

Memorandum of Understanding
Criminal Defense Project
Effective January 1, 2019

Project Description: The Criminal Defense Project (CDP) is comprised of a group of attorneys who are appointed by all the Circuit Court judges (based on recommendations by the criminal division judges and with the approval of the chief judge) to represent defendants in Dane County CF, CM and CT cases that the judges find to be indigent but who do not qualify for representation by the State Public Defender (SPD).

1. Definitions

- a. **CDP Pool:** Attorneys selected by the judges to participate in the CDP.
- b. **CDP Appointment:** The appointment shall be made on a per file basis unless the defendant has both a CM and CT case pending at the time of appointment. In that case the appointment will be made on a per-defendant basis. Compensation shall be as provided in paragraph 3.
- c. **Caseload:** Each defense attorney will be assigned an equal share of the cases approved by the court for CDP representation.
- d. **CDP Case Coordinator:** A coordinator will be selected by the attorneys under contract. The coordinator will meet with the attorneys and criminal division judges as needed to discuss issues of mutual interest. The coordinator will be paid \$500.00 per annum on or about March 1, 2019.
- e. **Eligibility Clerk:** A Clerk of Circuit Court staff member(s) will be selected to review all petitions for appointment of counsel to determine eligibility according to the standards established by the criminal division judges, to select the attorney to be appointed on a rotating basis and to monitor compliance by the defendant with his/her reimbursement obligations.

2. Mutual Obligations

- a. The judges shall appoint only an attorney from the CDP pool in CF, CM and CT cases, except in extraordinary circumstances, and the CDP pool shall accept all such appointments. CF cases under this MOU will generally include class “C” and less severe felonies. An individual attorney may refuse to accept a CDP case because of conflicts or other valid reason, but any attorney who repeatedly refuses to accept CDP cases is subject to elimination from the CDP pool at the discretion of the judges. An attorney may only accept an appointment for a case type that he/she is certified to take by the SPD. If the attorney is appointed on a case that he/she is not certified to take by the SPD, the attorney shall promptly notify the eligibility clerk who shall then immediately appoint the next attorney from the CDP pool. No compensation will be due for any case where the attorney is not properly certified.

- b. The staff of the Clerk of Circuit Courts shall notify the attorneys by e-mail of each new CDP appointment which will be made on a rotating basis unless the appointing judge determines otherwise in exceptional circumstances. A copy of all criminal complaints and the Order Appointing Counsel will be attached to the email notification of the appointment. Copies of e-mails shall be filed as correspondence in the case file.

3. Compensation

- a. At the conclusion of the CDP appointment (judgment entered, case dismissed, defendant referred to and accepted into the Drug Court Treatment Program, or FOP disposition made), the attorney shall within 30 days submit a billing statement for the CDP appointment to the Clerk of Circuit Courts. This flat fee shall cover all fees for representation to date and for all subsequent services (not including appeals, and probation proceedings, including revocations) that may be necessary with regard to the same case including:

- Representation at a restitution hearing for any timely request for restitution filed by the District Attorney's office;
- the filing of a Notice of Intent to Pursue Post Conviction Relief;
- representation at an adjudication and sentencing hearing if the defendant fails to successfully complete FOP or Drug Treatment Court within 6 months of the referral to FOP or Drug Treatment Court. If the defendant referred to FOP or DCTP returns to the court more than 6 months after referral, the attorney will be paid an additional \$200 to complete the appointment.

The Clerk of Circuit Courts shall pay the bill within 30 days of receipt. The per file rate is \$750.00 for CM/CT cases, \$1000.00 for CF cases - class C and below, \$1500 for CF cases - class B, and \$2500 for CF cases – class A. In all cases that proceed to a jury trial the CDP attorney shall be additionally compensated at an hourly rate of \$70.00 per hour for the duration of the jury trial for actual trial time including jury selection.

- b. **Multiple Files:** If a defendant has both a CM and CT case arising out of the same transaction at the time of initial appointment, the attorney will be paid \$750 to handle both. If a defendant has multiple files, the attorney shall not submit a bill until the conclusion of the CDP appointment (as described in par. 3(a)) on all of the cases, and the bill shall reference all of the case numbers. The attorney shall be paid the full per file rate for the two most serious cases (e.g. if the defendant has two CF cases, \$2,000, or if the defendant has a CF and a CM/CT case, \$1,750) and one-half the usual rate for the third and subsequent files (\$375 for CM/CT cases and \$500 for CF cases). For purposes of this paragraph, a CF case in which the only felony charged is felony bail jumping shall be treated as a CM case.

- c. **Post Conviction Related Matters**

Probation/Parole Revocation: An attorney appointed under this MOU to represent a defendant facing revocation of his/her probation or parole shall be paid \$500 regardless of the number of cases that are the subject of revocation. This flat fee shall cover representation during all revocation proceedings and all sentencing hearings that may be necessary, but the attorney shall not represent the defendant under this

MOU on cases arising out of convictions entered in any County other than Dane. Whether appointments will be made under this MOU in probation/parole revocation cases and the level of compensation for such cases if appointments are made will be determined on a case by case basis.

If a motion for sentence modification or other post-judgment motion is filed within 60 days after the date of sentencing, the original counsel remains appointed with the expectation of no further reimbursement. After 60 days the client should seek re-appointment and whichever attorney is appointed will receive a new fee in conformity with the regular process.

- d. **Special Costs:** Should a CDP attorney feel it is necessary to hire expert witnesses, private investigators, medical or psychological experts or the like to effectively represent his or her client, the attorney will submit an application stating his/her reasons for the request to the appointing judge prior to incurring such costs. Unless ordered otherwise by the court, defense counsel need only advise the prosecution that an application for expert assistance has been made to the court, not the substance of the inquiry or the names of individuals sought. This application will be docketed in the court record as Defense Application for Expert Assistance. The court will not compensate private investigators at a rate higher than the current rate paid by the State Public Defender (i.e., \$20 per hour). The initial appointment will be for a maximum of 10 hours of investigation. After the initial 10 hours, application for authority to pay for additional investigative services must be made. Psychological evaluations will be approved for a maximum of 8 hours per person evaluated. Upon request, the Clerk of Circuit Courts will provide a list of qualified psychologists willing to perform evaluations at a reasonable rate. It is the joint responsibility of the case coordinator and the assigned CDP attorney to advise the psychologist and/or investigator of these hourly rates and per case cost caps. No expert or investigator will be hired without the approval of the appointing judge.

The appointing judges shall not approve more than \$5,000 (combined total) annually for special costs for the CDP without further agreement of the Chief Judge.

Ordinary costs. Bills for costs such as collect calls from the jail, obtaining electronic media, reasonable photocopies and other case related services must be documented and submitted with their bill to the Clerk of Court's Office within 30 days of the close of the case in order to receive reimbursement from the County. Timely submission is important so these expenses may be added to the amount of restitution sought from the defendant.

- e. **Transcripts:** CDP attorneys may obtain transcripts, and the court reporter shall be paid at the county rate by direct billing to the Clerk of Courts.
- f. **Attorney Withdrawal / Termination:** Should an attorney be required to withdraw from an appointment prior to the conclusion of the case or be terminated from the CDP, the attorney shall provide a copy of the file(s), including all work product, to the new CDP attorney assigned within 10 days of withdrawal/termination. Compensation shall be half the standard rate if the withdrawal is within 60 days of the

CDP appointment and the full standard rate if the withdrawal is more than 60 days after the CDP appointment. If the withdrawal is at the request of the defendant, the defendant will be required to reimburse costs for both the original and subsequent CDP attorneys. An attorney who must withdraw from CDP participation during a contract year shall provide as much notice as possible under the circumstances.

If a client previously deemed ineligible for Public Defender services but eligible for SPD services, CDP attorneys should make every effort to terminate CDP representation if and when this information becomes known to them, and to refer the clients back to the SPD. In the event that a client becomes SPD eligible during the course of a CDP appointment, it will be determined by the trial judge on a case-by-case basis what amount of the CDP fee, if any, should be retained by the appointed attorney.

- g. Interpretation/Translation:** CDP pool members with fluency in a foreign language representing clients who require interpretation will be paid an additional \$75.00 per defendant.
- h. Bench Warrants:** If a bench warrant is issued for a defendant before the conclusion of the CDP appointment, the attorney may submit a statement for payment 60 days after the issuance of the warrant if the defendant has not been arrested. If a defendant is arrested on a bench warrant within 6 months of its issuance, the attorney shall complete the CDP appointment without further compensation.

4. Pool Composition

The composition of the CDP pool shall be determined by the judges and agreed to by the individual signatories to this MOU. The judges reserve the right to terminate anyone from the pool. Any attorney with a CDP appointment who withdraws or is discontinued from participation in the CDP in a subsequent year shall complete all assigned cases and shall be compensated in accordance with this MOU. CDP attorneys shall notify the coordinator by August 1, 2019 regarding their desire to continue in the CDP pool for 2020.

5. Scope of Representation

All CDP attorneys shall represent their clients within the confines of Supreme Court Rules on professional responsibility. Attorneys may provide legal representation only with regard to the criminal case on which they are appointed, and they will not be compensated for time spent on any other matters. Attorneys shall advise their clients of the client's legal obligation for reimbursement under the order appointing counsel.

6. CDP Communications

All members of the CDP pool will provide the Clerk of Circuit Courts and the case coordinator with their telephone numbers, fax number, e-mail and office addresses and shall advise of any changes as soon as possible. The primary means of communication between the courts and CDP pool members shall be by e-mail, and the attorneys should reply to acknowledge receipt of all communications.

7. Miscellaneous

- a. **Term:** This MOU shall be binding on all parties from January 1, 2019 through December 31, 2019.
- b. **Subsequent Years:** A new MOU shall be negotiated each year; attorneys may express the desire to continue as part of the CDP pool. The judges reserve the right to name additional attorneys to the CDP pool in any year.
- c. **Individual Agreement:** Nothing in the MOU shall preclude the judges, subject to the approval of the Dane County Presiding Judge, and the Clerk of Circuit Courts from entering into a negotiated settlement with any attorney in the CDP pool regarding any dispute that may arise under the terms of this MOU.

**Memorandum of Understanding
2019 Criminal Defense Project
December 2018**

Juan B. Colás
Dane County Presiding Judge

Carlo Esqueda
Clerk of Circuit Court