

**CONTRACT FOR INDIGENT LEGAL SERVICES
(2020)**

THIS AGREEMENT, effective the 1st day of January, 2020 between Walla Walla County, Washington, a municipal corporation, hereinafter referred to as "the County", and Bryan Ponti, hereinafter referred to as "the Attorney".

WITNESSETH:

For and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Attorney shall abide by all terms and conditions of the Standards for Indigent Defense, including filing a signed Certification of Compliance on a quarterly basis in each court that the Attorney has been appointed as counsel, as required by Washington State Supreme Court Order No. 25700-A-1004, adopted June 15, 2012.

2. In no event shall the Attorney receive more than the caseload cap outlined in Standard 3.4 of the Standards for Indigent Defense. Cases shall be defined as described in the Standards for Indigent Defense: "the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation." (Standard 3.3)

3. Attorneys who provide public defense must limit the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent (Standard 13).

4. If a defender is carrying a mixed caseload including cases from more than one category of cases, the standards in 3.4, and the limits set forth below, should be applied proportionately to determine a full caseload.

5. That during the contract term January 1, 2020 through December 31, 2020 the Attorney shall provide legal representation for the following matters marked with a "X" below, for which the Court makes an appointment after January 1, 2020 and for appointments already made to the Attorney, based upon applicable statutes, case law or court rules providing for a court-appointed attorney, on the basis of the person's indigency:

() a. (i) **Superior Court Criminal Cases.** Superior Court felony cases for the contract term (excluding murder); provided however, that in the event that the number of all Superior Court Criminal appointments for the Attorney reaches 150 appointments per year for the

term of the contract for cases actually filed by the County Prosecutor, the Attorney's obligation to provide representation in criminal matters shall have been fulfilled for the entire contract year, and full payment shall be made by the County for the duration of the contract term. This is based on a "cap" of appointments of 425 appointments per year for all attorneys providing representation in indigent adult criminal appointments in Superior Court for new felony cases filed during the contract term. The total amount of compensation for the contract period for this portion of the contract shall be \$_____ for year 2020 (see "compensation" information, pages 2 and 3 of this Contract) provided, however, that the Attorney shall be reimbursed at the rate of \$1395.83 per case for year 2020 (see "compensation" information, pages 3 and 4 of this Contract) for appointments for cases filed by the County Prosecutor after the "cap" of _____ filed cases per year has been reached. In no event shall the Attorney receive more than 150 felonies per year.

Cases will be counted for compensation consistent with the definition in the Standards for Indigent Defense: "the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation." (Standard 3.3). In the event the Attorney exerts a significant amount of time and/or resources on an appointment that does not lead to a case filing by the County Prosecutor, the Attorney may petition to have that appointment count as a case for compensation purposes. Petitions must be approved by a Superior Court judge.

In addition to the above, the County shall pay to Attorney the sum \$57.32 per hour, or the rate hereafter specified by the State of Washington in WAC 137-70-040, for all cases involving representation of inmates charged with crimes at the Washington State Penitentiary, upon and after submitting the appropriate itemization to the County for the actual hours expended.

a. (ii) Additional Compensation for Murder Cases. In addition to the above compensation, the County shall pay to the Attorney for each appointment to a Murder in the First (non-aggravated) or Murder in the Second Degree case a flat fee of \$5,000.00 plus a per diem payment of \$425.00 for each day of trial, if any. In addition to the above compensation, the County shall pay to the Attorney an hourly rate of \$70.00 per hour for appointments to any aggravated First Degree Murder cases for each hour actually expended on such cases. Requests for reimbursement shall first be submitted to the Superior Court for approval of actual hours and costs expended.

In the event the Attorney shall designate any other attorney responsible for Murder cases, the Attorney shall provide a satisfactory assurance of availability, and submit a copy of an executed agreement with the designated attorney that the designated attorney will perform the obligations of this contract without raising any issue of compensation with the County.

In no event shall the Attorney receive more than one (1) Active Death Penalty trial court case at a time. At such time, the Attorney shall undertake those non-death penalty cases that are compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2 of the Standards for Indigent Defense.

b. Superior Court Probation, Community Supervision Violations and Sentence Modifications. All adult criminal probation, community supervision violations, and sentence modifications in Superior Court, including allegations of failing to pay monetary obligations and failing to notify the Department of Corrections of the defendant's address. The total amount of compensation for the contract period for this portion of the contract shall be \$_____ for contract term. In no event shall the Attorney receive more than 250 cases per year.

c. Superior Court Juvenile Department Criminal Cases. In ____ percent (%) of the Walla Walla County Superior Court juvenile department criminal proceedings, including criminal charges, probation violations and sentence modifications. The total amount of compensation for the contract period for this portion of the contract shall be \$_____ for contract term. In no event shall the Attorney receive more than 250 cases per year.

d. Mental Health, Juvenile Therapeutic Court, & Adult Drug Court Hearings. In fifty percent (50%) of the Walla Walla County Superior Court mental illness hearings, Juvenile Therapeutic Court, and Adult Drug Court. The total amount of compensation for the contract period for this portion of the contract shall be \$23,999.33 for contract term. In no event shall the Attorney receive more than 250 cases per year.

e. Dependency and Termination of Parental Rights Proceedings. In ____ percent (%) of the Walla Walla County Superior Court dependency and termination of parental rights proceedings. The total amount of compensation for the contract period for this portion of the contract shall be \$_____ for contract term. In no event shall the Attorney exceed more than 80 open cases.

f. District Court Criminal Cases. In _____ percent (%) of the Walla Walla County District Court misdemeanor matters, including show cause, probation violation, sentence modification hearings, gross misdemeanor and appeals of District Court rulings in Superior Court. The total amount of compensation for the contract period for this portion of the contract shall be \$_____ for contract term. In no event shall the Attorney receive more than 400 cases per year.

() **g. Alcohol/Substance Abuse Commitments.** In _____ percent (____%) of the Walla Walla County alcohol or substance abuse commitment hearings. The total amount of compensation for the contract period for this portion of the contract shall be \$_____ for contract term. In no event shall the Attorney receive more than 250 cases per year.

() **h. Child Support Contempt Proceedings.** In _____ percent (____%) of the Walla Walla County Superior Court proceedings for contempt for failure to pay child support. The Attorney shall be compensated at a rate not to exceed \$50.00 per hour for up to seven (7) hours per case. Requests for reimbursement shall first be submitted to the Superior Court for approval of actual hours and costs expended. In no event shall the Attorney receive more than 400 cases per year.

() **i. Parents in Family Therapeutic Court Cases in Dependency Proceedings.** In _____ percent (____%) of the Family Therapeutic Court cases the attorney shall represent the parents in family therapeutic court cases in Walla Walla County Superior Court dependency proceedings. The total amount of compensation for the contract period for this portion of the contract shall be \$_____ for contract term. In no event shall the Attorney exceed more than 80 open cases.

() **j. Dependency and Termination of Parental Rights Proceedings, Child in Need of Services Petitions, and At-Risk Youth Petitions.** In _____ percent (____%) of the Walla Walla County Superior Court dependency proceedings where the child requests legal counsel and is age twelve or older (pursuant to RCW 13.34.100); dependency cases where it is necessary—for conflict of interest or others reason deemed appropriate by the court—to substitute for one of the two primary attorneys contracted to represent parents in dependency cases; Child in Need of Service petitions; and At-Risk Youth petitions. The total amount of compensation for the contract period for this portion of the contract shall be \$_____ for contract term. In no event shall the Attorney exceed more than 80 open dependency cases or receive more than 250 CHINS or ARY cases per year.

The total amount of compensation for the contract period for subsections a., b., c., d., e., f., g, h, i and j. of the contract shall be \$ 23,999.33 for contract term.

The compensation for subsection a. (i), stated above paid for the year 2020 reflects a base compensation increase of 2% (based upon the current Current Expense Courthouse Employees labor agreement). The Compensation for subsections b, c, d, e, f, g, h, i and j. represents the 2020 rate for those sections plus a 2% cost of living increase (based upon the Current Expense Courthouse Employees labor agreement), plus other as negotiated.

6. The services to be furnished by the Attorney shall include legal representation at all stages of the proceedings after appointment by the Court, and shall continue through the filing of a Notice of Appeal in District Court rulings (where applicable), and shall continue through the filing of a Notice of Appeal from Superior Court rulings in all cases. It is expressly understood and agreed between the parties that this contract for representation includes only those matters agreed to in Subparagraphs d. of Paragraph Five above as indicated by the Attorney and does not include those matters not agreed to in Paragraph Five. It is understood between the parties that representation in the other foregoing matters will be the subject of other contracts between the County and other contract providers.

7. The total contract price for the services for the contract term shall be in the sum of \$23,999.33, as provided herein. Payment shall be made in twelve (12) equal installments for each year. The County will process the payment on the last Accounts Payable run of the month with the payment being mailed no later than the following Tuesday to the Attorney at his/her address:
103 East Poplar Street, Walla Walla, WA 99362.

8. For purposes of this contract a person is indigent when a magistrate or judge has determined, in accordance with any applicable law or court rule, that such person is financially unable to obtain the services of any attorney at law. However, any person arrested and held in custody for a crime, and who claims to be indigent, shall be represented by the Attorney until a magistrate or judge determines that such person is not indigent and permits the Attorney to withdraw. Attorneys with portions of misdemeanor or felony defense contracts shall provide a phone number where they can be reached after hours to be posted at the jail so that at the earliest

opportunity a person in custody who desires a lawyer shall be provided access to a telephone and the number of an attorney that has contracted with the county to provide indigent legal services.

9. a. Certain non-routine costs of investigation, where necessary to an adequate defense, and other costs such as (a) experts; (b) doctors; (c) other extraordinary services; (d) depositions; (e) out-of-pocket costs associated with a court ordered change of venue; (f) scientific tests; and (g) interpreters and/or translators as per Superior Court Criminal Rule 3.1 (f) shall be the responsibility of the County for which the County agrees to reimburse the Attorney for such expenses, provided only that Attorney shall seek and obtain the approval of the Court by motion and ordered prior to incurring such expenses.

b. The cost of subpoenas, including their service and any fees required by law to be tendered to the witness at time of service, shall also be the responsibility of the County for which the County agrees to reimburse the Attorney for such expenses. The Attorney need not seek prior approval for the cost of service of subpoenas within the territorial limits of Walla Walla County unless a witness fee is required by law to be served with the subpoena. All out of county subpoenas shall require prior court approval.

c. It is anticipated that the County will receive annual payment from the Office of Public Defense Funds (OPD) pursuant to RCW 10.101. These funds will be distributed as additional attorney compensation on a pro rata basis among the attorneys holding contracts for indigent defense service. While the specific application of these funds is left to the discretion of the contractor, in accordance with current guidelines for permitted use of state public defense funds issued by the OPD, these funds are intended as additional compensation to help defray the cost of routine case expenses, such as non-extraordinary investigations deemed appropriate in each case by the contractor, without the need to account to the court as to any specific application of these funds.

10. The Attorney may designate one or more licensed attorneys to associate with in the performance of this contract. Any attorney so designated and approved shall be responsible for the

performance of this contract in the same manner as the Attorney. At the time of the signing this contract, the Attorney must submit the names, experience levels, and qualifications of any attorney proposed to be designated to associate with in the performance of this contract to the County for approval. In addition, the designated Attorneys shall submit their qualifications and Certification of Compliance to the Superior Court Judges for approval in those matters heard in Superior Court, and to the District Court Judges for approval in those matters heard in District Court. The Attorney is not authorized, however, to assign this contract without the prior written approval of the County, nor shall the attorney designate additional Attorneys to associate in the performance of this contract without County approval. The Attorney will ensure that in all circumstances of absence, including illness and emergency, a designated attorney will be available to perform the requirements of this contract. If a designated attorney is not reasonably available as required by the Court, the Court shall be authorized to make an appointment at the Attorney's expense.

11. a. During the life of this contract Attorney shall maintain errors and omissions insurance, and shall include anyone else acting for or on behalf of the Attorney in the performance of this contract as an additional named insured on any such policy. Such insurance shall be obtained from any insurance company authorized to do business as such in the State of Washington, and shall have policy limits of \$1,000,000.00 (one million dollars) or more. A certificate, or proof of insurance coverage, shall be provided to the County yearly.

b. The Attorney covenants and agrees that he will indemnify and hold harmless the County and other County's Officers, employees and agents to the extent of his/her insurance coverage from any loss, damage, costs, charge or expense, whether direct or indirect, and whether to persons or property, to which the County or its agents may have been subjected by reason of any act, action, neglect, omission or default on the part of the Attorney or anyone acting for, on behalf of, or at the discretion of the Attorney in the performance of this agreement.

c. In case any suit or legal proceedings shall be brought against the County, or any of the County's officers, employees or agents, at any time on account of or by reason of any act, action,

neglect, omission or default of the Attorney, or anyone acting for, on behalf of or at the direction of the Attorney, the Attorney hereby covenants and agrees to the extent of his or her insurance coverage to assume the defense thereof and to defend the same at the Attorney's own expense, and pay any and all judgments that may be incurred by or obtained against the County, or any of the County's officers, employees or agents in such suits or other proceedings.

12. In those instances in which a particular defendant may be able to pay some money for attorney fees, but not all, such persons, for purposes of this contract, shall be considered indigent and any "attorney fees" paid by such person shall be paid to, and be the property of the County. The Attorney is not responsible for collecting such fees.

13. During the performance of this contract, the Attorney shall comply with the Washington "Law Against Discrimination", and should any part of the performance contemplated hereunder be financed by federal funds, the Attorney shall comply with all applicable federal laws against discrimination in employment. Satisfactory performance of this provision by Attorney shall include, but not be limited to, the following:

a. During the performance of this contract, the Attorney shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability.

b. The Attorney shall ensure that applicants for employment and employees are treated during employment without discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability.

Performance under (a) and (b) above shall include, but not be limited to: employment, upgrading, demotion or transfer recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training, including apprenticeships, unless distinctions are based upon a bona fide occupational qualification.

The Attorney further agrees to comply with the Americans With Disabilities Act with regards to employment and the provision of services.

14. The provisions of this contract governing matters heard in Superior Court are subject to the approval of the Superior Court Judges of Walla Walla County, Washington. The provisions of this contract governing matters heard in District Court are subject to the approval of the District Court Judges of Walla Walla County, Washington.

15. The parties agree that this contract provides for services to be performed for the contract term only, and said contract shall terminate on December 31, 2020; provided that upon the expiration of, or other termination of this contract, the Attorney shall continue his or her representation for an additional thirty (30) days from the date of termination in all cases for which he or she has commenced legal representation, and the compensation for said extended period of service shall be the monthly payment of the contract price. The parties further agree and understand that the foregoing provision for extended representation shall not apply if the termination of the contract is due to a determination that the quality of legal services provided by the Attorney does not satisfy the Judges of the Courts hearing the matters provided for in this contract, or in the event it is reasonably determined by the County that the Attorney has materially failed to perform this contract.

This contract shall be cancellable upon ninety (90) days written notice during the contract term by the Attorney, so long as he remains in practice; or shall be cancellable immediately by the County in the event it shall be determined that the quality of legal services provided by the Attorney does not satisfy the Judges of the Court hearing the matters provided by this contract, or in the event it is reasonably determined by the County that the Attorney has materially failed to perform this contract. In the event the Attorney terminates this contract prior to the termination date specified herein and fails to provide ninety (90) days written notice thereof, and the Court assigns new counsel to represent the cases assigned to the attorney, the attorney shall pay to the County the sum of \$100.00 for each case filed in the Court to which the attorney has been assigned for each case other than Superior Court criminal cases for the contract term; for Superior Court criminal cases the attorney shall pay to the County the sum of \$1,395.83 for each case filed.

16. The Attorney shall make a monthly report to the Board of County Commissioners, said report to contain the number of appointments, class and type of case, appearances in Court, and trials in Court.

17. The Attorney agrees to comply with conditions of RCW Chapter 10.101.

Dated this 21st day of January, 2020

COUNTY OF WALLA WALLA
BOARD OF COUNTY COMMISSIONERS

Gregory A. Tompkins
Gregory A. Tompkins, Chairman

Absent
James K. Johnson, Commissioner

Attest:

Diane L. Harris
Diane L. Harris, Clerk of the Board

Todd L. Kimball
Todd L. Kimball, Commissioner

Attorney Bryon Powell

WSBA# 44155

Federal Tax Id. No. ___ On file with the Walla Walla County Auditor's Office _____

Dated this 13th day of January, 2020