

AGREEMENT FOR KITTITAS COUNTY UPPER DISTRICT COURT INDIGENT DEFENSE SERVICES (2018)

This agreement is entered into by and between the County of Kittitas (County) and Marjorie D. Alumbaugh (Contracting Attorney, WSBA #44091).

- 1. Scope of Services.** The Contracting Attorney agrees to provide, or arrange for the provision of, public defender services for all eligible indigent criminal defendants in cases filed in the Upper Kittitas County District Court (Court) as set forth in this agreement. The Contracting Attorney or other assigned counsel shall provide legal representation for each assigned defendant from the time of receiving notice of appointment through every stage of the legal proceedings at the district court level including sentencing and the processing of notices of appeal and motions for orders of indigence for direct appeals. The Contracting Attorney shall provide legal representation for review hearings (*e.g.* probation review hearings) when appointed for that purpose. The Contracting Attorney shall also provide legal representation for the arraignment calendars held on Mondays at 9:00 am. All cases assigned to the Contracting Attorney as of the date of termination of this contract for which the next set hearing date is within 45 days after such date of termination will be handled as set forth above; provided, that in any case where the client fails to appear for a trial or hearing after termination of the contract, the Contracting Attorney may withdraw from representation subject to order of the court and thereafter the Contracting Attorney shall have no obligation herein to represent the client or accept reappointment thereafter.
- 2. Attorney as Independent Contractor.** The parties recognize and affirm the understanding that the Attorney is an independent contractor having no relationship to the County except to provide professional legal defense services to the persons officially assigned to the Attorney pursuant to this Contract. Neither the Attorney nor any employee of the Attorney is an employee of the County. Neither the Attorney nor any employee of the Attorney is entitled to any benefits that the County provides its employees. The Attorney will provide the Court Administrator with proof of a valid Washington Uniform Business Identification number before commencement of work. The Attorney is solely responsible for the timely payment of any taxes, assessments, statutory workers compensation, or employer's liability insurance as required by Federal or state law for the Attorney and any employees of the Attorney. The Attorney guarantees such payment and will indemnify the County in that regard.
- 3. Applicant Screening.** Determination of Indigence for purposes of eligibility for appointed counsel under this contract shall be made by a screening process established by the Court. Counsel is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if counsel subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Counsel, if able to do so within the bounds of applicable ethical rules/professional standards, shall promptly notify the appointing court of such possibility.

4. **Associated Counsel.** Any counsel associated with or employed by the Contracting Attorney shall have the authority to perform the services called for herein, and the Contracting Attorney may employ and/or associate counsel to assist her. The Contracting Attorney and all counsel employed or associated pursuant to this section shall be admitted to the practice of law in the State of Washington and be in good standing as such, shall comply with CrRLJ 3.1 Standards for Indigent Defense 14.1 and 14.2, and shall have a minimum of five years' experience in the criminal law legal field (defense attorney and/or prosecutor and/or judicial). The Contracting Attorney shall be responsible for performance of this Agreement notwithstanding that other counsel may be employed or associated by the Contracting Attorney to perform services herein. The Contracting Attorney shall notify the Court of any proposed association or employment of counsel for purposes of performing the services called herein, and shall include in such notification information regarding the background, education, training, experience and qualifications of such counsel, and any additional training and supervision that is proposed to be provided to such associated or employed counsel for purposes of performing the services called for herein. The Contracting Attorney's selection of any counsel associated with or employed by the attorney to perform the services described in this contract shall be subject to the approval of the Court.
5. **Training.** Attorneys providing public defense services shall complete seven hours of continuing legal education approved by the Washington State Office of Public Defense within each calendar year in courses relating to their public defense practice. (RCW 10.101.050; CrRLJ 3.1 Standards) Attorneys providing public defense services shall comply with all applicable standards, training and/or certification requirements as may be required by court rule or regulations and shall provide written proof of such compliance to the court.
6. **Certification.** Attorneys providing public defense services shall comply with the Standards for Indigent Defense adopted by the Supreme Court. Each attorney shall provide a Certification of Compliance with the applicable standards as required by CrRLJ 3.1 which shall be filed with the Upper District Court administrator on the last Monday of each January, April, July, and October by the Contracting Attorney and any associated or employed attorney providing legal defense in Upper District Court under this agreement. The certification shall also include caseload reporting by the attorney consistent with the requirements imposed upon the County by RCW 10.101.050.
7. **Liability of Contracting Parties, Attorney as Independent Contractor.** Each party to this agreement shall be responsible for the negligent acts or omissions of its own employees, officers or agents in the performance of this agreement. Neither party shall be considered the agent of the other nor does neither party assume any responsibility to the other party for the consequences of any act or omission of any party, firm or corporation not a party to this agreement.
8. **Proof of Professional Liability Insurance.** The Contracting Attorney shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the COUNTY should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor or agents of either, while performing under the terms of this contract.

During the term of this agreement or extensions thereof, any attorney providing services under this contract shall secure and maintain at her own expense a policy of comprehensive professional liability insurance with an insurance company licensed to do business in the State of Washington, and shall name the COUNTY, its agents and employees, as additional insureds under the insurance policy(s). All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give COUNTY 30-days advance notice of any insurance cancellation. Said policy shall have limits of not less than \$100,000 per occurrence and \$500,000 annual, aggregate limit. NOTE: No contract shall form until and unless a copy of the Certificate of Insurance with Endorsement, properly completed and in the amount required, is attached hereto.

9. Indemnification. The Contracting Attorney shall indemnify, defend and hold the County, its elected officials, officers and employees harmless from any and all claims whatsoever arising out of performance of the Attorney's obligations pursuant to the Agreement, including but not limited to claims arising out of errors or omissions of the contracting Attorney (or his employees or associates) and/or by reason of accident, injury or death caused to persons or property of any kind occurring, except to the extent they are caused by the fault or neglect of the County or the Court.

10. Term of Agreement. Provision of services pursuant to this Agreement shall commence January 1, 2018 and terminate on December 31, 2018, unless this Agreement is terminated earlier pursuant to the provisions of Paragraph 22, and the Contracting Attorney shall provide service to all defendants referred herein in accordance with the terms of this Agreement until representation of such defendant is complete, as provided in Paragraph 1 of this Agreement. This Agreement shall apply to all referrals made through December 31, 2018, unless the contract is terminated earlier, in which case the contract shall apply to all referrals made until 5:00 p.m. on the date of termination of the contract.

11. Caseload Standards. The caseload limits set forth in this agreement include a case weighting system for establishing caseloads, a copy of which is attached hereto and incorporated by reference. Over the course of any 365-day period the Contracting Attorney (and any associated or employed counsel) shall not handle a caseload of more than 300 cases as weighted, or an average number of 25 per month.

12. Compensation for Assigned Cases. The Contracting Attorney shall be paid as follows:

- New Appointments: \$300 for DUIs and Assault in the Fourth Degree case; \$275 for all other cases.
- Probation violation/review cases shall be paid at \$175.
- Jury Trial: Shall be paid \$300 per diem for Jury Trial.

Attorney billing statements for assigned cases shall include the defendant's name, all charges, and affiliated case number(s) that were assigned by the court for the defendant.

13. Compensation for Arraignment and First Appearance Calendars. The Contracting Attorney or any associate or employed attorney shall be paid \$200.00 for each Monday morning arraignment calendar at 9:00 a.m. Attorney billing statements for Arraignment will include the

date and docket time of the attorney's appearance in court along with the monetary billing amount associated with that docket.

14. Policy as it refers to appointments:

- After court hearings with disposition (with the exception of Stay of Proceeding (SOP)/Deferred Prosecution (DP)/or Warrants) the court will automatically withdraw the attorney from the case upon the filing of a notice of appeal or 30 days after the final (appealable) decision of the Court, as the case may be. Attorney does not need to sign a withdrawal.
- On SOP/DPs- Court Appointed Attorney (CAA) may submit a motion to withdraw from the matter. If CAA withdraws from the case and the case is subsequently set for a probation review hearing, attorney may bill \$175.00 for the probation appointment.
- On cases where a warrant is ordered- CAA may submit a motion to withdraw from the matter. If CAA is withdrawn from the case, once warrant is served-if attorney reappointed, may bill \$300 or \$275 for case if prior to disposition status or \$175.00 for a case at probation hearing status.

15. Investigators. The court will set aside sufficient funds out of its public defender budget to fund defense investigators. Public Defenders may file ex parte motions for such investigator funds.

16. Experts. The court will set aside sufficient funds for expert defense witnesses. Public Defenders may file ex parte motions for such expert witness funds.

17. Extraordinary cases. If a public defender is assigned a case which requires an extraordinary amount of time and preparation, the following additional payment may be applied for: \$75 per hour for each hour over ten (10) hours.

18. Conflict Counsel. The cost of conflict counsel shall be paid by the County and not by the contracting attorney. If the Contracting Attorney or any employed or associated attorney is precluded from representing a client because of a conflict which cannot be resolved by transfer of the case between the Contracting Attorney and employed or associated counsel, the attorney shall promptly notify the Court by notice of withdrawal and substitution of another attorney qualified under the terms of Paragraph 3. Conflict counsel shall be paid at the same per case compensation rate as the Contracting Attorney. For the purposes of this provision, a Conflict of Interest requiring any replacement of counsel shall be as defined in the applicable RPCs (Rules of Professional Conduct) promulgated by the Washington Supreme Court.

19. Termination.

- a. For Cause: Either party may terminate this Agreement immediately in the event the other party fails to perform its obligations as described in this Agreement and such failure has not been corrected to the reasonable satisfaction of the injured party in a timely manner after notice of breach has been provided to the other party. Compensation for cases assigned prior to the effective day of termination shall be as provided under this Agreement.
- b. For Reasons Beyond the Parties' Control: Either party may terminate this Agreement immediately without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's control, including but not limited to acts of nature, war, riot, personal disability or superior governmental regulation or control.

- c. Without Cause: Either party may terminate this Agreement without cause upon 90 days written notice, which date of termination shall correspond to the last day of a calendar month. The contracting attorney shall be responsible for completion of cases assigned prior to the effective date of termination.
- 20. Amendments.** No modification or amendment of the provisions of this Agreement shall be effective unless in writing and signed by the authorized representative of the parties hereto.
- 21. Nondiscrimination.** Contracting Attorney shall not discriminate or tolerate harassment on the basis of race, color, sex, religion, national origin, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the administration or delivery of public defense services. Counsel shall comply with all federal, state, and local non-discrimination requirements.
- 22. Physical Office/Communications and Support Staff.** The Contracting Attorney will maintain a physical office or have access to an office that accommodates confidential meeting with clients; maintain a postal address and adequate telephone service to ensure prompt response to client contact, and will provide sufficient support staff to provide for effective assistance of counsel.
- 23. Entire Agreement.** This instrument contains the entire Agreement between the parties and may not be enlarged, modified, or altered except in writings signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 19th day of December, 2017.



Marjorie D. Alumbaugh
Contracting Attorney



Judge Darrel R. Ellis
Upper Kittitas County District Court



Paul Jewell
BOCC Chairman