



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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June 5, 2018

The Honorable Edward R. Tallon Sr.
Subcommittee Chair, Legislative Oversight Committee
228 Blatt Building
Columbia, SC 29201

Re: Follow-up questions from the Subcommittee meeting in a LOC letter dated May 9, 2018

Dear Chairman Tallon:

Please find enclosed Indigent Defense's response to your follow-up questions from the May 1, 2018 meeting. We look forward to continuing our partnership with the subcommittee in this oversight process.

Please do not hesitate to contact me if we can provide additional information or assist in any way.

Very truly yours,

J. Hugh Ryan, III
Executive Director
South Carolina Commission on Indigent Defense

Information by Court

Question 1 (a) - (c)

See **Attachment 1** which includes flow charts, by type of court, with the following information: (i) types of matters that can be heard, (ii) entity responsible for prosecuting and for representing indigent defendants, and (iii) entity responsible for paying the attorneys that prosecute and those that represent indigent defendants.

Question 1 (d) - (e)

Below are twelve types of fees associated with indigent defense. Included with the information below is the entity that collects and remits any fines obtained from individuals whose case resolution includes payment of fines as it relates to indigent defense representation.

- 1) **\$40 Civil Application Fee collected in State Family Court and State Circuit Court, Court of Common Pleas.** The \$40 fee is collected from anyone who executes an affidavit that they are financially unable to employ counsel. The Clerk of Court is to collect this \$40 civil application fee and remits it directly to SCCID on a monthly basis. If it is determined that the person is unable to pay the application fee, the fee may be waived or reduced. (Proviso 61.7)
- 2) **\$140 application fee for the Traffic Education Program in County Magistrates Court** which is collected by the Clerk of the Court and remitted to the county treasurer who then remits the fee to the State Treasurer's Office on a monthly basis. The State Treasurer's Office then transfers 10.97% of this collection to SCCID on a monthly basis. (SC Code 17-22-350(B)(6))
- 3) **\$140 application fee for the Traffic Education Program in City/Town Municipal Court** which is collected by the Clerk of the Court and remitted to the county treasurer who then remits the fee to the State Treasurer's Office on a monthly basis. The State Treasurer's Office then transfers 11.02% of this collection to SCCID on a monthly basis. (SC Code 17-22-350(C)(6))
- 4) Each person placed on probation after 7/1/2003, who was represented by a Public Defender or appointed counsel will pay a \$500.00 **Public Defender Probation Fee**. This fee is Collected by the Clerk of Court and sent directly to SCCID on a monthly basis. However, if a defendant fails to pay this fee, this failure alone is not sufficient basis for incarceration for a probation violation. (Proviso 61.6)
- 5) 50% of a \$150 **filing fee for filing a complaint or petition in a civil action** in a court of record is collected by the Clerk of Court and remitted to that counties treasurer, who in turn remits it to the State Treasurer's Office on a monthly basis. The State Treasurer's Office then transfers 26.78% of those collections to SCCID on a monthly basis. These funds are disbursed by SCCID to SC Legal Services Corporation on December 31 and June 30 of each year. (SC Code 14-1-204(A)(4)) (Proviso 61.8) (Pass Through Funds)
- 6) From the deposits made pursuant to 14-1-206(C)(6), 14-1-207(C)(5) and 14-1-208(C)(5), three million two hundred thousand dollars shall be allocated to the following agencies for support of the programs specified: (4) One million seven hundred fifty thousand dollars to the Office of Indigent Defense. (SC Code 14-1-218(4)) (**Court Fine Assessment**)
- 7) A person who is convicted of, pleads guilty or nolo contendere to, or forfeits bond for an offense occurring after June 30, 2008, **tried in State Circuit Court, General Sessions**, must pay an amount equal to **107.5% of the fine imposed as an assessment**. This assessment shall be paid to the Clerk of Court in the county in which the criminal judgment is rendered for remittance to the State Treasurer's Office from the county treasurer. The assessment is based upon that portion of the fine that is not suspended as assessments must not be waived, reduced or suspended. (C) After

deducting amounts provided pursuant to Section 14-1-210, the State Treasurer shall deposit the balance of assessments received as follows: (4) 14.46% to the Office of Indigent Defense for the defense of indigents. (SC Code 14-1-206(A)(C)(4)) (Proviso 61.1)

- 8) A person who is convicted of, pleads guilty or nolo contendere to, or forfeits bond for an offense occurring after June 30, 2008, **tried in County Magistrates Court** must pay an amount equal to **107.5% of the fine imposed as an assessment**. This assessment shall be paid to the Magistrate and deposited according to 22-1-70 in the county in which the criminal judgment is rendered for remittance to the State Treasurer's Office from the county treasurer. The assessment is based upon that portion of the fine that is not suspended as assessments must not be waived, reduced or suspended. The assessment may not be imposed on convictions for violations of Sections 56-3-1970, 56-5-2510 and 56-5-2530, or another state law, municipal ordinance, or county ordinance restricting parking in a prohibited zone on in a parking place clearly designated for handicapped persons. (C) After deducting amounts provided pursuant to Section 14-1-210, the State Treasurer shall deposit the balance of assessments received as follows: (4) 10.49% to the Office of Indigent Defense for the defense of indigents. (SC Code 14-1-207(A)(C)(6)) (Proviso 61.1)
- 9) A person who is convicted of, pleads guilty or nolo contendere to, or forfeits bond for an offense occurring after June 30, 2008, **tried in City/Town Municipal Court** must pay an amount equal to **107.5% of the fine imposed as an assessment**. This assessment shall be paid to the Municipal Clerk of Court and deposited according with the city treasurer for remittance to the State Treasurer's Office from the county treasurer. The assessment is based upon that portion of the fine that is not suspended as assessments must not be waived, reduced or suspended. The assessment may not be imposed on convictions for violations of Sections 56-3-1970, 56-5-2510 and 56-5-2530, or another state law, municipal ordinance, or county ordinance restricting parking in a prohibited zone on in a parking place clearly designated for handicapped persons. (C) After deducting amounts provided pursuant to Section 14-1-210, the State Treasurer shall deposit the balance of assessments received as follows: (4) 10.56% to the Office of Indigent Defense for the defense of indigents. (SC Code 14-1-208(A)(C)(6)) (Proviso 61.1)
- 10) **\$40 Indigent Defense Application Fee collected in City/Town Municipal (only if public defender services are provided), Magistrate and General Sessions Courts**. The \$40 fee is collected from anyone who executes an affidavit that they are financially unable to employ counsel. The Clerk of Court is to collect this \$40 public defender application fee and remit it to the State Treasurer's Office on a monthly basis. The State Treasurer's Office remits the revenue to SCCID on a monthly basis. If it is determined that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial judge and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation or by a time payment method if probation is not granted or appropriate. (SC Code 17-3-45(B)) (Proviso 61.1)
- 11) A **\$50 additional fee** is imposed pursuant to Section 8-21-310(11)(a) which is remitted to the State Treasurer on a monthly schedule provided in subsection (A). The revenue from this additional fee must be allocated in each fiscal year to the following agencies in the amounts specified: (b) 15.56% to Commission on Indigent Defense, Defense of Indigents per capita. (e) 1.81% to Commission on Indigent Defense, Division of Appellate Defense. (SC Code 14-1-204(B)(1)(a)(e)) (Civil Filing Fee)

- 12) A \$25 **additional surcharge** is imposed on all fines, forfeitures, escheatments, or other monetary penalties **imposed in State Circuit Court, General Sessions, or in County Magistrate or City/Town Municipal Courts for misdemeanor traffic offenses or for non-traffic violations.** No portion of the surcharge may be waived, reduced or suspended. (B)(1) The revenue collected pursuant to subsection (A) must be retained by the jurisdiction which heard or processed the case and paid to the State Treasurer within thirty days after receipt. The State Treasurer may retain in a fiscal year the actual cost associated with the collection of this surcharge not to exceed forty thousand dollars. The State Treasurer shall allocate and transfer quarterly the remaining balance as follows: (e) 1% to the Office of Indigent Defense, Division of Appellate Defense for its general purposes. (SC Code 14-1-212(A)(B)(1)(h)) (Municipal, Magistrate and General Sessions Surcharge)

Question 2

See **Attachment 2** which includes a chart which provides information about the types of violations (e.g., city/town ordinance, county ordinance, state law, and federal law) and courts in which they may be prosecuted.

Question 3 (a) - (f)

See **Attachment 3** which includes a flow chart for different types of actions as well as separate tables that list the actions required in moving the following types of cases forward and, next to each action, the entity responsible for the action (e.g., public defender, solicitor, judge, clerk of court, etc.): (i) non-capital murder crime; (ii) capital murder; (iii) sexual violent predator; (iv) non-capital murder post-conviction relief; (v) capital murder post-conviction relief; and (vi) family court.

Costs

Question 4 (a) - (f)

See **Attachment 4** which includes a chart with the average amount spent by the state, per indigent defendant, across the types of cases handled, or contracted by, the Commission on Indigent Defense.

Employee Evaluations

Question 5

Below are details regarding what the agency requires of each supervisor, starting March 30, 2018, as a way to improve employee evaluations and feedback.

Prior to March 30, 2018 each supervisor was to meet with each of their employees to discuss their respective duties and responsibilities for the performance of their positions within the agency. The supervisor and employee were to work together on defining the success criteria of their position and prepare the planning stage to outline what those success criteria would be for the next year's performance evaluation period. Once the planning stage was complete the employee and supervisor would sign the Employee Performance Management System (EPMS) document as the planning stage portion of the EPMS. At the end of the one-year performance period, March 30, 2019 each supervisor will evaluate each of their employees based upon the agreed upon success criteria to assess how well they did on achieving their goals in the performance of their duties and responsibilities.

See **Attachments 5 and 6** for examples of the EPMS document with the planning stage portion completed.

Attachment 1

Types of courts, cases heard, and who represents prosecution and defense

Types of courts, cases heard, and who represents prosecution and defense

NOTE: Information on this chart only includes court matters involving representation of indigents.

S.C. SUPREME COURT	
<p><u>Cases heard by court:</u> Appeals from General Sessions Court, Post-Conviction Relief (PCR), Sexually Violent Predator (SVP), Interlocutory Appeals, Family Court Exclusive Jurisdiction over certain appeals. Certiorari to Review Decisions of Court of Appeals and PCR Cases.</p>	
<p style="text-align: center;"><u>State (Prosecution¹)</u> Atty: Attorney General or SCDSS Attorney Paid by: State, Atty General, or SCDSS</p>	<p style="text-align: center;"><u>Individual (Defendant²)</u> Atty: SCCID attorney or other appointed counsel Paid by: SCCID</p>

S.C. COURT OF APPEALS	
<p><u>Cases heard by court:</u> Appeals: From General Sessions Court, PCR, SVP, Interlocutory Appeals, Family Court Jurisdiction over appeals not within the exclusive jurisdiction of the Supreme Court</p>	
<p style="text-align: center;"><u>State (Prosecution³)</u> Atty: Attorney General or SCDSS Attorney Paid by: State, Atty General, or SCDSS</p>	<p style="text-align: center;"><u>Individual (Defendant⁴)</u> Atty: SCCID attorney or other appointed counsel Paid by: SCCID</p>

S.C. CIRCUIT COURT			
<p><u>Cases heard by court:</u> Criminal Offenses designated by statute, PCR, SVP Concurrent jurisdiction over Magistrate Court offenses designated by statute (rarely exercised), Appeals from Magistrate/Municipal Court Conviction</p>			
General Sessions (Criminal) Court		Post-Conviction Relief (PCR)	
<p style="text-align: center;"><u>State (Prosecution)</u> Atty: Solicitor Paid by: State, county, and/or other sources⁵</p>	<p style="text-align: center;"><u>Individual (Defendant)</u> Atty: Public Defender Paid by: State or county or Atty: 608 contract or other appointed atty Paid by: SCCID</p>	<p style="text-align: center;"><u>State (Prosecution)</u> Atty: Atty General Paid by: Atty General</p>	<p style="text-align: center;"><u>Individual (PCR Applicant)</u> Atty: 608 contract atty Paid by: SCCID</p>
Sexually-Violent Predator (SVP)		Magistrate/Municipal Court Appeals	
<p style="text-align: center;"><u>State (Prosecution)</u> Atty: Atty General Paid by: Atty General</p>	<p style="text-align: center;"><u>Individual (SVP Respondent)</u> Atty: 608 contract atty Paid by: SCCID</p>	<p style="text-align: center;"><u>State or Municipality (Prosecution)</u> Atty: Solicitor or municipal atty Paid by: State, county, or municipality</p>	<p style="text-align: center;"><u>Individual (Defendant)</u> Atty: Same as original court Paid by: Same as original court</p>

¹ Called Respondent if the Defense is appealing the decision of a lower court. They are called the Appellant if Prosecution is appealing a decision of a lower court.

² Called Respondent if the Prosecution is appealing the decision of a lower court. They are called the Appellant if the Defense is appealing a decision of a lower court.

³ Called Respondent if the Defense is appealing the decision of a lower court. They are called the Appellant if Prosecution is appealing a decision of a lower court.

⁴ Called Respondent if the Prosecution is appealing the decision of a lower court. They are called the Appellant if the Defense is appealing a decision of a lower court.

⁵ Information regarding payment of DSS/Solicitor/Municipal attorneys is to the best of SCCID's knowledge and may not include all sources of funding.

Types of courts, cases heard, and who represents prosecution and defense

NOTE: Information on this chart only includes court matters involving representation of indigents.

S.C. FAMILY COURT

Cases heard by court:

Juvenile Delinquency Cases - Criminal Offenses Designated by Statute Abuse and Neglect, Termination of Parental Rights

Juvenile Delinquency Actions		Abuse And Neglect/Termination Of Parental Rights	
<u>State (Prosecution)</u> <i>Atty: Solicitor</i> <i>Paid by: State, county, and/or other sources⁶</i>	<u>Juvenile (Defendant)</u> <i>Atty: Public Defender</i> <i>Paid by: State or county</i> or <i>Atty: 608 contract or other appointed atty</i> <i>Paid by: SCCID</i>	<u>State (Prosecution)</u> <i>Atty: SCDSS atty</i> <i>Paid by: State/SCDSS</i>	<u>Parent/Guardian (Defendant)</u> <i>Atty: 608 contract or other appointed atty</i> <i>Paid by: SCCID</i>

SUMMARY COURTS

County Magistrate Court		City/Town Municipal Court	
<u>Cases heard by court:</u> Case Types: Criminal Offenses as Set by Statute (Generally Up to 30 days and/or \$500 fine) Traffic Offenses County Ordinances		<u>Cases heard by court:</u> Criminal Offenses as Set by Statute (Generally Up to 30 days and/or \$500 fine) Traffic Offenses Municipal Ordinances	
<u>State/County (Prosecution)</u> <i>Atty: Solicitor or law enforcement entity</i> <i>Paid by: State or county</i>	<u>Individual (Defendant)</u> <i>Atty: Public Defender</i> <i>Paid by: State or county</i> or <i>Atty: 608 contract or other appointed atty</i> <i>Paid by: SCCID</i>	<u>State or Municipality (Prosecution)</u> <i>Atty: Municipal atty or law enforcement entity</i> <i>Paid by: Municipality or other⁷</i>	<u>Individual (Defendant)</u> <i>Atty: Public Defender⁸</i> <i>Paid by: Municipality</i> Or <i>Atty: Other atty</i> <i>Paid by: Municipality</i>

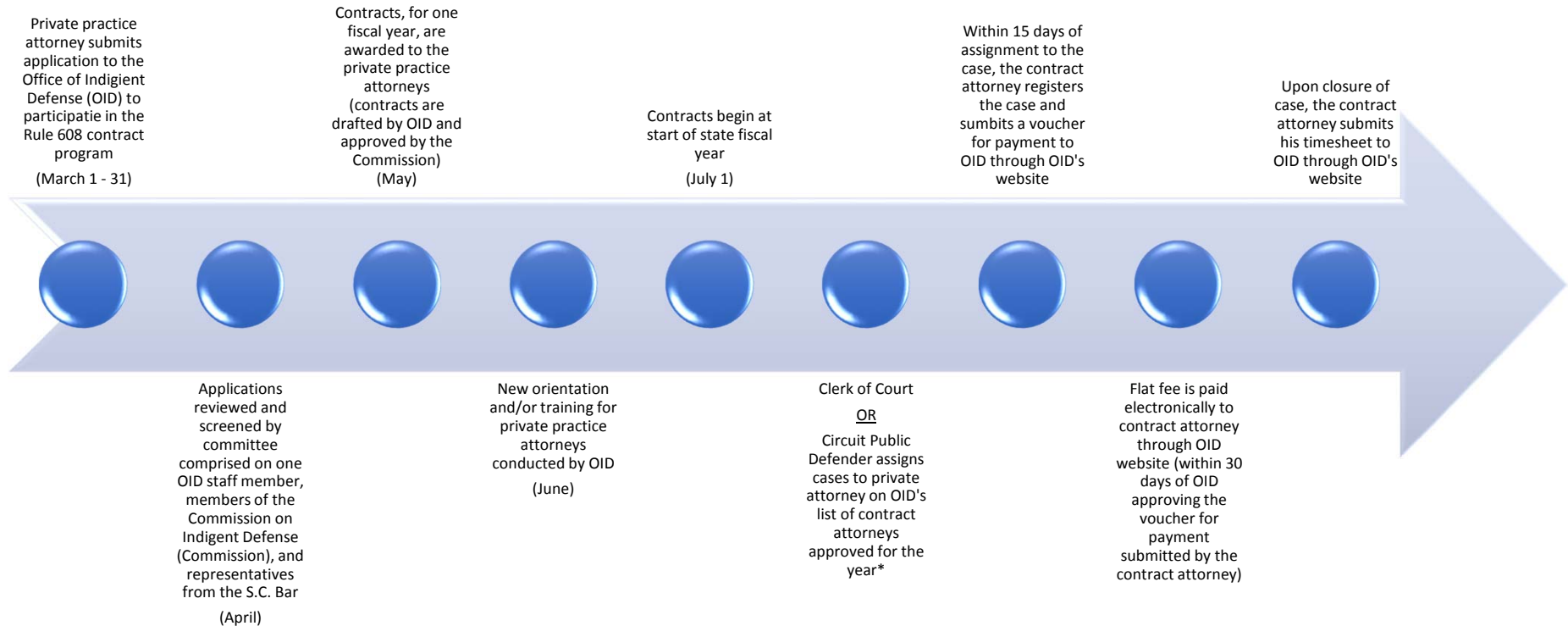
⁶ Information regarding payment of DSS/Solicitor/Municipal attorneys is to the best of SCCID's knowledge and may not include all sources of funding.

⁷ Information regarding payment of DSS/Solicitor/Municipal attorneys is to the best of SCCID's knowledge and may not include all sources of funding.

⁸ If there is an agreement between local Public Defender Office and Municipality.

Selection and Payment of Rule 608 Contract Attorneys

Flow Chart as of June 2018



*NOTE: Clerk of Court assigns cases in post-conviction relief (PCR), sexually violent predator (SVP), and Family Court Cases if person is indigent. The Circuit Defender assigns cases in criminal matters if (1) the defendant was determined to be indigent, and (2) a Public Defender is appointed AND a conflict of interest exists that prevents the Public Defender from representing the defendant.

Attachment 2

Types of violations and courts in which they may be prosecuted

Types of violations and courts in which they may be prosecuted

Violation of....	May be prosecuted in...
Municipal Ordinance ⁹	Municipal (City/Town) Court ¹⁰ <i>or</i> Magistrate (County) Court <i>ONLY IF approved by governing body of county</i> ¹¹
County Ordinance ¹²	Magistrate (County) Court
<p align="center">State Statute in which the maximum penalty...</p> <p>Does not exceed \$100 fine or 30 days in jail AND does not include a charge with a penalty that exceeds \$100 fine or 30 days in jail¹³</p> <p>Does not exceed \$500 fine or 30 days in jail¹⁴</p> <p>Does not exceed \$5,500 fine or 1 year in jail¹⁵</p> <p>Exceeds \$5,500 fine or 1 year in jail</p>	<p>Municipal (City/Town) Court <i>or</i> Magistrate (County) Court</p> <p>Magistrate/Municipal Court <i>or</i> General Sessions Court</p> <p>Magistrate/Municipal Court <i>ONLY IF the solicitor requests transfer of the case from General Sessions Court and Defendant does not object</i> <i>or</i> General Sessions Court</p> <p>General Sessions (State) Court</p>
Federal Statute	U.S. District (Federal) Court

⁹ The penalty for violation of a municipal ordinance cannot exceed \$500 and/or 30 days imprisonment. See, S.C. Code § 14-25-65.

¹⁰ S.C. Code §14-25-5(a) Authorization to establish court; S.C. Code §14-25-45 Powers, duties, and jurisdiction of municipal courts

¹¹ S.C. Code §14-25-5(c)

¹² The penalty for violation of a county ordinance cannot exceed the penalty jurisdiction of the Magistrates Courts. See, S.C. Code § 4-9-30(14). Designation of powers under each alternative form of government except board of commissioners' form.

¹³ S.C. Code § 22-3-540 Exclusive and Concurrent Jurisdiction

¹⁴ SC Code § 22-3-550 Jurisdiction Over Minor Offenses

¹⁵ S.C. Code § 22-3-545 Transfer Court

Attachment 3

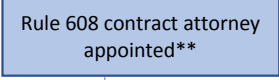
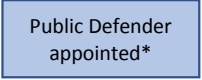
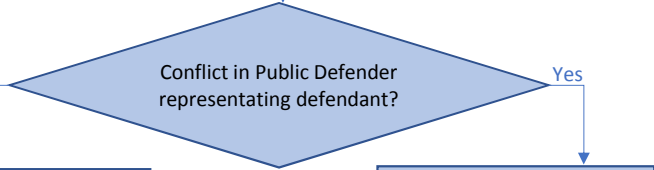
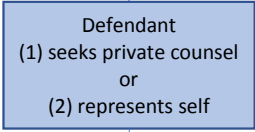
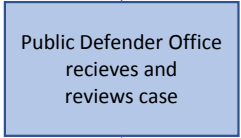
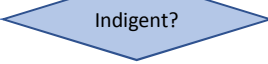
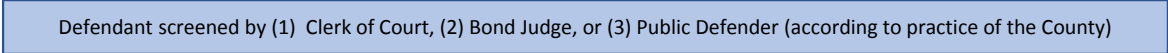
Actions required in moving different types of cases forward. Note: There are many nuances in legal actions and the exact steps in any case will depend upon the facts in that case. The steps included in this attachment are intended only as a very high level summary of what may occur.

Adult Criminal Case, including death penalty - Circuit, Magistrate, or Municipal Court

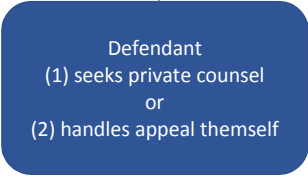
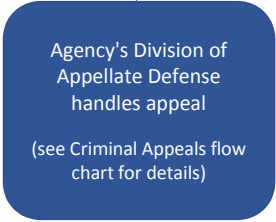
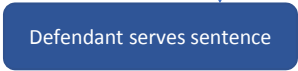
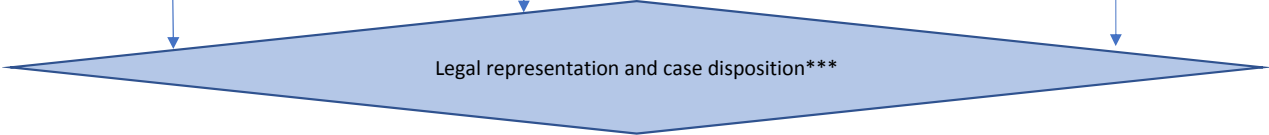
Indigent defendants right to counsel in criminal cases is granted in the U.S. Constitution.

Flow Chart as of June 2018

Step 1



Steps 2 - 10



*If the case involves the Death Penalty, the Capital Litigation Unit can get involved as second counsel to assist the appointed attorney. §16-3-26
 **If the Public Defender office is conflicted, the Capital Litigation Unit will be appointed and the court will appoint a Death Penalty Certified attorney to be second chair. §16-3-26
 ***Case disposition includes: (1) plea or nol proceed (not prosecuting) of some or all charges (i.e., warrants) before trial; (2) plea or nol proceed (not prosecuting) some or all charge (warrants) during trial; (3) judge or jury decision at end of trial.

Adult Criminal Case – All Criminal Cases, except Capital Murder

<u>Steps</u>	<u>Actions required to move case forward¹⁶</u>	<u>Entity Responsible for the action</u>
1	<p>Warrant</p> <p>Note: There are some instances of warrantless arrests.</p>	<p>Law Enforcement entity requests; County Magistrate issues*; Law Enforcement entity serves</p> <p>*Note: Magistrates are not required to be attorneys</p>
2	Bond - Initial	<p>County Magistrate sets**</p> <p>**Note: Magistrate Judge cannot set bond for certain cases</p>
3	Preliminary Hearing	County Magistrate schedules hearing after defendant request
4	Bond Hearing	<p>Defendant requests hearing; Solicitor schedules hearing; Circuit Court Judges decides at hearing***</p> <p>***Note: Circuit Court Judge sets bond on certain cases</p>
5	First Appearance	Solicitor schedules
6	Indictment	Solicitor schedules Grand Jury dates; Solicitor presents to Grand Jury
7	Discovery/Pre-Trial Motions	Solicitor & Defense Attorney conduct; Motion hearings, if needed, set by Solicitor
8	Appearance/Roll Calls	Solicitor schedules
9	Plea Negotiations	Solicitor & Defense Attorney conduct
10	Plea Hearings	Solicitor schedules hearings
11	Jury Trial	<p>Solicitor schedules trial in most circuits</p> <p>Note: Chief Administrative Judge schedules trials in the 7th Circuit.</p>

¹⁶ There are many nuances in legal actions and the exact steps in any case will depend upon the facts in that case. The steps included in this table are intended only as a very high-level summary of what may occur.

Adult Criminal Case - Capital Murder

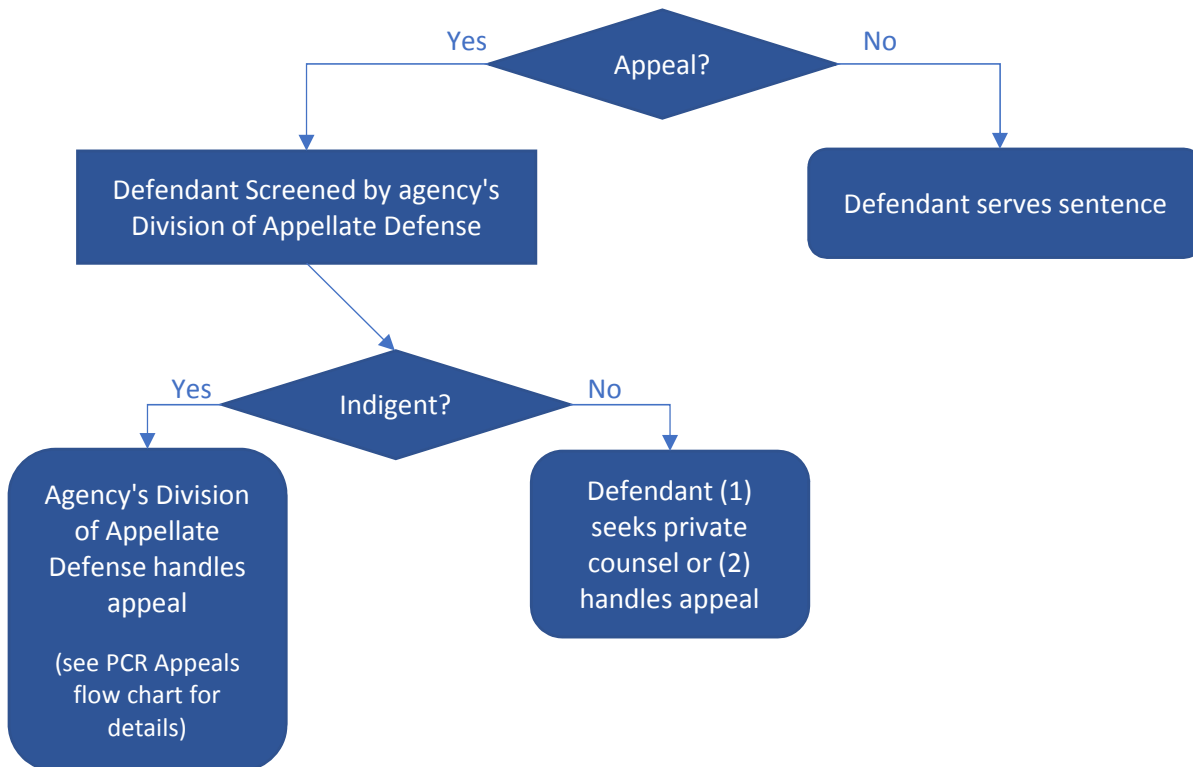
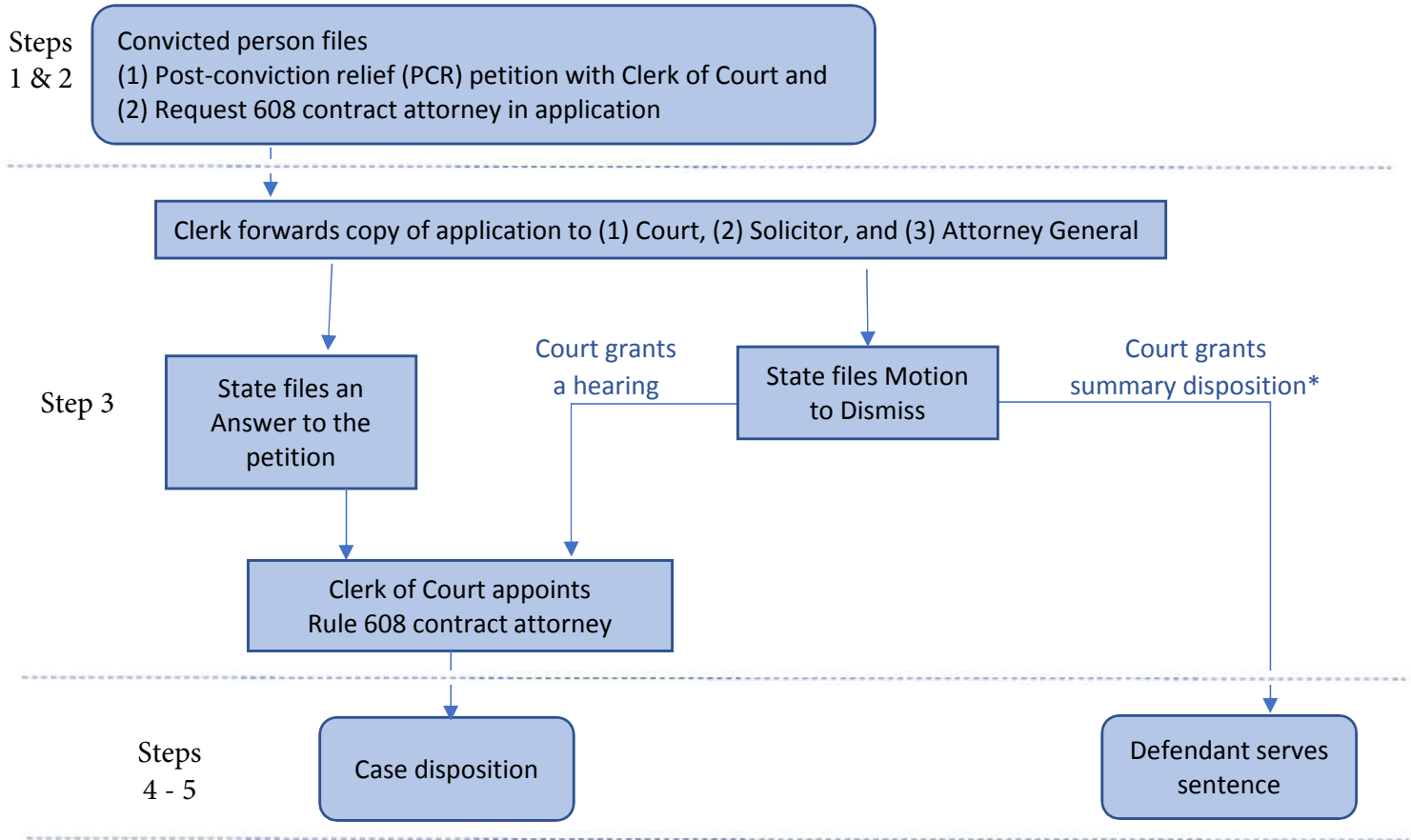
<u>Steps</u>	<u>Actions required to move case forward¹⁷</u>	<u>Entity Responsible for the action</u>
1	Warrant	Law Enforcement entity requests; County Magistrate issues*; Law Enforcement entity serves *Note: Magistrates are not required to be attorneys
2	Bond - Initial	County Magistrate sets
3	Preliminary Hearing	County Magistrate schedules hearing after defendant request
4	Bond Hearing	Defendant requests hearing; Solicitor schedules hearing; Circuit Court Judges decides at hearing
5	Discovery/Pre-Trial Motions	Solicitor & Defense Attorney conduct; Motion hearings, if needed, set by Solicitor
6	Indictment	Solicitor schedules Grand Jury dates; Solicitor presents to Grand Jury
7	Notice of Seeking the Death Penalty	Solicitor files
8	Appointment of Second Attorney	Appointment by Circuit Court Judge
9	Plea Negotiations	Solicitor & Defense Attorney conduct
10	Plea Hearings	Solicitor schedules hearings
11	Jury Trial	Scheduled by assigned Circuit Court Judge

¹⁷ There are many nuances in legal actions and the exact steps in any case will depend upon the facts in that case. The steps included in this table are intended only as a very high-level summary of what may occur.

Post-Conviction Relief (PCR) Case - Circuit, Magistrate, or Municipal Court

Indigent defendants right to counsel in PCR cases is granted in state statute, not the U.S. Constitution.

Flow Chart as of June 2018



*Summary disposition is the court dismissing the petition for post-conviction relief.

Post-Conviction Relief (PCR) Case – All Crimes, except Capital Murder

<u>Steps</u>	<u>Actions required to move case forward¹⁸</u>	<u>Entity Responsible for the action</u>
1	Application for Post-Conviction Relief	Defendant files
2	Appointment of Counsel	Clerk of Court appoints
3	Return to Application/Answer	S.C. Attorney General files
4	Amendment to Application	Attorney for the Defendant files
5	Hearing	S.C. Attorney General sets hearing date and presents at the hearing; Circuit Court Judge decides at hearing

Post-Conviction Relief (PCR) Case - Capital Murder

<u>Steps</u>	<u>Actions required to move case forward¹⁹</u>	<u>Entity Responsible for the action</u>
1	Petition for Post-Conviction Relief	Defendant files
2	Assignment of Judge	S.C. Supreme Court assigns
3	Appointment of Counsel (2 Attorneys)	Clerk of Court/Judge assigns
4	Return of Petition/Answer	S.C. Attorney General files
5	Amendments to Petition	Attorney for the Defendant files
6	Motions/Status Conference	Judge sets date
7	Hearing	Judge sets date for hearing at status conference

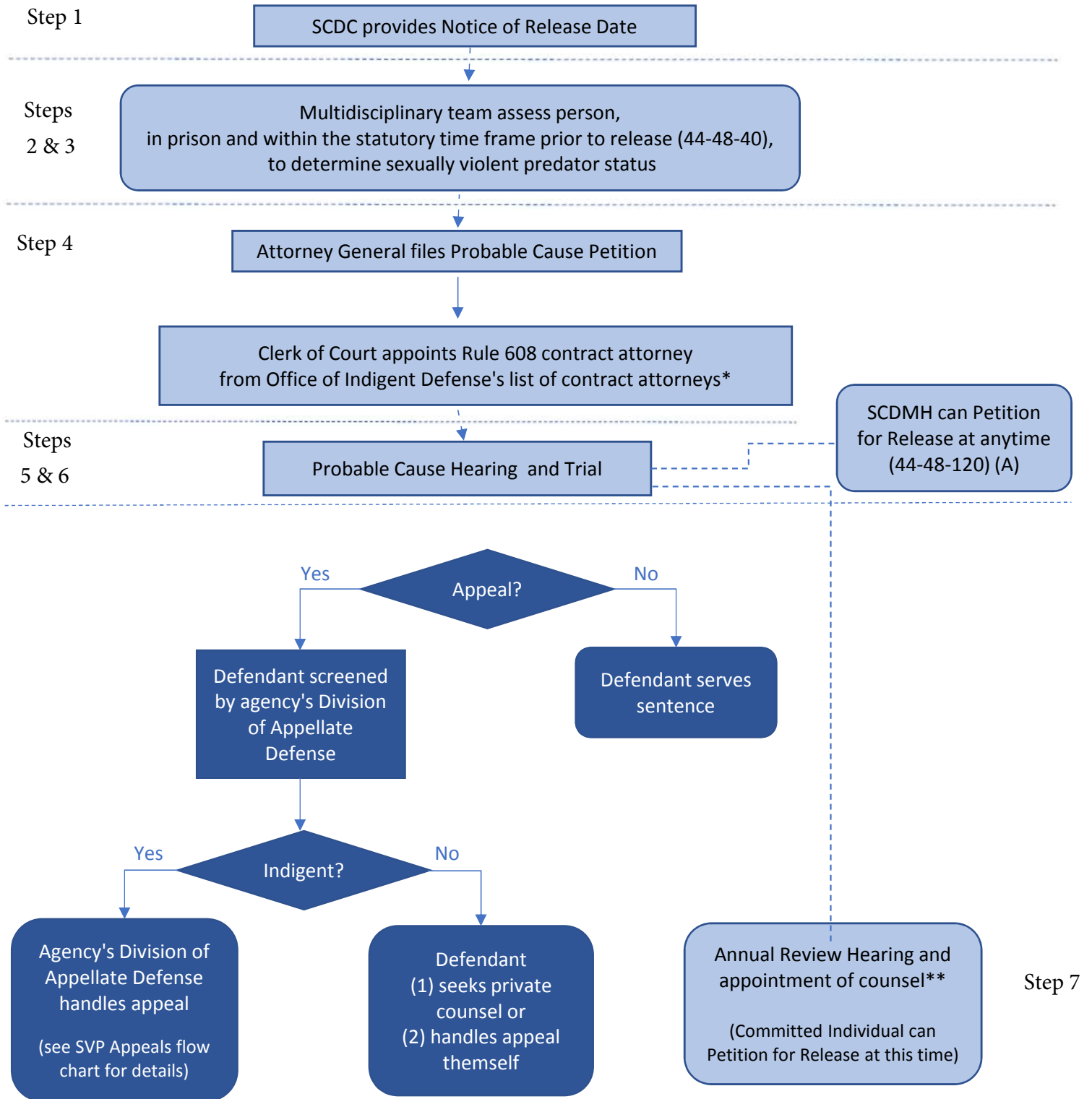
¹⁸ There are many nuances in legal actions and the exact steps in any case will depend upon the facts in that case. The steps included in this table are intended only as a very high-level summary of what may occur.

¹⁹ There are many nuances in legal actions and the exact steps in any case will depend upon the facts in that case. The steps included in this table are intended only as a very high-level summary of what may occur.

Sexually Violent Predator (SVP) Case - Circuit Court

Indigent defendant's right to counsel in SVP cases is granted in state statute, not the U.S. Constitution.

Flow Chart as of June 2018



*§ 44-48-90(B) provides that anyone subject to a SVP case is entitled to the assistance of counsel and if the person is indigent, the court must appoint counsel to assist the person. Because most people are in prison and indigent, appointment of counsel will be automatic upon service of the petition.

**After the probable cause hearing, the clock starts and every year there is a review of the probable cause hearing to determine if probable cause still exists. This annual review may occur prior to conclusion of an appeal.

Sexually Violent Predator (SVP) Case - Circuit Court

Indigent defendant's right to counsel in SVP cases is granted in state statute, not the U.S. Constitution.

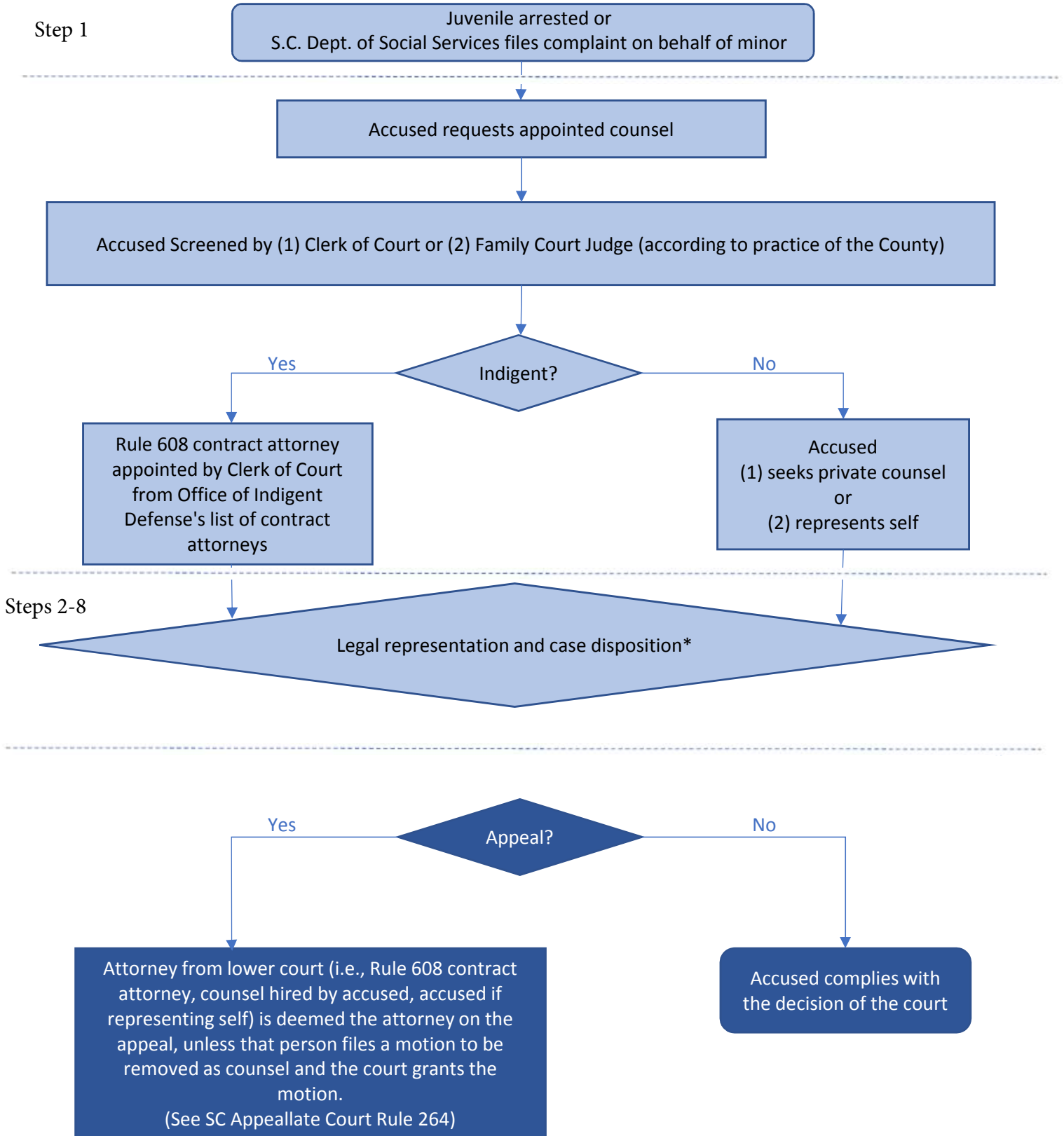
Also, this is a civil, not criminal, case.

<u>Steps</u>	<u>Actions required to move case forward²⁰</u>	<u>Entity Responsible for the action</u>
1	Notice of Release Date	S.C. Department of Corrections provides Notice of Release Date to the Multidisciplinary Team, Victim and Attorney General, 270 days prior to scheduled release date.
2	Assessment of Defendant (within 30 days of notification of Notice of Release Date)	Multidisciplinary Team schedules and conducts (The Multidisciplinary Team is comprised of 5-members appointed by the Director of SCDC. The team's members are from SCDC, DPPP, DMH, Retired Judge and Defense Atty.)
3	Review of Assessment Report (within 30 days of receipt of Assessment Report)	Prosecution Review Committee (Comprised of a member of the Attorney General's staff, an elected Circuit Solicitor and a Victim's Representative)
4	File SVP Probable Cause Petition (within 30 days of Probable Cause Determination)	S.C. Attorney General files
5	Probable Cause Hearing (within 72 hours of the SVP Petition being filed)	S.C. Attorney General schedules and presents case to the court
6	A) Evaluation within 60 days of Probable Cause Hearing (may get 1 extension) B) Trial request within 30 days determination of probable cause by the court 1) If no jury trial request, trial within 90 days of Evaluation Report 2) If jury trial request made, jury trial within 90 days of Evaluation Report	Court Appointed Expert schedules and conducts evaluation Defense Attorney or S.C. Attorney General request no jury or jury trial Court schedules trial Court schedules trial
7	Review Examination every year (The committed person can Petition for Release at this hearing)	Court schedules and conducts review
8	Petition for Release filed	S.C. Department of Mental Health can file this petition anytime (If the Director of the Department of Mental Health determines that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence.)
9	Hearing on Petition within 30 days of the Petition for Release being filed	Court schedules and conducts

²⁰ There are many nuances in legal actions and the exact steps in any case will depend upon the facts in that case. The steps included in this table are intended only as a very high-level summary of what may occur.

Juvenile Crime or Department of Social Services Abuse/Neglect Case - Family Court

Flow Chart as of June 2018



*Case disposition include the Court making either a finding of abuse/neglect or no finding of abuse and neglect.

Department of Social Services Abuse/Neglect Case - Family Court

<u>Steps</u>	<u>Actions required to move case forward²¹</u>	<u>Entity Responsible for the action</u>
1	Removal of minor from home	Law Enforcement entity removes (or Department of Social Services (DSS) if Judge grants ex parte order)
2	Complaint for removal based on abuse and neglect	DSS files
3	Probable Cause Hearing (within 72 hours of DSS taking custody of the minor)	Court or DSS sets date* DSS presents; Duty Judge decides *Note: Some Circuits only give DSS certain days each week on which they can have these hearings.
4	Investigation	DSS conducts
5	Preparation with Defendant	Appointed Counsel prepares
6	Merits Hearing (within 35 days of the filing of the Complaint for removal) A) Agreement Treatment Plan Judicial Review Hearing B) Trial Treatment Plan Judicial Review Hearing (3-4 hearings)	DSS schedules* DSS and appointed counsel discuss and reach DSS determines DSS schedules* DSS schedules with consult of everyone DSS determines DSS schedules* *Note: Some Circuits only give DSS certain days each week on which they can have these hearings.
If Foster Care case, Permanency Planning		DSS sets schedule for planning meetings
Consent order to transfer custody to a relative may occur at any step		DSS and Appointed Counsel discuss and enter on behalf of their parties
If an action is filed for Termination of Parental Rights, a hearing occurs		DSS schedules* *Note: Some Circuits only give DSS certain days each week on which they can have these hearings.

²¹ There are many nuances in legal actions and the exact steps in any case will depend upon the facts in that case. The steps included in this table are intended only as a very high-level summary of what may occur.

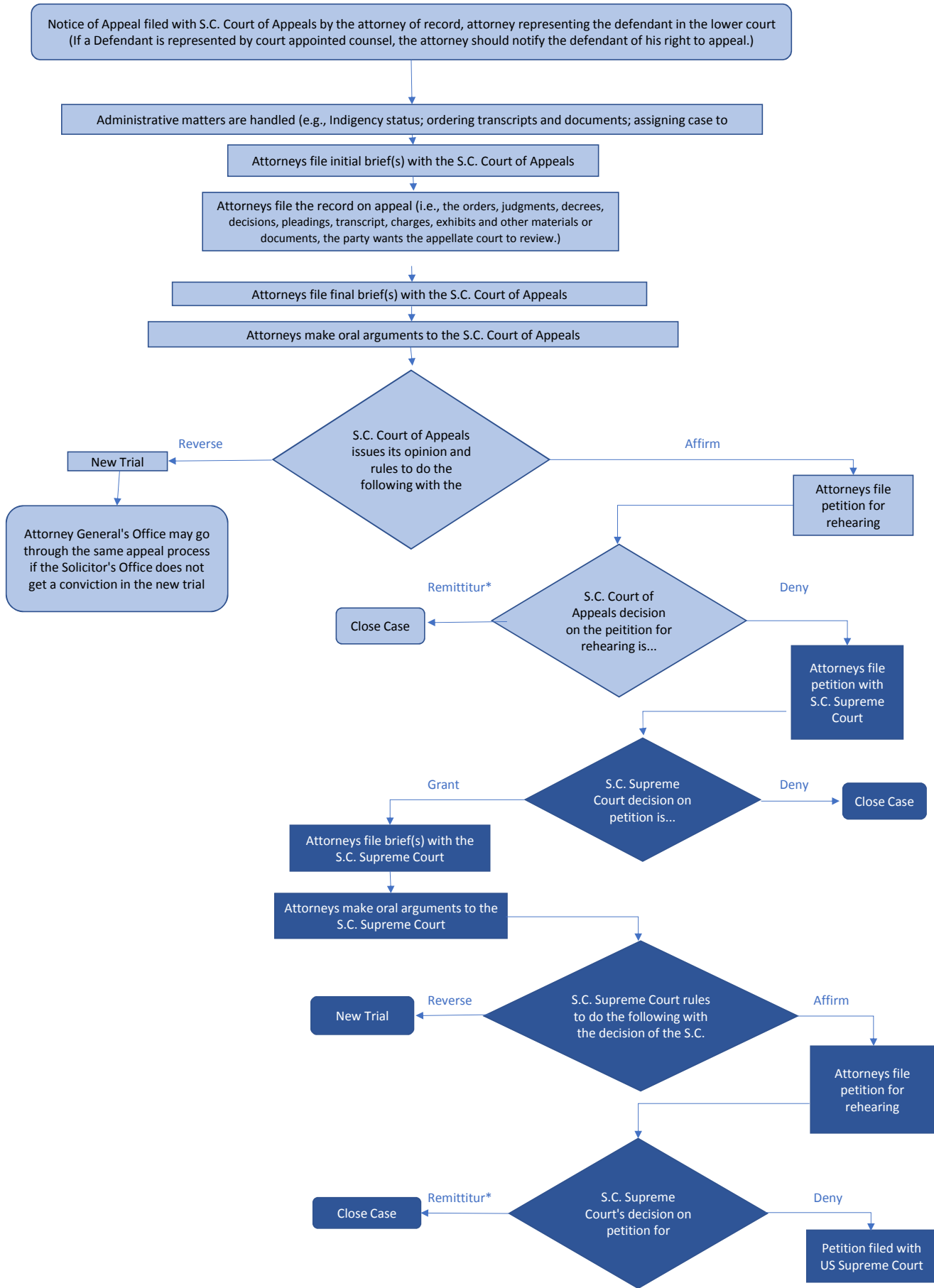
Juvenile Criminal Case - Family Court

<u>Steps</u>	<u>Actions required to move case forward²²</u>	<u>Entity Responsible for the action</u>
1	Taken into custody	Law Enforcement entity takes juvenile into custody
2	Notify Parent/Custodian & release	Law Enforcement entity notifies
3	If no release to Parent/Custodian notify DSS	Law Enforcement entity notifies
4	Determine need for detention	Department of Juvenile Justice determines
5	Detention Hearing within 48 hours of the Juvenile being taken into custody and Attorney appointed if applicant qualifies	Court sets date
6	Detention Reviewed A) Within 10 days of initial detention B) Within 30 days of 10 day review	Court reviews
7	Screened for mental health issues (within 24 hrs. of detention)	Department of Juvenile Justice screens
8	Prehearing Inquiry	Court schedules and conducts
9	Dispositional Hearing	Solicitor & Defense Attorney schedule together and conduct

²² There are many nuances in legal actions and the exact steps in any case will depend upon the facts in that case. The steps included in this table are intended only as a very high-level summary of what may occur.

Appeals of Adult Criminal Cases and Civil Sexually Violent Predator (SVP) Case

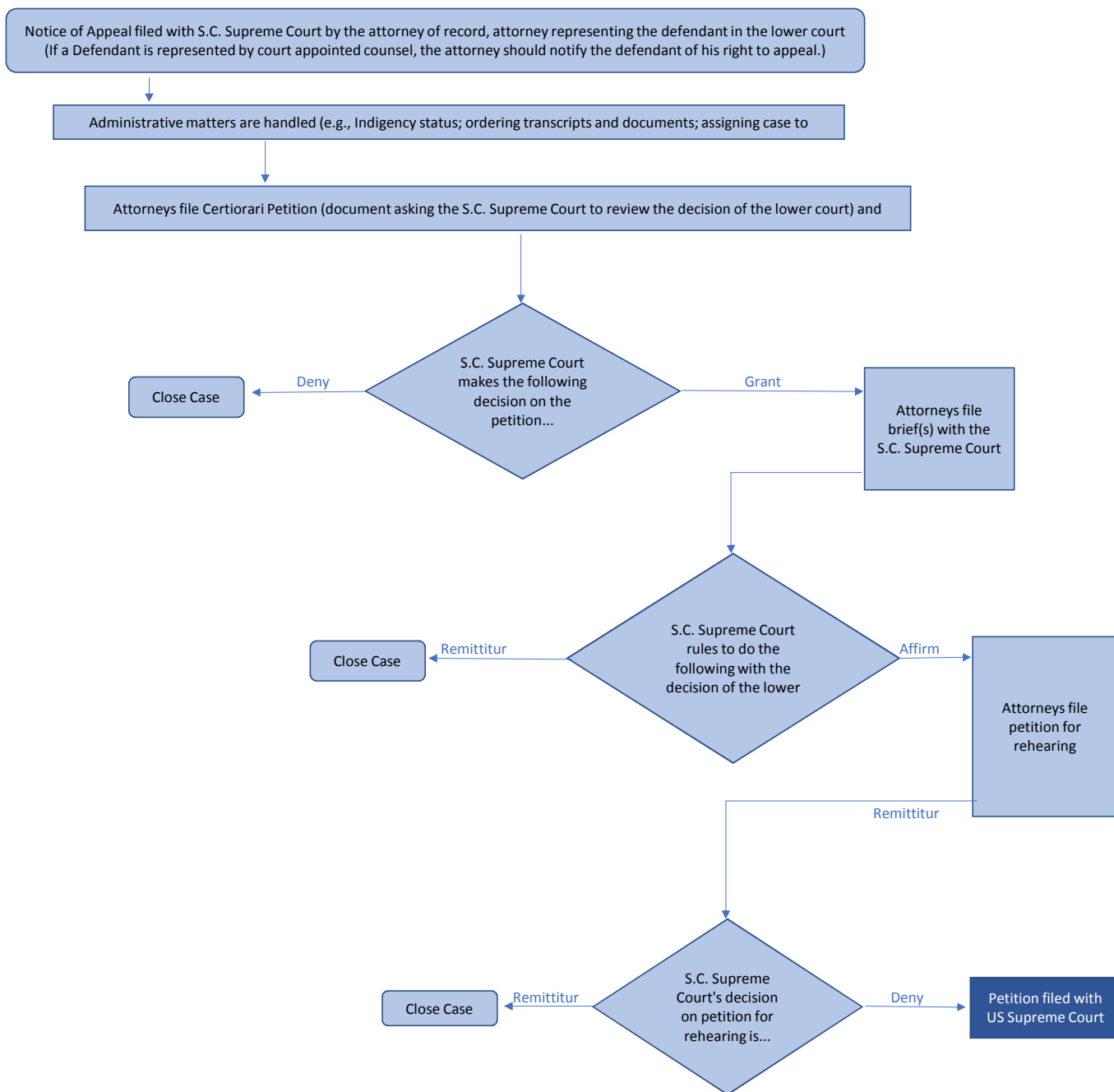
Flow Chart as of June 2018



*Remittitur means the appellate court is sending back the record to the court from which the appeal came so the decision of the lower court may be enforced.

Appeals of Post-Conviction Relief (PCR) Case

Flow Chart as of June 2018



Attachment 4

Average amount spent by the state, per indigent defendant

Average amount spent by the state, per indigent defendant

<u>Type of Case</u>	<u>Attorney</u>	<u>Attorney Fees (Avg.)</u>	<u>Expenses (Avg.)*</u>
Criminal Case (All, except Murder)	<i>Contract Attorney**</i>	\$1,000 flat fee	\$45
	<i>Public Defender</i>	See Table Note 3	\$1
Non-Capital Murder	<i>Contract Attorney**</i>	\$1,000 flat fee Note: The attorney can petition for, and receive, up to \$3,500 in an extraordinary circumstance with S.C. Commission on Indigent Defense approval.	\$881
	<i>Public Defender</i>	See Table Note 3	\$1,125
Non-Capital Murder Post-Conviction Relief (PCR)	<i>Contract Attorney**</i>	\$900 flat fee	\$173
Capital Murder	<i>Contract Attorney**</i>	\$118,058 per case Includes attorney fees and expenses, BUT does not include the cost of the Capital Trial Division attorneys and Circuit Public Defenders, who are salaried employees and handle the vast majority of Capital Murder cases in S.C. Capital Trial Division operational costs in FY 16-17 were \$570,753.	
	<i>Public Defender</i>		
Capital Murder Post-Conviction Relief (PCR)	<i>Contract Attorney**</i>	\$163,791 per case Includes attorney fees and expenses	
Sexual Violent Predator (SVP)	<i>Contract Attorney**</i>	\$900 flat fee	\$910
Family Court	<i>Contract Attorney**</i>	\$900 flat fee	\$4

*Table Note 1: Examples of expenses include court filing fees, court reporters for depositions, copies of transcripts, etc.

**Table Note 2: If a Contract Attorney has a conflict or is otherwise unavailable, an Attorney will be appointed in accordance with the South Carolina Court Rule 608 appointment list, which is maintained by the South Carolina Bar.

Table Note 3: Public Defenders are on salary and handle all cases assigned which is not broken down by case type.

Attachment 5

Attorney II EPMS document with the planning stage portion completed (Example)

INSTRUCTIONS

THE PLANNING STAGE

Job Functions - The supervisor, utilizing suggestions from the employee, shall select job duties from the employee's most recent position description and develop success criteria for each duty.

Objectives - This section allows the supervisor to include any additional special projects or program assignments that are not on the position description but that are assigned to the employee during the rating period. Objectives are optional, but if used, success criteria are required for each objective.

Performance Characteristics - Performance characteristics and their definitions should be directly related to the employee's job and may be selected by the supervisor and the employee from a list developed by the Office of Human Resources. All management and supervisory employees are required to be reviewed on "promoting equal opportunity." The supervisor should meet with the employee to discuss the position description and how it relates to the job functions and objectives for the upcoming year. After this discussion, the supervisor shall complete the planning stage of the document. Prior to discussing the completed planning stage with the employee, the supervisor will present the final document to the reviewing officer for signature. The supervisor will then meet with the employee to review the final plans for the year and obtain the employee's signature. The completed planning document should be maintained by the agency to be used as the evaluation document at the end of the review period.

THE EVALUATION STAGE

The supervisor will complete the evaluation document based on the employee's performance for the entire year. Using the three levels of performance outlined below, job functions and objectives shall be rated on how well the employee has met the success criteria as outlined in the planning stage. Performance characteristics will be rated "pass" or "fail" based on the definitions, which were communicated to the employee in the planning stage. The characteristics shall be used as a communication tool and shall not be weighted in the determination of the overall performance rating. Once the supervisor has completed the evaluation document, it will be presented to the reviewing officer for signature. The supervisor will then schedule a meeting with the employee to discuss his/her performance and to obtain the employee's signature on the evaluation document. The evaluation must be completed prior to the review date to be timely.

THREE LEVELS OF PERFORMANCE

(To rate job functions, objectives and overall performance)

Exceptional Performance: Work that is above the success criteria for the job throughout the rating period.

Successful Performance: Work that meets the success criteria for the job.

Unsuccessful Performance: Work that fails to meet the success criteria of the job.

(Performance characteristics will not be rated with the three levels of performance. They should be rated as "pass" or "fail")

JOB DUTIES

Performance
Level

1. **Job Duty:** Read all trial or PCR transcripts and relevant documents, conduct all necessary legal research, consult with other attorneys for advice, write or dictate the initial brief and designation or petition for writ of certiorari.

Success Criteria

Filed briefs and certiorari petitions should show a thorough and well thought out theory of the appeal with accurate citations to the record or appendix and the filing cites the applicable legal cases and statutes.

2. **Job Duty:** Order necessary exhibits and documents when a new case is assigned by the Chief Appellate Defender.

Success Criteria:

The applicable documents and exhibits are always ordered in a timely fashion.

3. **Job Duty:** Supervise support staff in compiling and indexing the record on appeal or appendix, final briefs, and any brief of petitioner or brief of respondent.

Success Criteria:

There should be no legitimate complaints of a lack of assistance from the attorney by the support staff. The filed documents should be accurate, clean, and visually appealing, and there should be no complaints from Court staff.

4. **Job Duty:** Prepare and argue cases in the State Supreme Court, the Court of Appeals, and any cases remanded to the Circuit Court

Success Criteria:

Oral arguments should be compelling, accurate and persuasive as should remand hearing presentations.

5. **Job Duty:** Assist less experienced attorneys by providing legal advice and participate in any trainings or CLE programs upon request.
-

Success Criteria:

The attorney demonstrates his or her sharing of legal knowledge and advice whenever called upon to do so within the office and in trainings or CLE presentations.

6. **Job Duty:** Supervise legal staff and handle any other duties upon the request of the Chief Appellate Defender
-

Success Criteria:

No legitimate complaints should be received regarding lack of supervision or the method of supervision, and there should never be reluctance to assist as requested.

OBJECTIVES
(Optional)

Performance
Level

1. Objective:

Success Criteria:

2. Objective:

Success Criteria:

PERFORMANCE CHARACTERISTICS NON-MANAGEMENT

FUNCTIONAL, INTERPERSONAL, & PERSONAL QUALITIES Pass or Fail

1. _____ **Quantity of Work:** The extent to which the employee produces an acceptable amount of work in order to meet schedules and deadlines.
2. _____ **Quality/Accuracy of Work:** The extent to which the employee neatly, thoroughly, and accurately completes job assignments according to established Office standards of quality. Continuously improves quality of work. Mistakes or errors are minimal and requires few corrections.
3. _____ **Time Management:** Employee is prompt in reporting for work and effectively and efficiently uses his/her time to accomplish his/her job tasks. Uses leave in a manner that minimizes disruption to the Office.
4. _____ **Responsibility:** Asks for work after completing assignments and does not make excuses but addresses problems squarely. Offers action plans to resolve problems and suppresses self-forgiving tendencies regarding so-called uncontrollable elements.
5. _____ **Judgment/Common Sense:** Able to reason, compare, understand, and think rationally on the job. Makes quality work-related decisions based on sound conclusions/data. Employee able to separate facts from opinions.
6. _____ **Initiative:** The extent to which an employee can be depended upon to work ahead based upon their own judgment, without waiting to be told, to meet work schedules and fulfill job responsibilities and commitments. Employee able to manage time wisely.
7. _____ **Dependability/Reliability:** Employee can be relied upon to meet work schedules and fulfill job responsibilities and commitments. Meets deadlines and follows instructions.
8. _____ **Teamwork:** The extent to which the employee establishes positive attitudes and relationships with co-workers and others; for example: being a good team worker, adjusting to changes in procedures or organization, having respect and confidence of co-workers, being tactful and courteous, discretion in contact with public, and court officials and clients.

9. _____ **Organizational Adaptability:** Employee can adapt to job or organizational changes. Readily accepts new responsibilities and assignments.
10. _____ **Loyalty:** Contributes to overall morale and character of the office. Works to promote the betterment of the office by showing initiative, seeking solutions, and working hard to achieve overall goals.
11. _____ **Positive Attitude:** Approaches tasks with positive outlook and works cooperatively with others. Creates an amicable work environment and motivates colleagues.

FOR ATTORNEYS ONLY

10. _____ **Effective Representation in Legal Proceedings:**
The extent to which the attorney effectively represents the client on appeal and during remand hearings.
11. _____ **Research:** The extent to which the employee completes timely accurate, thorough, precise and usable research.

ACTUAL PERFORMANCE

SUMMARY AND IMPROVEMENT PLAN

Identify the employee's major accomplishments, areas needing improvement, and steps to improve present and future performance.

APPRAISAL RESULTS

_____ **Exceptional Performance**

(Written documentation of rating required)

_____ **Successful Performance**

_____ **Unsuccessful Performance**

(Written documentation of rating required)

***DOCUMENTATION OF RATING REQUIRED FOR EXCEPTIONAL AND UNSUCCESSFUL PERFORMANCE**

Attachment 6

**Administrative Coordinator EPMS document with the planning stage portion completed
(Example)**

SOUTH CAROLINA INDIGENT DEFENSE EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM

Name: [REDACTED] _____

Position _____ Date Assigned to Current
Classification Administrative Coordinator II Position 7/1/1997

Division/Section Indigent Defense _____

Performance Review From April 1st, 2018 To March 31st, 2019

PLANNING STAGE ACKNOWLEDGMENT YEAR 2018-19

Rating Officer [REDACTED] Date 3/28/18

*Reviewed by [REDACTED] Date 3/30/2018
(Rating should be reviewed and approved by reviewing officer prior to reviewing with employee.)

Employee [REDACTED] Date 3-28-18
(Signature of employee indicates the Planning Stage and Position Description were reviewed with the employee.)

EVALUATION STAGE ACKNOWLEDGMENT YEAR _____

Rating Officer _____ Date _____

*Reviewed by _____ Date _____
(Rating should be reviewed and approved by reviewing officer prior to reviewing with employee.)

Employee _____ Date _____
(My signature indicates that I was given the opportunity to discuss the official performance review with my supervisor - not that I necessarily agree.)

Employee Comments _____

Review Type:

- Annual New Hire Reclassification Section Transfer

INSTRUCTIONS

THE PLANNING STAGE

Job Functions - The supervisor, utilizing suggestions from the employee, shall select job duties from the employee's most recent position description and develop success criteria for each duty.

Objectives - This section allows the supervisor to include any additional special projects or program assignments that are not on the position description but that are assigned to the employee during the rating period. Objectives are optional, but if used, success criteria are required for each objective.

Performance Characteristics - Performance characteristics and their definitions should be directly related to the employee's job and may be selected by the supervisor and the employee from a list developed by the Office of Human Resources. All management and supervisory employees are required to be reviewed on "promoting equal opportunity." The supervisor should meet with the employee to discuss the position description and how it relates to the job functions and objectives for the upcoming year. After this discussion, the supervisor shall complete the planning stage of the document. Prior to discussing the completed planning stage with the employee, the supervisor will present the final document to the reviewing officer for signature. The supervisor will then meet with the employee to review the final plans for the year and obtain the employee's signature. The completed planning document should be maintained by the agency to be used as the evaluation document at the end of the review period.

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The supervisor will complete the evaluation document based on the employee's performance for the entire year. Using the three levels of performance outlined below, job functions and objectives shall be rated on how well the employee has met the success criteria as outlined in the planning stage. Performance characteristics will be rated "pass" or "fail" based on the definitions, which were communicated to the employee in the planning stage. The characteristics shall be used as a communication tool and shall not be weighted in the determination of the overall performance rating. Once the supervisor has completed the evaluation document, it will be presented to the reviewing officer for signature. The supervisor will then schedule a meeting with the employee to discuss his/her performance and to obtain the employee's signature on the evaluation document. The evaluation must be completed prior to the review date to be timely.

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(Performance characteristics will not be rated with the three levels of performance. They should be rated as "pass" or "fail")

JOB DUTIES

Performance
Level

- 1. Job Duty:** Coordinates and performs activities related to fiscal management, administrative and support functions.

Success Criteria:

Under limited supervision, ensure that the monthly revenue collections from the State Treasurer's Office are entered in for each Division within the agency for distribution of payments, approves documents being processed in SCEIS to ensure they are paid from the correct codes. Reviews SCEIS information for the weekly expenditure report for the Executive Director and serve as backup for the Assistant Director on personnel, payroll issues and the time and leave report for employees required to enter their daily work times.

- 2. Job Duty:** Interprets accounting system policies, procedures and forms.

Success Criteria:

Under normal supervision and approval, prepares and maintains annual GAAP and SFFA reports to ensure timely submission by SCCID to the State Comptroller's Office. Works with the State Auditor's Office staff during their annual fiscal year audits of SCCID, to ensure SCCID compliance with all state financial regulations.

- 3. Job Duty:** Prepares and maintains accounting and fiscal records; monitors agency for budgetary and fiscal compliance.

Success Criteria:

Under limited supervision and approval, maintains spreadsheet information on all revenue collections by county, makes daily deposits of revenue collected by SCCID from county clerk of courts offices and maintains annual revenue comparison spreadsheet for SCCID. Calculates Public Defenders checks from revenue collections in SCEIS for quarterly distribution.

- 4. Job Duty:** Consults with agency Comptroller and other management regarding availability of funds and preparation of funding requests.
-

Success Criteria:

Under limited supervision and approval, monitors SCCID budget and cash balances, processes entries as needed for transfers of cash and or budget to cover expenditures, assists agency comptroller in accessing financial information from SCEIS in response to requests for agency financial status from legislature or other agencies.

5. **Job Duty:** Confers with external agencies regarding agency financial and administrative records.

Success Criteria:

Under limited supervision and approval, works with State Treasurer and Comptroller's Offices with payroll and payment issues, maintains federal grant records for payments, reimbursements and or expenditures, as well as working with SCEIS teams on new financial reports and training on time and attendance issues.

6. **Job Duty:** Coordinates with staff in implementing procedural changes.

Success Criteria:

Under normal supervision and approval, maintains and disseminates a listing of correct expenditure codes to use for processing vouchers, as well as monitors any changes in the data system and SCEIS for payment accuracy in the processing of vouchers.

7. **Job Duty:** Plans, implements and coordinates special projects or programs.

Success Criteria:

Under limited supervision works with other OID staff to ensure the Data System matches the SCEIS system to ensure accurate payment of 608 contract vouchers and researches any discrepancies.

OBJECTIVES
(Optional)

Performance
Level

1. Objective:

Success Criteria:

2. Objective:

Success Criteria:

PERFORMANCE CHARACTERISTICS NON-MANAGEMENT

FUNCTIONAL, INTERPERSONAL, & PERSONAL QUALITIES **Pass or Fail**

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9. _____ **Organizational Adaptability:** Employee can adapt to job or organizational changes. Readily accepts new responsibilities and assignments.

- 10. _____ Loyalty:** Contributes to overall morale and character of the office. Works to promote the betterment of the office by showing initiative, seeking solutions, and working hard to achieve overall goals.
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FOR ATTORNEYS ONLY

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(Written documentation of rating required)

_____ **Successful Performance**

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(Written documentation of rating required)

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