

Pool Attorney Guidelines & Application Process

New Jersey Office of the Public Defender

Revised and updated - August 2024



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Office of the Public Defender

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Dear Attorney,

Whether you are currently serving as a pool attorney, applying to become a pool attorney for the first time, or returning to the pool attorney list, we appreciate your interest and your service. Thank you on behalf of the New Jersey Office of the Public Defender (OPD).

The pool attorney application process and guidelines are below. With these revised guidelines, we seek to clarify the application, billing, and payment processes and provide you with helpful case-related contacts and resources. Please also note that, effective July 1, 2023, the rate for pool attorneys was increased to \$100 per hour.

OPD was formed in the wake of the landmark decision in Gideon v. Wainwright. For more than five decades, OPD has served as a national model for the delivery of public defense services. That model includes OPD staff attorneys and pool attorneys in each region. Pool attorneys handle matters when the OPD cannot do so due to a conflict of interest or for operational reasons. Pool attorneys are vital to delivering legal services across New Jersey to people facing serious legal matters without the means to pay for representation.

OPD cannot fulfill its statutory and constitutional duties without the assistance of qualified and committed pool attorneys. Pool attorneys represent people charged with indictable offenses in criminal court, with delinquency offenses in family court, and in related practice areas, including, most recently, parole revocation defense. Pool attorneys represent parents and children in abuse, neglect, and termination of parental rights proceedings and represent people in psychiatric commitment hearings and other hearings where they face loss of liberty and rights. Pool attorneys also handle appeals before the Appellate Division and the Supreme Court of New Jersey. Simply put, pool attorneys are indispensable to protecting the rights and liberties of people across New Jersey.

OPD invites you to consider joining the pool in the practice area or areas that best suit your skills and experience.

Thank you for all you do,
Jennifer N. Sellitti

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I. BECOMING A POOL ATTORNEY: REQUIREMENTS, PROCESS, AND OPD CONTACT INFORMATION

In this section, you will find the basic requirements for becoming a pool attorney as well as instructions on the application process and contact information by region and practice area.

A. REQUIREMENTS

1. To become a pool attorney, applicants must be admitted to practice law in the State of New Jersey and must be in good standing.
2. Pool attorneys must agree to abide by the rules concerning the practice of law as set forth in the Rules Governing the Courts of the State of New Jersey and the Rules of Professional Conduct as set forth by the Office of Attorney Ethics and the New Jersey Supreme Court.
3. Pool attorneys are required to stay current on developments in their practice areas and must not rely on OPD to keep them apprised of all important developments. Please also note that, while OPD will sometimes host trainings that award CLE credits, OPD is not responsible for ensuring that pool attorneys meet their CLE requirements.
4. Pool attorneys may be required to attend orientation within their first year and/or training, with CLE credits awarded, as directed by the OPD Director of Training, the Public Defender, or Assistant Public Defenders.
5. The Office of Law Guardian (OLG) and the Office of Parental Representation (OPR) require mandatory training prior to assigning cases to newly approved pool attorneys.
6. Pool attorneys cannot simultaneously represent OLG and OPR clients in the same vicinage.
7. Pool attorneys must familiarize themselves with and abide by the guidelines set forth below and any subsequent versions of these guidelines that OPD promulgates.

B. APPLICATION PROCESS

1. The first step to becoming a pool attorney is to submit a cover letter and resume to the deputy or managing attorney in the region where the applicant wishes to be assigned cases. The contact information for deputies and managing attorneys of each region can be found in the next section and on the OPD website.

2. If the applicant intends to practice in multiple practice areas or in multiple regions, the deputy or managing attorney in each of the regions must be provided with a resume and cover letter.
3. Applicants who seek to represent clients in Appeals or Conviction Integrity cases (post-conviction relief) must also provide a writing sample with their application.
4. The deputy or managing attorney will conduct an interview to determine if the applicant has the requisite skills and experience to represent OPD clients and to determine what categories of cases may be assigned.
5. If the applicant applies to be a pool attorney in multiple regions, interviews may be conducted jointly with one regional deputy or managing attorney directing the approval process.
6. For applicants approved at the regional level, the regional deputy or managing attorney will forward a copy of the attorney's cover letter and resume to their supervising Assistant Public Defender with an e-mail stating that the prospective pool attorney has been interviewed and recommended for approval at the regional level. An Assistant Public Defender shall thereafter approve or deny the request.
7. If the prospective pool attorney is approved, the regional deputy or managing attorney and the prospective pool attorney shall send the completed pool attorney packet for processing to Sepideh Ghorbani (opd.vendor.compliance@opd.nj.gov) This packet must include the following:
 - a. From the regional deputy or managing attorney:
 - i. Acknowledgment that that the prospective pool attorney was interviewed;
 - ii. Copy of the email approval; and
 - iii. Cover letter and resume.
 - b. From the prospective pool attorney:
 - i. Certificate of Good Standing
 - ii. Certificate of Ethical Conduct
 - <https://www.njcourts.gov/attorneys/attorney-ethics-and-discipline/certificates-and-forms>
 - iii. The completed vendor compliance forms
 - <https://www.nj.gov/defender/third-party/vendor/>
 - iv. Pool Attorney Certification and Pool Attorney Contact Information and County/Practice Specification forms (both found at the end of this document)
8. Once the applicant is deemed vendor compliant, OPD's Vendor Compliance Unit Team will add the pool attorney to the OPD Pool Attorney List and notify the regional deputy or managing attorney and the Assistant Public Defender for that region. Thereafter, the deputy or managing attorney may begin assigning cases.
9. Pool attorneys must have a current resume on file with OPD Headquarters and with the regional offices where they perform pool work. Upon any significant changes to their professional circumstances, pool attorneys shall provide an updated resume to the regional deputy or managing attorney.

C. CONTACT INFORMATION BY REGION AND PRACTICE AREA

Practice Area	Office	Contact
Criminal (Trial)	See “ Regional Criminal Offices ” section on OPD website for the regional contact information. Criminal Defense (Trial) (nj.gov)	Deputy Public Defender in Region of Interest
Youth / Juvenile (Trial)	Office of the Public Defender 31 Clinton Street, 5th Floor Newark, NJ 07102 T: 973-648-3011 Email: Michelle.Callari@opd.nj.gov	Michelle Callari Statewide Director of Youth Defense
Appellate: Criminal/Juvenile	Office of the Public Defender Appellate Section 31 Clinton Street Post Office Box 46003 Newark, NJ 07101 T: (973) 877-1200 Email: Jodi.Ferguson@opd.nj.gov Criminal Defense (Trial) (nj.gov)	Jodi Ferguson Assistant Deputy Public Defender
Conviction Integrity Unit (formerly Post Conviction Relief Unit)	Office of the Public Defender Conviction Integrity Unit 31 Clinton Street PO Box 46003 Newark, NJ 07101 T: (973) 877-1200 Email: Kathryn.Marron@opd.nj.gov Conviction Integrity Unit (nj.gov)	Kathryn Marron Deputy Public Defender

<p>Office of Law Guardian (TRIAL):</p> <p>Representation of children in Title 9 and Title 30 cases</p>	<p>See "Office of Law Guardian" section on OPD website for OLG regional offices.</p>	<p>Deputy Public Defender in region of interest</p>
<p>Office of Law Guardian (APPEALS):</p> <p>Representation of children in appeals of Title 9 and Title 30 cases.</p>	<p>Office of Law Guardian, Appellate Section 840 Bear Tavern Road, Suite 200 Ewing, NJ 08628 T: (609) 530-3623 Email: Alexis.Pollock@opd.nj.gov Office of Law Guardian (nj.gov)</p>	<p>Managing Attorney Alexis Pollock Deputy Public Defender (Appellate)</p>
<p>Office of Parental Representation (TRIAL):</p> <p>Representation of parents in Title 9 and Title 30 cases.</p>	<p>See "Office of Parental Representation" section on OPD website for list of OPR regional offices.</p>	<p>Deputy Public Defender in region of interest</p>
<p>Office of Parental Representation (APPEALS)</p> <p>Representation of parents in appeals of Title 9 and Title 30 cases.</p>	<p>Office of Parental Representation Appellate Section 31 Clinton Street Post Office Box 46003 Newark, NJ 07101 T: (973) 877-1265 Email: Richard.Foster@opd.nj.gov Office of Parental Representation (nj.gov)</p>	<p>Managing Attorney Richard Foster Deputy Public Defender (Appellate)</p>

<p>Megan's Law</p>	<p>Office of the Public Defender Special Hearings Unit 25 Market Street P.O. Box 850 Trenton, New Jersey 08625-0850 T: (609) 292-7677 Email: Stephanie.Lutz@opd.nj.gov Special Litigation Unit (nj.gov)</p>	<p>Stephanie Lutz Deputy Public Defender</p>
<p>Mental Health</p>	<p>Mental Health Advocacy 25 Market Street P.O. Box 850 Trenton, New Jersey 08625-0850 T: (609) 292-1750 Email: Kelly.Lerner@opd.nj.gov Division of Mental Health Advocacy (nj.gov)</p>	<p>Kelly Lerner-Sanders Director</p>
<p>Parole Revocation and Resentencing</p>	<p>Parole Revocation and Resentencing Unit (PRRU) 31 Clinton Street, 12th Floor Newark, New Jersey 07101 T: (973) 776-9720 Email: Joseph.Russo@opd.nj.gov Parole Revocation Defense Unit (PRDU) (nj.gov)</p>	<p>Joseph J. Russo Director</p>

II. POOL ATTORNEY GUIDELINES

All pool attorneys working with the OPD must adhere to the following guidelines, and any subsequent updates to these guidelines, as well as all rules of professional responsibility and ethical conduct that apply to their area(s) of practice.

A. ACRONYMS

Please note the following acronyms, which are used throughout these guidelines:

OPD - New Jersey Office of the Public Defender
OPR - Office of Parental Representation
OLG - Office of Law Guardian
PATS - Pool Attorney Timekeeping System
FSU - Forensic Science Unit
RO Number - Regional Office Number
5A form - Uniform Defendant Intake Form
DCP&P - Division of Child Protection & Permanency

B. PRACTICE, TRAINING, AND ASSIGNMENTS

1. **Licensed and in good standing:** Pool attorneys must be admitted to practice law in the State of New Jersey and must be in good standing.
2. **Rules apply:** Pool attorneys must abide by the rules concerning the practice of law as set forth in the Rules Governing the Courts of the State of New Jersey and the Rules of Professional Conduct as set forth by the Office of Attorney Ethics and the New Jersey Supreme Court.
3. **Notifying OPD of alleged misconduct:** Pool attorneys must immediately notify the Ethics Liaison Officer of the OPD, in writing, upon any arrest or if any formal complaint or ethics grievance is filed against them in any jurisdiction in which they are licensed.
4. **No private or ancillary representation of pool clients:** Pool attorneys are strictly prohibited from representing the same client privately in any case assigned by OPD or collecting additional fees for their representation. Additionally, pool attorneys cannot represent the client in other matters during the pendency of the assigned case, unless approval is granted by an Assistant Public Defender. Failure to abide by these directives may result in removal as a pool attorney and an ethics referral.

5. **Assignments not promised:** Pool attorneys understand that being selected as a pool attorney does not guarantee the assignment of cases. Case assignments will differ by region and practice area.
6. **Types of assignments:** Please note that pool attorneys who were recently admitted to practice law, or who are not sufficiently experienced in a particular area of the law, will not immediately be assigned the most serious or most complex cases.
7. **Staying up to date:** Pool attorneys are required to stay up to date on developments in their areas of practice. Although OPD seeks to serve as a resource for pool attorneys, pool attorneys must not rely on OPD to keep them apprised of important developments in their areas of practice.
8. **Training:** OPD will periodically mandate certain training. Failure to attend mandatory training risks removal as a pool attorney.
9. **Orientation and training specific to OLG and OPR:** As required by statute, OPR and OLG pool attorneys handling Title 9 or Title 30 DCPD cases must participate in training hosted by the OPD. All OLG pool attorneys must complete an OLG-specific orientation before accepting cases and must complete an OLG-specific training session annually. Failure to attend required orientation or trainings risks removal as a pool attorney.

C. EXPECTATION OF HIGH-QUALITY REPRESENTATION

1. **Client-centered representation:** Pool attorneys are expected, pursuant to their ethical obligations, to advocate for their clients with zeal, diligence, and client-centeredness always. Pursuant to the Rules of Professional Conduct and the constitutional right to counsel, pool attorneys must provide clients with effective legal representation in close consultation with their clients, keep clients informed about the status of their cases, promptly comply with their clients' reasonable requests for information and documents, and maintain client confidentiality and privilege.
2. **Non-delegable case assignments:** OPD pool assignments are made to the individual pool attorney, not to a law firm or to associates. The pool attorney may not assign or delegate any portion of the legal work (other than perfunctory adjournment requests) to other attorneys without prior written approval from an Assistant Public Defender, regional deputy, or managing attorney. If a case needs to be reassigned due to sickness or some other emergency, pool attorneys must reach out to the regional deputy as soon as possible.
3. **Client visitation:** Pool attorneys must visit clients who are in jail at the earliest opportunity. In-person meetings are strongly preferred. Pool attorneys must meet with clients no later than 3-5 business days after receiving a case assignment and must meet and communicate with their clients regularly to discuss their cases and update them on the status of their case. The 3-5 business day requirement is relaxed only for pool attorneys working on appellate and CIU cases.

4. **Discovery**: Pool attorneys must provide clients with all discovery promptly, subject to any protective order.
5. **The child as client**: Pool attorneys representing children in child welfare cases (Title 9 and Title 30 cases) or children charged with acts of delinquency or indictable offenses, must meet and regularly communicate with, clients in a manner that is developmentally appropriate and age appropriate. Pool attorneys must remain mindful that a strong attorney-client relationship with a child requires more frequent contact and simplified client counseling practices. Especially under the fast pace of juvenile delinquency matters, pool attorneys must visit their youth clients early and often.
6. **Meeting incarcerated clients**: In-person meetings with clients are preferred. For clients who are incarcerated in state prison, pool attorneys may meet with their clients via virtual video conferencing. This makes it unnecessary to travel to state prisons for every client meeting. However, in certain circumstances, especially when reviewing documents, virtual video conferencing may not be effective and in person visits are encouraged.

D. OPD IS A RESOURCE, ESPECIALLY FOR NONCITIZEN CLIENTS, YOUTH CASES, MENTAL HEALTH ISSUES, AND FORENSICS

1. **OPD consultation**: Pool attorneys should understand that OPD is available as a resource for consultations, especially for guidance on complicated or unique cases.
2. **Padilla advice to noncitizen clients**: Pool attorneys must abide by their constitutional obligations under Padilla v Kentucky, 559 U.S. 356 by understanding, factoring, and advising their noncitizen clients about the immigration consequences associated with a criminal case. OPD's Immigration Unit is available to assist pool attorneys with this advice. When assigned a noncitizen client, pool attorneys should complete the Non-Citizen Client Intake Form and send it to Immigration@opd.nj.gov and Susannah Volpe at Susannah.Volpe@opd.nj.gov. The Non-Citizen Client Intake can be found on the OPD website under Third Party Contracted Services/Pool Attorney Information or at this link: <https://nj.gov/defender/documents/NJ%20OPD%20NON-Citizen%20Form%208.2024.pdf>
3. **Case specific mental health issues**: When a client presents with – or potentially presents with – acute mental health issues (e.g., diminished capacity, competency, insanity), pool attorney should be aware that they can reach out to OPD for consultation, guidance, and resources. Pool attorneys can reach out to Joe Russo at Joseph.Russo@opd.nj.gov and/or Kelly Lerner-Sanders at Kelly.Lerner@opd.nj.gov.
4. **Case specific forensic science issues**: Pool attorneys are obligated to understand and respond to forensic science issues in their assigned cases. The law, science, and the investigative techniques around forensic issues are constantly evolving. OPD's Forensic Science Unit (FSU) is available to

assist pool attorneys with these issues. Pool attorneys are expected to reach out to FSU if they need assistance. FSU can provide resources, consult, and help strategize and link attorneys to experts. If a potential forensic issue arises in an assigned case, pool attorneys should contact FSU at Forensics@opd.nj.gov and Tamar Lerer at Tamar.Lerer@opd.nj.gov. Forensic issues that FSU can be helpful with include, but are not limited to, the following:

- a. DNA (including STRmix)
- b. Pattern Matching Disciplines
 - i. Bitemarks
 - ii. Bloodstain pattern analysis
 - iii. Firearms Toolmark
 - iv. Fingerprints
- c. Digital
 - i. Authentication
 - ii. Automatic License Plate Readers
 - iii. Cell tower dumps
 - iv. Data extraction techniques, challenges, and procedures
 - v. Drones
 - vi. Facial recognition
 - vii. Geofences
 - viii. Location evidence (e.g., cell, Google)
 - ix. ShotSpotter
 - x. Video enhancement and alteration
- d. Psychology and social science issues
 - i. Experience based or law enforcement expert testimony (e.g., gangs, drugs)
 - ii. Objections made under N.J.R.E. 702 as to reliability of a field of expertise or method
 - iii. Reliability of an identification
 - iv. Reliability of statements (e.g., confession, cooperator)
- e. Other Miscellaneous Forensic Techniques and Issues
 - i. Arson
 - ii. Canine
 - iii. Forensic anthropology
 - iv. Gunshot residue
 - v. Pathology
 - vi. Serology
 - vii. Shaken Baby Syndrome
 - viii. Toxicology

E. VENDOR COMPLIANCE

1. **Vendor compliance and registration:** For payments to be issued by the State of New Jersey for services rendered to the OPD, each prospective pool attorney must complete and submit the requisite vendor contract compliance documents and must register as a vendor with the Department of the Treasury's NJSTART.

2. **Contract compliance:** The vendor contract compliance documents must be submitted initially on acceptance as a pool attorney with OPD (or before) and subsequently resubmitted before OPD's 5-year contract compliance period expires. The Vendor Contract Compliance requirements can be found on the OPD website at: <http://www.state.nj.us/defender/> under the heading Vendor Contract Compliance or directly at the following link: <http://www.state.nj.us/defender/vendor/index.shtml>
3. **Separation from firm:** All pool attorneys who have earnings sent to their firm's business account for pool cases must do the following within fifteen business days of separation from their firm:
 - a. The pool attorney's billable hours for work rendered up to and including their last day, must be entered into the Pool Attorney Timekeeping System (PATS), and invoiced accordingly.
 - b. Pool attorneys must notify each deputy or managing attorney that has assigned them cases as to their separation from the firm.
 - c. Pool attorneys who have separated from their firm must submit a new vendor compliance packet along with a new pool attorney application (resume and cover letter) to the regional deputy or managing attorney.

F. DILIGENCE IN RECORDING BILLABLE HOURS

1. **No concurrent pool and per diem billing:** Pool attorneys with an OPD per diem assignment may not bill the OPD for work performed on pool cases during the same period that they are working as per diem attorneys.
2. **Care, diligence, and accuracy:** Pool attorneys must exercise care and diligence when submitting invoices. Invoices must accurately reflect the date, the number of hours, and services rendered for each case. Pool attorneys are strongly encouraged to record their time regularly and no less frequently than once per week.
3. **Accurate billing:** Pool attorneys must bill to the day that they actually worked the case and not, for instance, bill all hours for the case on the date that the court rendered a decision. Invoices must clearly provide the date and year when legal services were rendered and not simply indicate a range of dates. In-court and out-of-court hours must be clearly delineated.
4. **Nine hours per day:** Pool attorneys may invoice a maximum of nine hours of billable time per day.
5. **1500 hours per year:** Pool attorneys may invoice up to 1500 hours per year. Pool attorneys are expected to monitor their own workload so that they have enough hours remaining to complete all required work. Under some circumstances, pool attorneys may request to exceed the 1500-hour cap. That request must be made, with justification, through regional deputies and will be permitted at OPD's discretion.
6. **Subject to scrutiny:** The number of hours worked and the ratio of in-court to out- of-court time must be reasonable and will be scrutinized according to the complexity of the case type and disposition.

The OPD will evaluate cases closely and require justification for hours that appear excessive, disproportionate, or outside normal ranges.

G. USING MYNEW JERSEY AND PATS

1. **MyNewJersey and PATS:** Pool attorneys should record their hours on-line in the Pool Attorney Timekeeping System (PATS) through their MyNewJersey account. Instructions for establishing a MyNewJersey account and the PATS on-line User Guide can be found at the following link: <https://www.nj.gov/defender/documents/PATS%20Setup%20and%20Manual%2011-2018.pdf>
2. **Thirty-day requirement to record hours:** Pool attorneys must record their hours in PATS within 30 days of services rendered. Failure to record hours within 30 days of service can result in delay in payment and might require additional processing from the pool attorney. Repeated failure to timely record hours risks removal as a pool attorney.
3. **OPD Assistance with PATS:** Pool attorneys requiring assistance with PATS should contact: opd.vendor.compliance@opd.nj.gov

H. BILLING RATES

1. **Pool payment from OPD only:** Pool attorneys may not charge their clients for expenses associated with a case assigned through the OPD. The only fees that a pool attorney shall receive are the hourly fees paid by the OPD. Therefore, pool attorneys are strictly prohibited from charging clients a retainer fee (or any other fee) for services rendered as a pool attorney. Further, pool attorneys shall not accept nor solicit funds from the client's family, friends, or associates for legal work performed as a pool attorney for OPD.
2. **Updated rates:** The rates for billable work have recently increased:

In-Court: \$100 per hour
 Out-of-Court: \$100 per hour

Pool Attorney Hourly Rate History		
Duration	In Court	Out of Court
7/1/1967 - 6/30/1998 (31 years)	\$22.50	\$15.00
7/1/1998 - 6/30/2004 (6 years)	\$30.00	\$25.00
7/1/2004 - 6/30/2021 (17 years)	\$60.00	\$50.00
7/1/2021 - 6/30/2023 (2 years)	\$75.00	\$75.00
Effective 7/1/2023	\$100.00	\$100.00

3. **In-court and out-of-court rates:** Although the rates are now the same for out-of-court and in-court time, those hours must still be delineated for timekeeping purposes. In-court refers to the time an attorney is on the record in the courtroom or on a virtual platform representing OPD pool clients or before a judge in chambers discussing a particular case. Time spent traveling to a courthouse or waiting for a case to be called is not billable.
4. **Reduced rates for various expenses:** When requesting discovery, or filing court documents, pool attorneys must make clear that they are OPD pool counsel and therefore entitled to public defender rates. Pool attorneys are entitled to a waiver of any court filing fees and entitled to discounted rates for discovery, including discovery from prosecutors and medical records from hospitals and physicians. Therefore, reimbursement of these fees at a non-public defender rate is not permitted.
5. **Reduced rate through OPD for records:** OPD investigators can secure records from hospitals and other medical facilities at a reduced rate. Pool attorneys who do not utilize OPD investigators in securing records will not be reimbursed.

I. BILLING REQUIREMENTS AND EXPECTATIONS

1. **Only attorney time is billed:** Only attorney time can be billed. Billing for secretarial, paralegal, law clerk, or others' time is not permitted.
2. **Tenths of an hour:** Billing time must accurately reflect work performed for each client in fractions of tenths of an hour worked, e.g., .1 = 6 minutes, .2 =12 minutes, etc.
3. **Billing for opening and closing a file:** Billing associated with opening a file shall reflect the actual time spent up to a maximum of .5 hours. Billing associated with closing a file shall reflect the actual time spent up to a maximum of 1 hour.
4. **Time expectations and limits:** Pool attorney work performed on behalf of the OPD should be diligent and careful but not excessive. Attorneys must bill accurately for the actual time spent on services rendered.
5. **Guidance in criminal trial cases:** Generally, in criminal trial cases (not appellate), hours that exceed the following limits¹ will require detailed justification:

a. High level, especially complex, murder cases	250 hours
b. High level, especially complex, sex cases	167 hours
c. Other high level / high complexity indictable offense cases	99 hours
d. Medium level / medium complexity indictable offense cases	57 hours
e. Low level / low complexity indictable offense cases	35 hours

¹ These averages are sourced from the National Public Defense Workload Study published by the RAND Corporation in 2023, which was developed in consultation with leading criminal and public defense experts. The study can be found at this link: [National Public Defense Workload Study | RAND](#)

These limits are merely guidance. Often, cases will require fewer hours than these approximations. Sometimes, these limits will be good estimates. Other times, due to case complexity or when a case goes to trial, these limits might be exceeded.

Attorneys must bill accurately for the actual time spent on services rendered.

6. **Justifying extraordinary hours:** When the time billed for a case is extraordinary, above average, or unusually large the billing must be supported with a detailed justification in the “other” box of the PATS time sheet. The deputy or managing attorney may also mandate that the pool attorney submit a memorandum justifying extraordinary hours. Pool attorneys should err on the side of providing detailed justification to avoid payment delays.
7. **Seeking approval in advance:** To ensure payment and to assist with future processing, pool attorneys should seek pre-approval from the regional deputy or managing attorney when they believe that a case will require an unusually large number of hours.

J. BILLING FOR CLIENTS WITH MULTIPLE CASES OR LEGAL ISSUES AND OTHER CASE MANAGEMENT INSTRUCTIONS

1. **Bill only for open and assigned cases:** Before a pool attorney begins representing a client in a criminal trial case, Special Hearing Unit case, or OPR case, the attorney must ensure that a 5A form (i.e., Uniform Defendant Intake Form) has been approved for that client, and that the case has been assigned. Pool attorneys cannot bill for a case before the date they are assigned the case, nor can they bill for time spent on a case after the case is formally closed.
2. **One client, multiple cases:** When clients with an open criminal case receive a new criminal charge, the OPD Regional Office will open a new case file with a separate RO (Regional Office) number. Pool attorneys must prorate their hours between the separate files to reflect accurately the time provided on the consolidated case. For example, if an attorney spends four hours in court on a consolidated case, the total hours billed between the two cases must be four hours and not eight. Pool attorneys should consolidate time and billing records for multiple ROs on a single client.
3. **Billing in Title 9 and Title 30 cases:** Pool attorneys in OLG or OPR cases must clearly indicate on their time sheets if their case is a Title 9 or a Title 30 case and whether their bill is an interim or final bill. A new 5A application must be completed and approved by the Court for additional dockets/complaints. Title 9 cases and Title 30 cases must be billed separately.
4. **Case management in Parent Representation cases:** Pool attorneys representing Parents in Title 9 or Title 30 cases may bill for cases assigned by the deputy or managing attorney of the vicinage. The case should be opened in case management using the Dodd date as an “open” date, which will generate that same “open” date into the attorney’s PATS list allowing the attorney to bill.

5. **Case management in Law Guardian cases:** For pool attorneys handling Law Guardian cases, when an FN case is closed out in favor of an FG case or an FG case is closed out in favor of an FC case, the pool attorney must notify the regional office to update case management and process a new pool attorney form for the respective case designation. Attorneys should forward a copy of the dismissal order from the prior matter to the regional office as soon as possible.
6. **Limitation on pool attorney assignments under Title 9 and Title 30:** With respect to Title 9 and Title 30 cases, the OPD is authorized by statute to provide legal representation to indigent parents in child neglect and abuse cases and in termination of parental rights proceedings. Neither OPD staff attorneys nor pool attorneys are permitted to undertake any work for a client that is not related to or collateral to a child welfare proceeding. OPD will not compensate an attorney for any work that is not related or collateral to a child welfare action. For instance, although parents may be entitled by statute or constitutional requirement to receive other services, and a court may wish to assign other work to an attorney, all pool attorneys must explain to the court that they are not permitted to undertake any work for a client that is not related or collateral to a child welfare proceeding and that doing so is a violation of these guidelines. If the court nonetheless assigns additional work to counsel that is not permitted by this section, the attorney shall put on the record that the assignment is not authorized and must immediately notify the OPR office from which the original assignment was received.

K. REIMBURSABLE AND NON-REIMBURSEABLE EXPENSES

1. **Telephone:** Telephone charges will be reimbursed if appropriate receipts are attached to the invoice.
2. **Copying and transcribing:** Copying of less than 1,000 pages is reimbursable at \$.05 per page or the actual cost, whichever is less, with a \$50 cap per copying project. For any copying project over \$50, the pool attorney must arrange for copying by the regional office by contacting the regional deputy or managing attorney (or their designee) or, in some circumstances by our Appellate Section, with the approval of an Assistant Public Defender.

In certain complex cases (e.g., document-intensive matters such as wiretap cases, money laundering cases, fraud cases), outside vendors may be utilized to make copies or transcripts, but only with prior approval of an Assistant Public Defender. Please note that if approval is not obtained prior to incurring this expense, the expense will not be reimbursed. Often, OPD can handle large copying projects making a vendor unnecessary.

To receive reimbursement for any pre-approved copying expense, a receipt for copying must be provided.

3. **Mailing/Couriers:** Federal Express, UPS, overnight mail, or the use of other couriers should be rare and must receive prior approval of the regional deputy or managing attorney. A mailing receipt must be provided to be reimbursed for this expense. OPR pool attorneys are permitted to bill for regular

mail postage costs for returning the trial file to the appropriate OPR office. The cost of packaging materials is not reimbursable.

4. **Mileage:** Mileage to and from the office or home is not reimbursable. Mileage to the courthouse, county jail, or regional office, is not reimbursable. Travel to state prisons, institutions, mental health facilities, hospitals, and other non-routine State travel is reimbursable at the rate applicable to OPD staff, which is currently \$.47 per mile. Pool attorneys should utilize videoconferencing to avoid travel costs to State Prison when appropriate
5. **Parking:** In instances where free parking is not available for pool attorneys, parking is reimbursable up to \$8.00 per day, with a dated receipt. Any parking reimbursements above \$8.00 per day (with a receipt only) will be considered for approval, provided reasonable parking is not available within walking distance of the courthouse. If a pool attorney is handling both OPD and private matters while parked, the parking expense should be prorated accordingly.
6. **Legal Research:** All legal research must be detailed on the Attorney Case Time Sheet in PATS. If a unique legal issue arises for which an extraordinary amount of legal research is needed (i.e., over eight hours per case), pool attorneys should contact the regional deputy or managing attorney during the research period, advising of the circumstances and securing approval. Expenses associated with electronic research, such as Lexis or Westlaw, are not reimbursable.
7. **Travel time:** Attorney travel time is not reimbursable; however, under extenuating circumstances, such as travel to state prison or for a distant investigation, and with the written permission of the regional deputy or managing attorney, travel time may be approved for reimbursement at a rate of \$25.00 per hour.
8. **Reduced rate for records:** Because OPD investigators can secure records from hospitals and other medical facilities at a reduced rate, pool attorneys who do not utilize OPD investigators in securing records will not be reimbursed.
9. **Court filing fees:** Court documents are typically electronically filed via e-courts. If electronic filing via e-courts is not permitted, pool attorneys are entitled to a waiver of fees to file court related documents. Therefore, OPD cannot reimburse for any filing fees incurred by pool attorneys.
10. **Collect calls:** Collect telephone calls are not reimbursable.
11. **Other costs require approval:** Reimbursement for any other expense not outlined herein must be approved, in writing, by the regional deputy or managing attorney in advance of incurring the cost.

L. BILLING PROCESS AND INTERIM BILLING RULES

1. **Thirty-day deadline to provide client file and final bill:** Once a case is dismissed from litigation, a pool attorney must provide the entire client file and submit a final bill to OPD and must do so within

30 days of receiving the final order. The client file includes all electronic and paper documents and must be provided to OPD even if an actual physical file was not originally provided to the pool attorney. Failure to submit the client file to OPD can result in payment delays. Any bills submitted past 30 days risks nonpayment or substantial delay. Any bills submitted past the statute of limitations will not be paid.

2. **Required documents:** For the OPD to process the final bill for payment, every client file* returned to OPD must include the following documents:
 - a. A PATS-generated Attorney Case Time Sheet;
 - b. A PATS-generated Disposition and Billing Information Form or a Judgment of Conviction or Final Order (signed and stamped "Filed");
 - c. A copy of the signed Initial Letter to Client from Pool Attorney, if applicable;
 - d. A signed Notice of Right to Appeal form;
 - e. A completed and signed Appeal Transmittal form, if applicable; and
 - f. A disposition form, if applicable.
3. **Regional review:** Regional deputies, managing attorneys, and/or Assistant Public Defenders review all vouchers for compliance with the pool attorney guidelines.
4. **Excessive bills:** These guidelines have been updated with clearer expectations around billing, and under these guidelines pool attorneys are strongly encouraged to seek approval prior to incurring extraordinary expenses. Failure to do so risks nonpayment. If a pool attorney's invoice appears excessive or otherwise in violation of these pool attorney guidelines, the regional deputy, managing attorney, or Assistant Public Defender may return the invoice to the pool attorney for reconsideration, may require the reduction of any excessive billing entries, or may reduce the total bill to reflect a reasonable amount of legal work commensurate with the case. This process may involve dialogue between the pool attorney and OPD, but ultimate decision about the reasonableness of an invoice will fall to OPD's discretion.
5. **Factors for evaluating bills:** The OPD considers various factors when determining whether a pool attorney invoice is reasonable, including, but not limited to, the nature and complexity of the case, the volume and complexity of electronic and forensic discovery, the duration of the case, the number of court appearances, the ratio of in-court and out-of-court time, the extent to which the attorney filed papers in court, the amount of time billed relative to the nature of the specific task, the amount billed for similar tasks by other pool attorneys, any/or disparities in billing practices between pool attorneys representing similarly situated defendants; and/or the general guidelines for hours spent on a criminal case, as described above in Section 1.5. and recommended by the National Public Defense Workload Study.
6. **Thirty-day approval:** Regional deputies and managing attorneys will aim to approve or reject all pool attorney invoices in PATS within 30 days of receiving the invoice.
7. **Interim billing generally:** Interim billing is generally not permitted in CIU, and criminal cases unless written approval is granted by the regional deputy or managing attorney, who will then seek

authorization from the Assistant Public Defender of that region. Interim billing will generally be granted in appellate cases and in complex cases that remain pending for inordinate periods of time. Interim bills submitted without approval or otherwise improperly submitted will be rejected and returned to the pool attorney without processing or payment.

8. **Interim billing in Title 9 cases:** Interim billing is generally permissible Title 9 Cases. Pool attorneys are permitted to submit one interim invoice and a final invoice. The interim invoice can be submitted seven months after case assignment. The final bill is to be submitted at the conclusion of the case. OPR and OLG regional deputies and managing attorneys will have discretion to permit submission of a second interim invoice if warranted by special circumstances, such as cases expected to continue significantly beyond eight months after an interim invoice or 15 months from the outset of the case.
9. **Interim billing in Title 30 cases:** Interim billing is generally not permissible in Title 30 cases unless, in the discretion of the regional deputy or managing attorneys, it is warranted by special circumstances.
10. **Closed Files:** Files that are closed and returned with a payment voucher must include all documents for full payment; including the client's most recent contact information, the last time the client was seen, and the case disposition. The regional deputy retains the discretion to adjust the bill so it comports with the documents in the file.
11. **30 days:** Final bills should be sent for payment within 30 days of case closure and no more than 90 days after the file was returned to the office. No bills submitted past the statute of limitations will be paid.
12. **Continuity of representation in Title 9 and Title 30 cases:** Continuity of representation is critical, especially in Title 9 and Title 30 cases, and these cases have unique timelines and logistical requirements. Please take special note of the following:
 - a. Every pool attorney accepting a Title 9 or Title 30 case must handle the case until its conclusion, including the completion of the Title 30 litigation if a Title 30 action is filed. A pool attorney representing a child or parent in a Title 9 matter is expected to continue representing the client in all subsequent related litigation. For example, a pool attorney representing a child in a child welfare case should continue to represent the client until the client achieves permanency either through reunification with a parent, placement with a relative through Kinship Legal Guardianship, or adoption.
 - b. Pool attorneys who represent children in Title 30 matters (i.e., termination of parental rights cases) are expected to continue to represent the client in post-termination review hearings designed to monitor DCP&P's efforts to achieve permanency.
 - c. On the parent side, once a Title 30 action is filed, the pool attorney representing the parent must direct the client to obtain and complete a new Uniform Intake Defendant Form (5A form) from the Court Clerk. This is required to determine the client's eligibility for OPD

services, even if the client had pool or public defender representation in the Title 9 action. The pool attorney may continue to represent the client while the 5A form is being processed, however the OPD cannot pay for any Title 30 legal services until the OPD receives the approved 5A form for the Title 30 matter.

- d. Title 30 cases will be “re-pooled” to the pool attorney under the new Public Defender/RO file number. Once the Title 30 action has commenced, the pool attorney must separately bill for the Title 30 work using a new time sheet that designates the matter as Title 30 work. The client must sign a new Reimbursement Agreement for the Title 30 case and must complete additional authorizations to release information as needed.

M. VIOLATIONS OF THESE GUIDELINES

1. **No overbilling:** The OPD will not accept overbilling of any kind and may act in response to overbilling. Such action may include, but is not limited to, correcting or reducing any excessive billing entries or the total bill, as described above in Section L.4 and L.5.; temporarily or permanently suspending the pool attorney from receiving new cases, either due to a pattern or practice of overbilling or even to an overbilling violation in a particular case; or, in the event of egregious intentional overbilling, the filing of a complaint, a referral to the New Jersey Office of Attorney Ethics, and/or a referral to the Office of the Attorney General.
2. **Guidelines violations and removal:** Any violation of these guidelines may lead to a pool attorney’s suspension or removal as a pool attorney.

N. APPELLATE SECTION ASSIGNMENTS

1. **All appellate assignments:** The guidelines in this section apply to all appellate assignments regardless of the practice area.
2. **Brief review:** All pool attorney filings, including but not limited to briefs, petitions and motions, must be submitted to the OPD Appellate Section for review and should be submitted with sufficient time for them to be reviewed prior to their due date. Pool attorneys are expected to timely implement any changes required by the brief reviewer.
3. **Deadlines:** Pool attorneys are expected to monitor and abide by all scheduling orders and due dates. In the event a pool attorney needs an extension of time, the pool attorney must contact Jodi Ferguson for permission. Repeated extensions should be avoided.
4. **Filing:** Pool attorneys are required to submit all documents for filing to the OPD Appellate Section. Unless granted specific permission from the Appellate Section, pool attorneys are not permitted to file anything directly with the Appellate Division.

5. **Billing guidelines:** Absent unusual circumstances, appellate attorneys are expected to bill in accordance with the following parameters:
 - a. Transcript reading: 40 pages per hour for direct appeals and 60 pages per hour for PCR appeals. This includes time spent reading transcripts and taking notes.
 - b. Opening and Closing Files: Billing associated with opening a file shall reflect the actual time spent up to a maximum of .5 hours. Billing associated with closing a file shall reflect the actual time spent up to a maximum of 1 hour.
 - c. Corrections: Time spent implementing a brief reviewer's corrections is not billable, except that the pool attorney may bill for time spent when required by the brief reviewer to add a new legal point to the brief.
 - d. Legal research: Written justification is required for cases in which the pool attorney bills for more than twelve hours of legal research. Pool attorneys are not reimbursed for the cost of electronic research.

6. **Supporting explanation for billing:** When billing for preparation of the plenary brief, pool attorneys are required to provide supporting information in the "other" box of the PATS time sheet. Information required includes the number of transcript pages read, number of issues briefed, and number of pages in the brief. Attorneys should also include any other information, not already included on the timesheet, that justifies the bill (e.g. explanation why the legal issues were particularly complex).

7. **Interim billing:** Despite the general rule against interim billing for pool attorneys in most instances, interim billing is generally permissible in criminal appellate cases. Pool attorneys are permitted to submit one interim invoice and a final invoice. The interim invoice should be submitted upon completion of the initial brief. The final invoice should be submitted at the conclusion of the case. In a case where the pool attorney has oral argument, the pool attorney may submit another interim invoice at the completion of the oral argument.

8. **Supreme Court cases:** Pool attorneys are expected to file petitions for certification where appropriate. In the event a petition for certification is granted, the Appellate Section Deputy will determine whether to reassign the case for representation in the Supreme Court.

9. **Scope of representation:** Pool attorneys are expected to draft all documents necessary to the client's appeal, including but not limited to the plenary brief, a reply brief (where appropriate), a 2:6-11(d) letter, and all necessary motions.

10. **Oral argument:** Oral argument is an integral part of appellate representation and often leads to better client outcomes. Pool attorneys are expected to request oral argument except in cases where argument would not be advantageous (e.g., legal issues in the case are very weak). Pool attorneys may bill for reasonable time spent preparing for oral argument and for time at oral argument. Time spent traveling to and from oral argument is not billable.

11. **Sentencing oral argument calendar:** Pool attorneys will be paid a flat fee of \$250 per case for cases argued on the Sentencing Oral Argument Calendar. If a case is removed from the sentencing

calendar for briefing, the pool attorney may bill at an hourly rate for the additional time spent on the case.

12. **Staying up to date:** Pool attorneys are required to stay up to date on the law and are expected to read the daily court opinions that are released on the New Jersey Judiciary website. Pool attorneys must have access to some form of legal research (e.g., Westlaw or Lexis) and should conduct additional federal and out-of-state research in appropriate cases.
13. **Postage:** Criminal appellate pool attorneys are permitted to bill for regular mail postage costs for returning the appellate file to the Newark office.
14. **Incorporation of guidelines:** All other relevant sections of these guidelines are applicable to Appellate pool attorneys, except that where there is a conflict between this section and the rest of the guidelines, this section governs. Pool attorneys should especially note Section D, “OPD IS A RESOURCE, ESPECIALLY FOR NONCITIZEN CLIENTS, YOUTH CASES, MENTAL HEALTH ISSUES, AND FORENSICS,” and should consult where appropriate.
15. **Contact:** For questions about Criminal Appellate Section assignments, please contact Jodi Ferguson at Jodi.Ferguson@opd.nj.gov. For questions about other appellate assignments, please refer to the chart at Section I.C. of these guidelines.

O. USE OF EXPERTS

1. **Expert approval:** No expert or other service provider may be retained without prior approval from public defender management through a regional deputy or managing attorney. Requests for an expert must be made through PATS. Oral requests or approvals for experts are not permitted. Only vendor compliant experts can be utilized. Any expert who is not vendor compliant can become vendor compliant by contacting Sepideh Ghorbani (opd.vendor.compliance@opd.nj.gov).
2. **Identifying experts for a case.** OPD is available to assist pool attorneys who need assistance identifying an expert for a case. For mental health experts, please contact Joseph Russo at Joseph.Russo@opd.nj.gov. For forensic experts, please contact Tamar Lerer at Tamar.Lerer@opd.nj.gov. For other experts, please contact the regional deputy or managing attorney who assigned the case. For experts in OPR matters, please reach out to the regional deputy.
3. **Detailed request:** The original cost estimate of an expert’s work on the case should contain sufficient detail to allow the OPD to determine the reasonableness of the request. Hourly rate and travel time rate must be discussed with the expert before an expert request is submitted via PATS.
4. **Travel Rate:** Reimbursable travel for experts cannot exceed \$25 an hour.
5. **Approval for additional costs:** Pool attorneys must advise retained experts to alert the pool attorney if the need arises to exceed the estimated cost of that expert’s services. Before the expert

can exceed the original cost estimate, the retaining pool attorney must obtain advance written approval from public defender management through the regional deputy or managing attorney by submitting a supplemental request through PATS. Failure to receive prior approval to exceed the original agreed upon cost will be cause for the OPD to deny payment of the excess amount.

P. TRANSCRIPTS

1. **Order in advance**: Pool attorneys should be diligent about ordering transcripts sufficiently in advance of when the transcript will be needed.
2. **Approval required for expedited and daily requests**: Expedited and daily rate transcripts may not be ordered without prior written approval from public defender management through a regional deputy or managing attorney. A copy of the approval must be attached to the invoice.
3. **No postage costs**: OPD does not pay court reporters, transcribers, or others assisting with transcripts for postage and handling.
4. **Original only**: All transcript orders should only be for the original transcript.

Q. FILE RIGHTS AND CONFIDENTIALITY

1. **Right to audit and recall**: The OPD has the right to audit assigned files in the possession of pool attorneys at any time. The files assigned to pool attorneys are the exclusive property of the OPD and may be recalled at any time.
2. **Confidentiality of files**: The rules of attorney-client privilege and confidentiality apply to all case files and case types. Please be reminded that DCP&P documents are confidential by statute, and disclosure of DCP&P documents that pertain to a case to anyone other than a client is forbidden unless ordered by a court.

R. PRESS POLICY

1. **OPD Press Policy**: Pool attorneys must read, and familiarize themselves, with the OPD Press Policy. The Policy can be found on the OPD website under Third Party Contracted Services / Pool Attorney Information or at this link: <https://www.nj.gov/defender/documents/Press%20Policy%202024.pdf>. When representing OPD clients, pool attorneys shall follow the OPD Press Policy as it applies to OPD full-time personnel. Any future amendments made to the Press Policy shall apply to pool attorneys just as they apply to OPD full-time staff.

2. **Press Coverage:** Any questions regarding media coverage of an OPD-assigned case shall be directed by the pool attorney to Kimberly Schultz, OPD Director of Communications, opd.communications@opd.nj.gov

S. POLICIES AGAINST DISCRIMINATION, SEXUAL HARRASSMANT, AND WORKPLACE VIOLENCE

1. **Policy against discrimination:** Pool attorneys must read the New Jersey State Policy Prohibiting Discrimination in the Workplace and shall familiarize themselves with the Policy. When representing OPD clients, pool attorneys must follow this policy. The Policy can be found on the OPD website under Third Party Contracted Services / Pool Attorney Information or at this link: https://www.nj.gov/csc/about/divisions/eo/pdf/State%20Policy_8-18-2020.pdf
2. **Policy against sexual harassment:** Pool attorneys must read the OPD Policy Against Sexual Harassment, and shall familiarize themselves with the Policy. When representing OPD clients, pool attorneys must follow this policy. The policy can be found on the OPD website under Third Party Contracted Services / Pool Attorney Information or at this link: <http://www.state.nj.us/defender/documents/Sexual%20Harassment%20Policy.pdf>
3. **Policy against workplace violence:** Pool attorneys must read the OPD Policy Against Workplace Violence, and shall familiarize themselves with the policy. When representing OPD clients, pool attorneys must follow this policy. The Policy can be found on the OPD website under Third Party Contracted Services / Pool Attorney Information or at this link: <https://www.nj.gov/defender/documents/NJ%20STATE%20MODEL%20WORKPLACE%20VIOLENCE%20POLICY.pdf>

T. INDEMNIFICATION

1. **Indemnified for work within scope of role:** The Public Defender of New Jersey is the attorney of record for indigent defendants who are assigned pool attorneys. Public Defender pool attorneys will be indemnified for the legal work that they perform, provided that the pool attorney's work is within the scope of their authority as pool attorneys and provided that the pool attorney does not engage in acts of intentional misconduct.
2. **Notify OPD of complaints:** Pool attorneys must notify the OPD Ethics Liaison Officer within 10 days of receiving any formal complaint.

III. CERTIFICATION AND CONTACT FORMS

On the following pages you will find two forms: the Pool Attorney Certification and the Pool Attorney Contact Information and County/Practice Area Specification. Please complete and execute these documents and submit them with your pool attorney application.

Pool Attorney Certification

I hereby certify:

1. I have received and reviewed the Pool Attorney Guidelines and have had the opportunity to discuss the content of the Guidelines with a member of the OPD management staff.
2. I agree to abide by the Guidelines set forth above.
3. I am licensed to practice law in New Jersey and my license is active and current.
4. I have no matters pending before a District Ethics Committee, the Disciplinary Review Board, the Supreme Court of the State of New Jersey, or any other similar administrative or judicial body in another state or jurisdiction, and no pending arrests. I agree that I will immediately notify the Office of the Public Defender in writing if any matter is filed against me, and I agree to delineate the type of action pending and its current status.

Pool Attorney Signature

Date

Pool Attorney Printed Name
Attorney at Law
State of New Jersey

Signature of Deputy Public Defender or Managing Attorney

Date

Printed Name of Deputy Public Defender or Managing Attorney

Pool Attorney Contact Information and County/Practice Area Specification Form

Tax ID or SS#: _____

NJSTART V#: _____

Vendor Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

Cell Phone: _____

Fax: _____

Email Address: _____

Language(s) Spoken other than English: _____

Counties Requested: _____

DIVISION(S) REQUESTED	
<input type="checkbox"/> CRIMINAL TRIAL – ADULT	<input type="checkbox"/> CRIMINAL TRIAL - JUVENILE
<input type="checkbox"/> APPELLATE	<input type="checkbox"/> CONVICTION INTEGRITY Unit (PCR)
<input type="checkbox"/> LAW GUARDIAN*	<input type="checkbox"/> PARENTAL REPRESENTATION*
<input type="checkbox"/> LAW GUARDIAN APPELLATE*	<input type="checkbox"/> PARENTALREPRESENTATION APPELLATE*
<input type="checkbox"/> SPECIAL HEARINGS UNIT	<input type="checkbox"/> MENTAL HEALTH ADVOCACY
<input type="checkbox"/> PAROLE REVOCATION DEFENSE UNIT	

* In Title 9 and Title 30 matters, attorneys may not represent both parents and children simultaneously in the same vicinage