

**INDIGENT DEFENSE
CONTRACT FOR LEGAL SERVICES
PACIFIC COUNTY, WASHINGTON
(Nancy McAllister and Edward Penoyar)**

THIS CONTRACT is entered into by the Superior Court Judge of Pacific County, hereinafter referred to as "JUDGE"; Nancy McAllister, P.O. Box 430, Naselle, WA 98638, and Edward Penoyar, P.O. Box 425, South Bend, WA 98586, hereinafter referred to as "CONTRACTORS". According to the terms of this contract and the Rules of Professional Conduct, the parties agree that the CONTRACTORS shall provide legal representation for persons who by law are entitled to legal representation at public expense.

SCOPE OF SERVICES

ADULT FELONY

The ATTORNEYS shall be responsible for representing adults and declined juveniles who are entitled to counsel at public expense in criminal, contempt including civil contempt, and voluntary commitment cases in Pacific County, Washington, when ordered to do so by a court or at the request of an arrested defendant prior to his/her first appearance in court. The services provided by the CONTRACTORS also shall include, but not be limited to; representing indigents in criminal cases, involuntary commitment proceedings, in appeals from a District Court to Superior Court, in probation violation hearings, and in cases where contempt is sought as a sanction and counsel is appointed. Service also shall include preparation of post-judgment paperwork (modification of judgment, motion for furloughs, motion for special examinations, etc.) and preparation of a notice of appeal in cases where an appeal is requested by a defendant/respondent. This contract is intended to provide coverage for one-third (1/3) of the appointments as described herein. The remaining two-thirds of case assignments shall be assigned by the court via a separate contract. The applicable court shall retain the right of assignment as specified under ASSIGNMENT OF CASES.

DUTIES OF CONTRACTORS

The CONTRACTORS agree to represent, advise, defend in court, and otherwise provide legal assistance in accordance with the Rules of Professional Conduct and in keeping with the standards and requirements established in Pacific County Ordinance No. 159. The CONTRACTORS agree to comply with the SCOPE OF SERVICES listed; however, the CONTRACTORS will not be appointed under this contract to represent a defendant/respondent who is charged with murder in the first degree, or for exceptional cases which require abnormal time and effort to reach resolution. The

CONTRACTORS reserve the right to petition the court for additional compensation in such exceptional cases. The court shall reserve the right to make such determinations.

The CONTRACTORS agree to have a business telephone line(s), a fax machine, and an answering machine accessible without long distance charges. The CONTRACTORS agree that they will accept collect telephone calls from clients. The CONTRACTORS do not have to accept collect telephone calls from clients who are abusive toward him or her or who make repeated collect calls that are unnecessary. The CONTRACTORS agree that he / she will maintain reasonable contact with his / her clients and respond to indigent client requests in a timely fashion. The CONTRACTORS agree that they will provide legal services for indigent defense unless a conflict exists. For the purpose of this contract, a "conflict" means an ethical conflict under the Rules of Professional Conduct not arising from the CONTRACTORS' contemporaneous "outside" employment. Scheduling difficulties, vacation periods, and illness shall not constitute a "conflict". The following coverage shall be provided within the terms of this contract:

The CONTRACTORS must record in writing all contacts with indigent clients so the court can be apprised of the degree to which contact is being maintained with every indigent client.

The CONTRACTORS are responsible for making appropriate arrangements during any periods when he / she are unavailable due to medical reasons or when he is on vacation.

ASSIGNMENT OF CASES

In general, cases will be assigned to the CONTRACTORS by the court at the Court's discretion. The CONTRACTORS shall keep the court apprised of his / her desires in this regard. The JUDGE agrees to give strong consideration to the CONTRACTORS' preferences regarding appointments.

Notice of appointment shall be provided to appointed counsel as follows: by e-mail to the appointed CONTRACTOR, unless otherwise arranged by the CONTRACTOR and approved by the JUDGE. The CONTRACTORS shall secure one or more active e-mail addresses and shall provide the Court Administrator and the Clerk of the Court his e-mail address(es) for notification purposes. Notice of all appointments shall be forwarded to the CONTRACTOR by e-mail. Counsel or their designee shall check for appointments daily, Monday through Friday. The CONTRACTORS under this contract shall arrange to attend to each other's appointments when any counsel is unavailable.

The CONTRACTORS agree to be responsible for active indigent cases that previously had been assigned to the Pacific County Public Defender's Office or other CONTRACTORS. NOTE: A separate contract has been secured to cover two-thirds

(2/3) of adult felony cases and all juvenile civil, juvenile offender, and South and North District Court cases. It is understood that approximately one-third (1/3) of previously assigned active adult felony indigent cases will be assigned to the CONTRACTORS signatory to this contract, and that approximately two-thirds (2/3) of such cases will be assigned to the CONTRACTOR(s) signatory to a separate contract.

The CONTRACTORS shall document the number of hours spent on public defense cases and provide such information as requested and required by the County and Office of Public Defense Grant requirements.

PAYMENT

In consideration of such services, the CONTRACTORS shall be paid by Pacific County, on a monthly basis for the years as follows:

Nancy McAllister	\$2,101/per month	1/3 Adult Superior Court Felonies
Edward Penoyar	\$2,101/ per month	

Note: representation includes the corresponding representation for persons subject to contempt proceedings as per the above distribution.

The total contract for the Calendar Years 2014 and 2015 will be increased by the same percent cost of living increase, if any, that is provided to non-represented Pacific County management employees effective January 1, 2014 and January 1, 2015.

Note: This contract is for a maximum of one-hundred (100) Adult Felony appointments in total per year as said appointments enumerated previously herein under SCOPE OF SERVICES. For any felony appointments in excess of the one-hundred case cap, the CONTRACTORS would then have the option of accepting the additional appointment pursuant to mutually acceptable terms of payment.

The parties agree that in providing services in his capacity under this contract the CONTRACTOR IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE OF PACIFIC COUNTY. The CONTRACTORS hereby agrees not to make any representation to any third party, nor to allow such third party to remain under the misimpression that the CONTRACTORS are employees of PACIFIC COUNTY as it pertains to providing services under this contract.

The JUDGE will provide no additional compensation, benefits, or any other remuneration beyond the contract amount set forth immediately hereinabove.

The CONTRACTORS also agree to pay any local, state or federal taxes applicable to compensation or income received by the CONTRACTORS pursuant to this contract.

The CONTRACTORS shall not charge a fee to any client who is assigned to him or her for work performed under this contract.

The CONTRACTORS' ordinary business expenses are deemed included in the above rate. The CONTRACTORS' ordinary business expenses are those expenses related to the normal operation of a legal office such as support staff, copies, telephones, office rent, office supplies, etc. Expenses for investigation, expert witnesses, evaluations, etc. are not included in CONTRACTORS' ordinary business expenses. In the event expenses for investigation, expert witnesses, evaluations, etc. are appropriate, the CONTRACTORS must petition a Court for authorization to incur those expenses.

INDEMNIFICATION

In accepting this Agreement, the CONTRACTORS, including its successors and assigns, does hereby covenant and agree to indemnify and protect and save harmless the COUNTY and its officers and employees from all claims, actions, or damages of every kind and description which may accrue to or be suffered by any person, partnership, corporation, or other entity of any kind that arise in whole or in part from intentional tort(s), or negligent act(s) or omission(s), or strict liability of the CONTRACTORS or their employees, agents, successors, or assigns. If the above sentence applies and any suit or action is brought against the COUNTY, its officers, its employees, or any combination thereof, the CONTRACTORS, including its successors or assigns, shall defend the suit or action at his or her or their sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof.

INSURANCE

The CONTRACTORS shall maintain, and upon request of the COUNTY, provide proof of occurrence based general business professional liability insurance in the amount of \$1,000,000 or greater per occurrence and \$2,000,000 aggregate for the term of this CONTRACT. The CONTRACTORS agree that its liability insurance shall be primary to the COUNTY's. The CONTRACTORS shall be responsible at their own expense to provide any and all employment insurance coverage, including but not limited to, unemployment insurance, worker's compensation insurance, etc. for any and all of its employees as might apply.

MONITORING, EVALUATION, AND CLIENT COMPLAINTS

The Superior Court and District Court Judges may periodically monitor, evaluate and review the performance of the CONTRACTORS as pertains to his or her

performance under this contract in keeping with the term of and standards within Pacific County Ordinance No. 159. The Superior Court and District Court Judges may also investigate client complaints as per the procedures outlined in Pacific County Ordinance No. 159.

NONASSIGNABILITY

The CONTRACTORS' duties shall not be delegated or assigned without court permission.

SUBCONTRACTING

The CONTRACTORS may not subcontract all or a portion of the services under this contract, without express prior written approval of the presiding JUDGE for whom services are to be provided.

TERMS AND TERMINATION

- 1) This contract shall be deemed to have commenced on May 17, 2013 and shall continue through December 31, 2015.
- 2) Either party may terminate this agreement upon sixty (60) days written notice.
- 3) Termination of the contract with less than sixty (60) days written notice must be for "good cause".

CONFLICT WITH LAW

To the extent that this contract might conflict with any law or court rules pertaining to the responsibility of the court to provide indigent defendants with adequate legal representation, the law and the court rules shall control.

QUALIFICATIONS AND TRAINING

The CONTRACTORS shall be qualified to practice law in the State of Washington during the entire period of this contract. If this provision is breached, the JUDGE shall have the authority to terminate this agreement immediately by providing written notice to the CONTRACTORS. The CONTRACTORS shall complete a minimum of seven (7) hours of continuing legal education per year relevant to the provision of indigent legal defense as specified in Pacific County Ordinance No. 159.

The CONTRACTORS acknowledges that he or she is subject to the Standards for Indigent Defense promulgated by the Washington State Supreme Court.

NON-DISCRIMINATION IN SERVICES

The CONTRACTORS agree to provide equal opportunity in regard to the services to be provided. The CONTRACTORS agree that no person who works for the CONTRACTORS or seeks employment with the CONTRACTORS or otherwise falls under the ambit of this contract shall be denied employment or benefits or be discriminated against on the grounds of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog by a disabled person.

SAVINGS AND SEVERABILITY

If any provision, or any portion thereof, contained in this contract is held to be unconstitutional, invalid or unenforceable, said provision(s) thereof shall be deemed severed, and the remainder of this contract shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

SCHEDULING

The Court will attempt to schedule all pre-trial hearings for the CONTRACTORS on each Friday of each month. The CONTRACTORS agree that he/she shall be present at each Friday docket for which the Court is in session, and that the Court may, at its discretion, schedule hearings for any given Friday docket.

VENUE

In the event that any party to this contract or any subcontractor shall bring a suit or action on or arising out of this contract, it is mutually agreed that such suit or action shall be brought only in Pacific County, Washington.

NOTICE

Notice shall be given in writing. It may be delivered in person, or it may be mailed. Any notice delivered in person is effective upon delivery. If the notice is mailed, it shall be effective upon the third day after mailing.

ENTIRE CONTRACT

The parties agree that this contract is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this contract shall be in writing and signed by all parties.

Dated this _____ day of _____, 20_____.

SUPERIOR COURT JUDGE:

CONTRACTOR:

Michael J. Sullivan Date

Nancy McAllister Date

Edward Penoyar Date

CONFIRMED BY:
Board of Commissioners
Pacific County, Washington

ATTESTED:

Lisa Ayers Date
Chairman

Clerk of the Board Date