

INDIGENT DEFENSE SERVICES CONTRACT
Superior Court-Juvenile

For and in consideration of the mutual benefit derived and covenants contained herein, this agreement is entered into by and between the Board of County Commissioners of Pacific County (BOCC), and Edward Penoyar (ATTORNEY). The ATTORNEY, by signing this agreement, certifies that he/she is licensed to practice law in the State of Washington, in good standing, and agrees to represent indigent defendants before the Superior Court under the following terms and conditions:

1. **Term.** This contract shall be effective January 1, 2023, through December 31, 2027, inclusive, unless otherwise terminated as provided for herein; however, upon expiration of the agreement, the ATTORNEY shall complete the cases already assigned to him or her during the effective contract term.
2. **Compensation.** In consideration of the rights, obligations and services set forth herein, ATTORNEY shall be paid by Pacific County, on a monthly basis for the term of the contract as follows: Juvenile Offender/Juvenile Diversion Agreements in the amount of One Thousand Five Hundred Sixty Dollars and Ninety-Nine Cents (\$1,560.99) and for Children in Need of Services (CHINS) and At Risk Youth (ARY) in the amount of Seven Hundred Eighty-Seven Dollars and Eighty Cents by Pacific County, on a monthly basis for the term of the contract for Juvenile Offender cases.

Notwithstanding the aforementioned compensation rate, contract compensation shall increase on January 1, 2024, by the same percentage equal to the cost of living increase provided to non-represented Pacific County management employees.

3. **Washington State Standards for Indigent Defense**, where referenced herein, shall mean and refer to the most recent adoption of indigent defense standards or amendments thereto by the Washington State Supreme Court and/or the Office of Public Defense. Any alleged violation of any Standard for Indigent Defense shall be determined by reference to the applicable standard in effect at the time of the alleged offense.
4. **Termination.** The agreement may be terminated for any provision below. If the ATTORNEY is unable to continue representation after termination, as provided by this section, then the ATTORNEY shall provide a transfer memo to the BOCC, Superior Court and new counsel and provide all discovery to defendant's new counsel.
 - (a) For Cause: Either party may terminate this agreement 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 in writing (including email) to the other party. Such notice shall include an opportunity to cure the breach no later than twenty-one (21) days following notice. No new cases will be assigned during the cure period. Following termination, 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 sixty (60) days written notice, sent via certified mail. At the discretion of the Court, the contracting ATTORNEY may be responsible for completion of cases assigned prior to the effective date of termination.

5. **Notice.** All notices required or permitted under this Contract shall be in writing and shall be deemed effective when delivered in person to the BOCC, or effective three days after being deposited in the United States mail, first class postage prepaid addressed to the BOCC. Any address changes by the ATTORNEY must be provided by written notice to the Court and to the BOCC in the manner set forth herein.

Addresses of Parties:

Board of County Commissioners
P O Box 187
South Bend, WA 98586

Edward Penoyar, Attorney
P O Box 425
South Bend, WA 98586

6. **Associated Counsel.** The ATTORNEY shall not assign this agreement or any rights or duties hereunder without written permission of Pacific County. The ATTORNEY may, designate in writing one (1) or more licensed attorneys to associate with, subject to court approval, in the performance of an assigned case. With BOCC approval, the ATTORNEY may also associate with (1) or more licensed attorneys in the performance of this contract, provided that if the attorney is associating for the entirety of this contract, the associating attorney shall also sign this contract. The associated counsel shall also be responsible for the performance of this agreement in the same manner as the Attorney. Associated counsel shall be admitted to and be in good standing to practice law in the State of Washington, pursuant to the rules of the Supreme Court of Washington, and are subject to the Washington State Bar Association Standards for Indigent Defense Services.

- (a) Stand-in counsel is authorized for limited purposes (arraignment, pre-trial, uncontested continuances, etc.). The stand-in attorney must meet the Washington State Bar Association Standards for Indigent Defense minimum qualifications.
- (b) The ATTORNEY'S duties shall not be delegated or assigned without court permission. However, the ATTORNEY'S routine court hearing coverage by others for absences due to illness or vacation shall not constitute "delegation" or "assignment" for purposes of this clause. There shall be no more than five "routine" substitutions per year without approval by the JUDGE. This is intended to be a personal services contract for which the JUDGE is entering the agreement because of the quality of service by the ATTORNEY and not his or her employee.

7. **Duties of Attorney.** The Attorney agrees to represent, advise, defend in court and provide legal assistance to indigent defendants in accordance with the Code of Professional Responsibility and the best standards of the legal profession in all appointed matters.

- (a) ATTORNEY shall be qualified to practice law in the State of Washington during the entire period of this contract. **Notwithstanding paragraph 2** above, if this provision is breached, the contract, and all indigent defense representation, shall immediately cease and terminate, without recourse to the County, with respect to the ATTORNEY who is no longer qualified to practice law in the State of Washington. The BOCC shall provide notice of the termination of the contract in the same manner as it provides notice of appointment. Notice is deemed received up transmission if sent electronically. If sent via first class US postal service, notice is deemed received three days after placement in the mail. In all circumstances, when the Attorney becomes aware that he or she is no longer licensed or permitted to practice law in the State of Washington, the Attorney shall immediately notify the BOCC and cease work on all assigned cases.

- (b) In providing services, the ATTORNEY agrees to accept and handle appointed indigent defense cases as may be assigned by the Superior Court. The non-exclusive list of case types is as follows: persons arrested or charged with gross misdemeanor and misdemeanor criminal offenses or probation violations; motion hearings; Pacific County Superior Court cases whenever there is a need for different or additional legal counsel for a party to a case; felony cases filed as preliminary hearings, including the trial and disposition phase should the case later be reduced to a misdemeanor or a gross misdemeanor; all fugitive from justice cases and any extradition matters filed; review hearings; post-sentencing violations; post-conviction modifications or revocations; and all cases and matters, criminal and noncriminal, covered by this agreement that are returned to the Superior Court by a higher court.
- (c) Upon notice of appointment, the ATTORNEY shall promptly arrange for an initial interview with the client. Public defense attorneys shall have and maintain an office that accommodates confidential meetings with clients, receipt of mail, and adequate telephone services to ensure prompt response to client contact.
- (d) Acceptance of this contract does not obligate BOCC to assign the ATTORNEY to represent any indigent defendants or to handle any particular number of cases.
- (e) ATTORNEY agrees to provide equal opportunity in regard to the services to be provided and no client appointed to the attorney shall be discriminated against on the grounds of race, creed, color, national origin, sex, sexual orientation or gender preference or the presence of any sensory, mental, or physical disability or the use of a trained guide dog by a disabled person. ATTORNEY agrees that no person who works for the ATTORNEY 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, sexual orientation or gender preference or the presence of any sensory, mental, or physical disability or the use of a trained guide dog by a disabled person
- (f) The services of the ATTORNEY in every case, unless authorized to withdraw or otherwise terminated as provided in this agreement, shall continue until the case concludes by final judgment or order of dismissal, including final rulings on post-trial motions, and the filing of notice of and perfecting the appeal if required. The services shall include the preparation of all special disposition paperwork contemporaneous with final judgment.
- (g) In the event the court grants a change of venue, the ATTORNEY shall continue to represent such person until the case transfers to the new venue and the new venue appoints substituted counsel.
- (h) ATTORNEY shall provide the court, as well as all county and municipal law enforcement agencies and corrections facilities, with the Attorney's name, office address, email address, office telephone number and after-hours telephone number (if different *and* subject to ATTORNEY initialing at "i" below) at which the Attorney can be contacted after business hours. Attorney's telephone number will be provided to persons claiming the right to publicly provided legal counsel.
- (i) If agreed to herein and initialed hereafter, ATTORNEY agrees to make reasonable efforts to be available after-hours and to accept after-hours telephone calls for consultation by incarcerated persons. _____ (initial)

- (j) ATTORNEY agrees to maintain an office whereby ATTORNEY can meet in private with clients. ATTORNEY will also maintain a business telephone line(s), fax capabilities, and telephone message service without long distance charges. ATTORNEY agrees that he/she will accept collect telephone calls from his/her clients. ATTORNEY is not required to continue telephone conversations with any client who is abusive or who makes repeated and unnecessary collect calls. ATTORNEY agree that he/she will maintain reasonable contact with his/her clients and respond to indigent client requests in a timely fashion. ATTORNEY further agrees to be available for calls from his/her clients on specified days on specified times that he shall provide to his clients.
- (k) ATTORNEY agrees that they will provide legal services for indigent defense unless a conflict exists. For the purpose of this contract, a "conflict" means the Court's ruling that there is an ethical conflict under the Rules of Professional Conduct. Scheduling difficulties, vacation periods, and illness shall not constitute a "conflict".
- (l) ATTORNEY agrees to appear timely and in-person for all Court proceedings.
- (m) ATTORNEY will keep written records, and document time spent, for work done on each assigned case including but not limited to: telephone conversations with clients, investigators, witnesses, etc.; time spent on research of issues; time spent preparing discovery requests, motions, orders, or other written materials, and time spent appearing on behalf of each client. At the court's request, ATTORNEY shall make assigned indigent client files available for review of compliance with this contract and the Washington State Standards for Indigent Defense. Nothing in this paragraph is intended to require ATTORNEY to disclose or present for review any attorney/client conversation, document or other privileged information to the court should the court requests to review an indigent client file.

8. **Duties of Court.**

- (a) Court will notify counsel of cases to which counsel is assigned within 24 hours of the court appointment. Notice will be provided via email unless another method of notice is agreed to herein. Cases will be assigned by the Court from a list approved by the BOCC. Attorney will keep the court apprised of preferences regarding assignments and the court agrees to take ATTORNEY preference into consideration in assignment of cases. Attorney or attorney's designee will check daily for appointments.
- (b) Court will notify ATTORNEY five (5) days in advance with any request to review or inspect files for compliance with this contract and the Washington State Standards for Indigent Defense.

9. **Certification.** ATTORNEY shall comply with the Washington State Standards for Indigent Defense adopted by the Washington Supreme Court including, but not limited to qualification for particular case level assignment, case load limits taking all legal work from any source into consideration in maintaining limit compliance, quarterly certification of compliance, and requisite CLE trainings as set forth in para.9 below. ATTORNEY shall file a quarterly Certification of Compliance as required by Washington State Standards for Indigent Defense with the Pacific County Superior Court. Certifications shall be filed no later than the fifteenth (15th) day of January, April, July, and October each year.

10. **Training.** During the contract period the Attorney shall maintain compliance with all CLE trainings required by the Washington State Bar Association and attend at least one (1) training, which is approved by the Washington State Office of Public Defense and which meets the requisite seven (7) hours of training in an area related to ATTORNEY's public defense work as required under the Washington State Standards for Indigent Defense, and provide verification to the Court on or before December thirty-first (31st) of each year.

11. **Insurance.** Subject to the minimum coverage limits set forth in (a) and (b) below, ATTORNEY shall provide a copy of his or her current certificate of insurance, or insurance binder page showing policy limits, to the County, no later than thirty (30) days following execution of this contract, and following any renewal or expiration date during the term of this agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this contract. All certificates of insurance shall state that such insurance is in force and that such insurance will not be canceled without first giving thirty (30) days written notice to County by delivering such notice to the Court and to the Board of County Commissioners.

(a) ATTORNEY shall, at all times, maintain professional liability insurance (errors and omissions) that covers the services to be performed in connection with this agreement, in the minimum amount of at least One Hundred Thousand Dollars (\$100,000) per occurrence, Three Hundred Thousand Dollars (\$300,000) annual aggregate limit. The Attorney agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this contract.

(b) ATTORNEY shall, at all times, maintain general liability (premises) insurance in the minimum amount of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) general aggregate for bodily injury, personal injury and property damage. The premises insurance portion is waived, the ATTORNEY will not be meeting court appointed clients at their personal office. _____ (initial)

12. **Attorney as Independent ATTORNEY.** ATTORNEY'S services shall be furnished by the ATTORNEY as an Independent Contractor and not as an agent, employee or servant of the County. The ATTORNEY specifically acknowledges that he/she:

(a) is not entitled to any County benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to Pacific County employees.

(b) shall have and maintain complete responsibility and control over all of its employees, agents, and representatives. No employee, agent or representative of the ATTORNEY shall be or deem to be or act or purport to act as an employee, agent or representative of the County.

(c) has the right to direct and control ATTORNEY's own activities in providing the agreed services in accordance with the specifications set out in this Contract. The ATTORNEY shall be responsible for the negligent acts or omissions of employees or agents in the performance of this agreement.

(d) shall assume full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal or state legislation which is now or may, during the term of this Contract, be enacted as to all persons employed by the ATTORNEY and as to all duties, activities and requirements by the ATTORNEY in performance of this Contract.

13. **Indemnification/Hold Harmless.** To the fullest extent permitted by law, the ATTORNEY agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, 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. This includes but is not limited to claims arising out of errors or omissions of the contracting ATTORNEY (or 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 negligence of the County or the Court.
14. **Conflict of Interest.** The County shall pay the cost of conflict counsel. If the ATTORNEY is precluded from representing a client because of a conflict, the ATTORNEY shall promptly notify the Court and upon the appointment of a conflict attorney, the ATTORNEY shall file a court order for substitution of counsel.
15. **Expenses.** All expenses incurred by the ATTORNEY under this agreement, except the costs of obtaining investigative, expert or other services necessary to an adequate defense, as per *Washington State Standards for Indigent Defense* and CrRLJ 3.1(f), shall be the sole responsibility of the ATTORNEY. The County agrees to reimburse the ATTORNEY for expenses incurred in obtaining outside investigative, expert or other services necessary to an adequate defense, provided that ATTORNEY shall seek and obtain the approval of the court prior to incurring such expenses.
16. **Payment.** The County shall pay the ATTORNEY monthly in accordance with paragraph 2 above.
17. **Timely notice of claims.** The ATTORNEY shall give County prompt and timely notice of claims made or suits instituted that arise out of or as a result of ATTORNEY's performance under this Agreement, or which involve or may involve coverage under any of the required liability policies.
18. **Case Load Limits.** ATTORNEY, having knowledge of the case load limits set forth in the *Washington State Standards for Indigent Defense* and after consideration of the requirement to reduce the maximum number of indigent defense cases he or she will accept based upon privately retained clients and other contracts for legal work - including other indigent defense services, hereby agrees to accept no more than _____ cases under this contract
19. **Conflict of Law.** To the extent that this contract might conflict with *Washington State Standards for Indigent Defense* or any law or court rules pertaining to the responsibility of the court to provide indigent defendants with adequate legal representation, the *Washington State Standards for Indigent Defense*, law or the court rules shall control.
20. **Severability.** If any provision of this Contract shall be held to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

If any provision of this Contract is in direct conflict with any statutory provision of the state of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

Should the County determine that the severed portions substantially alter this Contract so that the original intent and purpose of this Contract no longer exists, the County may, in its sole discretion, terminate this Contract.

21. **Entire Agreement.** This contract contains the entire agreement between the parties and may not be enlarged, modified or altered except in writing mutually agreed to and signed by the parties.

DATED this _____ day of _____, 2022

ATTORNEY
Edward Penoyar

Signature

WSBA #

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON



Lisa Olsen, Chair of the Board

Frank Wolfe, Commissioner

Michael Runyon, Commissioner

ATTEST:

Amanda Bennett
Clerk of the Board

Date