

STATE PUBLIC DEFENDER[493]

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CHAPTER 1
ADMINISTRATION

493—1.1(13B) Scope. This chapter sets forth the organizational structure of the state public defender system and describes its purpose. See 493—Chapter 7 for definitions of terms used in this chapter.

493—1.2(13B) Function. The position of state public defender is established by Iowa Code chapter 13B. The state public defender is charged with the supervision of the operation of the state public defender system and with the coordination of the provision of legal defense representation of indigent persons in the state of Iowa.

493—1.3(13B) Overall organization and method of operations.

1.3(1) State public defender system. The state public defender system is administered by the state public defender. The system consists of three divisions: an administrative division, a local public defender division, and an appellate division.

1.3(2) Types of cases. Based on statutes and appropriate case law, the state public defender system provides representation for persons found to be indigent in the following types of cases:

- a. Felonies;
- b. Misdemeanors, if there exists a potential for jail sentence;
- c. Juvenile matters, including delinquency, termination of parental rights, child in need of assistance (CINA), judicial bypass proceedings, and juvenile commitments;
- d. Probation and parole revocation cases;
- e. Civil commitment proceedings under Iowa Code chapter 229A; and
- f. Other matters authorized by law.

1.3(3) State public defender. The state public defender is appointed by the governor, subject to confirmation by the senate. The state public defender is the chief administrative officer of the state public defender system and in that capacity coordinates the legal representation of indigent clients in criminal, juvenile and related cases in Iowa. The duties of the state public defender include, but are not limited to:

- a. Supervising the operations of the local public defender offices;
- b. Acting as chief legal officer of the state public defender system;
- c. Preparing and submitting the annual budget, personnel and employment policies, and preparing an annual report of the activities of the office;
- d. Determining locations for establishing future local public defender offices;
- e. Coordinating the provision of legal representation of all indigents under arrest or charged with a crime, on appeal in criminal cases, in a proceeding to obtain postconviction relief when ordered to do so by the court, against whom a contempt action is pending, in proceedings under Iowa Code chapter 229A, in juvenile cases under Iowa Code chapter 232, or in probation or parole violations under Iowa Code chapter 908;
- f. Filing with the clerk of court in each county served by a public defender a designation of which local public defender office shall receive notice of appointment of cases;
- g. Contracting with licensed attorneys in the state to provide legal services to indigent persons where there is no local public defender available to provide such services; and
- h. Reviewing claims for indigent defense services and costs and participating in hearings regarding claims.

1.3(4) Administrative division. The administrative division carries out all the duties of the state public defender including, but not limited to: budget preparation, processing claims for payment of public defender-related costs and expenses, coordinating hiring and disciplinary matters, maintaining statistics regarding case management and handling of cases, and all other administrative matters.

1.3(5) Local public defender division. The local public defender division provides legal representation at the trial level to qualified persons charged with adult crimes or in juvenile matters in counties where local public defender services are provided. The division also provides representation

to qualified persons in juvenile appeals and in civil commitment proceedings under Iowa Code chapter 229A at the trial and appellate levels.

The local public defender division consists of independent local offices and branch offices. Each independent local office is under the direct supervision of a local public defender. A local public defender may supervise a branch office. If so, the branch office may be considered part of the local office.

1.3(6) Appellate division. The appellate division is administered by the state appellate defender who reports directly to the state public defender. The appellate division provides legal representation to indigent clients in posttrial matters in the appellate courts of the state of Iowa.

1.3(7) Civil commitment unit. Rescinded IAB 12/28/11, effective 2/1/12.
[ARC 9938B, IAB 12/28/11, effective 2/1/12]

493—1.4(13B) Information. Information concerning the office of the state public defender or the state public defender system may be obtained by contacting the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087; or by telephone (515)242-6158 or fax (515)281-7289. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays. The state public defender's Web site address is <http://spd.iowa.gov>.
[ARC 9938B, IAB 12/28/11, effective 2/1/12]

493—1.5(13B) Information. Rescinded IAB 12/28/11, effective 2/1/12.

These rules are intended to implement Iowa Code chapter 13B and Iowa Code section 17A.3(1)“a.”

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CHAPTER 2
PETITIONS FOR RULE MAKING

The state public defender adopts the petitions for rule making segments of the Uniform Administrative Rules which are printed in the first volume of the Iowa Administrative Code with the following amendments:

493—2.1(17A) Petition for rule making. In lieu of the words “(designate office)”, insert “the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087”.

In lieu of the words “(AGENCY NAME)”, the heading on the petition should read:

“BEFORE THE STATE PUBLIC DEFENDER”

493—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087; telephone (515)242-6158; E-mail spd@spd.state.ia.us.

These rules are intended to implement Iowa Code section 17A.7.

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CHAPTER 3
DECLARATORY ORDERS

The state public defender adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments.

493—3.1(17A) Petition for declaratory order. In lieu of the words “(designate agency)”, insert “state public defender”. In lieu of the words “(designate office)”, insert “the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”. In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE STATE PUBLIC DEFENDER

493—3.2(17A) Notice of petition. In lieu of the words “ ___ days (15 or less)”, insert “15 days”. In lieu of the words “(designate agency)”, insert “state public defender”.

493—3.3(17A) Intervention.

3.3(1) In lieu of the words “within ___ days”, insert “within 15 days”. Strike the words “(after time for notice under X.2(17A))”. In lieu of the number “X.8(17A)”, insert “3.8(17A)”.

3.3(2) In lieu of the words “(designate agency)”, insert “state public defender”.

3.3(3) In lieu of the words “(designate office)”, insert “the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”. In lieu of the words “(designate agency)”, insert “state public defender”. In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE STATE PUBLIC DEFENDER

493—3.4(17A) Briefs. In lieu of the words “(designate agency)”, insert “state public defender”.

493—3.5(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”.

493—3.6(17A) Service and filing of petitions and other papers.

3.6(2) In lieu of the words “(specify office and address)”, insert “the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”. In lieu of the words “(agency name)”, insert “state public defender”.

3.6(3) In lieu of the words “(uniform rule on contested cases X.12(17A))”, insert “rule 481—10.12(17A)”.

493—3.7(17A) Consideration. In lieu of the words “(designate agency)”, insert “state public defender”.

493—3.8(17A) Action on petition.

3.8(1) In lieu of the words “(designate agency head)”, insert “state public defender”.

3.8(2) In lieu of the words “(contested case uniform rule X.2(17A))”, insert “rule 481—10.1(10A)”.

493—3.9(17A) Refusal to issue order.

3.9(1) In lieu of the words “(designate agency)”, insert “state public defender”.

493—3.12(17A) Effect of a declaratory order. In lieu of the words “(designate agency)”, insert “state public defender”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, section 13.

[Filed emergency 10/7/92 after Notice 8/19/92—published 10/28/92, effective 10/7/92]
[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 4
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The state public defender adopts the fair information practices segments of the Uniform Administrative Rules which are printed in the first volume of the Iowa Administrative Code with the following amendments:

493—4.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of the words “(official or body issuing these rules)”, insert “state public defender”.

493—4.3(17A,22) Requests for access to records.

4.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “state public defender”. In lieu of the words “(insert agency name and address)”, insert “Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087”.

4.3(2) Office hours. In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays”.

4.3(7) Fees.

c. Supervisory fee. In lieu of the words “(specify time period)”, insert “one hour”.

493—4.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records. In lieu of the words “(designate office)”, insert “the office of the state public defender”.

493—4.9(17A,22) Disclosures without the consent of the subject.

4.9(1) Open records are routinely disclosed without the consent of the subject.

4.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without the consent of the subject:

- a.* For a routine use as defined in rule 4.10(17A,22) or in the notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.
- d.* To the legislative services agency under Iowa Code section 2A.3.
- e.* Disclosures in the course of employee disciplinary proceedings.
- f.* In response to a court order or subpoena.

493—4.10(17A,22) Routine use. “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

1. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.
2. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
3. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

4. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

493—4.11(17A,22) Consensual disclosure of confidential records.

4.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 4.7(17A,22).

4.11(2) *Complaints to public officials.* A letter from the subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

493—4.12(17A,22) Release to subject.

4.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 4.6(17A,22). The agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

d. Others authorized by law.

4.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the state public defender may take reasonable steps to protect confidential information relating to another subject.

493—4.13(17A,22) Availability of records.

4.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

4.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Records which are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122.11, the rules of evidence, the Code of Professional Responsibility, and case law. Attorney work product includes an itemization of work performed on an interim indigent defense fee claim form or claims resulting from a mistrial.

g. Criminal investigative reports. (Iowa Code section 22.7(5))

h. Any other records considered confidential by law.

493—4.14(22) Personally identifiable information. The state public defender maintains systems of records which contain personally identifiable information.

4.14(1) By authority of Iowa Code chapter 13B, the appellate defender division maintains information and records relating to criminal and postconviction relief cases that are being appealed. Records contain names and identifying numbers of persons involved in these cases. Case information is stored in a data processing system and may be compared with information in any data processing system. By authority of Iowa Code section 910A.13, the names of child victims shall not be disclosed.

Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

4.14(2) *Litigation files.* Litigation files or records contain information regarding litigation or anticipated litigation, which include judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

4.14(3) *Contracts.* Contractual agreements are maintained by the state public defender. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address, and social security number of the contracting attorney. Other information in these records may include the proposal of the contracting attorney, budget figures, correspondence, and business information. Personally identifiable information is contained in a data processing system and may be compared with information in any data processing system.

4.14(4) *Personnel files.* Personnel files contain information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

493—4.15(17A,22) Other groups of records. Other groups of records are maintained by the state public defender other than the records described in rule 4.14(22). These records are routinely available to the public; however, the agencies' files may contain confidential information. The records may contain information about individuals. All records are stored on paper and in some cases in automated data processing systems.

4.15(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is available for public inspection and is not stored in an automated data processing system.

4.15(2) *Commission records.* Agendas, minutes, and materials presented to the indigent defense advisory commission are available from the office of the state public defender, except those records concerning closed sessions exempt under Iowa Code section 21.5(4). Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

4.15(3) *Statistical reports.* Periodic reports on the state public defender system and the delivery of indigent defense services are available from the office of the state public defender.

4.15(4) *Address lists.* Rescinded IAB 12/28/11, effective 2/1/12.
[ARC 9938B, IAB 12/28/11, effective 2/1/12]

These rules are intended to implement Iowa Code sections 17A.3, 22.7 and 22.11.

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[Filed ARC 9938B (Notice ARC 9817B, IAB 11/2/11), IAB 12/28/11, effective 2/1/12]

CHAPTER 5
AGENCY PROCEDURE FOR RULE MAKING

The state public defender adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments.

493—5.3(17A) Public rule-making docket.

5.3(2) *Anticipated rule making.* In lieu of the words “(commission, board, council, director)”, insert “state public defender”.

493—5.4(17A) Notice of proposed rule making.

5.4(3) *Copies of notices.* In lieu of the words “(specify time period)”, insert “one calendar year”.

493—5.5(17A) Public participation.

5.5(1) *Written comments.* Strike the words “(identify office and address) or”.

5.5(5) *Accessibility.* In lieu of the words “(designate office and telephone number)”, insert “the office of the state public defender at (515)242-6158”.

493—5.6(17A) Regulatory analysis.

5.6(2) *Mailing list.* In lieu of the words “(designate office)”, insert “the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”.

493—5.10(17A) Exemptions from public rule-making procedures.

5.10(2) *Categories exempt.* In lieu of the words “(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)”, insert the following:

“a. Rules which are mandated by federal law or regulation in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules;

“b. Rules which implement recent legislation when a statute provides for an effective date which does not allow for the usual notice and public participation requirements;

“c. Rules which confer a benefit or remove a restriction on licensees, the public or some segment of the public;

“d. Rules which are necessary because of imminent peril to the public health, safety or welfare; and

“e. Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules.”

493—5.11(17A) Concise statement of reasons.

5.11(1) *General.* In lieu of the words “(specify the office and address)”, insert “the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087”.

493—5.13(17A) Agency rule-making record.

5.13(2) *Contents.*

c. In lieu of the words “(agency head)”, insert “state public defender”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 6
UNIFORM WAIVER AND VARIANCE RULES

493—6.1(13B,17A) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the state public defender. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the state public defender.

493—6.2(13B,17A) Interpretive rules. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the state public defender does not possess delegated authority to bind the courts to any extent with its definition.

493—6.3(13B,17A) Compliance with statute. The state public defender shall not grant a petition for waiver or variance from a rule unless a statute or other provision of law has delegated authority to the state public defender sufficient to justify that action and the waiver or variance is consistent with the statute or other provision of law. No waiver or variance may be granted from a requirement that is imposed by statute, unless the statute itself specifically authorizes that action. Any waiver or variance must be consistent with statute.

493—6.4(13B,17A) Criteria for waiver or variance. At the sole discretion of the state public defender, the state public defender may issue an order, in response to a completed petition or on the state public defender's own motion, granting a waiver or variance from a rule adopted by the state public defender, in whole or in part, as applied to the circumstances of a specified person or a specific and narrowly drawn class of persons if the state public defender finds based on clear and convincing evidence that:

1. The application of the rule to the petitioner would pose an undue hardship on the person or class of persons for whom the waiver or variance is requested;
2. The waiver or variance from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

493—6.5(13B,17A) Filing of petition. A petition for a waiver or variance must be submitted in writing to the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087. If the petition relates to a pending contested case, the petition shall also be filed in the contested case proceeding.

493—6.6(13B,17A) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver or variance is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver or variance is requested.
3. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
4. The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver or variance.
5. A history of any prior contacts between the state public defender and the petitioner relating to the regulated activity, representation or other assigned function of the state public defender that would be affected by the proposed waiver or variance, including a description of each regulated activity, representation or other assigned function of the state public defender, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, representation or other assigned function of the state public defender within the last five years.

6. Any information known to the requester regarding the state public defender's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the state public defender with information relevant to the waiver or variance.

493—6.7(13B,17A) Additional information. Prior to issuing an order granting or denying a waiver or variance, the state public defender may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the state public defender may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the state public defender or state public defender's designee.

493—6.8(13B,17A) Notice. The state public defender shall acknowledge a petition upon receipt. The state public defender shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the state public defender may give notice to other persons. To accomplish this notice provision, the state public defender may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the state public defender attesting that notice has been provided.

493—6.9(13B,17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver or variance of a rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver or variance only when the state public defender so provides by rule or order or is required to do so by statute.

493—6.10(13B,17A) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

6.10(1) State public defender discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the state public defender upon consideration of all relevant factors.

6.10(2) Burden of persuasion. The petitioner has the burden of persuasion when a petition is filed for a waiver or variance from a state public defender rule. The standard of proof is clear and convincing evidence.

6.10(3) Special waiver or variance rules not precluded. This chapter shall not preclude the state public defender from granting waivers or variances in other contexts or on the basis of other standards if a statute authorizes the state public defender to do so and the state public defender deems it appropriate to do so.

6.10(4) Administrative deadlines. When the rule from which a waiver or variance is sought establishes administrative deadlines, the state public defender shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

6.10(5) Conditions. The state public defender may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means and in compliance with the following provisions:

- a. Each petition for a waiver or variance shall be evaluated by the state public defender based on the unique, individual circumstances set out in the petition;
- b. A waiver or variance, if granted, shall be drafted by the state public defender so as to provide the narrowest exception possible to the provisions of the rule;
- c. The state public defender may place on a waiver or variance a condition that the state public defender finds desirable to protect the public health, safety, and welfare;
- d. A waiver or variance shall not be permanent, unless the petitioner can show that a temporary waiver or variance would be impracticable; and
- e. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the state public defender, a waiver or variance may be renewed if the state public defender finds that all of the factors set out in rule 6.4(13B,17A) remain valid.

6.10(6) *Time for ruling.* The state public defender shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the state public defender has the discretion to wait until the contested case is resolved before entering an order on the petition for waiver or variance.

6.10(7) *When deemed denied.* Failure of the state public defender to grant or deny a petition within the required time period shall be deemed a denial of that petition by the state public defender.

6.10(8) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

493—6.11(13B,17A) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the state public defender shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the state public defender’s office.

Twice each year the state public defender must prepare a report that:

1. Identifies the rules for which a waiver or variance has been granted or denied;
2. Identifies the number of times a waiver or variance was granted or denied for each rule;
3. Includes a citation to the statutory provisions implemented by these rules; and
4. Includes a general summary of the reasons justifying the state public defender’s actions.

493—6.12(13B,17A) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The state public defender may at any time cancel a waiver or variance upon appropriate notice and hearing if the state public defender finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

493—6.13(13B,17A) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

493—6.14(13B,17A) Defense. After the state public defender issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

493—6.15(13B,17A) Appeals. Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and state public defender rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

493—6.16(13B,17A) Sample petition for waiver or variance.

BEFORE THE STATE PUBLIC DEFENDER	
Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}
	No. _____ PETITION FOR WAIVER

Include the following information in the petition for waiver where applicable and known:

1. Provide the petitioner’s (the person who is asking for the waiver or variance) name, address and telephone number.
2. Describe and cite the specific rule from which a waiver or variance is requested.
3. Describe the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.
4. Explain the important facts that the petitioner believes justify the waiver or variance. Include in your explanation (a) why application of the rule would pose an undue hardship to the petitioner; (b) why granting the waiver or variance would not prejudice the substantial legal rights of any person; (c) state whether the provisions of a rule subject to this petition are specifically mandated by statute or another provision of law; and (d) state whether public health, safety or welfare will be affected if the requested waiver or variance is granted.
5. Provide history of prior contacts between the state public defender and the petitioner relating to the regulated activity, license, audit, investigation, inspection or representation that would be affected by the waiver or variance. In that history, include a description of each affected regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the state public defender, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the state public defender within the last five years.
6. Provide information known to the petitioner regarding the state public defender’s treatment of similar cases.
7. Provide the name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.
8. Provide the name, address and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver or variance.
9. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the state public defender with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner’s signature		Date
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These rules are intended to implement Iowa Code section 17A.9A.
 [Filed 1/31/02, Notice 12/26/01—published 2/20/02, effective 4/1/02]

CHAPTER 7
DEFINITIONS

493—7.1(13B,815) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

“*Affidavit of financial status*” means a full written disclosure of all income, assets, liabilities, dependents, and other information required to determine if an applicant qualifies for legal assistance by an appointed attorney.

“*Appeal*” means a proceeding, other than an interlocutory appeal, application for discretionary review, or juvenile court petition on appeal, filed with the Iowa supreme court.

“*Applicant*” means a person requesting legal assistance by an appointed attorney.

“*Appointed attorney*” means an attorney appointed by the court to represent an indigent person.

“*Assets*” means all resources or possessions of the applicant.

“*Attorney*” means an individual licensed to practice law in Iowa.

“*Attorney time*” means the total time the attorney appointed to a case spends on in-court time, out-of-court time, and in travel time attributable to that specific case. Attorney time does not include time spent performing clerical activities.

“*Case*” means all charges or allegations arising from the same transaction or occurrence or contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding. A probation violation or contempt proceeding is a case separate from the case out of which the violation or contempt arose.

“*Child*” or “*juvenile*” means a person so defined in Iowa Code chapter 232.

“*Claim*” means an application or request for payment.

“*Claimant*” means an appointed attorney or other person seeking reimbursement of costs or fees payable from the indigent defense fund.

“*Claims for other professional services*” means claims submitted by nonattorneys, including but not limited to investigators, foreign language interpreters, experts, certified shorthand reporters, and persons conducting medical or psychological evaluations.

“*Clerical activities*” means activities including, but not limited to, opening files; closing files; making photocopies; mailing; opening mail; sending cover letters; transmitting copies of documents to a client, other party or clerk of court; sending a fax; picking up or delivering documents, internal file memos or instructions to staff; scheduling; or billing.

“*Contract*” means a written agreement between the state public defender and an attorney to provide legal services to an indigent person. The contract may be for the provision of legal services at either the trial court level or the appellate court level.

“*County base*” means the amount of expenses in juvenile cases for which the county remains liable pursuant to Iowa Code section 232.141(2).

“*Court-appointed attorney*” means an attorney appointed by the court to represent an indigent person.

“*Date of service*” means, for adult fee claims, the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of mistrial, the date a warrant was issued for the client, or the date of a court order authorizing the attorney’s withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, mistrial or the issuance of a warrant. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim claims or claims for professional services performed by nonattorneys, “date of service” means the last date on the itemization. For juvenile claims, “date of service” means the date of filing of an order as a result of the dispositional hearing or most recent review hearing, the date on which the client ceased to be a party in the CINA case, the date of a court order authorizing the attorney’s withdrawal from a case that was not dismissed, the date jurisdiction is waived to adult court, the date on which venue is changed, or the date of dismissal. For noncontract appellate claims, “date of service” means the date on which the procedendo issues or the case is dismissed. For contract appellate claims, “date of service” means the date on which the case was dismissed, the date of a court order authorizing the attorney’s withdrawal prior to the filing

of the page-proof brief, the date on which the proof brief was filed, or the date on which the procendo was issued. For claims filed as a result of a notice of action letter, “date of service” means the date of the notice of action letter. For claims filed as a result of a court order after hearing for review of the fee claim, “date of service” means the date of the order.

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

“*Expert witness*” or “*expert*” means a person who is retained to render an opinion regarding an issue relevant to a case, whether or not the person actually testifies in court.

“*Family*” or “*household*” means the applicant, applicant’s spouse, including a common-law spouse, and applicant’s children living in the same residence.

“*Fee limitations*” means the attorney fee limitations established by the state public defender for specific classes of cases as specified in rule 493—12.6(13B,815), together with out-of-pocket expenses approved by the state public defender, whether submitted by a public defender, by an appointed attorney pursuant to 493—Chapter 12, or by another professional pursuant to 493—Chapter 13.

“*Fees*” means the consideration paid to an appointed attorney to represent an indigent person.

“*Fiscal year*” means the 12-month period beginning July 1 and ending June 30.

“*Governmental assistance program*” means any public assistance program from which a person is receiving assistance.

“*Income*” means any money received from any source, including but not limited to remuneration for labor, products or services; money received from governmental assistance programs; tax refunds; prize winnings; pensions; investments; and money received from any other source.

“*In-court time*” means time spent by an appointed attorney engaged before a judge or jury including, but not limited to, arraignments, bail hearings, pretrial conferences, pretrial motion hearings, evidentiary hearings, jury selection, trial, plea proceedings, posttrial hearings, and probation violation hearings. In-court time does not include time spent at foster care review board hearings, staffings, family drug court, or any other meetings with other state agencies.

“*Indigent*” means a person entitled to an appointed attorney pursuant to Iowa Code section 815.9.

“*Juvenile proceeding*” means a case in juvenile court wherein the attorney acts as guardian ad litem for the child in interest or provides legal counsel for the child, parent, guardian or custodian.

“*Liabilities*” means all living, business or farming expenses and fixed debts.

“*Local public defender*” means an attorney in the trial division of the state public defender system who performs the duties outlined in Iowa Code section 13B.9.

“*Notice of action letter*” means a letter sent by the state public defender to notify the claimant that the claimant’s fees or expenses were reduced.

“*Out-of-court time*” means time actually spent by the attorney appointed to the case in drafting documents, case preparation, depositions and other discovery, client or witness interviews, investigation, research, brief drafting, conferences or negotiations with opposing counsel or the court, reviewing records, and other productive case-related time that is not in-court time or travel time. Out-of-court time does not include clerical activities.

“*Paralegal time*,” which is payable from the indigent defense fund, means time spent in a Class A felony case at the trial court level in which only one attorney is appointed preparing pleadings and motions, reviewing transcripts, performing legal research, and interviewing witnesses and may include time spent in court assisting the appointed attorney. Paralegal time does not include typing, scheduling, answering the telephone, talking on the telephone except when interviewing witnesses, or other clerical activities or activities that duplicate work performed by the appointed attorney. Paralegal time is not payable in any other cases or in Class A felony cases in which two attorneys are appointed.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or association, or any legal entity.

“*Poverty income guidelines*” means the annual poverty income guidelines established by the U.S. Department of Health and Human Services (DHHS).

“*Rules of criminal procedure*” means the rules prescribed by the supreme court that govern criminal actions and proceedings in all courts in the state.

“*State public defender*” means the state public defender appointed pursuant to Iowa Code chapter 13B and those other persons authorized to act on behalf of the state public defender.

“*State public defender system*” means a system for providing defense services within the state by means of a centrally administered organization having a full-time staff.

“*Timely claim*” means a claim submitted to the state public defender for payment within 45 days of the date of service in a case in which the attorney was appointed after June 30, 2004. A claim not submitted within 45 days of the date of service shall be deemed a timely claim if the delay in submitting the claim was due to the death of the claimant or due to the extended illness or hospitalization of the claimant within 5 days before the expiration of the 45-day limitation. A timely claim returned to the claimant for additional information shall continue to be deemed timely only if resubmitted with the required information within 45 days of being returned by the state public defender.

“*Travel time*,” which is payable from the indigent defense fund, means reasonable and necessary time spent by the attorney for travel under one of the following circumstances:

1. To and from the scene of a crime;
2. To and from the location of a pretrial hearing, trial, or posttrial hearing, if the venue has been changed from the county in which the crime occurred or if the location of the court hearing has been changed to a different county for the convenience of the court;
3. To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
4. To and from the place of detention of a client in a case if the place of detention is other than the county seat of the county in which the action is pending;
5. To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;
6. To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute and court order to visit the placement and the placement is outside the state of Iowa;
7. To and from a court of appeals or supreme court argument not held in Des Moines;
8. To and from the location where the deposition of an expert witness is being taken; or
9. Other travel for which authorization is obtained from the state public defender.

“*Written*” as used in these rules may include electronically transmitted communication to the extent permitted by rules of the state public defender.

This rule is intended to implement Iowa Code chapters 13B and 815.

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¹ 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.

CHAPTERS 8 and 9
Reserved

CHAPTER 10
ELIGIBILITY GUIDELINES FOR COURT-APPOINTED COUNSEL

[Prior to 2/20/02, see 493—Chapter 13]

493—10.1(815) Eligibility. The eligibility of any person for legal assistance by an appointed attorney shall be determined in accordance with Iowa Code section 815.9 and with the guidelines set forth in these rules. Any person who is eligible for appointed counsel shall be required by the court to repay all or a part of the cost of the applicant's legal assistance.

493—10.2(815) Income guidelines. Annually, the state public defender shall provide information to the court showing the most recently revised poverty income guidelines.

493—10.3(815) Designation of eligibility reviewer. The chief judge of each judicial district may designate the person(s) or entity to evaluate the eligibility of a person for legal assistance by an appointed attorney. However, the decision to appoint counsel remains with the court.

493—10.4(815) Application. Any person claiming to be entitled to legal representation by an appointed attorney shall have an indigency evaluation before being provided legal representation. The applicant should provide information on an affidavit of financial status. This form will be prescribed by the state public defender, but any form containing substantially the same information will be accepted.

10.4(1) Affidavit. The applicant shall provide information required by the affidavit of financial status under penalty of perjury.

10.4(2) Family. The applicant shall provide information that accurately represents the number of family members who are supported by or live with the applicant.

10.4(3) Income. The applicant shall provide information that accurately represents the total gross income received or reasonably anticipated to be received by the applicant.

10.4(4) Household income. The applicant shall provide information that accurately represents the gross income of the household in which the applicant lives. The income of a spouse need not be included if the spouse is the alleged victim of the offense charged. The income of a child member of the household need not be included unless the legal representation is sought for the child in a delinquency proceeding.

10.4(5) Assets. The applicant shall provide information that accurately represents the total assets owned, in whole or in part, by the applicant. This includes the requirement to disclose interest in real property and tangible and intangible personal property.

10.4(6) Liabilities. The applicant shall provide information that accurately represents the total monthly debts and expenses for which the applicant is responsible. Child support and alimony payments should be included only when payments have been made in a timely manner.

10.4(7) Nature of proceedings. In a criminal case, the affidavit of financial status shall contain a statement of the charge(s) against the defendant. In a juvenile or civil case, a statement of the nature of the proceedings shall be included.

10.4(8) Child applicant. If the applicant is a child, the child's parent, guardian or custodian shall complete the affidavit of financial status. The affidavit of financial status shall include a statement of the income, assets and liabilities of the person or persons having a legal obligation to support the child.

10.4(9) Additional information. The applicant shall provide such additional information as may be required by the court to determine the applicant's eligibility for appointed counsel. The applicant has a continuing duty to update information provided in the affidavit of financial status to reflect changes in the information previously provided.

493—10.5(815) Evaluation of affidavit of financial status. In determining whether counsel should be appointed to represent the applicant, the court should consider the following:

10.5(1) Family size. The total size of the applicant's household shall be used to determine eligibility for appointed counsel.

10.5(2) Household income. The applicant's income, or the combined income of the applicant and the applicant's spouse if they are living in the same residence, shall be used in determining an applicant's household income, subject to the following:

a. The income of the applicant's spouse shall not be considered if the spouse is the alleged victim of the offense charged.

b. The income of a child shall not be considered unless the child is requesting representation in a delinquency case or unless the child is under a conservatorship or is the beneficiary of trust proceeds.

c. In a juvenile proceeding, the income of both parents shall be considered in determining whether the child is entitled to appointed counsel. If a child's parents are divorced, the household income of each parent shall be considered separately.

10.5(3) DHHS poverty income guidelines. The applicant's family size and household income shall be compared to the DHHS poverty income guidelines to determine whether the applicant's household income is 125 percent or less of the poverty level; between 125 percent and 200 percent of the poverty level; or 200 percent or greater of the poverty level.

10.5(4) Income 125 percent or less of the poverty level. If the applicant's household income is 125 percent or less of the poverty level, the applicant is entitled to appointed counsel unless the court determines that the applicant is able to pay for the cost of an attorney to represent the applicant on the pending charge. In determining whether the applicant is able to pay for the cost of an attorney, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

10.5(5) Income between 125 percent and 200 percent of the poverty level. If the applicant's household income is greater than 125 percent, but less than 200 percent of the poverty level, the applicant is not entitled to appointed counsel unless the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial financial hardship. In determining whether substantial financial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

10.5(6) Income 200 percent or greater of the poverty level. If the applicant's household income is 200 percent or greater of the poverty level, the applicant is not entitled to appointed counsel unless the applicant is charged with a felony and the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial financial hardship. In determining whether substantial financial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

10.5(7) Applicability to juvenile cases. In evaluating whether to appoint counsel for a parent in a juvenile proceeding, the court shall consider not only the applicant's income, but also the availability of any assets subject to execution and the nature of the proceeding in determining whether the parent is financially unable to employ counsel.

493—10.6(815) Payment procedures.

10.6(1) Payment to clerk. An applicant who has been determined eligible for appointed counsel shall pay to the office of the clerk of the district court any sums ordered by the court. This order for payment may be entered during or following the pendency of the action.

10.6(2) Wage assignments. If the applicant is employed, the applicant shall execute an assignment of the applicant's wages. A portion of the applicant's wages, as determined by the court, shall be paid to the office of the clerk of the district court for recovery of attorney fees. This assignment of wages may be entered during or following the pendency of the action.

493—10.7(815) Forms. The state public defender shall promulgate forms to be used in court proceedings, including an Adult Affidavit of Financial Status, Juvenile Affidavit of Financial Status, Wage Assignment, and such other forms as the state public defender deems appropriate. Such forms

shall be available at the administrative office of the state public defender and published on the state public defender's Web site at <http://spd.iowa.gov>.

[ARC 9938B, IAB 12/28/11, effective 2/1/12]

These rules are intended to implement Iowa Code section 815.9.

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CHAPTER 11
ATTORNEY FEE CONTRACTS

493—11.1(13B) Scope. This chapter sets forth the rules for private attorneys entering into contracts for indigent defense legal services with the state public defender. See 493—Chapter 7 for definitions of terms used in this chapter.

493—11.2(13B) Contracts. An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons at either the trial level or the appellate level. Nothing in this rule is intended to imply that an attorney may not have both a contract for trial court work and a contract for appellate work.

11.2(1) To be eligible to contract with the state public defender, an attorney must be licensed to practice law in the state of Iowa.

11.2(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, by telephoning (515)242-6158, or on the Web at <http://spd.iowa.gov>.

[ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11]

493—11.3(13B) Notice of proposed contract. The state public defender will give notice to attorneys of the availability of contracts for indigent defense legal services in a manner reasonably calculated to make attorneys aware of the availability of the contracts.

493—11.4(13B) Contract approval or denial.

11.4(1) The state public defender or a person designated by the state public defender may confer with judges, attorneys and others with knowledge of a potential contracting attorney's competence, effectiveness, trustworthiness, and ability to provide services to eligible individuals, and may conduct such additional investigation as deemed warranted in the sole discretion of the state public defender. The information received may be taken into consideration in determining whether it would be in the best interests of the state to enter into an initial or renewal contract with the potential contracting attorney.

11.4(2) The state public defender or a person designated by the state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to determine the attorney's qualifications and ability to perform the conditions of an initial or renewal contract.

11.4(3) The state public defender or a person designated by the state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to establish under an initial or renewal contract the types of cases the contracting attorney will handle and the geographic area in which the cases will be handled.

11.4(4) The state public defender may decline to award an initial or renewal contract to a proposed contracting attorney if the state public defender determines that the contract would not be in the best interests of the state, as described in rule 493—11.8(13B). The state public defender may limit the contract to specific types of cases, a specified geographic area, or both. The state public defender shall give written notice of this action to the attorney. The attorney may seek reconsideration of this decision in the manner prescribed in rule 493—11.9(13B).

11.4(5) Nothing contained in this rule shall obligate the state public defender to enter into an initial or renewal contract if the state public defender determines that it is not in the best interests of the state to enter into such contract.

493—11.5(13B) Contract elements.

11.5(1) Contract elements. The state public defender may enter into a contract with a private attorney for the provision of legal services to indigents in cases at the trial court level. The state public defender may also enter into a contract with a private attorney for the provision of legal services to indigents in cases at the appellate level.

11.5(2) A contract can only be in force and effect when a contract acceptance form is signed by the contracting attorney and approved by the state public defender.

11.5(3) The contracting attorney shall be an independent contractor and shall not be an agent or employee of the state of Iowa. The attorney shall exercise the attorney's best independent professional judgment on behalf of clients to whom the attorney is assigned.

11.5(4) After a contract has been awarded, the state public defender shall notify the clerks of court of the counties in which the contracting attorney has requested placement on the list of attorneys willing to provide services in those counties.

11.5(5) A contract with a private attorney should cover, but not be 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;
- j.* A description of the manner of disposition of ongoing obligations following termination.

11.5(6) Compensation. Unless the contract provides for a different rate or manner of payment, the attorney shall be compensated as set forth in rule 493—12.4(13B,815) for work performed pursuant to a contract for services at the trial court level and rule 493—12.5(13B,815) for work performed pursuant to a contract for services at the appellate level.

11.5(7) Contract form. Unless the attorney and state public defender agree in writing to vary the terms of the contract between them, the terms contained in the Legal Services Contract Indigent Defense Casework No. 493-10 shall constitute the agreement between the parties for the provision of legal services at the trial court level. The terms of Legal Services Contract Appellate Casework No. 493-10A shall constitute the agreement between the parties for the provision of legal services at the appellate level.

11.5(8) No guarantee of appointments. An attorney under contract with the state public defender is not guaranteed any minimum number of court appointments. The process by which attorneys under contract with the state public defender are appointed to specific cases is governed by Iowa Code chapters 814 and 815. In making appointment decisions, the court may take into consideration any factor it deems appropriate including, but not limited to, the experience of the attorney and the difficulty of the case pursuant to Iowa Code section 815.10(4). The state public defender shall retain sole authority to determine the length of each contract or contract renewal.

[ARC 8090B, IAB 9/9/09, effective 9/15/09; ARC 8372B, IAB 12/16/09, effective 1/20/10; ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11]

493—11.6(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 and may conduct such additional investigation as is described in rule 493—11.4(13B). 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 contract and returning it 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 seek reconsideration of this decision in the manner prescribed in rule 493—11.9(13B).

493—11.7(13B) Termination.

11.7(1) Termination at will. Either the state public defender or the contracting attorney may terminate a contract upon 30 days' advance written notice to the other party for any reason or no reason. Such termination may affect the entire contract, or may relate solely to a particular county or geographical area, or particular type of case.

11.7(2) Termination for cause.

a. A contract for indigent defense shall automatically terminate without notice upon the suspension or revocation of the attorney's license to practice law in the state of Iowa.

b. The state public defender may issue a notice of default based on any of the grounds described in rule 493—11.8(13B). A notice of default shall state the grounds of default and, if feasible, request that the contracting attorney remedy the default within 10 days of the date of the notice. If the events triggering the notice of default continue to be evidenced more than 10 days beyond the date of written notice, the state public defender may immediately terminate the contract without further notice by issuing a notice of termination. An attorney may seek reconsideration of the state public defender's decision to terminate a contract based on the attorney's default in the manner described in rule 493—11.9(13B).

493—11.8(13B) Grounds to deny or terminate a contract. In determining whether the award, renewal, or termination of a contract is in the best interests of the state, the state public defender may take into consideration factors such as, but not limited to, the following:

1. The attorney's compliance with the terms of an existing or prior contract to represent indigent persons;
2. Any form of dishonesty or deception directed to judicial officials, the state public defender, indigent persons, other clients, or any other person in the practice of law;
3. Unprofessional or unethical conduct, or other act or omission that is or may be detrimental or harmful to indigent representation;
4. An attorney's failure to attend, or untimely attendance at, hearings, depositions, or other case-related proceedings;
5. An attorney's failure to abide by a court order, applicable statutes or administrative rules governing indigent representation, or local or state rules of procedure applicable to the cases in which the attorney has been appointed;
6. Repetitive, willful, deceptive, unexplained or uncorrected errors in claims for fees;
7. Disciplinary action against a legal or other professional license or conviction of a crime in any jurisdiction when the disciplinary action or conviction implicates an attorney's honesty, trustworthiness, or competence to practice law, or is otherwise related to the practice of indigent defense;
8. Use of alcohol or controlled substances during court proceedings or in a manner impairing competent performance;
9. Judicial orders or rulings finding that an attorney engaged in untruthful, incompetent, unprofessional, or unethical behavior in the practice of indigent defense, submission of fee claims, or otherwise in the practice of law; or
10. Any other behavior implicating an attorney's competence, effectiveness, or trustworthiness in the practice of indigent defense.

493—11.9(13B,17A) Reconsideration.

11.9(1) Written notice. A request for reconsideration is perfected by giving written notice of the request for reconsideration to the state public defender within ten business days of the date of mailing of the notice of denial of an initial or renewal contract, or notice of termination following issuance of a notice of default. A request for reconsideration must be in writing and must specify the factual or legal errors the attorney contends were made by the state public defender. The attorney may provide such additional information, explanation or documentation as the attorney believes would be relevant to the reconsideration decision. The request for reconsideration is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender.

11.9(2) Exhaustion of administrative remedies. A request for reconsideration of the state public defender's decision to deny or terminate a contract for cause is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

11.9(3) Informal conference. Upon receipt of a request for reconsideration, the state public defender or a person designated by the state public defender may schedule an informal conference with the attorney if in the state public defender's judgment such a conference may foster resolution of the dispute. To the extent that the participation of the state public defender or a person designated by the state public defender in an informal conference could be considered personal investigation as that term is used in Iowa Code section 17A.17, an attorney agreeing to participate in an informal conference waives the right to seek to disqualify the state public defender or a person designated by the state public defender from acting as presiding officer or advising the presiding officer in a subsequent contested case proceeding based solely on the ground of personal investigation during an informal conference. The attorney does not waive the right to raise any other type of disqualification.

11.9(4) Reconsideration decision. The state public defender shall issue a written reconsideration decision which may uphold, reverse, or modify the initial decision to deny or terminate a contract. The reconsideration decision is final agency action, unless an attorney timely requests a contested case hearing pursuant to rule 493—11.10(13B,17A).

493—11.10(13B,17A) Contested case hearing.

11.10(1) Written request for contested case hearing. An attorney who is aggrieved by a reconsideration decision and who desires to contest the factual basis for the reconsideration decision shall request a contested case hearing within 10 days of the date the reconsideration decision is mailed. The request for contested case hearing shall identify the fact issues in dispute and any other claimed error, and shall state the manner in which the state public defender is alleged to have relied upon erroneous facts.

11.10(2) Procedures. The request for contested case hearing is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender. A contested case hearing shall be conducted pursuant to the procedures set forth in 481 IAC Chapter 10.

11.10(3) A timely request for contested case hearing is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

11.10(4) Presiding officer. The state public defender or a person designated by the state public defender may preside over the contested case hearing and issue a final decision, or the state public defender may request that the hearing be conducted by an administrative law judge from the department of inspections and appeals who shall issue a proposed decision subject to review by or appeal to the state public defender. If the notice of hearing does not identify an administrative law judge as the presiding officer, an attorney may file a written request that an administrative law judge serve as the presiding officer at hearing. Such request must be filed within 20 days after service of the notice of hearing by certified mail, return receipt requested, to the attorney's last-known address. The state public defender may deny the request only upon a finding that one or more of the following apply:

- a. There is a compelling need to expedite issuance of a final decision.
- b. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- c. Funds are unavailable to pay the costs of an administrative law judge and possible resulting interagency appeal.
- d. The request was not timely made.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

493—11.11(13B,17A) Judicial review.

11.11(1) The final decision by the state public defender to deny an attorney's request to enter into an initial or renewal contract for indigent representation or to terminate such a contract for cause following issuance of a notice of default is reviewable pursuant to Iowa Code chapter 17A.

11.11(2) Nothing in this rule shall prevent the informal resolution of a decision to deny or terminate an initial or renewal contract through mutually agreeable settlement at any stage of the proceeding.

These rules are intended to implement Iowa Code chapter 13B.

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CHAPTER 12
CLAIMS FOR INDIGENT DEFENSE SERVICES

493—12.1(13B,815) Scope. This chapter sets forth the rules for submission, payment and court review of indigent defense fee claims. See 493—Chapter 7 for definitions of terms used in this chapter.

12.1(1) The state public defender will pay from the indigent defense fund attorney fees and costs for the following types of cases: commitment of sexually violent predators under Iowa Code chapter 229A; contempts; postconviction relief proceedings to the extent authorized under Iowa Code chapter 822; juvenile justice under Iowa Code section 232.141(3)(c); guardians ad litem for children in juvenile court under Iowa Code chapter 600 or respondents under Iowa Code chapter 600A; fees for appellate attorneys under Iowa Code section 814.11; fees to attorneys under Iowa Code section 815.7; fees for court-appointed counsel under Iowa Code section 815.10; violation of probation or parole under Iowa Code chapter 908; indigent's right to transcript on appeal under Iowa Code section 814.9; indigent's application for transcript in other cases under Iowa Code section 814.10; and special witnesses for indigents under Iowa Code section 815.4.

12.1(2) The state public defender will not pay for the costs for any type of administrative proceeding or any other proceeding under Iowa Code chapter 598, 600, 600A, 633, or 915 or other provisions of the Iowa Code.

12.1(3) The Iowa Code requires the state public defender to approve only those indigent defense fee claims that are reasonable and appropriate under applicable statutes. In exercising this duty, the state public defender publishes rules and makes judgments considering what is statutorily permitted, fair for claimants, fair for indigent clients (who, by law, are required to reimburse the state for the costs of their defense), and consistent with good stewardship of public appropriations.

493—12.2(13B,815) Submission and payment of attorney claims.

12.2(1) Court-appointed attorneys shall submit written claims to the state public defender for review, approval and payment. These claims shall include the following:

a. A completed fee claim on a form promulgated by the state public defender. Adult fee claims, including misdemeanor appeals to district court, postconviction relief and applications for discretionary review or applications for interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and applications for interlocutory appeals, must be submitted on a Juvenile form. Appellate fee claims, including claims for work performed after the granting of an application for discretionary review or for interlocutory appeal, or if full briefing is ordered following a petition on appeal, must be submitted on an Appellate form. The claim forms may be downloaded from the state public defender Web site: <http://spd.iowa.gov>. Claims submitted that do not comply with the instructions on the Web site may be returned to the claimant for additional information and resubmission.

b. A copy of all orders appointing the attorney to the case.

(1) The appointment order must be signed by the court and either dated by the court or have a legible file-stamp.

(2) If, at the time of appointment, the attorney does not have a contract to represent indigent persons in the type of case and the county in which the action is pending, the appointment order must include either a finding that no attorney with a contract to represent indigent persons in that specific type of case and that county is available or a finding that the state public defender was consulted and consented to the appointment.

(3) Claims for probation or parole violations and contempt actions are considered new cases, and the attorney must submit a copy of an appointment order for these claims. Appointment orders in parole violation cases to which the attorney was appointed on or after May 5, 2005, must also contain the following findings:

1. The alleged parole violator requests appointment of counsel;
2. The alleged parole violator is indigent as defined in Iowa Code section 815.9;

3. The alleged parole violator, because of lack of skill or education, would have difficulty in presenting the alleged violator's version of a disputed set of facts, particularly when presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence; and

4. The alleged parole violator has a colorable claim that the alleged violation has not been committed, or there are substantial reasons which justify or mitigate the violation and make revocation inappropriate.

(4) If the venue is changed in a juvenile case, an order appointing the attorney in the new county must be submitted.

(5) An appointment order is not necessary for trial counsel to request or resist an interlocutory appeal or an application for discretionary review.

(6) An appointment order is not necessary if the state public defender determines the appointment order is unnecessary.

c. A copy of any application and court order authorizing the attorney to exceed the attorney fee limitations.

d. A copy of any court order that affects the amount to be paid or the client's right to counsel.

e. An itemization detailing all work performed on the case for which the attorney seeks compensation.

(1) The itemization must separately state the date and amount of time spent on each activity. Time may be reported in either tenths or hundredths of an hour on the itemization but must be recorded in tenths of an hour on the claim form. Time listed in hundredths of an hour on the claim form will be reduced to the nearest tenth of an hour.

(2) The itemization shall separately designate time claimed for in-court time, out-of-court time, paralegal time and travel time.

(3) The itemization must be in chronological order.

(4) The itemization must be typed in at least 10-point type on 8½" × 11" paper.

(5) If the itemization does not indicate the date of the disposition of the case, a copy of the dispositional order must be attached to the claim.

f. If the attorney was privately retained to represent the client prior to appointment, a copy of any representation agreement, written notice of the dollar amount paid to the attorney, and an itemization of services performed and how any funds provided were spent during the period prior to the court appointment. The state public defender will review the amount paid and hours spent before and after the court appointment in determining the appropriate attorney compensation on the claim.

12.2(2) The state public defender shall forward claims to the department for processing and payment only after all reporting requirements have been complied with and the claim has been approved by the state public defender. Claims returned to the attorney for additional information will be processed after the requested information is received.

12.2(3) Claims submitted prior to the date of service will be returned to the claimant and may be resubmitted for processing after the date of service.

12.2(4) Claims for compensation in excess of applicable rates are not payable under the attorney's appointment and will be reduced.

12.2(5) Claims for services rendered prior to the effective date of the attorney's appointment are not payable under the attorney's appointment, and that portion will be denied.

12.2(6) For cases to which the attorney is appointed after June 30, 2004, claims that are not timely will be denied. Time billed on claims which are denied, or which could have been denied, pursuant to this subrule may be included in subsequent claims if timely submitted with regard to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding shall not be deemed the "same case" as the underlying proceeding.

12.2(7) Claims for services that contain charges that are either not reasonable or not appropriate are not payable under the attorney's appointment and will be denied.

12.2(8) Claims for clerical activities, overhead, preparation of the fee claim or itemization of services; for obtaining, preparing, or reviewing an application or order to exceed the fee limitations; or

for preparation of a motion to review or order and any subsequent hearing for review of an attorney fee claim are not payable under the attorney's appointment and will be denied.

12.2(9) Claims for compensation from attorneys whose appointment as counsel or guardian ad litem at the appellate level does not comply with Iowa Code section 814.11 will be denied.

12.2(10) Claims for compensation from attorneys appointed as counsel or guardian ad litem at the trial level may be denied if the appointment does not comply with Iowa Code section 815.10.

a. Claims by attorneys whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after July 1, 2009, shall be denied if the state public defender had filed a designation effective at the time of the appointment designating a local public defender, nonprofit corporation, or attorney to represent indigent persons in that type of case in the county in which the case was filed, unless the appointment order and any supporting documentation submitted with the claim demonstrate that:

(1) The state public defender's designee and any successor designee has withdrawn from the case or has been offered and declined to take the case; or

(2) The state public defender's designee and any successor designee would have withdrawn from or would have declined to take the case had the appointment been offered.

b. Claims by attorneys whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after February 1, 2012, shall be denied unless:

(1) At the time of the appointment, the attorney had a contract with the state public defender to represent indigent persons in that specific type of case and that county in which the the action was pending; or

(2) The appointment order includes a specific finding that no attorney with a contract to represent indigent persons in that specific type of case and that county in which the action was pending is available or a finding that the state public defender was consulted and consented to the appointment.

12.2(11) Time and expenses claimed by an attorney in withdrawing from a case, or related to withdrawing from a case, in order to either retire from the practice of law or pursue another job will be denied.

12.2(12) The following applies to claims by a guardian ad litem for a child who is aged 18 or older and involved in a juvenile court proceeding:

a. The court must enter an order appointing the guardian ad litem for the limited purposes of continuing a relationship with the child and to provide advice to the child relating to the child's transition plan under Iowa Code section 232.2 beyond the child's eighteenth birthday.

b. Neither a parent nor guardian of the child in interest is entitled to court-appointed counsel during the post-age 18 transition period.

c. The guardian ad litem appointment shall end by the earlier of an order of the court relieving the guardian ad litem of further duties or an order of the court closing the juvenile court case.

12.2(13) A court order that affects the amount of a claim and is entered after the date of the state public defender's action, except following court review as provided in rule 493—12.9(13B,815), is void. See Iowa Code section 13B.4(4).

12.2(14) Time and expenses claimed by an attorney for representing a parent in a child in need of assistance case or termination of parental rights case for work performed subsequent to the date on which the termination of that parent's parental rights becomes final, either on appeal or because no appeal was taken, will be denied.

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493—12.3(13B,815) Interim claims. Claims will be paid at the conclusion of the case unless one of the following applies:

12.3(1) Juvenile cases. An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing held in the case. A court hearing does not include family drug court, staffings or foster care review board hearings.

12.3(2) Appellate cases. A claim for work performed to date by an attorney having an appellate contract with the state public defender may be submitted in appellate cases after filing of the attorney's proof brief. A subsequent claim may be submitted at the conclusion of the case.

12.3(3) Specific cases. Interim claims in Class A felony cases may be submitted once every three months, with the first claim submitted at least 90 days following the effective date of the attorney's appointment.

12.3(4) Change of employment. If an attorney is changing law firms, the attorney may submit a claim to end billing at one firm and start billing at the new firm. If payments are to be made to someone other than the law firm which the attorney is leaving, both the attorney and the law firm must advise the state public defender in writing that the attorney is leaving the firm and where the payments should be made.

12.3(5) Other cases. In all other cases, claims filed prior to the conclusion of the case will not be paid except with consent of the state public defender.

12.3(6) Approval of interim claims. Approval of any interim claims shall not affect the right of the state public defender to review subsequent claims or the aggregate amount of the claims submitted.

493—12.4(13B,815) Rate of compensation. Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

Attorney time:	Class A felonies	\$60/hour
	Class B felonies	\$55/hour
	All other criminal cases	\$50/hour
	All other cases	\$50/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006, and before July 1, 2007:

Attorney time:	Class A felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$55/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007:

Attorney time:	Class A felonies	\$70/hour
	Class B felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$60/hour
Paralegal time:		\$25/hour

12.4(1) Applicability to juvenile cases. In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney \$50 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. In a juvenile case to which the attorney was appointed after June 30, 1999, but before July 1, 2006, the state public defender will pay the attorney \$55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006. In

a juvenile case to which the attorney was appointed after June 30, 2006, but before July 1, 2007, the state public defender will pay the attorney \$60 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2007. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

12.4(2) *Appointments before July 1, 1999.* In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the rates established pursuant to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

12.4(3) *Applicability to appellate contracts.* This rule shall not apply to claims from attorneys with appellate contracts with the state public defender.

12.4(4) *All other cases.* As used in this rule, the term "all other cases" includes appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings without regard to the level of the underlying charge.

493—12.5(13B,815) Appellate contracts. Subject to the provisions of this rule, an attorney who has entered into an appellate contract with the state public defender shall be paid pursuant to the terms of this rule for each appellate case to which the attorney is appointed. This rule applies to all appellate contract claims received by the state public defender on or after December 7, 2010.

12.5(1) *Frivolous appeals.* In an appeal in which the attorney withdraws from a case either based on a determination that the appeal is frivolous or for any other reason or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid for all reasonable, necessary and appropriate hours claimed on the itemization at the rate of \$60 per hour.

12.5(2) *Juvenile cases.* For juvenile appeals, the following provisions apply.

a. In a juvenile case in which a petition on appeal is filed, an appointed trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, subsequent attorney fee claims must be submitted on an Appellate form. Any amount paid on the petition on appeal shall be considered in determining whether the attorney hours claimed on subsequent appellate claims are reasonable and necessary.

b. In an appellate case in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid for all reasonable, necessary and appropriate legal services and expenses claimed on the itemization at the rate of \$60 per hour.

12.5(3) *Appeals from a guilty plea.* Notwithstanding the provisions of subrule 12.2(1), an attorney who has entered into an appellate contract with the state public defender and whose client is appealing from a judgment as the result of a guilty plea need not provide an itemization of legal services provided in the appeal if the amount of the attorney fee portion of the claim is \$600 or less. If the amount of the claim is in excess of \$600, the attorney must provide an itemization and will be paid for all reasonable, necessary and appropriate legal services claimed on the itemization at the rate of \$60 per hour, together with permissible out-of-pocket expenses.

12.5(4) *Appeals from a trial.* Notwithstanding the provisions of subrule 12.2(1), an attorney who has entered into an appellate contract with the state public defender and whose client is appealing from a judgment as the result of a jury trial or bench trial need not provide an itemization of legal services provided in the appeal if the amount of the attorney fee portion of the claim is \$1,800 or less. If the amount of the claim is in excess of \$1,800, the attorney must provide an itemization and will be paid for reasonable, necessary and appropriate legal services claimed on the itemization at the rate of \$60 per hour, together with permissible out-of-pocket expenses.

12.5(5) *Applications for further review.* In a case in which an application for further review is filed, the attorney will be paid for all reasonable, necessary and appropriate legal services claimed on the itemization at the rate of \$60 per hour, together with permissible out-of-pocket expenses.

12.5(6) Application of fee limitations. The fee limitations and procedures provided in rule 493—12.6(13B,815) have no application to appellate contracts.
 [ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11]

493—12.6(13B,815) Attorney fee limitations.

12.6(1) Adult cases. The state public defender establishes attorney fee limitations for combined attorney time and paralegal time for the following categories of adult cases:

Class A felonies	\$18,000
Class B felonies	\$3,600
Class C felonies	\$1,800
Class D felonies	\$1,200
Aggravated misdemeanors	\$1,200
Serious misdemeanors	\$600
Simple misdemeanors	\$300
Simple misdemeanor appeals to district court	\$300
Contempt/show cause proceedings	\$300
Proceedings under Iowa Code chapter 229A	\$10,000
Probation/parole violation	\$300
Extradition	\$300
Postconviction relief—the greater of \$1,000 or one-half of the fee limitation for the conviction from which relief is sought.	

Nothing in this subrule 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 the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in an adult criminal proceeding, if an attorney were appointed to represent a client charged with four counts of forgery arising at four separate times, and if the client were charged in four separate trial informations, the fee limitations for each charge would apply separately. If all four charges were contained in one trial information, the fee limitation would be \$1,200 even if there were more than one separate occurrence. If the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations.

If the Iowa Code section listed on the claim form defines multiple levels of crimes and the claimant does not list the specific level of crime on the claim form, the state public defender will use the least serious level of crime in reviewing the claim.

For example, Iowa Code section 321J.2 defines crimes ranging from a serious misdemeanor to a Class D felony. If the attorney does not designate the subsection defining the level of the crime, the state public defender will deem the charge to be a serious misdemeanor.

12.6(2) Juvenile cases. The state public defender establishes attorney fee limitations for attorney time for the following categories of juvenile cases:

Delinquency (through disposition)	\$1,200
Child in need of assistance (CINA) (through disposition)	\$1,200
Termination of parental rights (TPR) (through disposition)	\$1,800
Juvenile court review and other postdispositional court hearings	\$300
Judicial bypass hearings	\$180
Juvenile commitment hearings	\$180
Juvenile petition on appeal	\$600
Motion for further review after petition on appeal	\$300

Nothing in this subrule 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 the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is \$1,200 for all four proceedings, not \$1,200 for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to \$1,200 for the child in need of assistance case and up to \$1,800 for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

12.6(3) Appellate cases. Except as provided in this subrule, the state public defender establishes an attorney fee limitation of \$2,400 for all reasonable, necessary, and appropriate legal services in appellate cases filed with the Iowa supreme court.

a. In an appeal to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with an attorney fee limitation of \$1,000. In an appeal to which the attorney was appointed after June 30, 2006, and before July 1, 2007, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$55 per hour, with an attorney fee limitation of \$1,100. In an appeal to which the attorney was appointed after June 30, 2007, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$60 per hour, with an attorney fee limitation of \$1,200.

b. In an appellate case to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with an attorney fee limitation of \$500. In an appellate case to which the attorney was appointed after June 30, 2006, and before July 1, 2007, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with an attorney fee limitation of \$550. In an appellate case to which the attorney was appointed after June

30, 2007, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$60 per hour, with an attorney fee limitation of \$600.

c. In a juvenile case in which a petition on appeal is filed, an appointed trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, subsequent attorney fee claims must be submitted on an Appellate form. Any amount paid on the petition on appeal shall be considered in determining whether subsequent appellate claims exceed the fee limitations.

This subrule does not apply to appellate cases to which an attorney with an appellate contract with the state public defender is appointed. See rule 493—12.5(13B,815).

12.6(4) *Claims in excess of fee limitations.* A claim in excess of the attorney fee limitations will not be paid unless the attorney seeks and obtains authorization from the appointing court to exceed the attorney fee limitations prior to exceeding the attorney fee limitations. If authorization is granted, payment in excess of the attorney fee limitations shall be made only for services performed after the date of submission of the request for authorization.

12.6(5) *Retroactivity of authorization.* Authorization to exceed the attorney fee limitations shall be effective only as to services performed after a request for authorization to exceed the attorney fee limitations is filed with the court unless the court enters an order before submission of the claim to the state public defender specifically authorizing a late filing of the application and finding that good cause exists excusing the attorney's failure to file the application prior to the attorney's exceeding the attorney fee limitations. "Good cause" as used in this subrule means a sound, effective and truthful reason. "Good cause" is more than an excuse, plea, apology, extenuation, or some justification. Inadvertence or oversight does not constitute good cause. Retroactive court orders entered after the date of the state public defender's action on a claim are void. See Iowa Code section 13B.4(4).

[ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11]

493—12.7(13B,815) Reimbursement for specific expenses.

12.7(1) The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigators, foreign language interpreters, evaluations, and experts, if the following conditions are met:

a. The attorney obtained court approval for a certified shorthand reporter, investigator, foreign language interpreter, evaluation or expert prior to incurring any expenses with regard to each.

b. A copy of the application and order granting authority accompanies the claim.

c. The certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation or expert does not submit a claim for the same services.

d. The attorney is seeking reimbursement for moneys already expended or certifies that the funds for these services will be used to pay for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert.

e. A copy of the court order authorizing the expense is attached to the claim.

f. In claims for services of investigators, foreign language interpreters, or experts, a copy of a court order setting the maximum dollar amount of the claim is attached to the claim.

g. In claims for the cost of an evaluation requested by an appointed attorney, the attorney will be reimbursed for the reasonable cost of an evaluation of the client to establish a defense in the case or to determine if the client is competent to stand trial. In either instance, a copy of the court order authorizing the evaluation for one of these specific purposes and an order approving the amount of the evaluation must accompany the claim form. Claims for the cost of an evaluation to be used for any other purpose, such as sentencing or placement, will not be reimbursed.

12.7(2) Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

12.7(3) In an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, paragraphs 12.7(1) "b" to "d" shall apply.

12.7(4) Claims for expenses that do not meet these conditions are not payable under the attorney's appointment and will be denied.

493—12.8(13B,815) Reimbursement of other expenses.

12.8(1) The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case to the extent that the expenses are reasonable and necessary:

a. Mileage for automobile travel at the rate of 35 cents per mile. The number of miles driven must be listed in the itemization of services and on the claim form. Other forms of transportation costs incurred by the attorney will be reimbursed with prior approval from the state public defender.

b. The actual cost of lodging, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with the lodging and the attorney is required to be away from home overnight.

c. The actual cost of meals, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with these meals.

d. Necessary photocopying at the attorney's office at the rate of 10 cents per copy. The number of copies made must be listed in the itemization of services or on the claim form.

e. Ordinary and necessary postage, toll calls, collect calls, and parking for the actual cost of these expenses. Toll and collect calls will be reimbursed at 10 cents per minute or the actual cost. A receipt for the actual cost must be attached to the claim form. A statement from a correctional facility or jail detailing a standard rate for such calls shall constitute a receipt for purposes of this paragraph. For parking in excess of \$2, a receipt must be attached to the claim form. Claims for the cost of a parking ticket will be denied.

f. Receiving faxes in the attorney's office at the rate of 10 cents per page. There is no direct cost reimbursement for sending a fax unless there is a toll charge associated with it.

g. The actual cost of photocopying or faxing for which the attorney must pay an outside vendor. A receipt for the actual cost must be attached to the claim form.

h. Other claims for expenses such as process service, medical records, videotapes and film will be reimbursed for the actual cost. A receipt or invoice from an outside vendor must be attached to the claim form.

i. Other specific expenses for which prior approval by the state public defender is obtained.

12.8(2) Claims for expenses other than those listed in this rule or at rates in excess of the rates set forth in this rule are not payable under the attorney's appointment and will be reduced or denied.

493—12.9(13B,815) Court review. An attorney whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

12.9(1) Motions for court review. Court review of the action of the state public defender is initiated by the filing of a motion with the trial court requesting the review. The following conditions shall apply to all such motions:

a. The motion must be filed with the court within 20 days of the action of the state public defender. This time limit is jurisdictional and will not be extended by the filing of another claim or obtaining a court order affecting the amount of the claim.

b. The motion must set forth each and every ground on which the attorney intends to rely in challenging the action of the state public defender.

c. The motion must have attached to it a complete copy of the claim, together with the notice of action that the attorney seeks to have reviewed.

d. A copy of all documents filed must be provided to the state public defender.

e. It is unnecessary for the state public defender to file any response to the motion.

12.9(2) Hearings. The following shall apply to hearings on motions for court review:

a. The motion shall be set for hearing by the court. Notice of the hearing on the attorney's request for review shall be provided to the attorney and the state public defender at least ten days prior to the date and time set by the reviewing court.

b. Unless the state public defender appears or specifically indicates an intention to appear in person at the hearing, the state public defender shall participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for the telephone call. If the attorney intends to participate by telephone, the attorney shall notify the state public defender of this intent and provide a telephone number for the hearing at least two business days prior to the date scheduled for the hearing.

c. The burden shall be on the attorney requesting the review.

d. The court shall consider only the issues raised in the attorney's motion.

e. The court shall issue a written ruling on the issues properly presented in the request for review.

f. If a ruling is entered modifying the state public defender's action on the claim, the attorney must file a new claim with the state public defender within 45 days of the date of the court's order modifying the state public defender's action on the claim. A copy of the court's ruling must be attached to the claim form. The date of service on the claim form is the date of the court's order.

12.9(3) Failure to seek review. Failure to seek court review within 20 days of the action of the state public defender will preclude court review of the state public defender's action.

493—12.10(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered, the claimant shall notify the clerk of court of the error and shall reimburse the department for the amount of the overpayment. An overpayment that is returned to the department shall be paid by check made payable to the "Treasurer, State of Iowa" and mailed to the Department of Inspections and Appeals, Indigent Defense Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. The attorney is responsible for notifying the clerk of court of any payment error.

These rules are intended to implement Iowa Code chapters 13B and 815.

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⁰ Two or more ARCs

¹ 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.

CHAPTER 13
CLAIMS FOR OTHER PROFESSIONAL SERVICES

493—13.1(13B,815) Scope. This chapter sets forth the rules for submission, payment and court review of claims for other professional services. See 493—Chapter 7 for definitions of terms used in this chapter.

493—13.2(815) Claims for other professional services. The state public defender shall review and approve claims for necessary and reasonable expenses for investigators, foreign language interpreters, expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has a form W-9 on file with the department and the claim conforms to the requirements of this rule. Claims that do not comply with this rule will be returned.

13.2(1) Claims for investigative services. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for investigators if the following conditions are met:

a. The investigator submits a signed original and one copy of a claim containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which services commenced.
- (4) The date on which services ended.
- (5) The total number of hours claimed.
- (6) The total amount of the claim.
- (7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

c. One copy of each of the following documents is attached to the claim:

- (1) The application and order granting authority to hire the investigator.
- (2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the necessary investigation.
- (3) An itemization of the investigator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.
- (4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the investigator sets a limit for the claim, this court order is unnecessary.

13.2(2) Claims for foreign language interpreters. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for foreign language interpreters in accordance with the administrative directive of the state court administrator in the matter of court interpreter compensation, effective September 1, 2007, if the following conditions are met:

a. The interpreter submits a signed original and one copy of a claim containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which services commenced.
- (4) The date on which services ended.
- (5) The total number of hours claimed.
- (6) The total amount of the claim.
- (7) The claimant's name, address, social security number or federal tax identification number, E-mail address, if any, and telephone number.

b. Court approval to hire the interpreter was obtained before any expenses for the interpreter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order appointing the interpreter. This appointment is presumed to continue until the conclusion of the matter, unless limited by the court or modified by a subsequent order.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application for the appointment of the interpreter, makes one of the following specific findings:

1. The client is indigent, or

2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.

(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated. With regard to expenses and services, the following shall apply:

1. Receipts for parking expenses are required for actual costs of \$2 or more per day.

2. Claims for translating documents will be paid by the hour, not by the word or line.

(4) A court order setting the maximum dollar amount of the claim.

d. Claims for services completed before September 1, 2007, are timely if submitted to the state public defender for payment before October 15, 2007. Claims for services completed after August 31, 2007, are timely if submitted to the state public defender for payment within 45 days of completion of services in the case.

e. Claims which are not timely will be denied.

13.2(3) Claims for expert witnesses. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for expert witnesses if the following conditions are met:

a. The expert witness submits an original and one copy of a signed claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the expert witness.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary expert witness services.

(3) An itemization of the expert witness's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the expert sets a limit for the claim, this court order is unnecessary.

(5) If the expert charges a "minimum" amount for services based on a specific time, a certification by the expert that no other services have been performed or charges made by the expert for any portion of that specific time.

13.2(4) *Claims for certified shorthand reporters.* The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters if the following conditions are met:

a. The certified shorthand reporter submits a signed original and one copy of a claim containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which the deposition/court proceeding commenced.
- (4) The date on which the transcript was ordered.
- (5) The date on which the transcript was delivered.
- (6) The number of pages and cost per page.
- (7) The total amount of the claim.
- (8) The claimant's name, address, social security number or federal tax identification number, E-mail address, if any, and telephone number.

b. Court approval to hire the certified shorthand reporter was obtained before any expenses for the certified shorthand reporter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the certified shorthand reporter at state expense.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services.

(3) Itemization of any additional services or charges based on some criterion other than cost per page.

(4) If the certified shorthand reporter charges a "sitting fee" for services based on a specific time, a certification by the certified shorthand reporter that no other services have been performed or charges made by the certified shorthand reporter for any portion of that specific time.

(5) If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment, claims for certified shorthand reporter services will be limited to the rate approved by the Iowa supreme court for preparation of transcripts and other certified shorthand reporter services.

d. Claims for services completed before July 1, 2008, are timely if submitted to the state public defender for payment before August 15, 2008. Claims for services completed after June 30, 2008, are timely if submitted to the state public defender for payment within 45 days of the date on which services are completed.

e. For depositions, services are completed on the date the deposition transcript is delivered or on the date of disposition of the case if no transcript is ordered, whichever date is earlier. For trial transcripts, services are completed on the date the trial transcript is delivered.

f. Claims which are not timely will be denied.

13.2(5) *Claims for court-ordered evaluations.* The state public defender shall review, approve and forward for payment claims for necessary and reasonable evaluations requested by an appointed attorney only if the purpose of the evaluation is to establish a defense or to determine whether an indigent is competent to stand trial, and not for any other purpose such as sentencing or placement, if the following conditions are met:

a. The person performing the evaluation submits a signed original and one copy of a claim containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which services commenced.

- (4) The date on which services ended.
- (5) The total number of hours claimed.
- (6) The total amount of the claim.
- (7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is either to establish a defense to a pending charge or to determine whether an indigent is competent to stand trial.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the evaluation.

(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, this court order is unnecessary.

(5) If the evaluator charges a "minimum" amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.

13.2(6) *Submission of claims.* Claims for payment for professional services provided to a public defender must be submitted to the local public defender office for which the services were provided. Other claims for professional services must be submitted, on a form promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

13.2(7) *Claims from state employees.* Claims submitted by state of Iowa employees must be submitted on a form promulgated by the state public defender and on a state travel voucher form.

13.2(8) *Claim form for other professional services.* Rescinded IAB 1/3/07, effective 2/7/07.

493—13.3(13B,815) Court review. A claimant whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

13.3(1) *Motions for court review.* Court review of the action of the state public defender is initiated by filing a motion with the trial court requesting the review. The following conditions shall apply to all such motions:

- a.* The motion must be filed with the court within 20 days of the action of the state public defender.
- b.* The motion must set forth each and every ground on which the claimant intends to rely in challenging the action of the state public defender.
- c.* The motion must have attached to it a complete copy of the claim, together with the notice of action that the claimant seeks to have reviewed.

d. A copy of all documents filed must be provided to the state public defender.

It is unnecessary for the state public defender to file any response to the motion.

13.3(2) *Hearings.* The following shall apply to hearings on motions for court review:

a. The motion shall be set for hearing by the court. Notice of the hearing on the claimant's request for review shall be provided to the claimant and the state public defender at least ten days prior to the date and time set by the reviewing court.

b. Unless the state public defender specifically indicates an intention to appear in person at the hearing, the state public defender shall participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for the telephone call.

- c. The burden shall be on the claimant requesting the review.
- d. The court shall consider only the issues raised in the claimant's motion.
- e. The court shall issue a written ruling on the issues properly presented in the request for review.
- f. If a ruling is entered allowing additional fees, the claimant must file a new claim with the state public defender. A copy of the court's ruling must be attached to the claim form. The date of service on the claim form is the date of the court's order.

13.3(3) Failure to seek review. Failure to seek court review within 20 days of the action of the state public defender will preclude court review of the state public defender's action.

493—13.4(13B,815) Processing and payment. The state public defender will submit claims to the department for processing and payment. The department will submit claims that are not approved in the current fiscal year to the state appeal board for processing and payment.

493—13.5(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the claimant, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment or double payment shall be repaid by check. The check, made payable to "Treasurer, State of Iowa," together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Department of Inspections and Appeals, Indigent Defense Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. The claimant shall notify the clerk of court of the overpayment or double payment.

493—13.6(815) Claims submitted by a county. Rescinded IAB 1/3/07, effective 2/7/07.

These rules are intended to implement Iowa Code chapters 13B and 815 as amended by 2004 Iowa Acts, House File 2138.

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¹ 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.

CHAPTER 14
CLAIMS FOR ATTORNEY FEES IN 600A TERMINATIONS

493—14.1(13B,600A,815) Scope. This chapter sets forth specific rules for submission, review and payment of claims for attorney fees in proceedings under Iowa Code chapter 600A. Unless modified in this chapter, the provisions of 493—Chapters 7, 11 and 12 apply to such claims.

493—14.2(13B,600A,815) Definitions. The following definitions apply only to this chapter.

“Indigent” means the person has an income level at or below 100 percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the U.S. Department of Health and Human Services, unless the court determines that the person is able to pay for the cost of an attorney in the pending case. In making the determination of a person’s ability to pay for the cost of an attorney, the court shall consider not only the person’s income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the nature and complexity of the case.

“Timely claim” means a claim submitted to the state public defender for payment within 45 days of the date of service in a case to which the attorney was appointed. For termination of parental rights cases under Iowa Code chapter 600A with a date of appointment after May 11, 2004, and a date of service before May 5, 2005, a claim is timely if submitted to the state public defender for payment before June 20, 2005.

493—14.3(13B,600A,815) Hourly rate and fee limitations. Unless the attorney has a contract with the state public defender that provides for a different rate or manner of payment, claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after March 11, 2004, and before July 1, 2006, shall be paid at the rate of \$50 per hour, with a fee limitation of \$500 for the trial court proceedings and \$500 for appellate proceedings. Claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2006, and before July 1, 2007, shall be paid at the rate of \$55 per hour, with a fee limitation of \$550 for the trial court proceedings and \$550 for appellate proceedings. Claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2007, shall be paid at the rate of \$60 per hour, with a fee limitation of \$600 for the trial court proceedings and \$600 for appellate proceedings.

493—14.4(13B,600A,815) Limitations on other charges and expenses. For appeals, the state public defender shall approve claims for the actual cost of a transcript and printing of necessary briefs. The state public defender shall not approve claims for travel time, paralegal time, or other out-of-pocket expenses at the trial or appellate level.

493—14.5(13B,600A,815) Claims for attorney fees. Claims for attorney fees shall be submitted on Juvenile claim forms. Except as provided in this rule, claims for attorney fees for representing the respondent in proceedings for termination of parental rights cases under Iowa Code chapter 600A shall be reviewed by the state public defender in the same manner as provided in 493—Chapter 12.

14.5(1) For cases to which the attorney was appointed on or after May 5, 2005, the order of appointment must contain the following additional findings:

- a. The respondent requests appointment of counsel;
- b. Both the petitioner, or the person on whose behalf the petition is filed, and the respondent are indigent, unless the petitioner is a private child-placing agency as defined in Iowa Code section 238.2, in which case the petitioner need not be indigent;
- c. The respondent, because of lack of skill or education, would have difficulty in presenting the respondent’s version of a disputed set of facts, particularly when presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence; and
- d. The respondent has a colorable defense to the termination of parental rights, or there are substantial reasons that make termination of parental rights inappropriate.

14.5(2) For cases to which the attorney was appointed on or after May 5, 2005, in addition to the other requirements provided in 493—Chapter 12, a copy of both the petitioner’s and respondent’s financial affidavit must accompany the claim.

14.5(3) The provisions for review of the state public defender’s action provided in 493—Chapter 12 shall apply to claims submitted under this chapter.

493—14.6(13B,600A,815) Report to judicial branch. The state public defender shall submit quarterly to the state court administrator a report detailing all approved and paid attorney fee claims for termination of parental rights cases under Iowa Code chapter 600A.

These rules are intended to implement Iowa Code chapters 13B, 600A, 815 and 908 as amended by 2005 Iowa Acts, House File 683.

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