

AGREEMENT FOR SERVICES

This Agreement ("Agreement") is made and entered into by and between El Dorado Law, A Professional Law Corporation, ("Attorney") and the County of El Dorado ("County").

WHEREAS, persons charged with commission of a crime have a constitutional right to be represented by competent defense counsel; and

WHEREAS, California Penal Code Section 987 provides that if a defendant is unable to employ counsel, the court shall assign counsel to defend him or her; and

WHEREAS, Section 987.2(a)(3) of the Penal Code provides that in a case where the court finds that because of a conflict of interest or other reasons, the Public Defender has properly refused to represent a defendant in a criminal trial, proceeding or appeal, the court shall assign other counsel to represent the defendant; and

WHEREAS, Section 987.2(b) of the Penal Code provides that counsel assigned pursuant to Penal Code Section 987.2(a) shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the County; and the sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases; and

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

WHEREAS, the County has determined to provide defense counsel to indigent defendants for whom the Public Defender has properly refused to represent by contracting for a set fee with a professional law corporation that will administer a panel of qualified attorneys, each of whom has agreed to accept their proportionate share of assigned conflict indigent defense cases (the "Conflict Indigent Defense Panel"); and

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

1. SCOPE OF SERVICES

Attorney shall employ or contract with qualified attorneys who are properly licensed and qualified to handle cases which are appropriately assigned, commensurate with the attorneys' experience and background in order to provide the following services:

- A. Attorney shall administer, maintain and provide legal representation in criminal, juvenile delinquency, and conservatorship proceedings to individuals identified as indigent, when such representation cannot be provided by the Public Defender due to a legal conflict of interest as defined by the Rules of Professional Conduct 3.310 and Business and Professions Code § 6000 et seq. Attorney will be required to provide legal representation for indigent clients who:
- are defendants in a criminal case, including but not limited to the following types of cases:
 - Felony (including homicide)
 - Misdemeanor
 - Probation violation
 - Parole violation
 - Mandatory supervision and Post Release Community Supervision violations
 - are juveniles in delinquency court proceedings;
 - are conservatees in probate conservatorship cases and in mental health commitment/conservatorship cases;
 - have been called to testify in Court proceedings and need to be advised regarding self-incrimination issues;
 - have, in any other case in which a Public Defender would be appointed, had legal counsel appointed by the Court, where a conflict of interest arises that would preclude representation of the client by the Public Defender.
- B. Attorney shall provide for a sufficient number of subcontract attorneys to provide representation on all assigned cases, regardless of the location of the El Dorado County court hearing the case.
- C. Attorney shall represent clients at all stages of the client's case. Each attorney assigned to a case must devote all the time and resources reasonably necessary for the diligent fulfillment of the duties of legal counsel as prescribed by law and the contract.
- D. Attorney shall ensure provision of adequate coverage for all courtrooms, including establishing policies and procedures to avoid calendaring conflicts;
- E. Attorney shall respond promptly to issues and concerns from the County and the Court related to the services provided by Attorney and all employed or subcontracted attorneys including but not limited to attendance at meetings with the Court and/or County to discuss those issues;

- F. Attorney shall provide services to clients who use English as their second language and shall, upon presentation of an appropriate invoice, be allocated additional funds for interpreter services in accordance with section 2.(B) hereof;
- G. Attorney shall provide administrative oversight and statistical reports.
- H. Attorney shall ensure that subcontract attorneys will be available for all applicable court calendars and available for all appearances as required by the court. Attorney, when appointed to represent a particular client, must continue to represent that client unless relieved of the appointment by the Court.
- I. Attorney and any subcontract attorneys may be permitted to engage in the private practice of law during the term of the contract provided that such private practice of law does not interfere with the performance of the duties and responsibilities imposed by the contract. Neither Attorney nor any attorney assigned under the contract will be permitted to represent, advise, or maintain an attorney-client relationship with any organization of peace officers, the membership of which consists in whole or in part of peace officers who are employed by a public entity within El Dorado County, or who are employed by the State of California and work within El Dorado County.
- J. Attorney shall make every reasonable effort to assign cases in such a way as to avoid any legal conflict of interest between itself, its subcontract attorneys, or between any of these. Attorney will not be permitted to decline a Court appointment in any case, except for a legal conflict of interest or other lawful grounds. If there is a determination by the Court that, as a matter of law, Attorney and its subcontract attorneys may not represent an otherwise eligible individual because of a legal conflict of interest or, in the case of multiple parties, that only one of the subcontract attorneys may participate in the case, the Attorney will be required to arrange for qualified outside independent attorney(s) to represent the individual(s). Such costs will be paid by County in accordance with Article 2 hereof.
- K. If the death penalty is sought in a case assigned to Attorney, Attorney shall ensure that the attorney assigned to the case is qualified and competent to provide representation in a capital trial. (California Rules of Court, Rule 4.117)
- L. County will provide reimbursement for food and lodging, mileage, and airfare expenses when Attorney is required to appear in a case outside of El Dorado County because of a change of venue. These expenses will be reimbursed at rates consistent with current County policy for travel, Board of Supervisors Policy D-1, found at:
http://www.edcgov.us/Government/BOS/Policies/Policy_Manual.aspx#SectionD
- M. An attorney who was formerly assigned to a case will be required to provide legal representation in any subsequent proceedings for a client previously represented by that attorney and for whom the case was remanded by the appellate department of the Court or a higher court, unless such representation is precluded by law as determined by the Court.
- N. Attorney and subcontract attorneys shall provide, at its own expense, all office space, furniture, equipment, supplies, libraries, telephone and facsimile service, clerical assistance, stenographic services, utilities, maintenance, and all other services, supplies,

materials, and personnel required for the provision of competent and effective services, with the exception of investigative services, which shall be reimbursed by County.

For homicide cases, rare or complex cases, or cases with voluminous discovery, the County, at its sole discretion, may provide additional funds for miscellaneous items such as, but not limited to, hardware for data storage, or specialized computer software if such items are required to effectively perform the services and provided that such purchases are approved by the County's Contract Administrator.

- O. Attorney shall contractually require subcontract attorneys to notice County of any individual request for ancillary services exceeding \$5,000. Attorney and Subcontract attorneys shall support any request for ancillary services with a declaration stating that the services are reasonably necessary to provide a full and competent defense of the accused. Attorney shall require subcontract attorneys to take reasonable steps to minimize the costs of ancillary services, including but not limited to: meeting and conferring with counsel for other defendants charged in the same case to prevent duplicative work orders and requests; making diligent efforts to identify providers that provide market rate services to similarly situated court appointed clients.

The term "notice" as used in this paragraph shall include a written notice of the intent to request ancillary services. The "notice" shall identify the case in which the request will be made and an approximate cost of the services requested. The "notice" shall not require the Attorney or subcontract attorney to specify the exact nature of the services sought or the service provider.

Any notice provided under this provision shall be held by the County in confidence. The County hereby acknowledges that Attorney and Subcontract attorneys have an absolute duty of confidentiality to their clients, which includes keeping all strategies and tactics related to the client's defense a secret so as to not unfairly prejudice the client or deny the client the ability to receive a full and fair defense.

Any and all invoices for approved payments to ancillary service providers shall be remitted directly to the County by the subcontract attorneys. County will provide direct payment to the ancillary services providers within 60 days of receipt of an appropriate court order directing County to pay the service provider. Ancillary services include but are not limited to expert witnesses, transcription, interpreter, private investigator and other similar services. Private investigators shall be paid at a rate not to exceed \$50 per hour and mileage reimbursement at the current IRS rate.

- P. Attorney shall ensure that subcontract attorneys meet and confer with clients on a reasonable basis. This shall include meeting with clients in custodial facilities, in locked psychiatric placements, and in group homes whether in or out of County. Attorney and subcontract attorneys will be required to maintain a telephone answering machine or service when their offices are closed.
- Q. Attorney shall submit a written caseload report for each quarter, within 60 days following the last day of the quarter. The report must include:
1. Number of newly assigned cases, by attorney, date, and case type (including case numbers);

2. Number of open cases, by attorney and case type (including case numbers);
 3. Disposition of cases closed in that quarter, including trial statistics such as bench and jury trials, and number of pled cases (including case numbers);
 4. Any other information requested by County.
- R. Attorney and Subcontract attorneys are expected to appear with clients on any scheduled specialty court calendar when assigned unless its appearance has been excused by the judge handling that calendar. Continuances will not be granted absent good cause.
- S. This agreement shall specifically exclude representation of individuals charged in civil or quasi contempt action brought pursuant to Family Code § 290 and Code of Civil Procedure § § 1209-1222

All legal services required of the panel attorneys by this Agreement shall be provided in a manner fully consistent with all applicable laws regarding the provision of competent legal defense and with the Rules of Professional Conduct and other statutes, regulations, and rules of practice applicable to members of the State Bar of California.

2. COMPENSATION AND PAYMENT OF ADDITIONAL FUNDS

- A. Compensation for Services: Compensation for services described herein shall be a flat amount of \$753,384, which includes all administrative and operational costs and compensation to subcontract attorneys providing legal services hereunder. Payment shall be made in four equal installments. Each installment shall be due quarterly in advance. Payment shall be remitted to Attorney no later than the first business day of the first month of the quarter.

Subcontract Attorney Services: Attorney is an independent contractor and is solely responsible for compensation of all staff and subcontractors.

- B. Trials Exceeding Three Weeks: It is anticipated that the trial in an average case will not exceed three calendar weeks. The flat monthly rate established above is intended to compensate panel attorneys for legal services in all assigned cases up to and including three calendar weeks per case. For the purpose of this section, a trial week will consist of a minimum of three scheduled days of trial. If the trial in any individual assigned case exceeds three calendar weeks, a panel attorney will be entitled to additional compensation of \$560 per additional scheduled trial day, not to exceed \$1,000 per scheduled calendar week. Such compensation shall be billable at the conclusion of each month. Payment shall be made within forty-five (45) days of County's receipt and approval of an acceptable invoice. Extended trial payments cease when verdict is given, jury is discharged, or trial is concluded, whichever is earlier in time.
- C. Extraordinary and Excluded Cases: In those rare instances of an assigned indigent defense case involving unusual circumstances which demand a truly extraordinary amount of legal work, Attorney and/or subcontract attorneys may apply to the court by ex-parte application for order, for an order declaring the case to be extraordinary, in which instance Attorney's services in that case over the amount usually devoted to a

normal case will be paid at a rate not to exceed \$100 per hour upon receipt of an acceptable invoice.

Application to the court for extraordinary pay may only be made in cases charging violations of Penal Code sections: 37, 38, 182, 182.5, 187, 191.5, 192, 203, 205, 206, 207, 209, 209.5, 211, 215, 217.1, 218, 219, 220, 261, 262, 264.1, 269, 273ab, 285, 286, 288, 288 (a), 289, 451, 455, 459 (1st Degree) 667.51 (d), 667.6 (a) (b) (c) (d), 667.61, 1026 (all), 1026.5, 1606 , Mental Health Hearings, W&I 6600, Witness Representation, 3rd Strike Cases, Writs for Interlocutory Relief, contested Penal Code § 1368 trials, any other state prison cases, any case in which the defendant pleads not guilty by reason of insanity, any case which includes voluminous discovery greatly exceeding a typical prosecution, or any other cases for which the punishment includes life without the possibility of parole. The mere fact that a case falls under one of the above code sections does not make it extraordinary and attorneys are expected to provide services under the contract for such cases without extraordinary pay under normal circumstances.

Death penalty cases are not included in the base compensation of this contract, so if Attorney is assigned and accepts a death penalty case then compensation for that case shall be separately negotiated.

- D. Conflicts: If Attorney must decline a Court appointment in any case due to a legal conflict of interest or other lawful grounds, or if there is a determination by the Court that, as a matter of law, Attorney and its subcontract attorneys may not represent an otherwise eligible individual because of: (1) a legal conflict of interest; (2) there are an insufficient number of subcontract attorneys countywide to provide representation to all charged co-defendants; (3) the court determines there are no subcontract attorneys available to appear at a given hearing. In such a case Attorney shall appoint an attorney outside of the IDP to represent all charged co-defendants and additional funds will be dispersed by County directly to the attorney outside of the IDP upon receipt and approval of an acceptable invoice. The rate for such services shall not exceed \$70 per hour unless the case is deemed Extraordinary as per item 2C supra. Attorney shall make every effort to use existing panel attorneys to cover conflicts. If necessary, South Lake Tahoe panel attorneys will be appointed to cover conflicts in Placerville. Attorney shall not appoint non-IDP panel attorneys to represent indigent defendants in Placerville, unless all felony panel attorneys, including South Lake Tahoe panel attorneys, are unavailable or have a legal conflict and cannot represent all of the indigent defendants charged in a single case.

3. ASSIGNMENT AND DELEGATION

Attorney is engaged by County for its unique qualifications and skills. With the exception of subcontract attorneys, Attorney shall not delegate or assign services to be provided to any other person or entity prior to written consent of County.

4. INDEPENDENT CONSULTANT/LIABILITY

Attorney is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Attorney exclusively

assumes responsibility for acts of its employees, subcontractors and associates, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Attorney shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees and subcontractors. County shall have not right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Attorney or its employees or subcontractors.

5. DISPUTES

Any dispute arising under this Agreement shall be decided by the County Counsel who shall put his decision in writing and mail a copy thereof to the address provided herein for notices to Attorney. The decision of the County Counsel shall be final for purposes of administrative review. Attorney shall diligently perform the duties required by this Agreement in accordance with the decision of the County Counsel.

6. TERM AND TERMINATION

Unless otherwise terminated in accordance with this Section, the term of this Agreement shall be from July 1, 2019, through June 30, 2021.

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 thirty (30) calendar days advance written notice to the other party of the effective date such termination. County has the unilateral right to terminate this Agreement on five days' notice if in the County's judgment the Court does not assign a proportionate share of cases to Attorney. Attorney shall be entitled to payment for acceptable services rendered to and inclusive of the specified date of termination.

The termination of this Agreement does not affect the assignment of Attorney by the Court in any case, or the continuing obligation of Attorney to represent his or her clients. The County has no ability to relieve Attorney from his or her assignment to represent any individual defendant. As such, if and when a Panel Attorney is terminated from his or her position he or she shall be obligated to resolve any and all outstanding cases at a rate of \$70 per hour. The terminated Panel Attorney shall submit monthly billing to County on a monthly basis and be paid by County as per paragraphs I.(M) and 2(C) above. Attorney shall maintain in his/her possession for at least five (5) years following completion of the cases all files and records related the case.

7. 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. Any action or proceeding arising out of this Agreement shall be filed in El Dorado County, California.

8. COUNTY ADMINISTRATOR AND NOTICES

The administrator of this Agreement for the County is the Chief Administrative Officer. 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:

ATTORNEY

Adam C. Clark
520 Main St.
Placerville, CA 95667

COUNTY:

Chief Administrative Officer
El Dorado County
330 Fair Lane
Placerville, CA 95667

9. ATTORNEY QUALIFICATIONS

Attorney agrees that neither it, nor its employed or subcontract attorneys will not accept appointments to matters for which it is not qualified. Attorney and all persons who perform services for or through Attorney shall exercise the care and judgment consistent with all applicable professional standards in the performance of the services required by this Agreement. In some cases, Attorney and/or subcontract attorneys may not be available to represent a defendant in an assigned case because such representation would violate the Canons of Professional Ethics, and in such event, Attorney will notify the Court of the conflict and will request that the Court alter the assignment of Attorney.

10. INDEMNITY

Attorney shall defend, indemnify, and hold the County harmless against and from any and all claims for damages of every name, kind and description, including attorney fees and costs incurred, brought for, or an account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with Attorney's, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Attorney and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Attorney to indemnify and save County harmless includes the duties set forth in California Civil Code Section 2778.

11. INSURANCE

During the term of this Agreement, Attorney and all subcontract attorneys shall at all times maintain, at his or her expense, professional malpractice insurance in a minimum amount of \$100,000 per claim and \$300,000 per occurrence. Attorney shall submit proof of insurance acceptable to County at the commencement of this contract and annually thereafter.

12. 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 has no right to act on behalf of County in any capacity whatsoever as an agent, or to bind 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. Attorney shall file a State of California Form 590 or County shall be required by law to withhold seven percent (7%) of each payment to attorney.

13. AMENDMENT AND WAIVER

This Agreement may be amended only by written agreement executed by County and Attorney. The waiver by County or any of its officers, agents, or employees or the failure of County 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.

14. 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.

-- COUNTY OF EL DORADO --

Dated: 6-25-

By: 
Chair
Board of Supervisors
"County"


ATTEST:
James S. Mitrison
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 6-25-19

-- ATTORNEY --

EL DORADO LAW,
A PROFESSIONAL LAW CORPORATION

By: 
Adam Clark
President
"Attorney"

Dated: 6/24/19