

CHAPTER 10
CONTRACTS FOR INDIGENT DEFENSE SERVICES

493—10.1(13B) Definitions.

“*Attorney*” means a person or a firm, association, partnership, or corporation comprised of persons licensed by the Iowa Supreme Court to practice law in the state of Iowa.

“*Case*” means all charges arising from the same transaction or occurrence or all charges contained in the same trial or indictment or any juvenile court matter.

“*Contract*” means a formal written agreement between the state public defender and an attorney.

“*Contracting attorney*” means an attorney who has entered into a contract with the state public defender for the provision of indigent defense services.

“*Department*” means the Iowa department of inspections and appeals.

“*Effective date*” means the date on which the contract becomes effective and in force.

“*Fees*” means the contract consideration to be paid to attorneys under the indigent defense services contract.

“*Incidental costs*” means those cost items that are not attorney fees and includes, but is not limited to, such expenses as depositions, psychiatric examinations, service of notice charges, expert witness fees, court costs, and all items of expense that are not remuneration to the attorney as fees for legal services.

“*Indigent*” means a person who has been determined by the court to be unable to employ legal counsel or pay for incidental costs without prejudicing that person’s financial ability to provide economic necessities for the person or the person’s dependent family.

“*Indigent defense*” means services and incidental costs that are provided for the legal representation of indigent persons on both the adult court and the juvenile court level, and on the trial level and the appellate court level.

“*Other vendor charges*” means charges by vendors other than attorneys for incidental costs and includes the payment for incidental costs.

“*State public defender*” means the state public defender, appointed pursuant to Iowa Code chapter 13B, or the state public defender’s designee.

493—10.2(13B) Contracts. A private attorney may enter into a contract with the state public defender for the provision of legal defense services to indigent persons.

10.2(1) To be eligible to contract with the state public defender to provide indigent defense services, an attorney must be licensed by the Iowa Supreme Court to practice law in the state of Iowa.

10.2(2) A copy of an original contract is available from the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087, or by telephoning (515)242-6158.

493—10.3(13B) Submission of proposed contract. The state public defender will give notice to private attorneys of the availability of contracts for indigent defense services in a manner reasonably calculated to make all attorneys aware of the availability of the contracts. Notice of the available contracts shall be posted in the courthouse and published in a newspaper of general circulation in the area where the contract services are needed. In addition, the state public defender may notify attorneys of the availability of the contracts by mail, personal recruitment, and other methods reasonably calculated to reach as many potential contracting attorneys as possible.

493—10.4(13B) Contract approval or rejection. Although the state public defender will not unreasonably withhold the granting of a contract, before deciding to award a contract to a proposed contracting attorney, the state public defender may do any or all of the following:

10.4(1) The state public defender may confer with judges, attorneys and others with knowledge of the potential contracting attorney's competence, effectiveness, trustworthiness, or ability to provide services to eligible individuals. The information received may be taken into consideration in determining whether to enter into a contract with the potential contracting attorney.

10.4(2) The state public defender may hold discussions with, or otherwise obtain information from, potential contracting attorneys as necessary to determine their qualifications and ability to perform the conditions of the contract.

10.4(3) The state public defender may hold discussions with, or otherwise obtain information from, the potential contracting attorney to establish the type of cases the contracting attorney will handle and the geographic area in which the cases will be handled during the term of the contract.

10.4(4) The state public defender may decline to award a contract to a proposed contracting attorney if the state public defender receives information from credible sources that the attorney is not competent, effective, or trustworthy, or is not appropriate to provide the services for some other pertinent reason. The state public defender shall give written notice of this action to the attorney. The attorney may appeal this decision in the manner prescribed in rule 10.8(13B).

493—10.5(13B) Contract elements.

10.5(1) A contract with a private attorney may be awarded for the provision of legal defense services in varying areas of the entire criminal and juvenile justice system including, but not limited to:

- a. Representation of adults charged with a crime;
- b. Legal services on the trial level or appellate level;
- c. Postconviction legal services;
- d. Juvenile court representation; or

e. Types of cases, such as CINA cases, misdemeanor cases, specific types of felony cases, appellate cases, other types of cases as determined by the state public defender.

10.5(2) Other vendor charges will be paid by the department from the state indigent defense fund as specified in 481—Chapter 9.

10.5(3) A contract can only be in force and effect when signed by the contracting attorney, the director of the Iowa department of inspections and appeals, and the state public defender. A signed copy of an approved contract will be sent to a contracting attorney by the state public defender.

10.5(4) The contracting attorney shall be an independent contractor and shall in no sense be an agent, employee, or servant of the state of Iowa, the state public defender, or any of its employees. The contracting attorney shall exercise the attorney's best independent professional judgment in the handling of a case without any interference from the state public defender. The department or the state public defender accepts no responsibility for, or liability for, the services provided by contracting attorneys in the performance of the contract.

10.5(5) Once a contract has been awarded, the state public defender shall certify the name of the contracting attorney, including any limitations on types of cases to be handled, and any geographic limitations, to the court administrator in the district and the clerks of court in the counties in which the contracting attorney has agreed to provide services.

10.5(6) The conditions of the contract shall not be performed until all signatures are obtained and distribution of the contract is made to the principals of the contract.

10.5(7) A contract with a private attorney covers, but is not limited to, the following subjects:

- a.* The categories of cases in which the attorney is to provide services;
- b.* The term of the contract and the responsibility of the attorney for provision of services in cases undertaken pursuant to the contract;
- c.* Identification of the attorney(s) who will perform legal representation under the contract;
- d.* A prohibition against assignment of the obligations undertaken pursuant to the contract, including a prohibition against substitution of counsel without prior consent of the state public defender or the court;
- e.* The qualifications of the contracting attorney to undertake legal representation pursuant to the contract;
- f.* A description of the compensation to be paid and the manner of payment;
- g.* A description of any expenses, such as support services, investigative services and expert witness expenses, which may be provided under the contract;
- h.* A description of the record-keeping and reporting requirements under the contract;
- i.* A description of the manner in which the contract may be terminated and the disposition of ongoing obligations following such termination.

10.5(8) The contracting attorney shall comply with all applicable federal and state laws and regulations on confidentiality, including rules on confidentiality contained in 493—Chapter 4.

493—10.6(13B) Contract renewal. Prior to renewal of any contract, the state public defender may contact judges, attorneys, court personnel, and others to determine if any existing contract is being properly fulfilled. If the state public defender has determined that a contract renewal is in the best interests of the state, the state public defender may offer a new contract to the contracting attorney. The contracting attorney may accept the new contract by signing the same and returning the signed contract to the state public defender within 30 days of the date on which the contract is submitted to the contracting attorney. If a contracting attorney is not offered a contract renewal, the state public defender shall give the contracting attorney written notice of this action. The attorney may appeal this decision in the manner prescribed in rule 10.8(13B).

493—10.7(13B) Contract termination. Any contract may be terminated by either the state public defender or the contracting attorney upon 30 days' notice in any of the following instances:

1. Mutual agreement of the parties;
2. Failure of appropriation or sufficient funds available to continue the services;
3. Failure to make required reporting;
4. Failure to abide by the provisions of the contract;
5. Repeated submission of inappropriate claims;
6. Good cause.

The terminating party shall notify the other party in writing not less than 30 days before the date of termination except in an emergency situation wherein the contract can be terminated upon notice of termination. An emergency situation would exist if the contracting attorney could no longer provide the service or in any situation which would have rendered the contracting attorney originally ineligible for the contract. The attorney may appeal any termination in the manner prescribed in rule 10.8(13B).

Upon termination of the contract, the cases currently assigned to the attorney shall be handled as provided in the contract.

* Correction to 10.5(7) "d" IAC 10/8/97.

493—10.8(13B) Appeals. An appeal is perfected by filing a written notice of appeal with the state public defender within ten days of receipt of notice of the action. The notice is deemed to have been received three days after the notice is mailed. The notice of appeal shall state the grounds upon which the attorney challenges the action. Upon receipt of the appeal, the state public defender shall hold a hearing and may uphold, reverse or modify the previously made decision. The decision following the hearing shall be made in writing and shall set forth all of the findings relied upon in making the decision. If an attorney remains aggrieved by the decision, the attorney may further appeal in the manner provided for appeals from administrative decisions in 481—Chapter 10.

493—10.9(13B) Payment for services.

10.9(1) Billing procedures. Contracting attorneys shall submit case reports and claims to the state public defender, as set forth in the contract.

a. Juvenile cases. Initial claims for services in juvenile cases may be submitted only after the dispositional hearing, if any. Subsequent claims may be filed after each review hearing held in the case.

b. Appellate cases. Claims in appellate cases shall be submitted as provided in the contract.

c. Other cases. In all cases, other than juvenile cases and appellate cases, claims filed prior to the conclusion of the case will not be paid except with prior written consent of the state public defender.

10.9(2) Payment to contracting attorneys. Unless the contract provides specifically for a different rate of pay, the following hourly rates shall apply:

a. For Class A felonies, \$55 per hour for attorney time;

b. For Class B felonies, \$50 per hour for attorney time;

c. For all other adult, juvenile, or appellate cases, \$45 per hour for attorney time;

d. For all paralegal time, \$25 per hour.

Payment for services shall be made only after all reporting requirements have been complied with and the claim has been approved by the state public defender.

10.9(3) Fee guidelines. In reviewing fee claims, the state public defender will generally not approve fee claims which exceed the supreme court guidelines for court-appointed counsel, unless court approval is obtained prior to exceeding the guidelines.

Nothing contained in this rule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by Iowa law.

10.9(4) Items not covered by contract. If a fee claim contains items not compensable under the contract, the state public defender may delete said items from the claim and approve the balance, or seek review of the entire claim. The contracting attorney may appeal any such deletions in the manner prescribed in rule 10.8(13B).

10.9(5) Payment in case of nonrenewal or termination. If a contract is not renewed, as provided in rule 10.6(13B), or terminated, as provided in rule 10.7(13B), the contracting attorney will receive payment only for those services performed under the contract through the date of expiration or termination of the contract.

493—10.10(13B) Reporting requirements.

10.10(1) Claim form. The contracting attorney shall file a claim with the state public defender as required in subrule 10.9(1) upon a form provided by the state public defender. The claim form shall contain the following information:

a. The date on which the contracting attorney was appointed by the court to handle the case, the type of juvenile action or the offense charged, whether the offense is a felony or misdemeanor (together with the type of felony or misdemeanor), and the Iowa Code section(s) alleged to have been violated or under which the juvenile action was taken.

b. The number of hours claimed which were spent on research, the number of hours claimed which were spent in actual deposition taking, the number of hours claimed which were spent on other (regular) legal work, the number of paralegal hours claimed, the actual expenses incurred, and the total amount of money claimed.

10.10(2) *Disposition.* Each itemization shall contain a statement explaining how the case was resolved.

10.10(3) *Itemization.* The contracting attorney shall submit an itemization of all time spent on the case and a detailed itemization of expenses claimed when filing the claim. If the attorney has submitted prior claims in the same case, information concerning the date on which those claims were submitted and any amounts paid on those claims shall be provided.

10.10(4) *Court orders.* A copy of the order appointing the contracting attorney to the case and all other court order(s) which might affect the claim shall be provided when filing the claim.

10.10(5) *Other information.* The contracting attorney shall also provide any other information which the state public defender deems relevant to an appropriate evaluation of the claim.

493—10.11(13B) Records. The contracting attorney shall maintain records of all financial and statistical information relating to the contract for a period of five years following the date of final payment or completion of any required audit, whichever is earlier. Each contracting attorney shall maintain sufficient financial and statistical records to document the validity of the reports submitted to the state public defender. Records shall be provided to the state public defender, the auditor of the state of Iowa, or to any other authorized representative of the state of Iowa upon request.

These rules are intended to implement Iowa Code sections 13B.4 and 815.10.

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CHAPTERS 11 and 12

Reserved