

CITY OF SKY VALLEY

COUNTY OF RABUN

**RESOLUTION**

**WHEREAS**, the Mayor and Council of the City of Sky Valley have been presented with a document entitled, the "City of Sky Valley Municipal Court Internal Operating Procedure for a Indigent Defense Program" by the Chief Judge of the Municipal Court of the City; and

**WHEREAS**, the City of Sky Valley is required to adopt an indigent defense program by the 1<sup>st</sup> day of January 2005; and

**WHEREAS**, the City is complying with the directives of the General Assembly of the State of Georgia and the United States Supreme Court in providing funds and procedures for providing an indigent defense program; and

**WHEREAS**, the Mayor and Council has determined that it is in the best interest of the public health, safety and welfare of the citizens of both the City of Sky Valley that this Indigent Defense Program be adopted and the necessary funds be budgeted and expended to implement this programs as required by law.

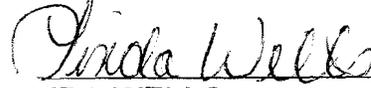
NOW THEREFORE, BE IT RESOLVED BY THE CITY OF SKY VALLEY that the City does hereby adopt and affirm the Indigent Defense Program as a formal operating procedure of the Municipal Court.

BE IT FURTHER RESOLVED THAT LINDA WELLS is hereby appointed the Municipal Court Administrator as defined in this Program.

BE IT FURTHER RESOLVED THAT the funds necessary for the operation of this program are hereby directed to be paid as approved by the Court and the Administrator.

SO RESOLVED, this the 14<sup>th</sup> day of February, 2005.

Attest:

  
LINDA WELLS  
CITY CLERK

  
STEVE BRETT, Mayor  
City of Sky Valley

Approved as to form:

  
JOHN DICKERSON  
City Attorney

CITY OF SKY VALLEY  
MUNICIPAL COURT  
STATE OF GEORGIA

INTERNAL OPERATING PROCEDURE

# INDIGENT DEFENSE PROGRAM

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## I. GENERAL GUIDELINES

### 1.1 The Function of the Guidelines

- A. These Guidelines are intended to facilitate the efficient and effective operation of the indigent defense program and are to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances. These Guidelines are not intended to create substantive or procedural rights which might accrue either to the accused, or convicted persons, or to counsel.
- B. These Guidelines are based upon and in many instances are a restatement of the American Bar Association Indigent Defense Function Standards, Third Edition, and reference may be made to the like numbered section of that document for assistance in interpreting the intent and reasoning relating to these Guidelines, especially when considering the commentary contained in that document, which, in addition to being instructive, occasionally refers to judicial decisions specifically or generally involving issues of competency or effectiveness of counsel insofar as such decisions may cast light on standards of conduct that courts have concluded are applicable to the conduct of counsel in these matters. Nonetheless, it is beyond the scope of these Guidelines to attempt to determine the conditions under which deviation from the Guidelines and recommendations made here warrants reversal or vacation of a conviction or sentence. Material has also been incorporated from the Guidelines of the Mountain Judicial Circuit and the Defense Attorney's Ethical Response to Ineffective Assistance of Counsel Claims, a booklet produced by and available from the Georgia Indigent Defense Council.
- C. These Guidelines have been adopted to satisfy the direction of the United State Supreme Court in the case of Alabama v. Shelton, 535 U.S. 654, 152 L. Ed. 2d 888, 122 S. Ct. 1764 (2002). The United State Supreme Court has mandated that any defendant who is subjected to criminal sanctions is entitled to assistance of counsel under the protections of the Constitution.

### 1.2 The Function of Defense Counsel

- A. Counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused.
- B. The basic duty defense counsel owes to the administration of justice and as an officer of the court is to serve as the accused's counselor and advocate with courage and devotion and to render effective, quality representation at a

reasonable cost.

- C. Reserved
- D. Defense counsel, in common with all members of the bar, is subject to standards of conduct stated in statutes, rules, decisions of courts, and codes, canons, or other standards of professional conduct. Defense counsel has no duty to execute any directive of the accused which does not comport with law or such standards. Defense counsel is the professional representative of the accused, not the accused's alter ego.
- E. Defense counsel should not intentionally misrepresent matters of fact or law to the court.

### 1.3 Delays; Punctuality; Workload

- A. Defense counsel should act with reasonable diligence and promptness in representing a person accused of a crime.
- B. Defense counsel should avoid unnecessary delay in the disposition of cases. Defense counsel should be punctual in attendance upon court and in the submission of all motions, briefs, and other papers. Defense counsel should emphasize to the accused and all witnesses the importance of punctuality in attendance in court.
- C. Defense counsel should not intentionally misrepresent facts or otherwise mislead the court in order to obtain a continuance.
- D. Defense counsel should not intentionally use procedural devices for delay for which there is no legitimate basis.
- E. Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the accused's interest in the speedy disposition of charges, or may lead to the breach of professional obligations.

## II. ACCESS TO COUNSEL

### 2.1 Appointment of Counsel

- A. The judges of the municipal courts are designated and authorized to appoint an attorney for indigent persons who have criminal proceedings pending in the courts. This appointment shall continue through the final disposition of the case, exclusive of appeal, unless the accused is determined not to be indigent.

- B. A court or its designee shall appoint only competent attorneys to represent an indigent person in any case and the attorney shall have an adequate educational background, have demonstrated the ability to perform competent trial work, conduct their professional work in an ethical manner and be a member in good standing of the State Bar of Georgia during the representation of the accused. No attorney shall be appointed to represent an accused when the appointing authority questions the attorney's ability to effectively represent the accused.
- C. The Court and the Sky Valley Municipal Court Indigent Defense Administrator (hereinafter "Administrator") shall observe the performance of the appointed attorney in order to be assured the attorney is performing the role effectively, that the attorney makes an early entry into representation of the accused, provides vigorous and independent representation of the accused, participates in training activities and continuing legal education and provides effective and reasonable use of time and resources.
- D. Appointed counsel shall be politically autonomous and free from influence, guidance or control from any authority in the discharge of their professional duties, within the bounds of the law, the Code of Professional Responsibility and these Guidelines.
- E. Appointed counsel not in compliance with these Guidelines may be removed from the case, may be admonished, placed on probation requiring completion of a rehabilitation plan, suspended from the Indigent Defense Attorney Panel (hereinafter referred to as "Panel") or may be removed from the Panel.

## 2.2 Eligibility of Accused

- A. The financial eligibility of a person applying for publicly provided counsel should be determined by the Court, Administrator or designee.
- B. Eligible accused persons include all applicants for an attorney with net income below a level set by the Administrator and revised periodically, being not less than the federal poverty level as determined each July 1, currently as shown at Appendix A.
- C. The appointing authority may consider special needs of the family unit including child care expenses, court ordered support payments for dependents, unusual, excessive or extraordinary medical or other expenses, the availability of retained counsel and the ability of the accused to acquire the services of retained counsel. When in doubt, the appointing authority

should generally make the appointment and, should it later be determined the accused was not eligible for appointed counsel, the accused may be required to reimburse the City for all or a portion of the actual costs of defense in the case.

### **III. LAWYER-CLIENT RELATIONSHIP**

#### **3.1 Establishment of Relationship**

- A.** An attorney-client relationship is established upon oral appointment by the Court or by the entry of an order of appointment. Defense counsel should seek to establish a relationship of trust and confidence with the accused and should discuss the objectives of the representation. Defense counsel should explain the necessity of full disclosure of all facts known to the accused for an effective defense, and defense counsel should explain the extent to which counsel's obligation of confidentiality makes privileged the client's disclosures.
- B.** To ensure the privacy essential for confidential communication between defense counsel and the accused, counsel should use caution to avoid disclosing or disseminating confidential information during private discussions between counsel and the accused in courthouses, jails, prisons, and other public places where accused persons must confer with counsel.
- C.** Where the accused does not speak and/or understand the English language, counsel shall acquire the assistance of an appropriate interpreter and during the use of the interpreter, shall exercise care to prevent the improper release of confidential information.

#### **3.2 Interviewing the Accused**

- A.** As soon as practicable, but not less than 72 hours after appointment, defense counsel shall meet with the accused, conduct the initial interview and seek to determine all relevant facts known to the accused which relate to the case. In so doing, defense counsel should probe for all legally relevant information without seeking to influence the direction of the accused's responses.
- B.** Defense counsel should not instruct the accused or intimate to the accused in any way that the accused should not be candid in revealing facts so as to afford defense counsel free rein to take action which would be precluded by counsel's knowing of such facts.
- C.** Defense counsel should ask the accused to list potential witnesses regarding the issues of guilt or innocence including possible character witnesses and

alibi witnesses and witnesses relating to sentencing issues including mitigation factors.

### 3.3 Fees

- A. Defense counsel should not seek or encourage the accused person or their family to convert the appointed case to a fee case, however, upon request, the Administrator or the Court may authorize the appointed attorney to accept representation of the accused on a retained basis. Appointed counsel shall not accept representation of the accused for a fee without prior approval by the Court or the Administrator.
- B. Defense counsel shall not seek nor charge the city an excessive or unreasonable fee for representing an indigent accused pursuant to an appointment.
- C. When the accused secures retained counsel, defense counsel should promptly notify the Court, withdraw and turn over the case file to the new counsel.

3.4 Obtaining Literary or Media Rights from the Accused. Defense counsel appointed to represent an indigent accused, shall not enter into any agreement or understanding with an accused or a prospective accused, representative, or his or her family by which defense counsel (nor any member of counsel's firm, any associate, agent, nominee or family of defense counsel) acquires any interest in literary or media rights to a portrayal or account based on information relating to or arising out of the appointment or subsequent employment of counsel in the case.

### 3.5 Conflicts of Interest

- A. Appointed defense counsel should not permit his or her professional judgment or obligations to be affected by his or her own political, financial, business, property, or personal interests.
- B. Defense counsel should disclose to the accused and the Court at the earliest feasible opportunity any interest in or connection with the case or any other matter that might be relevant to the selection of counsel to represent the accused or of counsel's continuing representation. Such disclosure should include communication of information reasonably sufficient to disclose the significance of any conflict or potential conflict of interest.
- C. Except for preliminary matters such as initial hearings or applications for bail, defense counsel who are associated in practice should not undertake to defend more than one accused in the same criminal case if the duty to one of the accused may conflict with the duty to another client. The potential for

conflict of interest in representing multiple clients is so grave that ordinarily defense counsel should decline to act for more than one of several co-defendants except in unusual situations when, after careful investigation, it is clear either that no conflict is likely to develop at the trial, sentencing, or at any other time in the proceeding or that common representation will be advantageous to each of the co-defendants represented and, in either case, that:

- (1) The several accused give an informed written consent to such multiple representation; and
  - (2) The consent of the accused is made a matter of judicial record. In determining the presence of consent by the accused, the trial judge may make appropriate inquiries respecting actual or potential conflicts of interest of counsel and whether the accused fully comprehend the difficulties that defense counsel sometimes encounters in defending multiple defendants.
- D. Defense counsel who has formerly represented an accused should not thereafter use information related to the former representation to the disadvantage of the former client unless the information has become generally known or the ethical obligation of confidentiality otherwise does not apply.
- E. In accepting appointment for the defense of another, defense counsel should be careful to determine that he or she will not be confronted with a conflict of loyalty since defense counsel's entire loyalty is due the accused. Defense counsel should not accept such appointment unless:
- (1) Reserved;
  - (2) Defense counsel guards against interference with defense counsel's independence of professional judgment or with the attorney-client relationship;
  - (3) Information relating to the representation of the accused is protected from disclosure as required by defense counsel's ethical obligation of confidentiality; and
  - (4) Defense counsel does not permit a person other than the accused to direct or regulate counsel's professional judgement in rendering such legal services.
- F. Defense counsel should not defend a criminal case in which counsel's partner or other professional associate is or has been the prosecutor in the same case.

- G. Defense counsel is not eligible for appointment to represent a criminal accused in a court in which he or she is also a judge, clerk or prosecutor.
- H. Defense counsel who formerly participated personally in the prosecution of an accused should not thereafter represent any person in the same or a substantially related matter. Defense counsel who was formally a prosecutor should not use confidential information about a person acquired when defense counsel was a prosecutor in the representation of an accused whose interests are adverse to that person in a matter.
- I. Reserved.
- J. Defense counsel who is related to a prosecutor as parent, child, sibling or spouse should not represent an accused in a criminal matter where defense counsel knows the government is represented in the matter by such prosecutor. Nor should defense counsel who has a significant personal or financial relationship with a prosecutor represent an accused in a criminal matter where defense counsel knows the government is represented in the matter by such prosecutor, except upon consent by the accused after full disclosure and consultation regarding the relationship.
- K. Defense counsel shall not act as surety on a bond either for the accused represented by counsel or for any other accused in the same or a related case.

**3.6 Prompt Action to Protect the Accused.** Effective use of the criminal justice system requires the rights of the accused be protected and preserved by prompt legal action. Defense counsel should inform the accused of his or her rights at the earliest opportunity and take all reasonably necessary action to vindicate such rights. Defense counsel should consider all procedural steps which in good faith may be taken, including, for example, motions seeking pretrial release of the accused, obtaining psychiatric examination of the accused when a genuine need appears, acquiring investigative services where defense counsel is unable to properly investigate the case, moving for change of venue or continuance, moving to suppress illegally obtained statements or evidence, moving for severance from jointly charged defendants, moving for severance of improperly joined charges, and seeking dismissal of the charges where there exists an appropriate basis for dismissal.

**3.7 Reserved**

**3.8 Duty to Keep Accused Informed**

- A. Defense counsel should keep the accused informed of the developments in

the case and the progress of preparing the defense and should promptly comply with reasonable requests for information. Counsel should accept collect calls from the client in pretrial detention and discuss and consult with the client on matters related to the case.

- B. Defense counsel should explain developments in the case to the extent reasonably necessary to permit the accused to make informed decisions regarding the representation.

### **3.9 Obligations of Hybrid and Standby Counsel**

- A. Defense counsel whose duty is to actively assist a pro se defendant should permit the defendant to make the final decisions on all matters, including strategic and tactical matters relating to the conduct of the case.
- B. Defense counsel whose duty is to assist a pro se defendant only when the defendant requests assistance may bring to the attention of the defendant matters beneficial to him or her, but should not actively participate in the conduct of the defense unless requested by the defendant or insofar as directed to do so by the court.

## **IV. INVESTIGATION AND PREPARATION**

### **4.1 Duty to Investigate**

- A. Defense counsel's preparation of the defense of a case requires that counsel conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty. Defense counsel should seek to avoid participating in the entry of a guilty plea without investigating and ascertaining the facts of the case.
- B. Defense counsel should not seek to acquire possession of physical evidence personally or through use of an investigator where defense counsel's sole purpose is to obstruct access to such evidence.
- C. Defense counsel should personally conduct the investigation of the case and avoid relying on the services of investigators or other persons except in special and extraordinary cases.

### **4.2 Reserved**

#### 4.3 Reserved

### V. CONTROL AND DIRECTION OF LITIGATION

#### 5.1 Advising the Accused

- A. After informing himself or herself fully on the facts and the law, defense counsel should advise the accused with complete candor concerning all aspects of the case, detailing the applicable law, the prosecution's evidence and arguments, including, when possible, a candid estimate of the probable outcome of the case and including the possibility or probability of the accused being convicted of the offense(s) charged and a complete description of the possible maximum sentence(s) which could be imposed under the applicable law. When counsel determines a conviction would likely result in the accused being sentenced to incarceration, counsel has an absolute duty to inform the accused of the possibility that the accused may be sentenced to incarceration and to properly and adequately inform the accused so that he or she will be prepared for the outcome of the case.
- B. Defense counsel should not intentionally understate or overstate the risks, hazards, or prospects of the case to exert undue influence on the accused's decision as to his or her plea. Counsel should not suggest that the accused will be eligible for an early release or parole unless counsel has verified same.
- C. Defense counsel should caution the accused to avoid communication about the case with family, friends, acquaintances and witnesses, except with the approval of counsel to avoid either the reality or the appearance of any other improper activity.

#### 5.2 Control and Direction of the Case

- A. Certain decisions relating to the conduct of the case are ultimately for the accused and others are ultimately for defense counsel. The decisions which are to be made by the accused after full consultation with counsel include:
  - (2) Whether and when to waive a preliminary hearing;
  - (3) What pleas to enter;
  - (4) Whether to accept a plea agreement and/or whether to tender a non-negotiated guilty plea;

- (5) Whether to waive jury trial;
  - (6) Whether to testify in his or her own behalf; and
  - (7) Whether to appeal.
- B. Strategic and tactical decisions should be made by defense counsel after consultation with the accused where feasible and appropriate. Such decisions include what witnesses to call, whether and how to conduct direct and cross-examination, what jurors to accept or strike, what trial motions should be made, what evidence should be introduced and what objections should be made to evidence, testimony or court rulings.
- C. If a disagreement on significant matters of tactics or strategy arise between defense counsel and the accused, defense counsel should make a record of the circumstances, counsel's advice and reasons, and the conclusion reached. The record should be made in a manner which protects the confidentiality of the attorney-client relationship.
- D. If a disagreement on significant matters of tactics or strategy arises between defense counsel and the accused and the nature of the disagreement is such that the defense counsel cannot effectively represent the accused, the disagreement shall be brought to the court's attention on the record.

## **VI. DISPOSITION WITHOUT TRIAL**

### **6.1 Duty to Explore Disposition Without Trial**

- A. Whenever the law, nature, and circumstances of the case permit, defense counsel should explore the possibility of an early diversion of the case from the criminal process through the use of other community agencies.
- B. Defense counsel may engage in plea discussions with the prosecutor. Defense counsel should avoid recommending the acceptance of a plea to an accused unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial.
- C. Defense counsel may not participate in the entry of a guilty plea by an accused which counsel believes to be innocent except that, where appropriate, counsel may tender a plea under North Carolina vs. Alford with the accused's full participation, knowledge and consent.

### **6.2 Plea Discussions**

- A. Defense counsel should keep the accused advised of developments arising out of plea discussions conducted with the prosecutor.
- B. Defense counsel should promptly communicate and explain to the accused all plea proposals made by the prosecutor. Written plea offers made by or to the prosecutor shall be shown to the accused.
- C. Defense counsel should not knowingly make false statements concerning the evidence in the course of plea discussions with the prosecutor.
- D. Defense counsel should not seek concessions favorable to one client by any agreement which is detrimental to the legitimate interests of another client.
- E. Defense counsel representing two or more accused persons in the same or related cases should not participate in making an aggregated agreement as to guilty or nolo contendere pleas, unless each accused consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved.

## **VII. TRIAL**

### **7.1 Courtroom Professionalism**

- A. As an officer of the court, defense counsel should support the authority of the court and the dignity of the trial courtroom by strict adherence to codes of professionalism and by manifesting a professional attitude toward the judge, opposing counsel, witnesses, jurors, and others in the courtroom.
- B. Defense counsel should not engage in unauthorized *ex parte* discussions with or submission of material to a judge relating to a particular case which is or may come before the judge.
- C. When court is in session, defense counsel should address the court and should not address the prosecutor directly on all matters relating to the case.
- D. Defense counsel shall comply promptly with all orders and directives of the court, but defense counsel has a duty to have the record reflect adverse rulings or judicial conduct which counsel considers prejudicial to the accused's legitimate interests. Defense counsel has a duty to object to the offer of inadmissible evidence. Defense counsel has a right to make respectful requests for reconsideration of adverse rulings.
- E. Defense counsel should be able, prepared and willing to go to trial in appropriate cases and not seek to encourage an accused to agree to enter a guilty plea in order to avoid a trial based on defense counsel's personal

desire to avoid a trial. Attorneys who are unable or unwilling to go to trial in appropriate cases are not eligible for appointment to represent indigent defendants and will be removed from the Panel list.

7.2 Reserved

7.3 Reserved

7.4 Reserved

7.5 **Presentation of Evidence.** Defense counsel should not actively participate in knowingly offering false evidence, whether by documents, tangible evidence, or the testimony of witnesses.

7.6 **Examination of Witnesses.** The interrogation of all witnesses should be conducted fairly, objectively, and with due regard for the dignity and legitimate privacy of the witness, and without seeking to intimidate or humiliate the witness unnecessarily.

7.7 Reserved

7.8 Reserved

7.9 **Post-Trial Motions.** Defense counsel's responsibility includes protecting the accused's rights to seek post-trial relief including motion for new trial and notice of appeal unless counsel is relieved by the Court or replaced by substitute counsel.

## **VIII. POST CONVICTION**

### **8.1 Sentencing**

A. Defense counsel should, at the earliest possible time, be or become familiar with all of the sentencing alternatives available to the Court and with community and other facilities which may be of assistance in a plan for meeting the accused's needs. Defense counsel's preparation should also include familiarization with the court's practices in exercising sentencing discretion, the practical consequences of different sentences, and the normal pattern of sentences for the offense involved, including any guidelines applicable at either the sentencing or parole stages. The consequences of the various dispositions available should be explained fully by defense counsel to the accused.

B. Defense counsel should present to the court any ground which will assist in reaching a proper disposition favorable to the accused. If a pre-sentence report or summary is made available to defense counsel, he or she should seek to verify the information contained in it and should be prepared to supplement or challenge it if necessary. If there is no pre-sentence report or

if it is not disclosed, defense counsel should submit to the court and the prosecutor all favorable information relevant to sentencing and in an appropriate case, with the consent of the accused, be prepared to suggest a program of rehabilitation based on defense counsel's exploration of employment, educational, psychological, addiction treatment and other opportunities made available by community services.

- C. Defense counsel should also insure that the accused understands the nature of the pre-sentence investigation process, and in particular the significance of statements made by the accused to probation officers and related personnel. Where appropriate, defense counsel should attend the probation officer's interview with the accused.
- D. Defense counsel should insure that the accused understands and appreciates the possible range of the sentence which could be imposed for each charge in the indictment or accusation. It is the duty of defense counsel to prepare the accused for the possible outcome of the trial, including the possibility that the accused may be convicted and sentenced to jail or prison.
- E. Defense counsel should request the accused provide the names of persons who could provide information or testimony helpful at sentencing and counsel should interview those persons and present witnesses at sentencing where appropriate.

## 8.2 Appeal

- A. After conviction, defense counsel should explain to the defendant the meaning and consequences of the court's judgment and defendant's right to appeal. Defense counsel should give the defendant his or her professional judgment as to whether there are meritorious grounds for appeal and as to the probable results of an appeal. Defense counsel should also explain to the defendant the advantages and disadvantages of an appeal. The decision whether to appeal must be the defendant's own choice.
- B. Defense counsel should take whatever steps are necessary to protect the accused's rights of appeal so that such rights will not be lost by default.
- C. Defense counsel shall not be authorized to file an appeal unless appointed by the court as appellate counsel. However, counsel has a duty to bring to the court's attention the issue of post-judgment representation.

## 8.3 Counsel on Appeal

- A. Appellate counsel should not seek to withdraw from a case solely on the

basis of his or her own determination that the appeal lacks merit.

- B. Appellate counsel should give an accused his or her best professional evaluation of the questions that might be presented on appeal. Counsel, when inquiring into the case, should consider all issues that might affect the validity of the judgement of conviction and sentence, including any that might require initial presentation in a post-conviction proceeding. Counsel should advise the accused on the probable outcome of a challenge to the conviction or sentence. Counsel should endeavor to persuade the accused to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance.
- C. If the accused chooses to proceed with an appeal against the advice of counsel, counsel should present the case, so long as such advocacy does not involve deception of the court. When counsel cannot continue without misleading the court, counsel may request permission to withdraw.
- D. Appellate counsel has the ultimate authority to decide which arguments to make on appeal except that, where there is any legitimate basis for raising an issue on appeal counsel should include the issue and should give consideration to issues that the accused desires to be argued on appeal. Counsel should also take into consideration that it may be advantageous to only argue the most meritorious issues and avoid jeopardizing the appeal by arguing numerous and marginal issues thereby diverting attention from the main appellate grounds.
- E. Counsel for a defendant-appellant or a defendant-appellee should continue to represent the accused if the prosecution seeks review in a higher court, unless new counsel is substituted or unless the court permits counsel to withdraw. Similarly such appellate counsel should continue to represent the accused if the prosecution seeks review in the Supreme Court of the United States.
- F. In the event an appeal is taken in the U.S. Supreme Court by counsel for the government and defense counsel is not a member of that Court and does not immediately become a member, counsel shall notify the trial court promptly so that substitute counsel can be appointed in a timely manner.

#### 8.4 Conduct of Appeal

- A. Appellate counsel should be diligent in perfecting appeals and expediting their prompt submission to appellate courts.
- B. Appellate counsel should be accurate in referring to the record and the authorities upon which counsel relies in the presentation to the court of briefs and oral argument.

- C. Appellate counsel should not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.
- D. Appellate counsel should become completely familiar with the proceedings and record of the case, thoroughly investigate the facts and research the applicable law, and raise appropriate issues on appeal.

8.5 Reserved

8.6 Challenges to the Effectiveness of Counsel

- A. If defense counsel, after investigation, determines or concludes that another defense counsel who served in an earlier phase of the case did not provide effective assistance of counsel, he or she should not hesitate to seek relief for the accused on that ground.
- B. If defense counsel, after investigation, is satisfied that another defense counsel who served in an earlier phase of the case provided effective assistance, he or she should so advise the accused and the Court and may decline to proceed further on the issue of effective assistance, unless directed to do so by the Court.
- C. If defense counsel concludes that he or she did not provide effective assistance in an earlier phase of the case, defense counsel should explain this conclusion to the accused and seek to withdraw from further representation with an explanation to the court of the reason therefor.
- D. Defense counsel whose conduct of a criminal case is drawn into question and is called to testify, is entitled to testify concerning the matters charged and is not precluded from disclosing the truth concerning the accusation to the extent defense counsel reasonably believes necessary, even though this involves revealing matters which were given in confidence.
- E. Defense counsel whose conduct in a criminal case is the subject of a claim of ineffectiveness has a duty upon proper request, to respond by cooperating fully with requests from the accused's new counsel and to produce the case file at any hearing and to testify truthfully and completely in response to questions about how he or she conducted the accused's defense. If defense counsel is aware of his or her own failure or ineffectiveness in any area, this fact must be represented truthfully to the Court. Defense counsel must not attempt to reinvent or misrepresent the quality or extent of representation provided the accused.
- F. Defense counsel should be or become familiar with the Georgia Indigent

Defense Council's pamphlet entitled *Defense Attorney's Ethical Response to Ineffective Assistance of Counsel Claims* and counsel's response to ineffectiveness claims should comply with the tenants set out therein.

## **IX. APPOINTMENT OF COUNSEL**

### **9.1 Municipal Court Administration**

- A. The Administrator shall administer the Municipal Court of the City of Sky Valley Indigent Defense Program.
- B. Provision of attorneys for indigent accused shall be in conformance with Georgia Indigent Defense Council Guidelines and O.C.G.A. 17-12.
- C. The Administrator shall maintain a list of indigent defense Panel of attorneys eligible for appointment to indigent defense cases and shall monitor the performance of appointed attorneys, determine the appropriate compensation and reimbursement of appointed attorneys and provide the courts with a list of Panel attorneys eligible for appointment for each term of court.
- D. The Administrator shall propose and adopt a plan for operating an indigent defense program, submit the plan to the Georgia Indigent Defense Council and operate the program in a manner consistent with Council Guidelines so that the program retains eligibility for state grants to contribute to funding the program.
- E. Nothing herein shall restrict the authority of the Judges to appoint any qualified attorney to represent an indigent accused or to set or approve fees or expenses in such cases.

### **9.5 Bind Over or Transfer to State/Superior Court**

Appointed attorney's service shall terminate under the authority of the Municipal Court City of Sky Valley upon the filing of a bind over or transfer order. Services as appointed attorney in any Court other than the Municipal Court City of Sky Valley shall be subject to that court's rules and procedures.

## **X. PANEL ATTORNEYS**

- 10.1 **Qualifications of Panel Attorneys.** The Administrator shall create a master list of Panel Attorneys qualified for appointment to represent indigent accused based upon the following guidelines:

- A. Misdemeanor Cases, Traffic Cases and City Ordinance Violations. An attorney who practices criminal law and is in good standing with the State Bar of Georgia and either maintains an office for the practice of law in the Mountain Judicial Circuit or actively practices in the Circuit may be subject to appointment to represent an indigent person charged with a misdemeanor violation, provided the attorney is approved by the Administrator and the Court.

10.2 Continuing Legal Education. Indigent defense Panel attorneys should complete a minimum of 6 hours per year of continuing legal education regarding criminal defense, trial practice or appellate skills.

### 10.3 Panel Attorneys

- A. No attorney shall be required to serve on the appointed list more than one term in any calendar year. Nothing contained herein shall restrict the Court in appointing an attorney not on the current appointed attorneys list when it is determined that such an appointment is in the best interest of the indigent person.
- B. The Administrator may grant waivers on classification to Panel attorneys on an individual basis as appropriate to protect the accused's interests and as are just and equitable under the circumstances.
- C. Panel attorneys shall provide the Administrator with a correct, current address and telephone number at all times in order to maintain their eligibility to remain on the Panel.
- D. Panel attorneys shall be members in good standing with the State Bar of Georgia. Panel attorneys whose membership in the State Bar of Georgia is suspended, whether by reason of imposition of discipline, failure to pay membership dues, failure to meet continuing legal education requirements or otherwise, shall promptly notify the Administrator of the change of their status and shall be suspended from the Panel and not be eligible for appointment to represent an indigent accused and shall immediately take appropriate steps to protect the accused's interests by notice, withdrawal and/or whatever actions are just and equitable under the circumstances.
- E. No person may be assigned the primary responsibility of representing an indigent person unless he/she is authorized to practice law in this state and is otherwise competent to counsel and defend a person accused of a crime. Guidelines relating to competence and training promulgated by the Supreme Court of Georgia, the Georgia Indigent Defense Council and/or the Municipal Court Administrator shall be followed by all Panel attorneys so long as they remain on the Panel and their failure to maintain or comply with any such Guideline or requirement shall constitute a basis for suspension or removal

from the Panel.

#### 10.4 Removal of Panel Attorney

- A. At any stage of criminal proceedings, including appeal or other post-conviction proceeding, the Court may, for good cause, assign an assistant counsel who may be in any category, or assign substitute counsel.
- B. The Administrator may suspend or remove any attorney from the Panel for good cause and require completion of a rehabilitation plan prior to considering a request for reinstatement to the Panel.

### **XI. COMPENSATION**

#### 11.1 Request for Compensation

- A. The Administrator or the Court shall establish an appropriate fee structure for adequate compensation of attorneys appointed to represent indigent accused under the indigent defense program and which comply with State guidelines.
- B. The appointed attorney shall keep and maintain accurate and adequate time records and receipts for expenditures in each case.
- C. The appointed attorney shall submit to the Administrator a request for payment on the fee invoice form adopted by the Administrator [Appendix D]. The form shall be made under oath and with sufficient detail to permit effective review by the Administrator.
- D. Requests for payment shall generally be submitted at the conclusion of the case at the trial level and in cases of appointment for post-conviction representation; the invoice shall be submitted following the entry of a final order on the appeal. In lengthy or protracted cases, interim bills may be presented by the attorney.
- E. All requests for reimbursement of reasonably necessary expenditures made by the attorney shall be accompanied by proper vouchers, receipts and proof of payment of the expenditures.
- F. Requests submitted by counsel for payment of charges by experts, investigators and other support providers shall include a copy of the order of the Court authorizing funds for the support services.
- G. Request for compensation of the following expenses requires prior approval

by the Court or the Administrator:

- (1) Travel time and expenses, food, lodging;
- (2) Work product of any person other than the appointed attorney;
- (3) Investigators;
- (4) Medical/psychological examinations of the accused;
- (5) Lab work and forensic testing;
- (6) Photocopying and facsimile transmission charges; and
- (7) Preparation of conflict letters and leaves of absence.

H. Fee invoices which are unusually high or unique should be accompanied by a written explanation of the attorney's work and an itemization of the time and fees charged by the attorney.

I. Not used.

J. Fee invoices may be reviewed by the Court or Administrator and adjusted as appropriate taking into consideration the nature and seriousness of the offense, possible punishment, skill and experience of defense counsel, time involved, availability of other appropriate counsel, uniqueness of the qualifications of counsel, comparable fees charged by private attorneys, outcome of the case and the indigent defense budget.

K. Decisions of the Administrator regarding Panel attorneys, payment of fees, expenses and costs are final and may not be appealed except as provided by law.

11.2 Fee Schedule. Fees paid to attorneys appointed to represent an indigent accused shall be based on an hourly rate to be established by the Court or the Administrator currently as shown at Appendix E. (This Internal Operating Procedure supersedes IOP 99-45, dated June 30, 1999).

**APPENDIX A**

**2004 Poverty Guidelines**

**2004 POVERTY GUIDELINES**  
**U.S. Department of Health and Human Services**

Size of Family Unit	Yearly Income	150%	200%
1	\$9,310	\$13,965	\$18,620
2	\$12,490	\$18,735	\$24,980
3	\$15,670	\$23,505	\$31,340
4	\$18,850	\$28,275	\$37,700
5	\$22,030	\$33,045	\$44,060
6	\$25,210	\$37,815	\$50,420
7	\$28,390	\$42,585	\$56,780
8	\$31,570	\$47,355	\$63,140
For each additional person, add	\$3,180	\$4,770	\$6,360

Size of Family Unit	Monthly Income	150%	200%
1	\$775	\$1,163	\$1,550
2	\$1,040	\$1,560	\$2,080
3	\$1,305	\$1,958	\$2,610
4	\$1,570	\$2,355	\$3,140
5	\$1,835	\$2,753	\$3,670
6	\$2,100	\$3,150	\$4,200
7	\$2,365	\$3,548	\$4,730
8	\$2,630	\$3,945	\$5,260
For each additional person, add	\$265	\$398	\$530

Source: United State Department of Health and Human Services

**STANDARDS OF THE GEORGIA PUBLIC DEFENDER STANDARDS COUNCIL FOR  
 DETERMINING INDIGENCE**

The Georgia Indigent Defense Act, in O.C.G.A. § 17-12-8(b)(8) and O.C.G.A. § 17-12-24(a), requires the Standards Council to adopt a uniform standard and procedure that will be used by each Circuit Public Defender Office to determine whether a person is indigent and entitled to representation at public expense under the Act. The Standards Council has adopted the following standards for determining indigence:

**1. Definition of Indigence**

An "indigent" is a person who has been arrested or charged with a crime punishable by imprisonment who lacks sufficient income or other resources to employ a qualified lawyer to defend him or her without undue hardship on the individual or his or her dependents.

## **2. Standards for Determining Indigence**

Each Circuit Public Defender Office shall apply the following criteria in determining whether an individual is an indigent entitled to legal representation under the Georgia Public Defender Act:

### *(a) Persons Earning Less Than 150% of Federal Poverty Guidelines*

A person who earns less than 150% of the Federal Poverty Guidelines is presumed to be indigent and entitled to legal representation in all cases covered by the Act unless there is evidence that the person has other resources that might reasonably be used to employ a lawyer without undue hardship on the person or his or her dependents.

### *(b) Persons Earning 150% or More of Federal Poverty Guidelines*

#### *(1) Misdemeanor, Probation Revocation, Juvenile Cases and Cases Involving Municipal or County Offenses*

A person charged with a misdemeanor, violation of probation, or a municipal, county or juvenile offense punishable by imprisonment who earns or, in the case of a juvenile, whose parents earn, more than 150% of the Federal Poverty Guidelines is presumed to be ineligible for legal representation under the Act unless the person can show, to the satisfaction of the Circuit Public Defender's Office, that he or she (1) earns less than 200% of the Federal Poverty Guidelines and (2) is unable to obtain qualified legal representation because of the extraordinary cost of the case, as compared to his or her disposable income or other resources, or that there are other reasons that make it impossible for the person to obtain qualified legal representation without undue hardship on the person or his or her dependents.

#### *(2) Felony Cases*

##### *(A) Persons Earning Less than 200% of the Federal Poverty Guidelines*

A person charged with a felony who earns or, in the case of a juvenile, whose parents earn, less than 200% of the Federal Poverty Guidelines is presumed to be indigent and entitled to legal representation in all cases covered by the Act unless there is evidence that the person has other resources that might be used to employ a lawyer without undue hardship on the person or his or her dependents.

##### *(B) Persons Earning Between 200% and 300% of the Federal Poverty Guidelines*

A person charged with a felony who earns or, in the case of a juvenile, whose parents earn, more than 200% but less than 300% of the Federal Poverty Guidelines is presumed to be ineligible for legal representation under the Act unless the person can show, to the satisfaction of the Circuit Public Defender's Office, that he or she is unable to obtain qualified legal representation because of the extraordinary cost of the case, as compared to his or her disposable income or other reasonably available resources, or that there are other reasons that make it impossible for the person to obtain qualified legal representation without undue hardship on the person or his or her dependents.

## **3. Close Cases Should Be Resolved in Favor of the Applicant**

The Circuit Public Defender Offices should use a common sense approach in making a determination of indigence in keeping with the overall purpose of "assuring that adequate and effective legal representation is provided . . . to indigent persons who are entitled to representation under this chapter" and under the federal and state Constitutions. O.C.G.A. § 17-12-1(c). The Circuit Public Defender Offices should consider all the person's circumstances, such as extraordinary medical expenses or child support, and the presence or absence of other assets, and not earnings alone in determining whether the person is an indigent. Doubtful cases should be resolved in favor of representation under the Act.

## **4. Appeal by a Person Denied Representation**

A person who is deemed by the Circuit Public Defender to be ineligible for representation under the Act may apply to the assigned Judge of the Court in which his or her case is pending, or to a presiding judge of such Court in the event there is no assignment system in such Court, for an order

appointing the Office of the Circuit Public Defender to represent him or her in the case. If the Court finds that the person is unable to employ a qualified lawyer without undue hardship on the person or the person's dependents, notwithstanding the contrary determination by the Circuit Public Defender, the Court shall order the Circuit Public Defender Office to provide representation under the Act.

**Commentary:** For example, a person could rebut the presumption of ineligibility by obtaining fee quotations from at least two qualified attorneys in the circuit and by showing that he or she, because of health problems, child support obligations or other circumstances, would be unable to afford a qualified attorney without undue hardship.

**Legal Authority:** O.C.G.A. § 17-12-8(b)(8); O.C.G.A. § 17-12-24(a).

# **APPENDIX B**

## **Invoice Form - Expert**

**(RESERVED)**

# **APPENDIX C**

## **Invoice Form - Investigator**

**(RESERVED)**

# **APPENDIX D**

## **Invoice Form - Attorney**

## Sky Valley Municipal Court Indigent Defense Invoice – Attorney

Case Number

Warrant Number

The State vs

Charge (s):

Appointment Date:

Disposition Date:

Guilty     Not Guilty     Nolo     Nolle Pros.     Not Guilty     Other \_\_\_\_\_  
 Plea     Bench Trial     Jury Trial

\$60.00 per hour in-court; \$45.00 per hour out-of-Court Administrator

IN-COURT	HOURS	OUT OF COURT [LIST]	HOURS
Bail Hearing			
Preliminary			
Arraignment			
Motions			
Plea			
Trial			
Revocation			
Sentencing			

Total \$ claimed in court \$  
expenses \$

Total \$ claimed out- court \$

Total other

Invoice Total \$

Date Invoice Submitted

I swear the above claim is true and correct. I further swear that if I appeared in court on the same day on multiple indigent case, I have prorated the cost of my services. I understand that this invoice is subject to a full audit by the City of Sky Valley.

Attorney Signature

Notary Signature & Stamp

Date:

SSN or FEIN NUMBER:

Your address or attach business card in this space

Do Not Write in This Space

Approved: \$

by Court Administrator

Date:

Approved: \$

by Case Judge

Date:

# **APPENDIX E**

## **Fee Schedule**

**APPENDIX E - FEE SCHEDULE**

**[in re 11.2]**

**MUNICIPAL COURT CASES.**

The initial rate of reimbursement shall be as follows:

- ◆ In-court time @ \$60.00 per hour
- ◆ Out-of-court time @ \$45.00 per hour
- ◆ Appeals @ \$45.00 per hour

This rate can be changed by order of the Chief Municipal Court Judge provided the Order is in writing, executed by the Judge and attached to this Policy by the Administrator.

Adopted by the Municipal Court this 1 day of January, 2005.

This Indigent Defense Program is hereby adopted and approved as a formal rule and procedure of the Municipal Court of the City of Sky Valley, Georgia. So Ordered this \_\_\_\_\_ day of January, 2005.

A handwritten signature in black ink, consisting of a large, sweeping arch that starts with a vertical stroke on the left and tapers off to the right.

---

Robert Sneed, Chief Judge

Municipal Court of the

City of Sky Valley, Georgia

IN THE MUNICIPAL COURT OF SKY VALLEY  
STATE OF GEORGIA

STATE OF GEORGIA

WARRANT #:

vs.

CITATION #:

Defendant

CITY OF SKY VALLEY OFFENSE(S):

IN JAIL:

OUT ON BOND:

ARREST DATE:

APPLICATION FOR APPOINTMENT OF COUNSEL AND  
AFFIDAVIT OF FINANCIAL RESOURCES

I want the court to provide me with a lawyer. I understand that I am providing the information in this declaration in order for the court to determine my eligibility for a court appointed lawyer or public defender, paid by the City of Sky Valley, to defend me against the charges listed above.

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security #: \_\_\_\_\_ Home Tel#: \_\_\_\_\_  
Work Tel#: \_\_\_\_\_

1. Are the charges against you **ALL City** charges?  YES  NO

IF NOT, what else are you in jail for?

2. Employer (if employed): \_\_\_\_\_

3. How are you paid? (check one):  weekly  bi-weekly  monthly

What is your TOTAL take home pay? \$ \_\_\_\_\_

4. If unemployed, how long? \_\_\_\_\_

5. Do you receive any of the following sources of income? If so, how much?

Unemployment \$ \_\_\_\_\_ Welfare \$ \_\_\_\_\_ Disability \$ \_\_\_\_\_  
Retirement \$ \_\_\_\_\_ Child Support \$ \_\_\_\_\_ Other \$ \_\_\_\_\_

6. Are you married? \_\_\_\_\_ If YES, is your spouse employed? \_\_\_\_\_

What is your spouse's take home pay? \$ \_\_\_\_\_

How is your spouse paid? (check one)  weekly  bi-weekly  monthly

7. Number of children living in home: \_\_\_\_\_ Ages: \_\_\_\_\_

8. How many others living in the home? \_\_\_\_\_ If so, are they employed? \_\_\_\_\_

What is their take home pay? \$ \_\_\_\_\_

9. Do you own a home? \_\_\_\_\_ What is its value? \$ \_\_\_\_\_ How much do you owe? \$ \_\_\_\_\_

Do you own any other property? \_\_\_\_\_ What is its value? \$ \_\_\_\_\_ How much do you owe? \$ \_\_\_\_\_

10. List your checking or savings accounts and other deposits with any bank or financial institution and the amount in each account.  
\_\_\_\_\_  
\_\_\_\_\_

11. List other assets, including cars, antiques, jewelry, coins, collectibles, notes, bonds, stocks, etc.  
\_\_\_\_\_  
\_\_\_\_\_

12. List any unusual living expenses and medical expenses and amount (s).  
\_\_\_\_\_  
\_\_\_\_\_

13. Have you tried to hire an attorney? \_\_\_\_\_ How much can you pay for your defense? \$ \_\_\_\_\_

14. Have you ever had an attorney appointed to represent you in City of Sky Valley?  
 YES  NO

IF YES, name of attorney \_\_\_\_\_

**AFFIDAVIT OF DEFENDANT APPLICANT**

I understand and agree that whether I am convicted or acquitted, City of Sky Valley may seek reimbursement of attorneys' fees paid in my behalf, if I am able, or it is determined that I am able, to reimburse the city.

I have read, or had read to me, the above questions and statements. I SWEAR that the answers I have given are true and correct. I also understand that a false answer to any question may result in my being charged with a crime.

\_\_\_\_\_  
(Signature of Defendant)

**ORDER OF THE COURT**

Having considered the above matter, it is the finding of this court that the above named defendant [ ] IS [ ] IS NOT indigent under the criteria established to determine indigence claims within the City of Sky Valley and [ ] IS [ ] IS NOT entitled to have appointed counsel.

This \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

---

(Judge, \_\_\_\_\_ Sky Valley Municipal Court)

IN THE MUNICIPAL COURT OF SKY VALLEY  
STATE OF GEORGIA

STATE OF GEORGIA

v.

CASE #

WARRANT #

APPLICANT'S FULL NAME

OFFENSE(S)

CURRENT ADDRESS

DEFENDANT'S TELEPHONE NUMBER

**APPOINTMENT OF COUNSEL FOR INDIGENT PERSON**

**SKY VALLEY MUNICIPAL COURT**

The person named above has satisfied the court that s/he is financially unable to employ an attorney and does not waive an attorney. The attorney designated below shall represent the person and the appointment shall remain in effect through all courts in the circuit until the case is completed or another attorney is appointed by the court or retained.

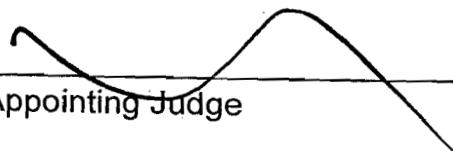
[ Appointed Attorney's Full Name ]

[ Appointed Attorney's Bar Number ]

[ Appointed Attorney's Address ]

[Telephone Number]

SO ORDERED this 1 day of Jun, 2005.

  
\_\_\_\_\_  
Appointing Judge