



POLICY NAME: VACANCY FUNDING

Number: 404-070-003

DIVISION: ADMINISTRATIVE SERVICES DIVISION

Effective Date: 10/1/2023

RESPONSIBLE SECTION: TRIAL DIVISION

APPROVED: Executive Team

Approval Date: 10/24/2023

PURPOSE: To establish criteria and notice requirements related to funding of an unfilled contracted attorney position.

AUTHORITY: ORS 151.216; ORS 151.219

APPLICABILITY: This policy applies to all contracts for public defense services. It is applicable when an attorney is leaving a contract and the contract is continuing with OPDS.

DEFINITION:

Representational Services: Lawyer services and appropriate support staff services, investigation and appropriate sentencing and disposition advocacy, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the PDSC is to pay Contractor do not include fees and expenses authorized as routine expenses or case support services as defined by the PDSC.

Vacancy: When an attorney discontinues providing representational services under a contract with the PDSC for Public Defense Services.

POLICY

The Public Defense Services Contract provides that compensation authorized by the contract may be withheld “[w]hen Contractor has a vacancy that has not been filled for 60 days.” The purpose in providing 60 days of continued funding for a vacancy is to allow the contractor flexibility and support when an attorney leaves a contract while the contractor works to replace the existing attorney. In order to receive full funding for a vacancy for 60 days, Contractor must intend to and be actively working toward filling the vacant position.

Contractor shall notify OPDS of an impending vacancy within 48 hours of becoming aware an attorney is planning to leave the contract.

At its discretion, OPDS will provide an additional 60 days of funding for **overhead only**. To be eligible for the additional 60 days of overhead funding, 90% of the entity's caseload must be court appointed cases and 90% of the vacated position's caseload must have been court appointed cases.

Funding for overhead only shall not exceed 60 days and shall only apply to the following entities:

- Non-profit public defender offices,
- Law firms, with more than one member, that contract directly with the agency, and
- Law firms within consortia that have more than one member taking public defense cases.

Approved by: Executive Team

Prepared by: Trial Division

Reviewed by: Policy Division

Publish: Internally
 Externally