



## Ohio Administrative Code

### Rule 120-1-12 Standards governing contracts with non-profit organizations for the provision of indigent representation.

Effective: May 1, 2017

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(A) A county public defender commission or joint county public defender commission, with the approval of the board of county commissioners, may contract with a non-profit organization to provide indigent legal representation. In order to qualify for state reimbursement, such contract must be approved by the Ohio public defender commission.

(B)

The county commission's initial resolution that established the county or joint county public defender commission and the initial resolution that appointed the members to that commission must be on file with the state public defender.

(C)

The primary purpose of the non-profit organization must be to provide legal representation to indigent persons. The articles of incorporation of the contractor as filed with the Ohio secretary of state must be on file with the Ohio public defender.

(D)

The county public defender commission or joint county public defender commission shall obtain the approval of the county board of commissioners for the entire amount of a contract with a non-profit organization prior to signing the contract. All contracts submitted to the Ohio public defender commission for approval shall contain a resolution of the board of county commissioners or certification from the county fiscal authority that sufficient funds have been appropriated and are available to meet the contracting authority's obligations under the contract.

(E) A contract with a non-profit organization for indigent defense services must include:



- (1) Parties. The contract shall identify the parties to the contract, including the county public defender commission or joint county public defender commission, and the non-profit organization and any other public or private person, agency, or organization which is party to the contract.
- (2) Scope of the contract. The contract shall specify the courts, categories, and percentages of indigent defense cases in which the non-profit organization is to provide services. The contract shall also specify any categories for which the non-profit organization is not to provide services.
- (3) Determination of eligibility. The contract shall specify the procedure by which a defendant's financial eligibility is to be determined and contain a standard of indigency incorporating by reference rule 120-1-03 of the Administrative Code.
- (4) Term of the contract. Contracts shall be for a term of one year. The contract shall specify that the non-profit organization has the responsibility to complete any and all cases once representation is commenced under the terms of the contract. Representation commenced in the trial court shall be continued through all trial court proceedings, including capias and probation violation proceedings. Representation commenced in or taken to an appeals court shall continue until the appeals process is terminated. The contract should specify that the non-profit organization or attorney can withdraw from a case due to a conflict of interest recognized by a court due to a finding of the client's financial ineligibility for the legal services, or due to the attorney's excessive workload as determined pursuant to rule 120-1-07 of the Administrative Code.
- (5) Attorney staff. The contract may require the non-profit organization to use full-time or part-time attorneys. The contract shall require that attorneys meet the qualification and training requirements established in rule 120-1-10 of the Administrative Code. If the contract is for the use of part-time attorneys, it shall contain provisions to ensure that the part-time attorneys devote the time necessary to provide quality representation to the indigent clients and comply with the Ohio public defender performance standards.
- (6) Support staff, investigators, and experts. The contract should provide for the employment of a support staff of secretaries and non-legal personnel for the office. The contract should also specify how adequate funds will be provided for investigators, social workers, mental health professionals, and other experts necessary to provide quality representation. Experts may also be obtained on



motion to the court. To qualify for reimbursement, requests for experts must be held ex parte if so requested in writing by defense counsel. No contract clause may interfere with the selection, supervision, and direction of these persons by the non-profit organization.

(7) Compensation. The contract shall provide that the non-profit organization compensate its employees, subcontractors, and retained experts at rates commensurate with their training, experience, and responsibilities, and compensation paid to persons doing similar work in public agencies in the county. The contract shall also include adequate funding for the training of attorneys and support staff who are employees of the non-profit organization, in subject matters relevant to their job duties.

(8) Extraordinary compensation. The contract shall provide for extraordinary compensation in cases that require an extraordinary amount of time and preparation, including but not limited to cases in which capital punishment is possible. Services that require compensation in excess of the normal rate shall be defined in the contract.

(9) Compensation of additional attorneys and conflicts of interest. The contract shall contain provision for the county to pay assigned counsel where conflicts of interest arise. The contract may contain provisions respecting other extraordinary circumstances creating an inability to provide representation and necessitating compensation for additional attorneys, such as those set out in rule 120-1-07 of the Administrative Code.

(10) Financial reports. The contract shall provide that the non-profit organization retain financial records, submit financial reports, and submit to a financial audit at least annually and report these findings to the county public defender commission or joint county public defender commission. Copies of the annual audit shall be forwarded to the Ohio public defender commission as part of the annual report submitted pursuant to sections 120.14 and 120.24 of the Revised Code.

(11) Standards of representation. The contract shall require that the non-profit organization provide legal services to all clients in a professional, skilled manner consistent with Chapter 120. of the Revised Code, agency 120 of the Administrative Code, any other published rules of the Ohio public defender commission, the Ohio public defender standards and guidelines, the canons of ethics for attorneys in Ohio, and case law and applicable court rules defining the duties of counsel and the



rights of defendants in criminal cases. The non-profit organization shall provide that counsel under contract shall be available to eligible defendants at their request or the request of someone acting on their behalf as required by law, including but not limited to at police questioning, arraignment,, formal charging, or indictment. The contractor shall insure that attorneys provided by the contract shall be accessible to applicants in regard to criminal or delinquency matters before formal court appointment.

(12) Insurance. The contract shall require that the non-profit organization provide malpractice insurance for attorneys who are employees of the non-profit organization, or that individual members of the non-profit organization carry sufficient malpractice insurance. No contract shall provide that the non-profit organization holds the government or county public defender commission or joint county public defender commission harmless for the attorney's representation of the clients.

(13) Management information system The contract shall provide that the non-profit organization maintain a case reporting and management information system from which data shall be available and provided to the county public defender commission, joint county public defender commission, or state public defender upon request. The county public defender commission or joint county public defender commission shall report the caseload data required by the Ohio public defender when submitting its monthly request for reimbursement. Any such system shall be maintained independently from client files so as to disclose no privileged information. The case reporting and management information system shall be used to provide the non-profit organization, county public defender commission or joint county public defender commission, and the Ohio public defender commission with caseload information sufficient to insure compliance with the Ohio public defender commission's rules, Chapter 120. of the Revised Code, and the Ohio public defender standards and guidelines.

(F)

The county public defender commission or joint county public defender commission shall award a contract under this rule only when the non-profit organization is able to fully comply with Chapter 120. of the Revised Code, the rules of the Ohio public defender commission, and all standards and guidelines issued by the Ohio public defender.



(G)

The Ohio public defender commission shall approve a contract with a non-profit organization that conforms to all standards of this rule, Chapter 120. of the Revised Code, the rules of the Ohio public defender commission, and standards and guidelines issued by the Ohio public defender. The Ohio public defender commission shall not approve any contract that is based solely or largely on cost effectiveness, as opposed to quality of representation.

(H)

Any law school, legal aid society, or non-profit organization that enters into a contract with a county public defender to provide legal services shall be subject to the policies and procedures established by the Ohio public defender commission and the Ohio supreme court rules for the government of the bar of Ohio. The standards for in determining eligibility for representation under rule 120-1-03 of the Administrative Code shall apply to these organizations. Copies of such contracts shall be made available to the state public defender upon request.