clients
- Disposition advocacy
- Defending against transfer to adult court
- Defending juvenile sex cases
- Immigration consequences for youth
- Collateral consequences of delinquency court involvement
- Special education issues
- Defending against school-based offenses
- Adolescent mental health, trauma, and resiliency

APPLICATION

GENERAL

Name:

Address:

Email address:

Phone:

Bar admission date:

Bar number:

LEGAL BACKGROUND

Number of years and location(s) of legal practice:

Type of legal practice:

Percentage of practice that is delinquency defense:

EXPERIENCE AND TRAINING

Please list the counties, names of the courts, and number of delinquency cases per court you have accepted during the past three years:

What percentage of your legal practice currently involves handling:

- Delinquency cases:
- Criminal cases:
- Other cases:
 - Probate:
 - Dependency:
 - Family:
 - Civil:
 - Other:

What percentage of your practice involves handling public defense cases?

What other types of legal work do you do?

Broken Contracts: Contract Counsel Toolkit

Please provide any relevant CLE you have attended or presented in the last two years.

Topic	Number of Hours	Presented or Attended	Sponsor

Please explain your process for remaining current on relevant caselaw:

REPRESENTATION/AREAS OF PRACTICE

For each category, please indicate the approximate number of cases in which you have provided:

- Representation of children in delinquency matters:
- Trial advocacy:
- Representation in post-dispositional hearings or appeals:

On your last five juvenile delinquency cases, how much time did you spend with each client?

Where did you meet with your clients?

JUVENILE ADVOCACY

Please select three recent cases where you feel your representation led to a positive outcome for your client and provide the court, case number, case name, and a brief description (redacting any non-public or confidential information):

Please provide at least three sample motions you have filed on behalf of your youth clients in the last year (redacting any non-public/confidential information).

Please provide three names with contact information of judges and/or attorneys who would be able to comment on your experience handling juvenile delinquency cases:

If you are experienced in juvenile court practice, are you willing to serve as a mentor for a new or less experienced attorney?

EMPLOYMENT

Please attach a resume with your employment and education history, including:

- Title
- Business type
- Supervisor's name
- Supervisor's contact info
- Dates of employment
- Duties and responsibilities

PROFESSIONAL RESPONSIBILITY

Have you even been disbarred, suspended, reprimanded, censured, admonished, or otherwise formally disciplined publicly or privately as an attorney?

If yes, please explain:

Has a city, county, state or federal court ever entered a finding of guilty or sufficient facts to warrant a finding of guilty against you in a criminal offense?

If yes, please give particulars:

Are you currently on probation or do you have any criminal charges pending against you in any court?

If yes, please describe:

Are any charges or complaints now pending before any court or agency concerning your conduct as an attorney or as a member of any profession?

If yes, please explain:

Has there ever been a motion or a complaint filed that has alleged your ineffective assistance of counsel?

If yes, please give particulars:

OTHER MEMBERSHIPS AND ACTIVITIES IN PROFESSIONAL ORGANIZATIONS

Please list any professional organizations, including name, dates of membership, and any offices held:

Please list any other organizations or associations you are a member of, including name, dates of membership, and any offices held:

Please provide any other relevant experience (volunteer work, legal clinic experience, etc.):

VII. Sample Contract

SECTION I GENERAL REQUIREMENTS

1.1 Minimum Qualifications

Applicant shall be a graduate of a fully accredited law school. Applicant shall be licensed by the [STATE'S ATTORNEY LICENSING AUTHORITY] and shall be member in good standing of the [STATE'S ATTORNEY LICENSING AUTHORITY] and shall maintain the same for the duration of any contract award.

Applicant shall have [YEARS OF JUVENILE DELINQUENCY DEFENSE EXPERIENCE] and [NUMBER OF JUVENILE DELINQUENCY CLE HOURS] in the last 12 months.

Applicant shall have [ANY ADDITIONAL MINIMUM QUALIFICATIONS REQUIRED BY JURISDICTION].

1.2 Agreement to Provide Services

Applicant, by submission of an application to this solicitation, agrees to fully provide the services defined within at the pre-determined compensation schedule. Fees or compensation as stated within this solicitation are firm and not negotiable. Contract award does not guarantee any number of assignments or any other measure of work.

1.3 Performance Reviews

Contractors are advised that Contract Administrator reserves the right to conduct periodic performance reviews. The results of these reviews may be used by Contract Administrator to determine whether any additional case assignments will be made and the type/level of cases that may be assigned to the contractor and may impact future contracts.

**SECTION II
GENERAL PROVISIONS**

2.1 Definitions

As used throughout the Contract, these terms shall have the following meanings unless the context requires otherwise:

Billable Time – Time spent for the benefit of the Client which substantially advances the case toward conclusion. Billable time may include court time, legal research, interviews of the Client and witnesses, and other work required to effectively represent the Client. Billable time does not include, for example, the following:

- non-substantive motions such as motions to continue, motions to withdraw, or time spent reviewing a file prior to moving to withdraw;
- support services or overhead items that are compensated through Contractor’s contract rate including such things as secretarial services, typing, leaving messages, transmitting documents by facsimile, mailing letters, and photo copying; or
- activity that does not substantially advance the Client’s case such as unanswered telephone calls, leaving messages, or setting up meetings or conferences.

Client – A person who receives services from Contractor pursuant to an assignment.

Contract – This document and all attachments hereto.

Contract Administrator – The agent designated to develop, administer, and monitor the contracts.

Contractor – The person agreeing to provide services to Contract Administrator and the Client pursuant to this contract.

Extraordinary Compensation – The calculation of additional compensation beyond that provided by contract. Extraordinary compensation must be negotiated between the Contract Administrator and the Contractor, in writing, based on the facts of the individual case and Contractor’s overall compensation under the entire contract.

Fiscal Year – The 12 consecutive months from [Dates of fiscal year] inclusive.

Parties or Party – Contract Administrator, [JURISDICTION], and Contractor as the context requires.

Reimbursable Expenses – Expenses which are:

- reasonable and necessary;
- for the legal representation of a Client; and
- approved in advance by the Contract Administrator.

Reimbursable expenses do not include:

- items that are compensated through billable time;
- secretarial expenses;
- expenses for stationery, postage, envelopes, transmission by facsimile, parking and supplies; or
- other items that are an ordinary cost of doing business.

Representation – The services that Contractor provides to a Client in a specific legal matter.

Trial/Adjudication – Participation in a court hearing at which jeopardy or preclusion attaches, witnesses are sworn, and testimony is taken; A final determination of the ultimate issue is made by the trier of fact; A trial day is 5.0 or more hours of actual trial time; a half-day is less than 5.0 hours.

2.2 Term

The Contract shall be awarded for a period of one year from the commencement date.

The Contract begins on [DATE] (the commencement date) and expires on [DATE] (expiration date), unless extended, amended, or terminated consistent with the provisions of the Contract.

2.3 Right to Extend Contract

The Contract Administrator may, at its option and with the approval of Contractor, extend the term of the Contract up to a maximum of one additional one-year period from the original expiration date. Contractor shall be notified in writing of the intention to extend the contract period at least 30 calendar days prior to the expiration of the original contract period. Nothing herein shall be construed to guarantee that the Contract will be extended or awarded.

2.4 Default, Suspension, and Termination

The Contract Administrator may suspend, modify, or terminate the Contract upon Contractor's failure to perform or upon the occurrence of an event that may cause or result in Contractor's failure to perform any requirement of the Contract. Failure of performance shall include failure by Contractor to fulfill the reporting requirements of the Contract. Additionally, Contractor's contract may be terminated due to economic events that may have an adverse effect on the [JURISDICTION] budget or a material change in circumstances including, but not limited to, reduction in the number of cases to be assigned at a given location of the Juvenile Court.

The Contract Administrator may terminate the Contract as follows:

- No Cause: Upon thirty days written notice to Contractor.
- For Cause: Immediately upon written notice to Contractor.

[INSERT JURISDICTION'S STANDARD LANGUAGE REGARDING TERMINATION APPEALS OR GRIEVANCE PROCESS.]

Contractor may terminate this contract upon 30 days written notice to the Contract Administrator. Contractor's termination of Contract does not terminate Contractor's duty to continue representing those cases/persons assigned to Contractor prior to the effective date of termination. See Section 2.6.4 below.

2.5 Non-Exclusive Status

Contract Administrator may contract for the same or similar professional services through persons other than Contractor. This provision applies to Contract Administrator only and does not confer upon Contractor permission to substitute performance in any way without the express written consent of Contract Administrator.

2.6 Contractor's Responsibilities

2.6.1 Effective Representation. Contractor shall effectively represent the Client including, but not limited to:

- contacting and conferring with the Client within 48 hours for non-detained children and 24 hours for detained children of Contractor's notice of appointment;
- maintaining reasonable contact with the Client, responding to all phone calls within 24 hours during the business week, and visiting Client in detention, until the representation is terminated;
- communicating with the Client in an age- and developmentally appropriate manner regarding rights, charges, developments of the case, and dispositional alternatives;
- using reasonable diligence in notifying the Client of necessary court appearances, including any court action that arises out of the Client's non-appearance;
- showing up prepared at every hearing, including but not limited to detention, advisory, competency, transfer, pretrial/evidentiary, adjudication, disposition, report and review, restitution, and post-dispositional hearings;
- appearing in court on time at whatever time the court designates. Contract assignments shall take priority over privately retained and other cases;
- filing all appropriate motions;
- conducting such interviews and investigation as are appropriate; and
- timely providing the Client information on the right to appeal and filing a notice of appeal when appropriate.

2.6.2 Client-Attorney Relationship. Contractor shall assure undivided loyalty to each assigned Client. The Parties recognize, however, that certain cases may arise where conflicts are of sufficient magnitude that Contractor cannot represent the Client. To this end, Contractor agrees to cooperate with Contract Administrator in the assignment of cases to avoid actual or apparent conflicts of interest.

2.6.3 Firms. Firms that are awarded a juvenile delinquency contract may not internally assign cases to attorneys who do not meet the minimum qualifications, including experience and training.

2.6.4 Accepting Assignments. Contractor shall accept all assignments made by the Contract Administrator unless Contractor is not ethically permitted to accept the representation pursuant to the Rules of Professional Conduct or other relevant rules, regulations, canons, or statutes.

2.6.5 Replacement Representation. In the event Contractor is unable to complete an assignment and is allowed by the Court to withdraw, Contractor immediately shall report the circumstances to the Contract Administrator so that replacement counsel may be appointed. Contract Administrator may require Contractor to account for the time Contractor expended and to return all or part of the payment for the representation where the work will require duplication.

2.6.6 Continuing Representation. Contractor has a continuing duty to represent the Client until the Court has terminated the representation. Termination of the Contract by either Party does not terminate the Contractor's duty to provide services in those cases assigned prior to the effective date of termination.

2.6.7 Removal for Failure of Performance. In the event a Court removes Contractor from representation due to any failure of performance relating to representation, Contractor shall reimburse [JURISDICTION] for any payment made to Contractor relating to the representation and provide a written explanation of the failure of performance.

2.6.8 No Additional Compensation. Contractor may not solicit or accept private or additional compensation of any kind, including attorney's fees, in any matter that relates to or arises out of a pending assignment or representation other than compensation as specified in the Contract, unless approved in writing by the Contract Administrator.

2.6.9 Records and Reports. Contractor shall create and keep detailed and accurate case logs, final disposition records, and time sheets relating to the representation. Contractor will periodically report on a timely basis data and statistics to the Contract Administrator in the manner prescribed by the Contract Administrator. Failure to submit case logs, final disposition records, and time sheets in the time and manner specified by Contract Administrator will result in withholding compensation until the Contractor is in compliance. Contractor shall make available for inspection and copying by the Contract Administrator all records and accounts relating to the work performed or the services provided under the Contract, except any document that is privileged as attorney-client communication. Contractor shall safeguard confidential and privileged information in accordance with all applicable laws, rules, and regulations.

2.6.10 Substitute Performance. This is a personal services contract between Contractor and Contract Administrator. Contractor may, on occasion, allow substitute counsel to appear in court on behalf of the Contractor. Any other substitute counsel must be approved in advance by the Contract Administrator. Notwithstanding the foregoing, the Contractor shall remain primarily responsible for the performance of the Contract. The Contract Attorney must represent the client directly in any advisory hearing, major motions hearing, or trial.

2.6.11 Requests for Expenditures. Contractor shall submit for approval by the Contract Administrator all requests for payment of expert witness fees, travel expenses, publication of legal notices,

investigators, mitigation specialists, service of process, court transcript fees, and other reasonable and necessary expenditures. Contractor may not incur any expense for the account of the Contract Administrator without prior approval of the Contract Administrator. Failure to obtain prior approval may result in non-payment for the expenditure and the debt shall become the personal responsibility of the Contractor. A copy of the approval must be given to the approved vendor for its billing purposes prior to the commencement of any work.

2.6.12 Non-reimbursable expenses. Contract Administrator will not reimburse Contractor for office supplies, secretarial or other staff services, transcripts of witness interviews, or any other type of expense that involves the general cost of doing business, unless approved in advance by the Contract Administrator as an extraordinary expense.

2.6.13 Appointment of Interpreters. Interpreters shall be used for non-English-speaking clients as necessary for all court proceedings and out-of-court matters.

2.6.14 Compliance with Law. Contractor will comply with all laws, including rules and regulations of all governmental accrediting and regulatory authorities, relating to the licensure and regulation of attorneys. In the event that a complaint is filed with the [ATTORNEY LICENSING ENTITY] regarding the Contractor by any person, regardless of the nature of the complaint, and the complaint is submitted for investigation, the Contractor must notify the Contract Administrator within five days of receiving the notice of investigation. Any disciplinary order entered against the Contractor shall be provided to the Contract Administrator within five days of its entry. In the event the Contractor is suspended by the [ATTORNEY LICENSING ENTITY] on an interim or other basis, Contractor must immediately notify the Contract Administrator of this suspension so that appointment of cases may be stopped. Failure to comply with such notice will result in termination of Contractor's Contract.

In the event that criminal charges are filed against the Contractor, the Contractor shall notify the Contract Administrator within five days of the filing of such charges and upon disposition of the criminal case.

2.6.15 Technological Equipment. Contractor must possess the following equipment to meet Client needs:

- desktop, laptop, and/or notebook computer;
- Microsoft Office Suite software, Adobe Reader, and other software as might be needed to allow Contractor to conduct business electronically;
- email account; and
- cellular telephone.

2.6.16 Reporting and Billing Periods. Any claim for services must be submitted within 30 days of the service.

2.6.17 Attorney Complaints. Complaints made about a Contractor may be forwarded to Contractor with a request for a response to the complaint. The Contractor must respond to the complaint in writing within 10 days.

2.7 Availability of Funds

Contractor and Contract Administrator acknowledge that the continuation of any contract after the close of the fiscal year is contingent upon the approval of a [JURISDICTION] budget that identifies such contract as an authorized expenditure. The [JURISDICTION] does not represent that any budget item will be adopted. The approval of such expenditures is the exclusive province of the [JURISDICTION] at the time of the adoption of the budget.

2.8 Independent Contractor

Contractor's relationship to Contract Administrator and [JURISDICTION] is that of an independent contractor and not an employee.

This Contract does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or employment relationship. The rights and obligations of the Parties shall be only those expressly set forth in the Contract.

No persons or services utilized by Contractor in the performance of obligations under the Contract are considered to be [JURISDICTION] employees, and no rights of civil service, retirement, or personnel rules accrue to such persons. Contractor shall have complete responsibility for all salaries, wages, bonuses, retirement withholdings, worker's compensation, and other employee benefits and all taxes and premiums relating to such persons, and shall defend, indemnify, and hold the [JURISDICTION] harmless for any and all claims, suits, liability, and damages which the [JURISDICTION] may incur because of Contractor's failure to pay such taxes or obligations.

2.9 Malpractice Insurance

Contractor shall provide to the Contract Administrator a declarations page for a current certificate of insurance for professional malpractice coverage in an amount not less than \$[DOLLAR AMOUNT]. Professional malpractice coverage shall remain in force during the entire term of the Contract. In the event Contractor's insurance is terminated or suspended, Contractor shall immediately give written notice to the Contract Administrator. Failure to provide proof of professional malpractice coverage during any period of the contract shall result in Contractor's immediate termination for cause. Proof of professional malpractice coverage is due on the first day of the second month of the Contract. Contractor shall not be entitled to liability coverage or costs of defense from [JURISDCITION] or any other claims arising from Contractor's performance under the Contract.

2.10 Amendments

All amendments to the Contract shall be in writing and signed by both Parties.

2.11 Laws, Rules, and Regulations

Performance under the Contract shall be accomplished in conformity with all applicable laws, ordinances, rules, regulations, and zoning restrictions.

2.12 Non-Discrimination and Equal Employment Opportunity

Contractor, in the performance of the Contract, will not discriminate against any person based on race, religion, sex, national origin, or disability.

2.13 Vendor Offset

The [JURISDICTION] may withhold debts owed to State agencies for:

- unpaid child support debt or child support arrearages;
- unpaid balance of tax, accrued interest, or other charges specified;
- owed amounts required to be paid to the Unemployment Compensation Fund; and
- any other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination.

2.14 Retention and Adequacy of Records

Contractor agrees to retain all books, records, and other documents relevant to the Contract for six years after final payment or until after the resolution of any audit questions, whichever is longer. Auditors and any other persons duly authorized by the [JURISDICTION] shall have full access to, and the right to examine, copy, and make use of all such materials.

2.15 Waiver of Claims

Contractor accepts the compensation provided in the Contract in lieu of any other claim, demand, request, or compensation for the services that Contractor provides pursuant to the Contract.

Contractor's obligations under this section, including the duty of continuing representation, shall survive the termination or expiration of the Contract.

This section is not severable, in whole or in part, from any other provision of the Contract. In the event any portion of the Contract is found to be invalid or unenforceable, the Contract may be terminated at the sole discretion of the Contract Administrator.

2.16 Further Assurances and Corrective Instruments

The Parties will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged, and delivered, any corrective instruments as may be reasonably necessary to carry out the intent of the Contract.

2.17 Compliance with Applicable Laws

The Parties shall comply with all applicable federal and state laws, rules, and regulations.

2.18 Notice

All notices, demands, and other communications to be given or delivered pursuant to the Contract shall be in writing, and shall be deemed delivered upon the following:

- personal delivery;
- one business day from transmission by electronic mail; or
- five business days from deposit in the United States mail, registered mail, or certified mail, return receipt requested, with postage prepaid to the Notice Address or to the last known address of the Party who is to be given notice.

2.19 Rules of Construction

2.19.1 Incorporation of Definitions, Recitals and Exhibits. The Parties acknowledge the accuracy of the definitions and recitals set forth in the Contract. All exhibits to the Contract are incorporated into the Contract as if set out verbatim.

2.19.2 Merger. All prior and contemporaneous contracts, agreements, statements, and understandings with respect to the subject matter of the Contract, if any, among the Parties or their agents, are merged into the Contract, and the Contract shall constitute the entire agreement among the Parties.

2.19.3 Successors. The Contract shall be binding upon, inure to the benefit of, and be enforceable by the successors, assignees, and transferees of the Parties.

2.19.4 Third-Party Beneficiaries; No Rights Conferred on Others. Any person who is entitled to indemnity by the terms of the Contract or by operation of law is a third-party beneficiary of the Contract to the extent only that such status is necessary to fulfill or enforce the indemnification.

2.19.5 Severability. Each provision of the Contract shall be construed to preserve its validity and enforceability to the extent possible. If any provision of the Contract is declared void, invalid, or unenforceable, the Party who would have enforced the provision may elect whether the provision shall be modified to the extent necessary to make it valid and enforceable or excluded from the Contract.

2.19.6 Remedies Cumulative. Any remedy in the Contract is cumulative and is not exclusive of any other remedy, nor does it limit any other legal or equitable remedy that may be available to any Party.

2.20 Miscellaneous

2.20.1 Process Server. All expenditures for service of process must be approved prior to incurring any such expense. In the event that Contractor does not request and receive approval before incurring such an expense, Contractor shall be personally responsible for payment of the process server's invoice.

2.20.2 Court Reporters. Only appellate transcripts are paid directly. Any other use of court reporters or transcriptionists must be approved in advance by the Contract Administrator. It is the Contractor's responsibility to deliver the approval to the appropriate, approved vendor.

2.20.3 Audio and Video Tape Transcription. Transcriptions of tape-recorded interviews must be approved in advance.

2.20.4 Travel. All travel for contractors, witnesses, or expert witnesses must be pre-approved by the Contract Administrator.

2.20.5 Change of Address. Contractor must promptly advise Contract Administrator in writing of any changes to telephone numbers, e-mail addresses, and business addresses.

2.20.6 Billing. All Contractor invoices submitted for payment must contain an itemized statement of hours describing in detail in chronological order: Date, Description of Event, and Time (in tenths of an hour). Time for the services of secretaries, paralegals, legal assistants, caseworkers, or any other non-contract person will not be compensated when considering hours worked by a Contractor on a case.

2.20.7 Maximum Caseload. All Contractors who hold contracts in the following areas are subject to a combined open/pending maximum caseload for all past and present contracts and privately retained/other contracted/pro bono clients, regardless of contract types:

- Juvenile Appeals: [NUMBER];
- Juvenile Delinquency: [NUMBER].

In the event that Contractor's caseload exceeds the applicable threshold, Contractor and the Contract Administrator will confer to examine the nature and quality of the caseload to determine if the Contractor should be assigned additional cases. The final decision on this issue shall be made by the Contract Administrator.

SECTION III WORK STATEMENT

3.1 Effect

This Work Statement shall control should there be any conflict between the General Provisions and Work Statement sections of this contract.

3.2 Duties

The Contract Attorney shall provide representation in a thorough, competent, and professional manner subject to all applicable standards, rules, regulations, canons, statutes, and cases. Representation shall commence upon appointment and continue in all matters arising from the appointment through the filing of a notice of direct appeal and related documents or the filing and ruling on a motion for reconsideration of sentence. If the appointment is for the appeal of an adverse decision of the trial court, the representation shall include the opening brief and all other legal functions through the filing of the Petition for Writ of Certiorari and any motion to reconsider sentence. Contractor must be a member of good standing with the [ATTORNEY LICENSING ENTITY] and meet the following minimum requirements:

- Juvenile Delinquency: [JURISDICTION'S MINIMUM QUALIFICATIONS FOR TRIAL-LEVEL DELINQUENCY CASES]
- Juvenile Appeals: [JURISDICTION'S MINIMUM QUALIFICATIONS FOR DELINQUENCY APPEALS]

3.3 Multiple Petitions

In the event multiple petitions are filed, the attorney assigned to the original matter shall be assigned to the subsequent petitions if the original petition is still pending.

3.4 Termination by Court

A Contract will not compensate in any matter in which any of the following apply:

- The Court has terminated Contractor's representation of the Client or the Client has retained private counsel; or
- The Court has requested a substitution of counsel.

3.5 Special Continuing Education Duties

Contractor shall provide, at the request of the Contract Administrator, proof of attendance at continuing legal education seminars and courses. At least [NUMBER] hours of continuing education each year be in the area of juvenile delinquency practice. Failure to attend seminars in this area may result in the termination or suspension of the Contract at the discretion of the Contract Administrator.

3.6 Notice of Appeal

If a Notice of Appeal must be filed, it is the responsibility of the trial attorney to do so. If the trial attorney's responsibilities in the trial court have terminated, the Notice of Appeal should be accompanied by a Motion to Withdraw and Appoint Appellate Counsel. If the trial attorney's responsibilities in the trial court have not terminated, the Notice of Appeal should be accompanied by a Motion to Appoint Additional Counsel for Purposes of Appeal Only.

SECTION IV CONSIDERATION

4.1 Compensation

The following is the schedule of payments for each of the areas of practice and the cases within those areas of practice:

[JURISDICTION'S PAYMENT SCHEDULE FOR DELINQUENCY CASES]

VIII. Checklist of Data Contract Counsel Systems Should Collect

Contract Administrators should track:

- Qualifications of attorneys with contracts/on appointed counsel lists
- Number and types of cases assigned through contract counsel system
- Records of which cases are assigned to which attorneys
- When and how decisions are made regarding conflicts and need for specialized counsel
- Dates cases are assigned and closed
- Attorney hours billed and cost per case
- Additional resources (experts, investigators, etc.) requested and utilized per case and the cost of those resources

Attorneys providing representation as contract counsel should track:

- Number and types of cases received via contract counsel system appointment
- Number and types of charges included in each case
- Client demographics, including:
 - Age
 - Race
 - Gender
 - Where possible, other demographic information that may impact a child's court experience, including sexual orientation and gender expression, ethnicity, school attended, neighborhood lived in, etc.
- Client communication (e.g. in-person visits, phone calls, electronic communications, etc., including date, length of meeting, and topics discussed)
- Motions filed and outcomes
- Hearings held and outcomes
- Requests for and use of experts, investigators, social workers, and other non-attorney case specialists
- Judges, magistrates, prosecutors, and probation officers involved in each case
- Disposition of case, including disposition of each charge
- Any post-disposition services rendered, including filing notice of appeal, motion to seal record, judicial release motion, etc.

Courts should track:

- Number and types of cases
- Number and types of charges included in each case
- How each case was referred to court (e.g. school, police, parent, child welfare, etc.)
- Demographic information of each child, including:
 - Age
 - Race
 - Gender
- Whether defense counsel is present at each hearing
- Pre-trial detention motions, hearings, and decisions
- Each motion filed and outcome
- Each hearing held and outcome
- Defense requests for experts, investigators, social workers, etc. and outcome
- Defense attorney, prosecutor, and probation officer involved in each case
- Case disposition, including the disposition of each charge
- Post-disposition motions and hearings, including disposition reviews, sealing requests, judicial release motions, etc., and outcomes of each

IX. State Appointed Counsel Rates for Juvenile Delinquency Representation

State	Hourly Rate	Case Caps
Alabama ⁱ	\$70	\$2,500
Alaska ⁱⁱ	\$60 in court \$50 out of court	Misdemeanor: \$400 (plea); \$800 (trial) Felony: \$2,000 (plea) \$4,000 (trial)
Arizona ⁱⁱⁱ	Varies by county	Varies
Arkansas ^{iv}	\$50-\$80	None
California ^v	Varies by county	Varies
Colorado ^{vi}	\$80 felonies \$75 misdemeanor & traffic	\$5,500 (trial) \$2,750 (no trial)
Connecticut ^{vii}	\$50	\$500
Delaware ^{viii}	\$75	None
District of Columbia ^{ix}	\$90	\$7,000 felony \$2,000 misdemeanor
Florida ^x	None	\$1,000
Georgia ^{xi}	None	None
Hawaii ^{xii}	\$90 in court \$60 out of court	\$3,000
Idaho ^{xiii}	Varies by county	Varies by county
Illinois ^{xiv}	\$40 in court \$30 out of court	Felony: \$1,250 Misdemeanor: \$150
Indiana ^{xv}	\$90	None
Iowa ^{xvi}	\$60	\$1,200
Kansas ^{xvii}	\$75	Varies by case type from \$400 - \$7,500
Kentucky ^{xviii}	\$40	\$300
Louisiana ^{xix}	None	None
Maine ^{xx}	\$60	\$540
Maryland ^{xxi}	\$50	\$4,000
Massachusetts ^{xxii}	\$55	None
Michigan ^{xxiii}	Varies by county	Varies by county
Minnesota ^{xxiv}	None	None
Mississippi ^{xxv}	None	\$200

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State	Hourly Rate	Case Caps
Missouri ^{xxvi}	None	Non-violent: \$500 Violent: \$750 Additional compensation for trial days
Montana ^{xxvii}	\$56	None
Nebraska ^{xxviii}	Varies by court	Varies by court
Nevada ^{xxix}	\$100	Felony: \$2,500 Misdemeanor: \$750
New Hampshire ^{xxx}	\$60	\$1,700
New Jersey ^{xxxi}	\$60 in court \$50 out of court	None
New Mexico ^{xxxii}	None	\$300-\$350
New York ^{xxxiii}	\$60 misdemeanors \$75 all other	\$2,400 misdemeanor \$4,400 all other
North Carolina ^{xxxiv}	\$75	None
North Dakota ^{xxxv}	None	\$850
Ohio ^{xxxvi}	Varies by county	Varies by county
Oklahoma ^{xxxvii}	None	\$800
Oregon ^{xxxviii}	\$46	None
Pennsylvania ^{xxxix}	Varies by court	Varies by court
Rhode Island ^{xl}	\$30	\$1,000
South Carolina ^{xli}	\$60 in court \$40 out of court	\$3,500 felony \$1,000 misdemeanor
South Dakota ^{xlii}	\$95	None
Tennessee ^{xliii}	\$50 in court \$40 out of court	\$1,000
Texas ^{xliv}	Varies by county	Varies by county
Utah ^{xlv}	None	None
Vermont ^{xlvi}	\$50	\$2,000
Virginia ^{xlvii}	\$90	\$120

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State	Hourly Rate	Case Caps
Washington ^{xlviii}	Varies by court	Varies by court
West Virginia ^{xliv}	\$65 in court \$45 out of court	\$3,000
Wisconsin ⁱ	\$40	None
Wyoming ⁱⁱ	\$100 in court \$35-60 out of court	None

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ⁱ ALA. CODE § 15-12-21 (2015).

ⁱⁱ ALASKA ADMIN. CODE tit. 2, § 60.010 (1986).

ⁱⁱⁱ ARIZ. REV. STAT. ANN. § 8-221 (2010).

^{iv} ARK. PUB. DEF. COMM’N, PAYMENT & EXPENSE REIMBURSEMENT GUIDELINES (2012), <http://apdc.arkansasadmin.net/site/assets/files/1046/pymtexpensereimbguidelines.pdf>.

^v CAL. PENAL CODE § 987.2 (2003).

^{vi} OFFICE OF THE CHIEF JUSTICE, SUPREME COURT OF COLO., APPOINTMENT OF STATE-FUNDED COUNSEL IN CRIMINAL CASES AND FOR CONTEMPT OF COURT (2018), https://www.courts.state.co.us/Courts/Supreme_Court/Directives/04-04_Amended%20effective%20July%201,%202018%20Attachment%20B%20Amended%20March%202019%20WEB.pdf.

^{vii} CONN. DIV. OF PUB. DEF. SERVS., *Assigned Counsel Agreements*, https://portal.ct.gov/OCPD/Assigned-Counsel/xAssigned_Counsel_Annual_Agreements-2018 (last visited Aug. 7, 2019).

^{viii} OFF. OF CONFLICTS COUNSEL, DEL. GOV’T, *Policies and Procedures Governing Attorney Billing and Compensation*, <https://conflictsounsel.delaware.gov/documents/occ-billing-policy-revised-6-27-17/> (last visited Dec. 19, 2019).

^{ix} D.C. CODE § 11-2604(b) (2016); 18 U.S.C.A. § 3006A(d)(2) (2010).

^x FLA. STAT. ANN. § 27.5304 (2019).

^{xi} GA. CODE ANN. § 17-12-22 (2011).

^{xii} HAW. REV. STAT. ANN. § 571-87 (2008).

^{xiii} IDAHO CODE ANN. § 19-859 (2014).

^{xiv} 725 ILL. COMP. STAT. ANN. 5/113-3 (2000) (Illinois statute requires counties with a population greater than 2,000,000 (i.e. Cook County) to pay appointed counsel these rates. All other counties are to pay appointed counsel “a reasonable fee”).

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- ^{xvi} IOWA STATE PUB. DEF., *Fee Claim Process*, <https://spd.iowa.gov/contract-attorneys/fee-claim-process> (last visited Dec. 19, 2019).
- ^{xvii} KAN. BD. OF INDIGENTS' DEF. SERVS., PERMANENT ADMINISTRATIVE REGULATIONS, ART. 5 (2018), <http://www.s bids.org/forms/ksbidsreg.pdf>.
- ^{xviii} KY. DEP'T OF PUB. ADVOCACY, PUBLIC ADVOCACIES POLICIES & PROCEDURES: POLICY 8.06 (2004) (on file with author).
- ^{xix} LA. STAT. ANN. § 15:147 (2017).
- ^{xx} ME. COMM'N OF INDIGENT LEGAL SERVS., CHAPTER 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL (2016), <https://www.maine.gov/mcils/rules/rules/Chapter%20301%20Fee%20Schedule.pdf>.
- ^{xxi} MD. CODE REGS. 14.06.02.06 (2019) (stating "As the annual budget permits, panel attorneys will be compensated at the same hourly rate at which federal panel attorneys are compensated for indigent criminal defense representation" and that the maximum fee for a juvenile delinquency case will be equivalent to the federal felony maximum fee). The budget does not allow Maryland to pay appointed counsel at federal rates, however. The actual rates paid to appointed counsel in delinquency cases at the time of the writing of this report are reflected in the chart above, based on information provided by the Maryland Office of the Public Defender
- ^{xxii} MASS. GEN. LAWS ANN. ch. 211D, § 11 (2018).
- ^{xxiii} MICH. COMP. LAWS. § 775.16 (2013).
- ^{xxiv} [MINN. STAT. § 611.215](#) (2007).
- ^{xxv} [MISS. CODE ANN. § 99-15-17](#) (1980).
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- ^{xxvii} MONT. OFFICE OF STATE PUB. DEF., CONTRACTOR COMPENSATION SCHEDULE (2018), <http://opd.mt.gov/Portals/61/Forms/AllContractors/Contractor%20Compensation%20Schedule.pdf>.
- ^{xxviii} [NEB. REV. STAT. ANN. § 29-3905](#) (1990).
- ^{xxix} [NEV. REV. STAT. ANN. § 7.125](#) (2015).
- ^{xxx} N.H. SUPREME CT. R., *Admin. R. 48*, <https://www.courts.state.nh.us/rules/scr/scr-48.htm> (last visited Aug. 7, 2019).
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- ^{xxxvi} OHIO REV. CODE ANN. § 120.33 (2019).
- ^{xxxvii} [OKLA. STAT. ANN. tit. 22, § 1355.8](#) (2001).
- ^{xxxviii} [PUB. DEF. SERVS. COMM'N, OR. OFFICE OF PUB. DEF. SERVS., PUBLIC DEFENSE PAYMENT POLICY AND PROCEDURE, EXH. 2 \(2019\)](#), <https://www.oregon.gov/opds/provider/PoliciesProcedures/PaymentPolicyEffective06-01-19.pdf>.
- ^{xxxix} [16 PA. STAT. AND CONS. STAT. ANN. § 9960.7](#) (1969).
- ^{xl} Exec. Order No. 2012-06, R.I. SUPREME COURT (2012), <https://www.courts.ri.gov/Courts/SupremeCourt/ExecutiveOrders/12-06ex.pdf>.
- ^{xli} [S.C. CODE ANN. § 17-3-50](#) (2007).
- ^{xlii} LETTER FROM GREG SATTIZAHN, STATE COURT ADM'R, S.D. UNIFIED JUDICIAL SYS. TO ANDREW FERGEL, STATE BAR OF S.D., 2019 COURT-APPOINTED ATTORNEY FEES AND MILEAGE (2018), <https://ujs.sd.gov/uploads/docs/2019CourtAppointedAttorneyFees.pdf>.
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^{xlix} [W. VA. CODE ANN.](#) § 29-21-13a (2008).

^l [WIS. STAT. ANN.](#) § 977.08 (2018).

^{li} WYO. R. CRIM. PROC. R. 44(e) (2006).