

ALTERNATE CONFLICT PUBLIC DEFENDER CONTRACT

THIS CONTRACT is made and entered into by and between the Board of Commissioners of Twin Falls County, Idaho, "Board," and _____.

WHEREAS, the Board desires to procure the services of legal counsel to represent indigent persons in conflict situations in felonies, misdemeanors, probation violations, post-conviction relief, appeals, child protection act cases, juvenile corrections proceedings, and mental commitment matters in which an attorney is appointed by a court to represent said indigent person(s); and

WHEREAS, _____ is a licensed member of the Idaho State Bar and is otherwise competent to represent persons involved in those proceedings detailed in the paragraph above;

NOW, THEREFORE, the Board does hereby appoint _____ and _____ does hereby accept appointment as the **Third Level Alternate Conflict Public Defender** for Twin Falls County, Idaho, "County," beginning the ____ day of **January, 2021**, upon the following terms and conditions:

NOW, THEREFORE, it is hereby agreed as follows:

1. **DUTIES OF THE ALTERNATE CONFLICT PUBLIC DEFENDER:** It shall be the duty of _____ to perform the following acts during the term of this Contract: _____ will provide legal counsel and representation to certain public defender clients who require representation because of a declaration of a conflict of interest by the Twin Falls County Public Defender. This duty shall extend to felony, misdemeanor, probation violation, appeals, post-conviction relief claims, and juvenile, child protection, and mental commitment matters. Cases will be equitably allocated to each level of Conflict Public Defender by the Administrative Conflict Public Defender to ensure appropriate case load at any one time.

2. **RECORDS AND REPORTS:** _____ agrees to keep appropriate files/records for the cases that are assigned to _____ pursuant to this Contract, and upon reasonable notice and request by the Board, shall submit a report to help keep track of the number of conflict cases in Twin Falls County.

3. **CONFLICT OF INTEREST:** For purposes of this Contract, conflict of interest shall mean any situation when the representation of a defendant would cause the Twin Falls County Public Defender, or _____, to violate the Code of Professional Responsibility as adopted by the Idaho State Bar Association, and/or any conflict declared by order of the magistrate or district court judge presiding over the case(s). If the Alternate Conflict Public Defender has a conflict in a case assigned to him/her, he or she shall send the case back to the Administrative Conflict Public Defender (currently Tim Williams) and/or the Board and/or

the judge in the case for reassignment. If _____ disputes the existence of an actual or potential conflict of interest claimed to exist by the Twin Falls County Public Defender or any other conflict public defender, then the dispute should be resolved by _____ and the relevant attorney; provided, however, that if no agreement can be reached, then the matter should be submitted to the judge presiding over the dispute.

4. **PDC STANDARDS:** _____ shall substantially comply with the Idaho Public Defense Commission's maximum caseload. At the time of this Contract, that is the equivalent of 210 non-capital felony public defense cases annually. A "case" is defined as the equivalent of one non-capital felony public defense case annually. Currently a misdemeanor case is the equivalent of .4 case, a juvenile case is the equivalent of .91 case, and a child protection case is the equivalent of 2 cases. If the PDC's maximum caseload or case equivalents should change, _____ will comply with the current PDC maximum. Attorney shall substantially comply with the standards and requirements of the State Public Defense Commission ("PDC") as detailed in IDAPA 61 and the PDC's most recent STadards for Defending Attorneys. Those standards include the following:

- a. Attorney shall limit his or her workload to a level that permits effective representation.
- b. Pursuant to Idaho Code § 19-864, Attorney shall submit a completed annual report to the PDC by November 1 of each year unless Attorney's firm submits a completed annual report or the PDC has granted Attorney a waiver under IDAPA 61.01.02.
- c. Attorney shall participate in regular continuing legal education, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice as detailed in the Standards for Defending Attorneys. Attorney is responsible to pay for such education or to secure funding through another source (such as the PDC). County is not responsible to pay for Attorney's continuing legal education.
- d. When Attorney is notified that a case has been assigned to him/her under this contract, Attorney shall make reasonable efforts to contact the client within _____ (period of time). This amount of time was chosen to balance the need to provide constitutional representation with the ability of the Attorney to meet that requirement considering factors such as travel time and the ability to engage in communication with clients.
- e. Attorney shall make reasonable efforts to comply with the requirements of this Contract.

5. **CONSIDERATION:** _____ will handle the equivalent of, but no more than, 33 yearly cases for a monthly fee of \$1,650 per month. Additional hourly fees are outlined in sections 8, 13, and 14. Amounts due shall be paid to _____ on or before the last business day of the month for which the services were rendered. Cases shall be counted in the first year that appointment was accepted.

6. **TERM:** The initial term of this Contract shall begin on the _____ day of January, 2020. The parties acknowledge that it is their intent that said Contract will continue for one year or until such time as proper notice is given to dissolve said relationship, whichever comes first.

7. **CANCELLATION CLAUSE:** Unless a shorter time is mutually agreed upon in writing by both _____ and the Board, the Board may not cancel this Contract without first giving _____ at least 30 days' written notice. Should said option to cancel be exercised by the Board, then _____ may be required to keep and continue to provide legal representation to any clients/cases which were assigned him during the time the Contract was in effect, for which services _____ shall be compensated at the normal conflict rate of \$65.00 per hour. Additionally, all said sums already paid _____ under this Contract shall remain the property of _____ without recourse by the Board. _____ shall give at least 90 days' written notice to the County of intent to terminate this Contract unless otherwise agreed by both parties in writing. Provided, however, that _____ shall be relieved of all duties and obligations under this Contract should he/she at any time become legally or physically incapable of practicing law in the State of Idaho.

8. **EXTRAORDINARY SERVICES:** In the event that _____ spends more than 50 hours on any individual case, then _____ shall be entitled to additional compensation at a rate of \$65.00 per hour for each hour worked on any case above the 50-hour limit. No more than 10 of the 50 hours shall be attributable to consultation or conferences with the client, prosecuting attorney or third parties. All time spent on any case in which _____ claims to exceed the 50-hour limit, shall be itemized and submitted to the Twin Falls County Commissioners' Audit Committee for additional payment. The County shall also pay additional compensation of \$65 per hour above the normal monthly rate in cases in which persons are charged with the felony crimes of murder or manslaughter and/or attempting to commit those crimes.

9. **OFFICE LOCATION AND OPERATION:** _____ shall be responsible for ordinary expenses incurred incidental to this agreement, which expenses include

assistants' wages, rent, mileage, and storage. Such expenses exclude those normally billed a client in the regular course of business of a law office, including copies and postage.

_____ is not responsible for any expenses that are court ordered to be paid from the District Court or other County fund. _____ shall establish and maintain regular office hours at a location near the Twin Falls County Courthouse, which shall be conducive to the efficient operation of the county court system and the effective representation of the Alternate Conflict Public Defender's clients.

10. **EMPLOYMENT RELATIONSHIP:** _____ agrees that he/she is an independent contractor under the terms of this Contract. The conduct, manner and control of the legal services to be provided under this Contract will lie solely with _____. _____ and any employees he/she may hire to help fulfill the terms of this agreement are not to be agents or employees of the Twin Falls County for any purpose, and they shall not be entitled to any of the benefits that Twin Falls County provides its employees.

11. **MODIFICATION:** This Contract may not be modified or amended unless in writing, duly executed and agreed upon by _____ and the Board.

12. **APPEALS:** _____ agrees to act as legal counsel on any appeal case assigned him/her, and/or an any case wherein the conflict client assigned him or her determines that an appeal should be filed on his/her case. The Board hereby agrees that all such appellate services shall be deemed to be extraordinary services, and that _____ shall be compensated for all appellate work he/she performs at the rate of \$65.00 per hour for each hour worked on said appeal, in addition to the normal monthly compensation due under paragraph 5 of this Contract.

13. **POST CONVICTION RELIEF:** _____ agrees to act as legal counsel in any post-conviction relief proceeding that may arise and be assigned to him/her during the term of this Contract, or in any case in which the client assigned to him requests such work. The Board hereby agrees that all post-conviction relief services performed by _____ shall be deemed to be extraordinary services, and that _____ shall be compensated for all post-conviction relief work he/she performs at the rate of \$65.00 per hour on said matters, in addition to the normal monthly compensation due under paragraph 5 above.

14. **AVAILABILITY:** In the event _____ is unavailable to represent Conflict Public Defender clients assigned to him/her under this Contract due to illness, vacation, other prior legal obligation, or the like, it is _____'s obligation to provide other legal counsel to represent said client/defendant. Except in an emergency, the counsel provided by _____ shall be pre-approved by the Board.

15. **EXTRAORDINARY EXPENSES:** Twin Falls County agrees to pay all expenses incurred by _____ for expert witness fees, transcripts, interpretation, psychiatric evaluation fees, investigative costs and similarly related costs which involve payments to third parties, as extraordinary expenses. All such expenses should either be approved in advance by the Board or authorized and/or otherwise ordered by the court. _____ may also apply to the Board for additional funding on a case-by-case basis if it appears that some extraordinary expense not specifically contemplated herein arises. Approval of said additional funding shall rest in the sound discretion of the Board.

16. **PRIVATE AND CRIMINAL CLIENTS:** It is expressly agreed that _____ shall be entitled to accept any and all private clients' cases as he/she deems appropriate except if the County is the Defendant. However, _____ may not accept public defense clients from other counties if doing so causes _____ to be unable to accept 33 Twin Falls County cases while complying with PDC standards.

17. **BILLING INVOICES:** When requesting payment from the County under this Contract for charges outside the basic services, _____ shall provide a detailed billing statement which shall include client name, case number, and reason for the billing.

18. **AUDIT COMMITTEE:** All charges made by _____ for legal services shall be reasonable and necessary. This includes charges of any conflict public defender _____ selects or works with under this Contract. If _____ sees a charge of another attorney for conflict public defender work for Twin Falls County that does not seem reasonable and/or necessary, he/she shall bring the bill and the reason for his concern to the attention of the Board. Charges from _____ and other conflict public defense attorneys are subject to review by an Audit Committee selected by the Board. If, on the recommendation of the Audit Committee, the Board determines that a charge was not reasonable and necessary, the County will not pay for the service. If a judge finds that the service was reasonable and necessary, the County will pay for it.

19. **CONTRACT IS WITH _____ PERSONALLY:** This Contract is with _____ personally. If _____ hires another attorney to help him/her fulfill the duties of this Contract on a regular or temporary basis he/she shall submit the name of that attorney(s) to the Board before that other attorney may begin work for the County. The Board shall approve or deny the selection. If an attorney has been approved by the Board for a certain type of case, his or her name does not need to be re-submitted to the Board for approval in a new case unless the Board has notified _____ that such other conflict public defender is no longer approved for new cases. If an attorney with less than five years of experience as a licensed attorney performs work under this Contract, he or she

must be directly supervised by an attorney with five or more years of experience as a licensed attorney.

20. **ESTABLISHMENT AND MAINTENANCE OF RECORDS**: Attorney agrees to maintain records, including personnel, property, financial, and programmatic records, which reflect costs of services performed under the Contract. The records shall sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall be maintained by Attorney for _____ (period of time) unless the Board gives written permission to destroy the records before that time. Upon reasonable notice and request by the Board, Attorney shall submit a report with information that will enable County to track the number of conflict public defense cases in Twin Falls and/or supply the Board with materials necessary to verify compliance with all terms of this agreement. Upon reasonable notice and request by the Board, Attorney shall provide materials necessary to verify compliance with all terms of the Contract.

21. **MALPRACTICE INSURANCE**: _____ agrees to maintain in full force and effect during the period of this Contract professional liability insurance on his law practice in the amount of not less than \$500,000.00 and agrees that he shall be responsible for all costs associated with obtaining said insurance.

22. **INTEGRATION**: This writing embodies the entire agreement of the parties. There are no additional terms, conditions, or obligations existing between the parties regarding the Alternate Conflict Public Defender position, other than those contained in this Contract.

DATED this _____ day of _____, 2020.

TWIN FALLS COUNTY BOARD OF COMMISSIONERS

Don Hall, Chairman

Jack Johnson, Commissioner

Brent Reinke, Commissioner

Attest:

Kristina Glascock, Clerk

DATED this _____ day of _____, 2020.

_____, Attorney

DRAFT