

**AGREEMENT BETWEEN COUNTY OF ALPINE AND COUNTY OF EL DORADO FOR INDIGENT LEGAL SERVICES**

This Agreement (hereinafter "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2010, by and between the County of Alpine (hereinafter "County"), a California public entity, and the County of El Dorado (hereinafter "Attorney"), a California public entity, for indigent legal services.

**RECITALS**

WHEREAS Alpine County has determined to discharge its constitutional obligation to provide public defender services by contracting for a set fee with Attorney, which has agreed to accept such assigned cases and have them handled by the staff of the El Dorado County Public Defender's Office; and

WHEREAS, Attorney is willing, competent and available to provide the legal services required of Attorney by this Agreement; and

WHEREAS a county has authority to enter into a contract for legal services pursuant to Government Code §31000; and

WHEREAS the appellate court in *Phillips v. Seeley* (1974) 43 Cal. App. 3d 104 held that the judicial act of assigning an attorney to represent an indigent defendant with knowledge of the compensation contract between the board of supervisors and that attorney constitutes judicial approval and ratification of the contract and recognition that the contract provides reasonable compensation to the attorney;

NOW, THEREFORE, in recognition of the above facts, the County and Attorney agree as follows:

**DEFINITIONS**

Eligible Client: Eligible client means a person who is or has been determined by the Alpine County Superior Court, hereinafter "Court") to be entitled to a court-appointed attorney pursuant to the provisions of California Penal Code Section 987 with respect to adult offenders, Welfare and Institutions Code Sections 634 and 317(c) with respect to juvenile delinquency and/or dependency proceedings, or pursuant to any other state statute, court rule, case precedent, or constitutional provision which authorizes such appointment.

Courtroom time: Courtroom time means time during which the attorney is actually appearing before a judge or jury (including any meetings in chambers); it does not include time spent waiting in a courtroom for the case or matter to be heard.

Disposition: Disposition in criminal cases shall mean:

1. The dismissal of charges;
2. The entering of an order of deferred prosecution; An order or result requiring a new trial;
3. An order or result requiring a new trial;
4. Imposition of sentence; or
5. Deferral of any of the above, coupled with any other hearing on that cause number, including but not limited to felony or misdemeanor probation review, which occurs within 30 days of sentence, deferral of sentence, or the entry of an order of deferred prosecution.

No hearing that occurs after 30 days of any of the above will be considered part of case disposition for the purpose of this Contract except that a restitution hearing ordered at the time of original disposition, whether it is held in 30 days or subsequently, shall be included in case disposition. Disposition includes the filing of a notice of appeal, if applicable.

Disposition in other cases shall mean: In Welfare and Institutions Code Section 300 cases, upon termination of the proceedings; in Section 601 and 602 cases, upon disposition, unless there is an order for removal, or an order following a disposition hearing; in revocation of probation, a dismissal, or imposition of sentence; in all other cases, an adjudication in the trial court which constitutes a final order or judgment, unless reversed on appeal.

## **I. SERVICES TO BE PROVIDED BY ATTORNEY**

A. Attorney shall provide competent legal services in Alpine County Superior Court to all eligible clients whom the Court has determined to be indigent and entitled to legal representation at County expense, and when Attorney can lawfully represent consistent with the laws of the State of California and are:

1. Charged with the commission of one or more misdemeanor or noncapital felony offenses;
2. Are the subject of a paternity action;
3. For whom the appointment of an LPS conservatorship has been filed;

4. Are seeking writs or Misdemeanor appeals to the Superior Court;
5. Who are charged with a violation of misdemeanor or felony probation;
6. In probate conservatorships and in which the Court Appoints counsel;
7. Are subject to extradition.
8. Are subject to contempt.

9. All minors the subject of a Petition under California Welfare and Institutions Code Sections 601 and 602.

10. Are entitled to appointment of counsel in Welfare and Institutions Code Section 300 cases, and also any children who are the subject of such proceedings and who the Court has determined are entitled to appointed counsel.

B. Representational Services: The services for which the County is to pay the Attorney are representational services, including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other attorneys and court regarding possible dispositions, and preparation for and appearance at all court proceedings. Attorney agrees to accept assignments falling within this Agreement in the Alpine County Superior Court in return for the compensation provided herein, and the parties agree that this Agreement provides reasonable compensation in each such case. All legal services required of Attorney by this Agreement shall be provided in a manner fully consistent with the Rules of Professional Conduct and other statutes, regulations, and rules of practice applicable to members of the State Bar of California.

C. Complex Litigation Cases: Complex litigation refers to the following: 1) All homicide cases, but for vehicle, charged as a felony; 2) Life in state prison eligible clients, with the exception of three strikes cases; and 3) Other cases in which the courtroom time exceeds 35 hours

Compensation for Attorney representation in cases deemed to be "complex litigation" as defined herein will be in addition to the regular compensation provided under this Contract. For those cases which are deemed "complex litigation" by virtue of their requiring more than 35 hours of courtroom time, the first 35 hours of courtroom time, and any other associated services performed prior to the 36<sup>th</sup> hour of courtroom time, shall be deemed included in the regular compensation provided through this Contract.

D. Other Litigation Expenses: Other litigation expenses shall mean those expenses which are not part of the Contract with the Attorney, such as investigative services, expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the court by motion, and, if granted, will be financed out of separate county funds reserved for that purpose. Payment for

mitigation specialists in Capital cases is included in this category. Attorney's compensation hereunder shall not be affected in any way by expenditures for such ancillary services.

E. Extraordinary Expenses: In addition to compensation specified elsewhere herein, Attorney shall be reimbursed for reasonable costs associated with extraordinary cases. Extraordinary cases and those cases which demand extraordinary time and expense, including such circumstance as change of venue. Such reimbursement will only occur after prior Court authorization of extraordinary expenditures, such as out-of-pocket expenses associated with venue changes, such as out-of-town lodging, meals and travel.

F. Staff: In providing the legal services required by this Agreement, Attorney will provide, at its own expense, all appropriate office and legal staff as necessary to provide the services required by this contract. This staff may consist of such attorneys, paralegals, clerks, and any and all secretarial services, as are necessary to fully discharge in a professional manner all obligations herein assumed by Attorney. Attorney represents and warrants that at all times its personnel shall be competent and that all services rendered will be sufficient to meet all constitutional requirements relating to legal services. County expects that Attorney will provide the legal services required under this Agreement using the existing staff of the El Dorado County Public Defender's Office and that a member of that staff will appear personally at all mandatory appearances.

G. Equipment: In providing the legal services required by this Agreement, Attorney will bear at his sole expense all normal office costs, such as and including telephone, copy expenses, computerized legal research, in-state travel, etc. Attorney will be entitled to additional reimbursement from County for ancillary services as provided below in this Agreement.

H. Conflict of Interest Cases: The parties recognize that the appointment of an attorney to represent an indigent party is a matter entirely within the discretion of the court assigned to hear the case, and that there will inevitably be cases in the Superior Court of Alpine County in which the County has to pay other lawyers not associated with Attorney to represent eligible clients that Attorney is unable to represent because of a conflict of interest or other reason. The compensation of such other lawyers is a separate obligation of County that is not within the terms of this Agreement. This Agreement is based on the mutual understanding that in those cases falling within this Agreement, the Alpine County Superior Court will initially appoint Attorney to represent an individual who has been determined by the court to be legally entitled to representation at the expense of County. The legal services required by this Agreement will be provided by the existing staff of the El Dorado County Public Defender's Office, and Attorney will not be obligated to hire or otherwise engage any additional staff. The parties recognize that the Public Defender's Office is a unified office and if any individual in the Office is disqualified from participating in the representation of an individual client, the entire office is disqualified.

Attorney will notify the court if Attorney is unable to represent an assigned client, and request that the court reassign the representation of that client to a different lawyer not associated with Attorney.

**II. COMPENSATION AND REIMBURSEMENT OF EXPENSES**

**A. Compensation for Cases within the Contract.** For the services described in Section IA-IC above, Attorney shall be paid \$50,000.00 annually.

**B. Compensation for Cases for Cases not within the Contract.** For the services described in Section IC above, reasonable compensation shall be determined by negotiation of the parties.

**C. Method of Payment:** For services provided under this contract, County shall pay Attorney in monthly in equal monthly installments, payable within 30 days of the month following the month in which services are provided. Attorney shall comply with County policies and procedures for the submission of claims on authorized County claim forms.

**III. TERM AND TERMINATION**

Unless otherwise terminated in accordance with this section, the term of this Agreement shall be from January 1, 2011 through December 31, 2014.

Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice and specifying the date of such termination, at least five (5) business days before the effective date of such termination. Either party may terminate this Agreement for any reason by giving at least ninety (90) calendar days advance written notice to the other party of the effective date such termination. Attorney shall be entitled to payment for services rendered to and inclusive of the specified date of termination at the rates established herein.

The termination of this Agreement does not affect the assignment of Attorney by the court in any case, nor the continuing obligation of Attorney to represent its clients. The County has no ability to relieve Attorney from his or her assignment to represent any individual client. Compensation for services provided by Attorney after termination of this agreement will be determined by the court and paid by the County.

#### IV. APPLICABLE LAWS

In the performance of the services required by this Agreement, Attorney shall comply with all applicable Federal, State, or County statutes, ordinances, regulations, directives, and laws. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California.

#### V. COUNTY ADMINISTRATOR AND NOTICES

The administrator of this Agreement for the County is the Public Defender of El Dorado County. All notices shall be deemed to have been given when made in writing and delivered or mailed to County and Attorney at their respective addresses as follows:

A. Reports and Inspections: Attorney agrees to comply with County requests for statistical information and/or reports regarding services provided. Specifically, Attorney agrees to provide any caseload information requested by the County such as the number of cases to which Attorney has been appointed, the number of conflicts declared, a breakdown of the cases by category, i.e. felony, misdemeanor, etc.. Attorney agrees to provide County with any and all caseload information necessary for County to properly assess Attorney's performance under the Contract.

B. State Bar Complaints: Attorney shall immediately notify the County and Court, in writing, if the Attorney becomes aware that a complaint lodged with the State Bar Association has resulted in their public or private reproof, suspension, or disbarment. In the event of a report of a private reproof, County and Court shall maintain confidentiality of said report to the extent permitted by law.

ATTORNEY

Rick Meyer, Public Defender  
El Dorado County  
630 Main Street  
Placerville, CA 95667

COUNTY:

Chief Administrative Officer  
Alpine County  
99 Water Street  
P.O. Box 387  
Markleeville, CA 96120

and

Chief Administrator's Office  
El Dorado County  
330 Fair Lane  
Placerville, CA 95667

**VI. ATTORNEY QUALIFICATIONS**

Attorney will provide the legal services required by this Agreement through the existing staff of the El Dorado County Public Defender's Office, and Attorney will not be obligated to hire or otherwise engage any additional staff. Attorney, and all persons who perform services for or through Attorney, shall exercise the care and judgment consistent with applicable professional standards in the performance of the services required by this Agreement. In some cases, Attorney may not be available to represent a client in an assigned case because such representation would violate the Canons of Professional Ethics or other laws of the State of California, and in such event, Attorney will notify the court of the conflict and will request that the court relieve Attorney of the assignment. Such relief will not affect the compensation hereunder.

**VII. INDEMNITY**

Attorney shall indemnify, defend, and hold harmless the County of Alpine, its elected representatives, officers, agents, and employees from and against any and all claims, demands, losses, defense costs, expenses (including attorney fees) or liability of any kind or nature, for personal injury or property damage arising out of or, as a result of litigation or administrative proceeding(s), alleged to arise wholly or in part out of any negligent or intentional act, error, or omission of Attorney, its offers, agents or employees, in performing the services, responsibilities, or duties required of Attorney by this Agreement, or any breach of any statutory, regulatory, contractual, or legal duty of any kind related, directly or indirectly, to the services, responsibilities, or duties required of Attorney by this Agreement, or any claim of negligent retention or similar claim against County arising out of this Agreement.

**VIII. INSURANCE**

"Attorney" is El Dorado County, a lawfully self-insured public entity. Attorney is not required to carry any insurance by this Agreement.

**X. STATUS OF ATTORNEY**

Attorney, and those who perform services for or through Attorney, are independent contractors, and no relationship of agency or employer-employee exists between County and Attorney or those who perform services for or through Attorney. Neither Attorney nor those who perform services for or through Attorney shall be entitled to any benefits payable to employees of County. Attorney will provide legal services to individual clients to which Attorney is appointed by the Superior Court of Alpine County, and by virtue of this Agreement does not enter into an attorney-client relationship with Alpine County. Attorney has no right to act on behalf of Alpine County in any capacity whatsoever, or to bind Alpine County to any obligation whatsoever. County has no right to determine case assignments, nor to supervise or control the services provided by Attorney or those who perform services for or through Attorney under this Agreement.

**XI. AMENDMENT AND WAIVER**

This Agreement may be amended only by written agreement executed by County and Attorney. The waiver by any party or any of its officers, agents, or employees, or the failure of any party or its officers, agents, or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants, or conditions of this Agreement.

**XII. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between County and Attorney and supersedes all prior negotiations, representations, of agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above set forth.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

COUNTY OF ALPINE

COUNTY OF EL DORADO

By: \_\_\_\_\_  
Chairman, Board of Supervisors

By: \_\_\_\_\_  
Chairman, Board of Supervisors

Attest: \_\_\_\_\_,  
Clerk of the Board of Supervisors

Attest: Suzanne Allen de Sanchez,  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

By \_\_\_\_\_  
Deputy Clerk