

ORDINANCE NO. 1449

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON adopting standards for the delivery of public defense services, adding a new section to chapter 2.28 DMMC, and codifying a new section entitled *Public defender standards*.

WHEREAS, pursuant to RCW 10.101.030, the City of Des Moines is required to adopt standards for the delivery of public defense services, and

WHEREAS, RCW 10.101.030 further provides that the standards endorsed by the Washington State Bar Association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards, and

WHEREAS, the City desires to adopt public defense service standards which reflect the needs of the City; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

**Sec. 1. Adoption.** The City hereby adopts the following standards for public defender to ensure that indigent criminal defendants receive high-quality legal representation through a public defense system that efficiently and effectively protects the constitutional requirement of effective assistance of counsel.

**Sec. 2. Contract.** All indigent defense services shall be paid pursuant to a written contract between the indigent defense attorney(s) and the City, with input, from judicial officers.

**Sec. 3. Compensation.** All indigent defense attorneys shall be reasonably compensated, taking into consideration the experience and training of the attorney. Attorneys who have a conflict of interest shall be required to select or compensate conflict counsel.

**Sec. 4. Duties and responsibilities of counsel.** All indigent defense contracts shall require that services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable Washington State Bar Association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client.

**Sec. 5. Malpractice insurance.** Indigent defense attorneys shall maintain malpractice insurance with agreed-upon policy limits.

**Sec. 6. Caseload limits and types of cases.** Caseloads shall be limited to ensure effective representation. An attorney should not allow his or her private law practice to interfere with the competent representation of indigent defendants.

The caseload standards adopted by the Washington State Bar Association, Washington Defenders Association and/or American Bar Association shall be considered as guidelines. A case is defined as the filing of a document wherein a person is designated a defendant or respondent and an attorney is appointed by the court. Adjustments may be made wherein a full case is not attributed in the following non-exclusive circumstances:

- (1) A bench warrant is issued before a case is resolved;
- (2) Probation violation, extradition, restitution hearings, etc., that do not required a full-blown hearing;
- (3) Diversions, continuances for dismissal, misdemeanor compromises or similar dispositions;
- (4) Deferred prosecution or other similar procedure;
- (5) Early dismissal by a prosecutor based on lack of evidence or standard plea offers, based on the prosecutor's charging and plea bargaining practices or other reasons that dispose of a case without extensive litigation; or
- (6) Withdrawal of counsel at an early stage of the case, due to conflict of interest or other reasons.

Attorneys providing indigent defense services, judicial officers and City Administration shall monitor caseloads to assure adequate representation and progress in moving cases to final adjudication. The above-mentioned parties should not hesitate to confer and craft a remedy for dealing with caseload issues that materially affect representation of an indigent client. Excessive continuances, missed court dates, client complaints, etc. shall be addressed as soon as practicable.

**Sec. 7. Services other than counsel.** Reasonable compensation for expert witnesses, investigators and other services necessary for an adequate preparation and presentation of the defense case shall be provided pursuant to Criminal Rule 3.1(f).

**Sec. 8. Administrative expenses.** Attorneys shall be responsible for paying all administrative expenses of their office or firm not otherwise provided for in these standards or in a contract. Such costs may include law libraries, financial accounting, case management systems and other costs incurred in the day-to-day management of the contract. Attorneys shall maintain an office to maintain confidential meetings with clients.

**Sec. 9. Reports of attorney activity and vouchers.** Attorneys on contract shall maintain a case reporting and management information system which includes the number and type of cases, and disposition of each case. Any such system shall be maintained independently from client files so as to disclose no privileged information. At least quarterly reports shall be submitted by the contract firm to the Court and to the City Administration.

A standardized voucher form shall be used by attorneys seeking payment for services rendered. Payment should be made at times agreed to by the parties, without regard to the number of cases closed in the period.

**Sec. 10. Training.** Attorneys shall participate in regular training programs in areas relating to their indigent defense practice.

Attorneys providing counsel to indigent accused should take the opportunity to attend courses that foster trial advocacy skills and to review professional publications and tapes.

**Sec. 11. Supervision.** Each attorney or firm providing indigent defense services should provide adequate supervision of attorneys providing indigent defense services.

**Sec. 12. Substitution of attorneys or assignment of contracts.** The attorney or firm engaged by the respective City to provide indigent defense services shall not subcontract with another firm or attorney to provide representation without prior written approval and shall remain directly involved in the provision of representation. If the contract is with a firm or office, the respective City or judicial officer may request the names and experience levels of those attorneys who will actually be providing the services, to ensure they meet minimum qualifications. Any indigent defense contract shall address the procedures for new counsel taking over upon the conclusion of the contract to ensure a smooth transition upon non-renewal or termination, with the minimal possible detriment to the indigent client.

**Sec. 13. Limitations on private practice for contract attorneys.** New contracts for indigent defense attorneys with private attorneys or firms may set limits on the number of private or special appointment cases. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent. An attorney or firm rendering indigent defense services shall not allow his or her private practice or accept special appointments to diminish his or her ability to represent indigent clients he or she is obligated to serve by any contract.

**Sec. 14. Disposition of client complaints.** The following procedure shall be utilized for responding to client complaints: Complaints should first be directed to the attorney, firm or agency which provided representation. If the attorney and client cannot resolve the complaint amicably, the attorney shall ask the court to withdraw and substitute new counsel. The complaining client should be informed as to the disposition of his or her complaint within a reasonable period of time. If the client feels dissatisfied with the evaluation and response received, he or she should be advised of the right to complain to the Washington State Bar Association.

**Sec. 15. Cause for termination or removal of attorney.** Contracts for indigent defense services should include the grounds for termination of the contract by the parties. Termination of an attorney's contract should only be for good

cause or as provided within the terms of the agreement between the City and firm or attorney. Good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; the willful disregard of the standards herein addressed; or violations of the RPC's.

The representation in an individual case establishes an inviolable attorney-client relationship. Removal of counsel from representation, therefore, should not occur over the objection of both the attorney and the client.

**Sec. 16. Nondiscrimination.** Neither the City, in its selection of an attorney, firm, or agency to provide indigent defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation, or handicap. Both the City and the contractor shall comply with all federal, state, and local nondiscrimination requirements.

**Sec. 17. Guidelines for awarding defense contracts.** The City shall award contracts for indigent defense services only after determining that the attorney or firm chosen can meet appropriate professional standards and qualifications. Under no circumstances will a contract be awarded on the basis of cost alone. Attorneys or firms seeking contracts for indigent defense services must demonstrate their ability to meet these standards.

Prosecutor and law enforcement officers shall not select the attorneys who will provide indigent defense services.

**Sec. 18. Codification.** Sections 1 through 17 of this ordinance shall be codified as a new section in chapter 2.28 DMMC, entitled *Public defender standards*.

**Sec. 19. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

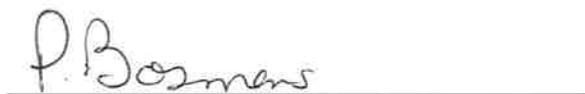
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**Sec. 20. Effective date.** This ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this 11th day of December, 2008 and signed in authentication thereof this 11th day of December, 2008.

  
M A Y O R

APPROVED AS TO FORM:

  
City Attorney

ATTEST:

  
City Clerk

Published: December 22, 2008

Effective Date: January 10, 2009

LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1449, Adopted December 11, 2008.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance adopts standards for the delivery of public defense services, adds a new section to chapter 2.28 DMMC, and codifies a new section entitled *Public defender standards*.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab  
City Clerk

Published: December 22, 2008