

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS
CONSENT AGENDA REQUEST**

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: February 20, 2024

SUBJECT: Request for approval: Delegation of Authority to Approve Contracts
With Conflict Attorneys Appointed by the Courts and Issuance of a Request for
Proposals/Qualifications

STATEMENT OF ISSUE: The Washington Administrative Office of the Courts promulgated General Rule 42 to safeguard the independence of public defense services from judicial influence or control. GR 42 requires the removal of courts from the process of selecting attorneys to represent indigent defendants. Jefferson Associated Counsel (JAC) is the county's public defender. GR 42 is similar to the RCW that prohibits prosecuting attorneys from being involved in the selection of attorneys who provide a defense to indigent defendants. In most cases, this is not an issue, because JAC provides the defense. However, when JAC has a conflict of interest, separate counsel must be provided at the county's cost. GR 42 was effective on January 1, 2023. Jefferson County is just now making the changes necessary to implement the rule.

ANALYSIS: Until recently both Superior Court and District Court had been selecting and appointing conflict attorneys. After discussions with the courts and Chief Civil Deputy Prosecutor Hunsucker I determined that the County Administrator's Office should select the conflict attorneys who would then be appointed by the court. (This is the same decision made in Clallam County.) Subsequent to their appointment, the County Administrator would enter into a contract with conflict attorneys using the attached contract template. The template covers requirements for hiring counsel for indigent defense required by state law. King County has detailed requirements for counsel for indigent defense, and those requirements served as a model for the attached template.

Because of the recurring nature of these appointments and the need to swiftly empower the selected attorneys to begin representing their clients, staff recommends that the Board of Commissioners delegate contract approval authority to the County Administrator.

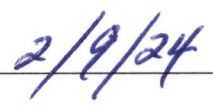
Staff also requests that the Board authorize the issuance of a Request for Proposals/Qualifications (RFP/RFQ) to solicit proposals/qualifications from interested attorneys.

FISCAL IMPACT: The fiscal impact of this request cannot be determined. The impact depends on the number of attorneys appointed and the complexity and length of the cases they are assigned.

RECOMMENDATION: That the Board of County Commissioners delegate conflict attorney contracting authority to the County Administrator and authorize the issuance of an RFP/RFQ.

REVIEWED BY:


Mark McCauley, County Administrator Date



AGREEMENT TO PROVIDE INDIGENT DEFENSE SERVICES

THIS AGREEMENT TO PROVIDE INDIGENT DEFENSE SERVICES ("this Agreement") is entered into between the County of Jefferson, a municipal corporation ("County"), and _____ ("Counsel"), to provide indigent defense services to the defendant described in Section 1, below ("Defendant").

1. Representation of Defendant. Counsel was appointed to represent Defendant by order issued on the ____ day of _____, 2024 by the:

☐ Jefferson County Superior Court; or,

☐ Jefferson County District Court to represent Defendant:

_____ in the following matter ("the Matter"):

Case Name: _____.

Case Number: _____.

2. Only Eligible Clients.

- a. Counsel understands and agrees that they will be paid only for representation of eligible clients. Eligibility is established pursuant to Chapter 10.101 RCW.
- b. The order appointing Counsel to represent the Defendant details the requirements for eligibility.

3. Scope of Services.

- a. Counsel shall provide effective representation until a case is completed or a court has permitted the attorney to withdraw. A complete case involves all necessary legal action from arraignment through disposition or the completion of legal services necessary to fulfill the purposes of assignment.
- b. The scope of work does not include work on an appeal, except for filing a notice of appeal and perfecting the record, as detailed below.
- c. When a client requests appellate review, Counsel shall file notice of appeal and assist in perfecting the record, consistent with the Washington State Courts Rules of Appellate Procedure. For misdemeanor appeals under RALJ 2.2, Counsel shall immediately provide the County Administrator a copy of the Notice of Appeal for appointment of appellate counsel.
- d. Counsel must obtain written approval from the County Administrator or designee to pay for work performed on drafting and filing a motion for discretionary review under Washington Rule of Appellate Procedure 2.3. If this work is approved, any

work or representation subsequent to filing the motion for discretionary review will not be compensated by the County.

- e. Counsel must obtain prior written approval from the County Administrator or designee to pay for work performed on an interlocutory appeal. Failure to obtain prior approval can result in non-payment. Such a request for payment authorization by the County should address the following:
 - A. The issue on appeal, both factually and legally;
 - B. How the issue impacts the case;
 - C. Why the issue is appropriate for interlocutory appeal as opposed to post-disposition review;
 - D. The anticipated outcome of the interlocutory appeal; and,
 - E. The approximate number of hours for the interlocutory appeal.
 - f. In accordance with the Washington Rules of Professional Conduct, Counsel and their staff shall not solicit or accept any compensation, gifts, gratuities, or services for work performed on cases assigned by the County Administrator or delegee.
 - g. Counsel shall not convert the Matter into a private pay case.
 - h. Work on any other matter or any issue not related to the representation of the Defendant in the Matter is not within the scope of this Agreement and shall not be paid by the County.
4. Time for Performance. This Agreement shall commence on the date of appointment by the court identified in Section 1 and shall continue through case completion as described in Section 3. Counsel shall remain assigned and responsible as provided the Washington Rules of Professional Conduct or until the withdrawal and substitution of counsel is granted by the court that assigned Counsel to represent Defendant.
5. Representation and Warranty of Counsel. Counsel agrees that by signing below they are representing and warranting that they are:
- a. A licensed member of the Washington State Bar Association;
 - b. In good standing with the Washington State Bar Association; and,
 - c. Qualified to represent Defendant on the charges against Defendant in the Matter, and as required the Standard 14 in Washington State Supreme Court Standards for Indigent Defense, CrR 3.1, CrRLJ 3.1, and JuCr 9.2.

6. Satisfaction of Ongoing Requirements for Practicing Law in Washington. Counsel shall satisfy all ongoing requirements for practicing law as determined by the Washington State Supreme Court, including continuing legal education requirements.
7. Compliance with Washington State Supreme Court Standards for Indigent Defense. Counsel shall comply with all Washington State Supreme Court Standards for Indigent Defense pursuant to CrR 3.1, CrRLJ 3.1, and JuCr 9.2.
8. Conflicts of Interest. If a conflict of interest is discovered during the course of Counsel's representation of Defendant, Counsel shall discuss the conflict with the County Administrator or delegee prior to filing a Motion to Withdraw.
9. Professional Standards.
 - a. The primary and most fundamental responsibility of Counsel is to provide vigorous and effective representation as required by the State and Federal Constitutions and the Washington Rules of Professional Conduct.
 - b. Counsel shall provide indigent defense services to Defendant in a professional, skilled manner consistent with minimum standards set forth by the Washington Rules of Professional Conduct, applicable court rules, and case law defining the duties of counsel and the rights of defendants in criminal cases.
 - c. Although the County is paying for the indigent defense services under this Agreement, Counsel's sole ethical duties under the law and Washington Rules of Professional Conduct are to Defendant.
10. No Impairment of Independent Professional Judgment. Nothing in this Agreement shall be construed to impair or inhibit the exercise of independent professional judgment by Counsel with respect to the representation of Defendant.
11. Hourly Rate. The County shall pay Counsel the following hourly rate: [\$ HOURLY RATE HERE] for the Matter.
12. Billing Procedure. Counsel shall be paid by County for completed work and for services rendered under this Agreement as follows:
 - a. Detailed Invoice Required.
 - i. Invoices shall be submitted to the County Administrator or designee for review.
 - ii. The County shall pay the hourly rate only for the actual, reasonable and necessary work spent completing at task or series of tasks, as documented in an invoice provided by Counsel to the County. Billing entries on the invoice shall list the date, the identity of the timekeeper and the task being billed in a manner sufficient for the County to determine what task was accomplished and why the work was necessary for the progress of the

Matter. Duplicate work by multiple timekeepers or the same timekeeper shall not be billed. The minimum billing entry shall be 0.10 of an hour. Tasks on a given day that take less than one minimum entry shall be grouped as one minimum entry. Each individual task (or a grouping of minimum tasks) shall be stated separately on the invoice.

- iii. Expenses shall be separately documented, billed and copies of the receipts, invoices, or other backup for the expenses shall be provided with each invoice.
- b. Billing Frequency. Invoices shall be submitted at least quarterly, monthly is strongly preferred.
- c. No Interest Charged. Interest shall not be charged due to any claim of late payment of any invoice.
- d. Final Invoice.
 - i. Counsel must submit a final invoice within thirty (30) days of case disposition, except in cases where restitution is pending. Where restitution is pending, invoices for the final billing must be submitted within thirty (30) days of resolution of the restitution issues.
 - ii. When submitting a final invoice, Counsel must designate on the request for payment that the invoice is final. Counsel must provide all relevant disposition information in the field provided, including the final case disposition, plea information, and sentencing information.
- e. Overhead Expenses Not Reimbursable. Unless approved in advance by the County, overhead expenses are not reimbursable and include but are not limited to: Internal copying or scanning costs of over 10 cents per page; costs for converting paper materials in to electronic materials and vice versa; overtime charges for salaries, meals or transportation, rent or utilities; continuing legal education or attendance at seminars; conference rooms or facilities; software and equipment rental; refreshments or meals during meetings; any alcoholic beverages; gratuities in excess of 15%; travel agent or booking service fees; temporary employee agency fees; incoming faxes; markups of costs; computerized legal research such as Westlaw or LexisNexis; internet connections; case management or litigation software systems; or, cell phone charges.
- f. Billing for Travel Costs.
 - i. Counsel may bill for mileage at the federal rate from a primary business location to and from courts, interviews, and jails.
 - ii. Travel for non-local travel (more than 100 miles from Counsel's office, home or the Jefferson County Courthouse) must be approved by the County

Administrator or designee prior to travel. Such a request for payment authorization by the County should address the following:

- A. Why the out of town travel is necessary for the defense of the Matter; and,
 - B. The estimated cost of the out of town travel.
 - iii. A request for payment for travel costs must reflect the date, locations, and reason for travel.
 - iv. Mileage requested must be prorated between all clients served by the travel.
 - g. Maintenance of Billing Records. Counsel's records and accounts pertaining to this Agreement are to be kept available for audit by representatives of County and the State Auditor for a period of six (6) years after the final invoice. Copies shall be made available upon request. For the avoidance of doubt, "records and accounts pertaining to this Agreement" do not include documents subject to the attorney-client privilege or the attorney work product doctrine.
 - h. Review of Invoices.
 - i. Invoices shall reviewed by the County Administrator or designee for reasonableness, necessity and efficiency. After this review for consistency, the County Administrator or designee shall submit all approved amounts for processing by the County Auditor.
 - ii. Any adjustments to invoices shall be detailed in an invoice report that shall be sent by the County to Counsel by email.
 - i. Administrative Remedy. Counsel may request reconsideration of any adjustments to an invoice by making such request to the County Administrator or designee within 30-days of receipt of an invoice report. Otherwise, the adjustments to the invoice become final.
 - j. Payment Not a Waiver. Payment of any invoice by the County does not constitute a waiver of the County's right to subsequently review, dispute, seek reimbursement of, compromise or request future credits of legal fees from Counsel. Payment of hourly rates that have not been approved does not constitute acceptance of those hourly rates.
2. Retention of Investigator's, Experts and Consultants. The County shall pay for the work of investigators experts and consultants who have been approved for payment by order of the court, after a duly noticed motion.
3. Indemnification.
- a. Counsel shall indemnify and hold harmless County, its past or present employees, officers, agents, elected or appointed officials or volunteers (and their marital

communities), from and against all claims, losses or liability, or any portion thereof, including reasonable attorney's fees and costs, arising from for actions brought against County by Counsel's employees, including all other persons engaged in the performance of any work or service required of Counsel under this Agreement.

- b. Counsel specifically assumes potential liability for actions brought against County by Counsel's employees, including all other persons engaged in the performance of any work or service required of Counsel under this Agreement.
 - c. Solely for the purpose of this indemnification and defense, Counsel specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Counsel recognizes that this waiver was specifically entered into pursuant to provisions of R.C.W. 4.24.115 and was subject of mutual negotiation.
 - d. This section shall survive the expiration or termination of this Agreement.
4. Insurance. Prior to commencing work, Counsel shall obtain at their own cost and expense the following insurance coverage specified below and shall keep such coverage in force during the term of this Agreement.
- a. Professional Liability Insurance. Counsel shall obtain and maintain insurance against legal liability arising out of activity related to the performance of this Agreement, on a form acceptable to Jefferson County Risk Management, with a limit of not less than in the amount of at least one million dollars (\$1,000,000) per claim and \$1,000,000 in the aggregate. The professional liability insurance policy should be on an "occurrence" form. If the professional liability policy is "claims made," then an extended reporting periods coverage (tail coverage) shall be purchased for three (3) years after the end of this Agreement, at Counsel's sole expense. Counsel agrees its obligation to provide professional liability insurance shall survive the completion of the services or termination of this Agreement.
 - b. Employer's Liability Insurance. If and only if Counsel employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of Counsel, Counsel shall obtain and maintain Employer's Liability Insurance or stop gap coverage as a part of their general liability insurance with a minimum policy limit of \$1,000,000 per claim limit and \$1 million in the aggregate.
 - c. Worker's Compensation (Industrial Insurance) and Employer's Liability Insurance.
 - i. If and only if Counsel employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of Counsel, Counsel shall maintain workers' compensation insurance at its own expense, as required by Title 51 RCW, for the term of this Agreement and shall provide evidence of coverage to County, upon request.

- ii. Worker's compensation insurance covering all employees with limits meeting all applicable state and federal laws.
- iii. Counsel expressly waives by mutual negotiation all immunity and limitations on liability, with respect to County, under any industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

d. Terms Related to All Required Insurance.

- i. If the County incurs any costs to enforce the provisions of this section, all cost and fees shall be recoverable from Counsel.
- ii. Failure of Counsel to take out or maintain any required insurance shall not relieve Counsel from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification of the County.
- iii. Failure to take out or maintain the any of the required insurance shall constitute a material breach of this agreement upon which the County may, after giving 10 business days' notice to Counsel to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith and offset those premium payments against funds due Counsel from the County.
- iv. Insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy.
- v. All deductibles in the policies shall be assumed by and be at the sole risk of Counsel.
- vi. The County may, upon Counsel's failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation that would otherwise be due to Counsel.
- vii. The insurance limits mandated for any insurance coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.
- viii. Counsel shall maintain all required insurance policies in force from the time services commence until services are completed.
- ix. Counsel shall provide the County with a written notice of any policy cancellation within two (2) business days of their receipt of such a notice.

5. Independent Contractor.

- a. Counsel and County agree that Counsel is an independent contractor with respect to the services provided pursuant to this Agreement.
- b. Counsel only acts as counsel for Defendant and is not the agent or legal representative of the County, or the City of Port Townsend.
- c. Counsel is not granted any express or implied right to assume or create any obligation or responsibility on behalf of or in the name of the County, or the City of Port Townsend, or to bind the County, or the City of Port Townsend in any manner whatsoever.
- d. Counsel specifically has the right to direct and control Counsel's own activities, and the activities of its employees, agents, and representatives, in providing the agreed services in accordance with the specifications set out in this Agreement.
- e. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. Neither Counsel nor any employee of Counsel shall be entitled to any benefits accorded Jefferson County employees by virtue of the services provided under this Agreement, including, but not limited to: retirement, vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to Jefferson County employees.
- f. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Counsel, or any employee of Counsel.

6. No Assignment. Counsel shall not assign any rights, duties, or interest in this Agreement without the written consent of the Court. In no event shall a case be transferred, assigned, or subcontracted to another attorney outside the conflict assignment group. Counsel may, however, provide coverage for unavailability through other attorneys but only with Court approval.

7. Non-Waiver. Waiver by County of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

8. Notices. All notices or other communications which any party desires or is required to give shall be given in writing and shall be deemed to have been given if hand-delivered, sent by facsimile, email, or mailed by depositing in the United States mail, prepaid to the party at the address listed below or such other address as a party may designate in writing from time to time. Notices to County shall be sent to the following address:

Jefferson County Risk Management
P.O. Box 1220
Port Townsend, WA 98368

Notices to Counsel shall be sent to the following address:

9. Integrated Agreement. This Agreement together with any attachments or addenda represents the entire and integrated Agreement between County and Counsel and supersedes all prior negotiations, representations, or agreements written or oral. No representation or promise not expressly contained in this Agreement has been made. This Agreement supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, by the County within the scope of this Agreement.
10. Modification of this Agreement. This Agreement may be amended only by written instrument signed by all the parties.
11. Disputes. The parties agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions. Any disputed issue not resolved pursuant to the terms of this Agreement shall be submitted in writing within 10 days to County Risk Manager, whose decision in the Matter shall be final, but shall be subject to judicial review. If either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this Agreement, each party in such action shall bear the cost of its own attorney's fees and court costs. Any legal action shall be initiated in the Superior Court of the State of Washington for Jefferson County. The parties agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. Counsel hereby consents to the personal jurisdiction of the Superior Court of the State of Washington for Jefferson County.
12. Section Headings. The headings of the sections of this Agreement are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of the sections or this Agreement.
13. Limits of Any Waiver of Default. No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.
14. No Oral Waiver. No term or provision of this Agreement will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.
15. Severability. Provided it does not result in a material change in the terms of this Agreement, if any provision of this Agreement to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application this

Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.

16. Survival. Those provisions of this Agreement that by their sense and purpose should survive the term of this Agreement shall survive the term of this Agreement. Without limiting the generality of the preceding sentence, and for the avoidance of doubt, the provisions that survive the term of this agreement include: (a) controlling law; (b) insurance; and, (c) indemnification.
17. Binding on Successors, Heirs and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest, heirs, and assigns.
18. No Third-party Beneficiaries. The parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is for the benefit of any person or entity who is not a party, except for Defendant.
19. Signature in Counterparts. The parties agree that separate copies of this Agreement may be signed by each of the parties.
20. Facsimile and Electronic Signatures. The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.
21. Arms-Length Negotiations. The parties agree that this Agreement has been negotiated at arms-length.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

JEFFERSON COUNTY WASHINGTON

COUNSEL

By: _____
Mark McCauley, Date
County Administrator

By: _____
Signature

As delegated by the Board of County Commissioners
on the _____ day of _____, 2024

Name: _____

WA Bar #: _____

Date: _____