ALABAMA DEPARTMENT OF FINANCE
ADMINISTRATIVE CODE

CHAPTER 355-9-1
OFFICE OF INDIGENT DEFENSE SERVICES

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355-9-1-.01 Creation Of Office Of Indigent Defense Services ("OIDS").

The Office of Indigent Defense Services (known hereinafter as "OIDS") was created as a division of the Alabama Department of Finance by the legislature by Act 2011-678 ("the Act"). The purpose of OIDS is to administer the system of defense for criminal defendants or juveniles found by a court to be unable to pay for legal representation in a trial or appellate proceeding.
Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h)
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355-9-1-.02 Director Of OIDS.

OIDS shall have a director ("the Director"), chosen by the Director of Finance as set out in §41-4-322(b) of the Code of

Alabama, as amended. The Director shall be responsible to develop standards governing the provision of legal representation to indigents. The standards are set out in §41-4-322(c), as amended. The method or methods for delivering indigent defense services shall be determined as provided in §41-4-322(d), as amended.
Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h).
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355-9-1-.03 Availability Of Records In The Custody And Control Of OIDS.

Requests for the inspection and copying of records maintained in the custody and control of OIDS may be made in person or by mail, addressed to the Director at 100 North Union Street, Suite 680, Montgomery, Alabama 36104. All rules promulgated by OIDS, as well as all final orders, decisions, and opinions issued, if any, shall be made available for public inspection and copying, at cost, at the address set out above. Documents posted on the OIDS website and available for download, may be downloaded and printed at no cost by the public.
Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h).
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355-9-1-.04 Time Limit For Submission Of Attorney Fee Declarations To OIDS.

In accordance with §15-12-21(e) of the Code of Alabama, appointed counsel shall submit a bill for services rendered no more than 90 days after the conclusion of the trial or ruling on a motion for a new trial or after acquittal or other judgment disposing of the case. The 90 day statutory period shall begin to run at the later of the following - (1) acquittal of the defendant or (2) at sentencing of the defendant or subsequent order of the Court that disposes of any remaining issues not addressed at sentencing, i.e. probation, restitution, etc. or (3) the trial court's ruling on any postjudgment motion filed by either the prosecution or the defendant which ruling starts the time for filing a notice of appeal under Alabama law or rules of court or (4) the trial court's granting of a motion to withdraw or order removing counsel from representation in the matter.

(a) Attorneys appointed to represent defendants in capital murder cases may submit fee declarations on a semi-annual basis for interim payment of work performed and expenses incurred during the semi-annual period. An attorney seeking

interim payment must include a written notice with the fee declaration informing OIDS of the semi-annual billing and upload a copy of each prior interim billing submitted for that case.

(b) In juvenile cases, the disposition date for the case shall be date of the judge's final order of adjudication or the date of the final disposition hearing or the date of the judge's order disposing of all post-trial motions or hearings, whichever date is the latest.

(c) Fee declarations for dependency cases must be submitted to OIDS within 90 days of the judge’s final order of adjudication of dependency. OIDS will accept fee declarations for post-adjudication proceedings such as review hearings or permanency determinations annually.

(d) Fee declarations must be submitted within 90 days of the date a judge grants a timely filed motion to withdraw from a case.

(e) Appointed counsel may submit a fee declaration before final disposition on any case that is assigned to a court's administrative docket or 60 days following a defendant's "Failure to Appear" or if bound over to the Grand Jury without action after one year. The fee declaration must be submitted to OIDS prior to the case being placed on an active docket to receive payment before final disposition. The 90 day requirement does not apply where there has been no final disposition.

(f) The failure of appointed counsel to submit a fee declaration within the 90-day period, as set out above, shall result in the denial of payment by OIDS. An attorney adversely affected by OIDS action with respect to the 90-day period may seek relief, as set out in 355-9-1-.05.

Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h).
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355-9-1-.05 Dispute Resolution Process Regarding Attorney Fee Declarations.

Any dispute regarding the compensation due to be paid to an appointed attorney shall first be submitted in writing as a request for reconsideration by the attorney to the Director. Should the Director's decision with respect to the request for reconsideration be adverse to the appointed attorney, the appointed attorney may seek relief for the amount of compensation by filing a claim with the State Board of Adjustment in accordance

with its statutes and rules, as found at Code of Ala. 1975, §41-9-60 et seq. and at www.bdadj.alabama.gov, respectively.
Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h).
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355-9-1-.06 Billing Standards.

(a) Time recorded on a fee itemization submitted with a fee declaration form shall be in increments of 0.10 hours (six minutes), as follows:

1 to 6 minutes - 0.1 hours
7 to 12 minutes - 0.2 hours
13 to18 minutes - 0.3 hours
19 to 24 minutes - 0.4 hours
25 to 30 minutes - 0.5 hours
31 to 36 minutes - 0.6 hours
37 to 42 minutes - 0.7 hours
43 to 48 minutes - 0.8 hours
49 to 54 minutes - 0.9 hours
55 to 60 minutes - 1.0 hours

(b) Opening, closing, and final billing of a case file will be paid a maximum of 0.5 hours in total. Should the total time for the aforementioned activities exceed 0.5 hours due to circumstances beyond the control of the attorney or for other reason, the attorney may petition the director to approve payment of time in excess of 0.5 hours.

(c) Time spent by qualified law clerk or paralegal working at the direction of appointed counsel must be billed at the paralegal rate of $20.00 per hour.

(d) An Attorney other than appointed com1sel may bill at the statutory rate on the indigent matter provided that; (1) the attorney is working at the direction of appointed counsel; (2) the attorney's assistance was required by circumstances beyond the control of appointed counsel and (3) the name of the attorney must be noted on the fee declaration.

(e) In juvenile and youthful offender cases, names or any personally identifiable information of the child or parties to the matter must be redacted. Fee declarations containing this information, including uploaded supporting documents, will be denied and appointed counsel must re-file for payment.

(f) Non-overhead expenses in excess of $300.00 must be approved by court order in advance of being incurred. To be reimbursed, appointed counsel must submit a fee declaration supported by copy

of court order, invoices and receipts. Non-overhead expenses may be billed on an interim basis. All reimbursement will be in accordance with Alabama Law and The State of Alabama Fiscal Policy and Procedure.
Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h)
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355-9-1-.07 Employment Of Experts, Court Reporters, And Investigators.

All requests for experts, court reporters, and investigators (known collectively herein as "providers" or individually as "provider") must be approved in advance by an order from the trial judge before they perform any work or services. The date at which the provider(s) can begin to perform work or services to be paid by the State of Alabama is the date on which the trial judge signs the order granting the request. In order to effect payment for work and services performed by provider(s), the following procedure must be followed:

(a) The appointed attorney must have filed a motion requesting the services of a provider and the trial judge must have issued an order approving each request.

(b) The appointed attorney must complete a certification that the work or service submitted for payment has been performed and completed.

(c) Each provider must file a Professional Services Fee Declaration (Form PFD-1) with a copy of the court order, the attorney certification, and an itemized invoice attached thereto. If the court's order is not specific as to the nature of the services to be performed or as to payment terms for the provider, the provider must attach a copy of the attorney's motion requesting the services.

(d) Fees to providers may be paid on an interim basis.

(e) Payment of expenses related to the employment of Experts, Investigators and Court Reporters will be in accordance with Alabama Law and the State of Alabama Fiscal Policy and Procedure Manual.

(f) Note regarding court reporters -in-court appearance fee for a court reporter is not payable from the Fair Trial Tax fund and should not be submitted to OIDS for payment. Court reporters are paid in accordance with Alabama Rules of Judicial Administration (ARJA) Rule 29(B) and the court

reporter must file a Court Reporter Fee Declaration (Form C-62C).
Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h).
History: **New Rule:** Filed November 18, 2015; effective December 23, 2015; operative January 4, 2016.

355-9-1-.08 ndigent Defense Advisory Boards; Required Attorney Qualifications.

(1) Act 2011-678 established an Indigent Defense Advisory Board ("the Board") in each judicial circuit. Under the Act, the Board is directed to, among other things, determine the method of delivering indigent defense services to be used in its respective circuit, which methods of delivery may include, but are not limited to, the use of appointed counsel, contract counsel, or public defenders or a combination of any of these. In choosing the method of delivery of indigent defense services for a judicial circuit, the Board "shall select the most efficient and effective counsel system available in each county or circuit, or parts of the county or circuit." (See Code of Ala. 1975, §41-4-322(d).) In order to provide the most efficient and effective indigent defense services, either by the appointment of counsel by a judge or the selection of counsel under contract by the Board, the following qualifications are mandatory:

(a) Each attorney appointed or selected to provide indigent defense representation must -

1. Be a member in good standing with the Alabama State Bar, and

2. Must complete a minimum of six (6) hours per year of continuing legal education credits, approved by the Alabama State Bar, in criminal law beginning after the attorney is appointed or selected.

(b) **Capital Murder** - to act as **Lead Counsel** in a capital case, the attorney, whether appointed or public defender, must, in addition to the mandatory qualifications in (a) above, possess the following minimum qualifications:

1. Must have at least five (5) years of criminal litigation experience.

2. Must be familiar with the Alabama Rules of Professional Conduct, must be familiar with current criminal practice and procedure in Alabama, must be familiar with capital jurisprudence established by the U.S. Supreme Court and the Supreme Court of Alabama;

3. Must have litigated a capital case to verdict, hung jury, or plea as associate counsel, or have litigated four (4) homicide cases to verdict, hung jury, or plea;

4. Must have substantial familiarity with, and experience in the use of, expert witnesses and scientific and medical evidence in litigation;

5. Must complete at least ten (10) hours of capital defense related continuing legal education every two (2) years.

(c) **Capital Murder** - To act as **Associate Counsel** in a capital case, the attorney, whether appointed or public defender, must in addition to the mandatory qualifications in (a) above, possess the following minimum qualifications:

1. Must have at least three (3) years of criminal litigation experience;

2. Must be familiar with the Alabama Rules of Professional Conduct, must be familiar with current criminal practice and procedure in Alabama, must be familiar with capital jurisprudence established by the U.S. Supreme Court and the Supreme Court of Alabama;

3. Must have participated as trial counsel in at least four (4) jury trials to verdict or hung jury;

4. Must have substantial familiarity with, and experience in the use of, scientific and medical evidence in litigation;

5. Must complete a capital murder seminar every two (2) years.

(d) **Class A Felonies** - To act as defense attorney in a Class A felony case, whether appointed, contract counsel, or public defender, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The amount of criminal litigation experience possessed by the attorney;

2. The degree of familiarity with the Rules of Professional Conduct and the current criminal practice and procedure in Alabama; and

3. Whether the attorney has sufficient criminal trial experience in light of the seriousness of criminal charges constituting Class A felonies in Alabama.

(e) **Class B Felonies** - To act as defense attorney in a Class B felony case, whether appointed, contract counsel, or public defender; an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The amount of criminal litigation experience possessed by the attorney;

2. The degree of familiarity with the Rules of Professional Conduct and the current criminal practice and procedure in Alabama; and

3. Whether the attorney has sufficient criminal trial experience in light of the seriousness of criminal charges constituting Class B felonies in Alabama.

(f) **Class C Felonies** - To act as defense attorney in a Class C felony case, whether appointed, contract counsel, or public defender, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The amount of criminal litigation expe1ience possessed by the attorney;

2. The degree of familiarity with the Rules of Professional Conduct and the current c1iminal practice and procedure in Alabama; and

3. Whether the attorney has sufficient criminal trial experience in light of the seriousness of criminal charges constituting Class C felonies in Alabama.

(g) **Juvenile Cases** - To act as defense attorney in a Juvenile case, whether appointed, contract counsel, or public defender, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The amount of juvenile litigation experience possessed by the attorney;

2. The degree of familiarity with the Rules of Professional Conduct and the current criminal and juvenile practice and procedure in Alabama possessed by the attorney;

3. Whether the attorney has exhibited proficiency and commitment to providing quality representation to juvenile offenders; and

4. Whether the attorney has completed a minimum of three (3) hours per year of continuing legal education credits, approved by the Alabama State Bar, in juvenile law or practice.

(h) **Guardian Ad Litem** (GAL) - To act as GAL, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The degree of familiarity with the Rules of Professional Conduct and the current criminal and juvenile practice and procedure in Alabama possessed by the attorney;

2. Whether the attorney has completed a minimum of three (3) hours of continuing legal education credits approved by the Alabama State Bar and specifically related to GAL practice; and

3. Whether the attorney has completed GAL training and certification required by the Alabama Administrative Office of Courts (AOC). Said certification must be maintained on a continuous basis as reported by AOC.

(i) **Misdemeanors and Traffic** - To act as defense attorney in a misdemeanor or traffic case, whether appointed, contract counsel, or public defender, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The degree of familiarity with the Rules of Professional Conduct and the current criminal practice and procedure in Alabama; and

2. Whether the attorney has exhibited professionalism, proficiency, and commitment to providing quality representation to offenders charged with misdemeanors and traffic offenses.

(j) **Appeals** - To act as defense attorneys in an appeal whether appointed, contract counsel, or public defender, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The amount of appellate experience possessed by the attorney; and

2. The degree of familiarity with the Rules of Appellate Procedure, Rules of Professional Conduct and the current criminal practice and procedure in Alabama.

Author: C. Roberts
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355-9-1-.09 Recoupment Of Attorney Fees.

If the court determines that the defendant is, or will be, able to reimburse the State of Alabama for the full or partial cost of legal services provided, the court may order payment of said cost, or a portion thereof, to the circuit clerk's office. The amount to be paid by defendant shall be the actual amount ordered by the court or, if no amount is stated in the court's order, the following amount:

Class A Felony	$1,000.00
Class B. Felony	$ 750.00
Class C Felony	$ 500.00
Juvenile	$ 500.00
Misdemeanor/Probation revocation	$ 250.00

Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h)
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355-9-1-.10 Caseload Management Standards.

It is the policy of OIDS, in accordance with the Act, that the caseload of counsel providing legal services to indigent defendants should allow each lawyer to give each client the time and attention necessary to ensure effective representation. In

order to assure that caseloads are managed adequately so that the quality of legal representation for indigent criminal defendants is not compromised, the following caseload standards are adopted for those attorneys representing indigent criminal defendants, and should not be exceeded:

(a) Two hundred (200) felony cases per attorney per year; OR

(b) Four hundred (400) misdemeanor and traffic offense cases per attorney per year; OR

(c) Two hundred (200) juvenile offender cases per attorney per year; OR

(d) One hundred (100) open juvenile dependency cases per attorney per year; OR

(e) One hundred (100) GAL cases per attorney per year; OR

(f) Thirty-six (36) appeals to an appellate court considering a case on a record and on briefs per attorney per year.

It is expected that an attorney will handle cases in more than one of the types set out in (a) through (f), above. However, in any year, an attorney should not accept a caseload of any combination of the types set out above that, due to the volume of cases, compromises the ability of the attorney to render quality representation.
Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h).
History: Authority: Code of Ala. 1975, §41-4-322(h). History: **New Rule:** Filed November 18, 2015; effective December 23, 2015; operative January 4, 2016.

355-9-1-.11 Minimum Qualifications And Requirements For A Public Defender.

Should a Board determine that the method for delivering indigent defense services in its county or circuit is by the establishment of a Public Defender's office and the selection and appointment of a Public Defender, it shall do so in accordance with the Act. The minimum qualifications and requirements for the position of Public Defender shall be:

(a) The individual sought to be appointed must be a member in good standing with the Alabama State Bar and any other bar association of which the individual is a member;

(b) The individual sought to be appointed must have a minimum of eight (8) years of criminal practice experience, preferably with criminal trial experience;

(c) The individual sought to be appointed must have the ability to effectively administer the Public Defender's office;

(d) The individual sought to be appointed may not practice before a judge in the same county or judicial circuit within the 4th degree of consanguinity (first cousin), inclusive;

(e) The individual sought to be appointed must become a resident of the county or circuit in which he or she will serve as Public Defender within 90 days of taking office.

Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h)
History: **New Rule:** Filed November 18, 2015; effective December 23, 2015; operative January 4, 2016.

355-9-1-.12 Standards For Establishing Contract Counsel System.

Should a board determine that the method for delivering indigent defense services in its county or circuit is by the establishment of a Contract Counsel System, it shall do so in accordance with the Act and consistent with these rules. The selection process shall be determined by the Board consistent with the qualifications enumerated in the Act and these rules. All Contracts are to be negotiated and attorneys selected by the Board, subject to the approval of the Presiding Circuit Judge and the Director.

Author: C. Roberts
Statutory Authority: Code of Ala. 1975, §41-4-322(h)
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