



COUNTY OF PLACER

OFFICE OF COUNTY EXECUTIVE

THOMAS M. MILLER, County Executive Officer

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TO: Honorable Board of Supervisors
FROM: Thomas M. Miller, County Executive Officer
By: Rich Colwell, Chief Assistant County Executive Officer
Bekki Riggan, CEO Principal Management Analyst

DATE: June 13, 2006

SUBJECT: Approval of First and Second Level Conflict Public Defender Contracts with the Law Offices of Mark A. Berg and the Law Firm of Balcom & Carbone

Action Requested

Approve two, four-year public defense contracts with the Law Offices of Mark A. Berg for First Level Conflict services in the amount of \$4,835,662 for the period from July 1, 2006 to June 30, 2010; and with the Law Firm of Balcom & Carbone for Second Level Conflict services in the amount of \$1,344,956 for the period from July 1, 2006 to June 30, 2010, for a combined total of \$6,180,618; and authorize the Chairman of the Board to sign the contracts.

Background

California counties are responsible for providing certain legal services to persons that cannot afford to pay (indigent) for competent and effective counsel, including:

- Defending eligible clients charged with the commission of any offense triable in Placer Courts;
- Representing eligible clients concerning conservatorships;
- Representing eligible clients for various mental health proceedings;
- Representing eligible clients for various juvenile delinquency court proceedings;
- Helping eligible clients collect wages and other demands that do not exceed \$100;
- Defending eligible clients in any civil litigation in which the Public Defender believes the person is being persecuted or unjustly harassed;
- Representing eligible clients for paternity cases in which the county or the state has filed suit (e.g., Family Support cases);
- Representing eligible clients in a proceeding relating to the nature of conditions of detention, or other restrictions prior to adjudication of treatment or of punishment.

Placer County Public Defender services are provided at Court locations including the Historic Auburn Courthouse, the DeWitt Center, the Jail Courtroom, Juvenile Court, the Roseville Court and the Tahoe Court. Public Defender services also include mental health hearings at the County's Cirby Hills facility in Roseville. The services will be reconfigured when the Courts move to the South Placer Justice Center in 2007. Negotiations will resume at that time to identify siting and lease costs with the three defense firms.

In California, many counties provide public defender services through combinations of a county department for primary services and private sector contracts for conflict representation. Conflict representation involves situations where there is a legal or professional conflict of interest, such as cases where there are multiple defendants for a single crime. Due to comparatively high employee wage and benefit costs associated with operating a county department versus a private contract, several counties, including Placer County, have determined it is cost effective to contract with the private sector, rather than create a county department for Indigent Public Defense services. It remains the County Executive Office's opinion that Indigent Public Defense services are best obtained through contracts with the private sector.

On February 23, 2006, the County tested the market by releasing a competitive Request for Proposals (RFP) for Public Defender services to be effective upon the expiration of the current contracts. These service levels involve an initial four-year term with options to extend the contract for two, two-year periods. The County received a total of five RFP responses, two for Primary services, one for First Level Conflict services and two for Second Level Conflict services. Proposals submitted for Primary Public Defender services were received from the current provider Tauman & Koukol, and from Barker and Associates. Mark A. Berg submitted the sole proposal for Primary Conflict Public Defender services. This RFP was also successful in eliciting two proposals for the Secondary Conflict Public Defender services from Balcom and Carbone and from Clymo and Manning. The 2002 RFP did not receive any bids at the Second Conflict level which necessitated the past reliance on court-appointed attorneys. It is anticipated that securing a contract for this service level will yield many efficiencies to the Public Defense program.

The RFP evaluation and interview panel consisted of six voting members comprised of County and Court staff. After a review of the written proposals and interviews, panel members agreed unanimously upon the final ranking and recommendations. Final negotiations are currently underway for the Primary Public Defense services and a final recommendation is anticipated to be before your board at the June 27th Board of Supervisor's meeting.

Fiscal Impact

Public Defender services are funded on an annual basis primarily by the General Fund contribution to the Criminal Justice Other Programs appropriation, and are offset by the collection of consumer fees and state funding which total approximately \$100,000 per year. The four-year annualized costs for these contracts are as follows:

FY	Mark Berg	Balcom & Carbone	Total Annual Cost
FY 2006-07	\$1,057,968	\$318,680	\$1,374,648
FY 2007-08	\$1,100,286	\$326,178	\$1,426,464
FY 2008-09	\$1,312,455	\$342,487	\$1,654,942
FY 2009-10	\$1,364,953	\$359,611	\$1,724,564
Totals	\$4,835,662	\$1,344,956	\$6,180,618

Total combined four-year costs for the First and Second Level Conflict Public Defense services are identified at \$6,180,618.

Recommendation

The County Executive Office recommends your Board authorize the Chairman of the Board to sign on behalf of Placer County two conflict defense service contracts with the Law Offices of Mark A. Berg for First Level Conflict services in the amount of \$4,835,662 for the period from July 1, 2006 to June 30, 2010; and with the Law Firm of Balcom & Carbone for Second Level Conflict services in the amount of \$1,344,956 for the period from July 1, 2006 to June 30, 2010.

**CONTRACT FOR LEGAL REPRESENTATION
OF INDIGENT PERSONS IN THE
COUNTY OF PLACER**

THIS CONTRACT is made and entered into this day of 13th June 2006 by and between the COUNTY OF PLACER ("COUNTY") and the Law Offices of Mark A. Berg ("ATTORNEY") or jointly referred to as "Parties":

WITNESSETH

WHEREAS, the right of all persons against whom criminal prosecutions are brought to be represented by counsel is guaranteed by the Constitution of the United States and the Constitution of the state of California; and

WHEREAS COUNTY is obligated by law to provide legal services in certain cases for persons financially unable to retain counsel; and

WHEREAS, the cost and expense of such counsel in the representation of indigent defendants is a proper and lawful charge upon COUNTY; and

WHEREAS, ATTORNEY has submitted a proposal pursuant to Request for Proposal (RFP) Number 9554 to perform first level conflict Public Defender services and related duties on a contractual basis for a period of four (4) years, with options to renew for two subsequent two-year extensions; and

WHEREAS, it is in the public interest that COUNTY employ private counsel to render the usual and customary legal services of a conflict public defender, and the parties desire to contract with respect thereto; and

WHEREAS, ATTORNEY represents and warrants that it is competent to render all legal services required by the Contract.

NOW, THEREFORE, the Parties hereto agree:

1. **RFP NUMBER 9554**; - COUNTY's issuance of, and ATTORNEY's response to, RFP Number 9554 is hereby incorporated and made a part of this Contract, as are all Contract attachments referenced herein.
2. **SCOPE OF ATTORNEY SERVICES**: -ATTORNEY agrees to perform functions, duties, and professional legal services in accordance with Attachment A, ATTORNEY Scope of Service.
3. **CONTRACT TERMS; TERMINATION**:
A. Term: This Contract shall be for a period of four (4) years, with options to renew for two subsequent two-year extensions, unless extended by mutual written consent or terminated per this Section.

B. Termination:

1. This Contract may be terminated by the Parties upon the provision of no less than one hundred twenty (120) calendar days' written notice.
2. COUNTY may terminate this Contract by providing no less than thirty (30) calendar days' advance written notice for any of the following actions or in-actions by ATTORNEY:
 - a. Pleading no contest to, or being found guilty of, a felony or a crime involving moral turpitude;
 - b. Persistent failure to perform the duties of this Contract, including failure to provide required information and reports;
 - c. Disability that substantially interferes with the performance of duties and is permanent or is likely to become permanent;
 - d. Conduct prejudicial to the administration of justice which brings the ATTORNEY into disrepute; or
 - e. Undertaking to represent at COUNTY expense persons who are not, in fact, indigent and, thus, are not entitled to ATTORNEY services;
 - f. Refusal of the Placer County Superior Court (Court) to appoint ATTORNEY as conflict counsel in criminal cases;
 - g. Disqualification from the practice of law.

4. REPRESENTATION OF CASES AFTER EXPIRATION:

- A. At the expiration of this Contract, ATTORNEY shall carry to conclusion all cases pending at that time unless relieved by the Court.
- B. Compensation for services under this Section as mandated by the Court shall be based upon the rates set forth in the then-effective Court rules and in accordance with Penal Code Section 987.3. A prerequisite to any payment for such services shall be the submission by ATTORNEY to COUNTY of full documentation of services rendered, rates charged and activities billed.
- C. As to pending cases where the Courts are willing to authorize a substitution of counsel for a new provider of COUNTY conflict public defender services, at the expiration of the Contract, ATTORNEY shall be relieved of the obligation to provide further representation.
 1. At the expiration of this Contract, ATTORNEY agrees to assign all existing, open assigned cases and closed-case files and other applicable records to the successor conflict public defender.
 2. Attorney shall execute any and all documents necessary to effect this provision.

5. **CONTRACT COMPENSATION:**

- A. COUNTY agrees to pay ATTORNEY, as full compensation for services herein, the total sum of Four Million Eight Hundred Thirty Five Thousand Six Hundred Sixty Two Dollars (\$4,835,662) for a four (4) year service period, payable in monthly installments in accordance with the payment schedule on Attachment B.
- B. Upon written agreement of the Parties, the payment schedule on Attachment B may be amended by COUNTY for the purpose of advancing funds, which may become necessary for ATTORNEY to procure new office space. Such payment schedule amendment shall in no way whatsoever mean, or imply to mean, that the reimbursable value of this contract has changed, unless changes are provided to the total contract value in this Section by written agreement of the Parties.
- C. ATTORNEY agrees to defend up to two (2) non-capital homicide cases within a two (2) year time period. Any additional non-capital homicide cases appointed by the Court, would be paid for by COUNTY as additional compensation upon proper Court order for services in accordance with Court rules, and only upon the submission of a proper claim by service provider in accordance with COUNTY procedures.
- D. ATTORNEY shall be entitled to no additional compensation or reimbursement for any cost incurred in the provision of services required by this Contract unless additional compensation is authorized pursuant to subsection (C) above, Section 7 or 10 herein.
- E. ATTORNEY failure to provide reports to COUNTY pursuant to Section 17 herein within twenty (20) calendar days following the end of each month will result in a monthly payment withholding of ten percent (10%) until such time as the reports are delivered. Upon delivery of reports, COUNTY will immediately prepare a payment document representing any amounts withheld pursuant to this Section, and to be processed by the Auditor/Controller.
- F. ATTORNEY agrees to accept appointment of cases outside this contract to assist with any transition involving primary public defense services, to the extent staff is available and caseloads permit. Attorney will be compensated on an hourly basis based upon the rates set forth in the local Court rules.

6. **PARTIES' COOPERATIVE APPROACH TO NEW PROGRAMS AND GRANT FUNDING:**

Parties agree to work cooperatively in the pursuit of additional funding that may become available for application by public defender programs; provided, however, that such additional revenue is not utilized to supplant existing funding for services. With Parties' prior written agreement, and at COUNTY's discretion, application of COUNTY resources related to this section may be invoiced to, and reimbursed by, ATTORNEY. Any funds pursuant to this section, which involve, as a condition of funding, a pass through from COUNTY to ATTORNEY, may correspondingly involve the assessment of an ongoing COUNTY administrative fee pursuant to any such grant application budget and award. Pass-through grants pursuant to this Section will require a written contract amendment pursuant to Section 34 herein, prior to transfer of any such funds from COUNTY to ATTORNEY.

7. **ADDITIONS TO COURT CALENDAR:**

COUNTY agrees to work with ATTORNEY to address any material changes to the court calendar which would impact ATTORNEY operations.

8. **INCIDENTAL EXPENSES; COST TO COUNTY:**

Costs for expert witnesses, special investigations, tests, interpreters and reports from third parties, and the cost of non-capital homicide investigations, medical and psychiatric expenses and ancillary costs may supplement the services to be provided under this contract. Such costs shall be borne by COUNTY only upon proper Court order for services in accordance with Court rules, and paid by COUNTY only upon the submission of a proper claim by service provider in accordance with COUNTY procedures.

9. **INCIDENTAL EXPENSES; COST TO ATTORNEY:**

ATTORNEY shall provide, at ATTORNEY's expense, all costs of operations required for the competent and effective performance of ATTORNEY, including but not limited to office space, utilities, supplies, attorneys, support staff, investigators, travel, library, communications including information technology, equipment, and all other costs of operations of any kind or nature whatsoever, except as provided in Section 10 herein.

10. **EXTRAORDINARY EXPENSES RELATED TO AN EXTRAORDINARY CASE:**

A. An "Extraordinary Case" refers to capital cases, change of venue cases and those cases deemed by the Court to be extraordinary. Additional compensation for such cases may be provided in accordance with local Court rules.

B. Application for funds under this section shall be by affidavit, and shall specify that the funds are reasonably necessary for the preparation or presentation of the defense. Application shall also include the specific facts or circumstances that make the application necessary, along with cost detail and an estimate of total funds expected to be sought for the case.

1. The application shall be heard by a Judge of the Court and certified by said Judge as an "Extraordinary Case" prior to application to COUNTY by ATTORNEY for funds under this Section.

2. Such application for funds shall include a copy of the "Extraordinary Case" certification from the Court.

11. **DETERMINATION OF CLIENT FINANCIAL ELIGIBILITY:**

A. As requested by the Court, ATTORNEY will participate in the determination of a defendant's financial ability to employ counsel pursuant to Government Code 27707: the court in which the proceeding is pending may make the final determination in each case as to whether a defendant or person described in Attachment A is financially able to employ counsel and qualifies for the services of the public defender; and

- B. ATTORNEY shall, however, render legal services as provided in Attachment A for any person the Court determines is not financially able to employ counsel until such time as a contrary determination is made by the Court. If a contrary determination is made, ATTORNEY thereafter may not render services for such person except in a proceeding to review the determination of that issue or in an unrelated proceeding; and
- C. In order to assist the Court or ATTORNEY in making the determination, the Court or ATTORNEY may require a defendant or person requesting representation to file a financial statement under penalty of perjury. The financial statement shall be confidential and privileged and shall not be admissible as evidence in any criminal proceeding except the prosecution of an alleged offense of perjury based upon false material contained in the financial statement. The financial statement shall be made available to the prosecution only for purposes of investigation of an alleged offense of perjury based upon false material contained in the financial statement at the conclusion of the proceedings for which such financial statement was required to be submitted. The financial statement shall not be confidential and privileged in a proceeding under Section 987.8 of the Penal Code.

12. **PERFORMANCE UNDER CONTRACT TO BE PRINCIPAL BUSINESS OF ATTORNEY; LIMITED PRIVATE PRACTICE PERMISSIBLE:**

- A. ATTORNEY represents and warrants to the COUNTY that, while this Contract is in effect, the performance of the legal services under this Contract shall be its principal and first priority business; and
- B. ATTORNEY covenants to decline to advise or represent clients, or undertake cases or legal projects, which would, or in the foreseeable future could, conflict with services under this Contract.

13. **LEGAL CONFLICTS OF INTEREST:**

- A. ATTORNEY shall adhere to the Superior Court's Policy for Declaration of Conflicts of Interest in Criminal and Juvenile Cases (Attachment F) in its then-current form, for determining which cases to decline in the event that a conflict of interest requires ATTORNEY to continue representation of one client while seeking relief from further representation of another; and
- B. If a Court determines that a conflict of interest exists which would prevent ATTORNEY from representing one or more eligible defendants in a pending criminal proceeding, ATTORNEY shall be relieved of providing services as required by this agreement as to such proceeding.

14. **DISCRIMINATORY CONDUCT PROHIBITED:**

ATTORNEY and its subcontractors shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, color, sex, religion, national origin, age, disability, sexual orientation, political beliefs, veteran's status, other non-merit factors unrelated to job duties, or any other legally protected characteristic in: hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; and accepting or terminating representation of any client.

15. **DRUG-FREE WORKPLACE:**

ATTORNEY and its subcontractors shall comply with the provisions of a Drug-Free Workplace in accordance with Government Code Section 8355.

16. **SEXUAL HARASSMENT AND HOSTILE WORKPLACE PROHIBITION:**

ATTORNEY shall maintain an organization and workplace free of legally defined harassment, including but not limited to: Quid Pro Quo or unwelcome sexual advances made either explicitly or implicitly as a term or condition of employment, advancement used as the basis for employment decisions, or determination of service level; a hostile or offensive environment unreasonably interfering with an individual's work or performance; harassment by non-employees; and any related retaliation.

17. **APPOINTMENT OF OTHER COUNSEL; COSTS TO BE BORNE BY ATTORNEY:**

- A. Should ATTORNEY be unable, ineligible or unavailable to provide services included in this Contract for any reason other than a documented legal conflict of interest in accordance with Section 12 herein, or is dilatory in providing such services, the Court may appoint other counsel; and
- B. If the Court should determine that other counsel must be appointed for any reason other than a documented conflict of interest, such as the granting of a Marsden motion, ATTORNEY shall be responsible for all costs associated with such court-appointed counsel; and
- C. Compensation provided in Section 5 shall be offset by an amount equivalent to the cost COUNTY incurs as a result of services provided by such other counsel as described in this Section. COUNTY shall provide cost detail to ATTORNEY concerning any such payment offsets at the time an offset is effected.

18. **RECORDS AND REPORTS:**

- A. ATTORNEY shall maintain a case reporting and management information system to provide COUNTY with financial, caseload and performance data and management, and workload and statistical reports as set forth in RFP Number 9554. ATTORNEY shall maintain records and reports:
 - 1. As required and requested by COUNTY including, but not limited to, reports to enable the Court, in appropriate proceedings, to determine the amount of reasonable attorney's fees for the purpose of assessment of costs pursuant to Penal Code 987.4 and 987.8; and
 - 2. To enable COUNTY to obtain reimbursement from the state of California under the provisions of Government Code 15200-15204; and
 - 3. As otherwise required by COUNTY to determine sufficient caseload management; and
 - 4. At a minimum, such records shall be maintained for each case in accordance with the requirements of RFP Number 9554 and Attachment C, and shall include the number of hours spent by ATTORNEY, associate attorneys, support staff, investigators, associated charges, and any other related charges incurred in the defense of said case, provided that such disclosure shall not violate attorney-client privilege.

- B. ATTORNEY shall provide the Presiding Judge of the Superior Court with the names of the attorneys of the firm, their experience, qualifications, and areas of specialization, and shall update this information as applicable and necessary.
- C. ATTORNEY shall submit a monthly report to the COUNTY on the then-current COUNTY prescribed report (Attachment D) no later than the twentieth (20th) calendar day of each following month. Only those cases determined by the COUNTY and the Courts as fitting the Definition of a Case shall be reported.

19. **RECORDS RETENTION AND COUNTY ACCESS:**

- A. ATTORNEY shall maintain, in safe storage, all significant administrative files, i.e. personnel and financial, including time records and billing reports, for at least seven (7) years; and
- B. ATTORNEY shall maintain case records in accordance with a Records Management Retention schedule, or longer as necessary for compliance with applicable sections of California law.
 - 1. Death penalty and homicide case records shall be retained for at least the life of the individual sentenced, with documents copied and mailed to COUNTY pertaining to any records released to other entities per Court order; and
 - 2. County shall have access to such files as necessary for administration of this Contract or a successor Contract. COUNTY guarantees confidential treatment of such files. COUNTY shall not be permitted access to any case file without a Court order or the written consent of ATTORNEY.

20. **STANDARDS OF REPRESENTATION:**

- A. ATTORNEY agrees to follow applicable public defender standards published by the American and California Bar Associations, including the California Bar Association's Rules of Professional Conduct; and applicable provisions of California law; and
- B. Attorney shall provide quality representation of indigent defendants consistent with constitutional and professional standards, providing diligent and conscientious services to clients.
- C. Parties agree that the application of standards contained in this Section shall not represent financial compensation to ATTORNEY over and above the amount stated in Section 5 herein.

21. **CASE ASSIGNMENT AND REVIEW:**

Case assignment shall be based on counsel's experience and/or training in order to provide ethical, high-quality representation.

22. **OVERSIGHT:**

- A. COUNTY and a representative of the Superior Court bench shall confer on at least a quarterly basis to maintain oversight and evaluation of public defender services. Such oversight shall include recommendations and related implementation review applicable to maintaining services in conformance with standards as set forth in this Contract, and generally acceptable practices by public defender programs in California; and

- B. COUNTY and Courts shall review and provide input concerning any changes to ATTORNEY staff; and
- C. COUNTY may, at its discretion, appoint an Oversight Committee to satisfy the conditions in this Section.
23. **OFFICE REQUIREMENTS:**
Business Office: ATTORNEY shall maintain a publicly accessible office within Placer County as necessary to competently and capably fulfill the requirements of the Contract.
24. **STAFFING REQUIREMENTS:**
A. ATTORNEY shall employ attorneys, investigators, law clerks, interviewers and administrative staff sufficient to provide coverage for all Courts located throughout Placer County, and as necessary to competently and capably fulfill the requirements of this Contract, at a minimum as follows:
1. FY 2006-07 Staffing: minimum attorney staff shall be equivalent to eight (8) full time attorneys; one (1) part-time law clerk; three (3) investigators; four (4) full-time support staff;
2. FY 2008-09 Additional Staff: one (1) additional full-time attorney, for a total of nine (9) full-time attorneys, and one (1) additional full-time support staff for a total of five (5) support staff.
- B. ATTORNEYS' failure to provide minimum staff levels as stated herein may result in payment deductions pursuant to Section 16 herein; and
- C. Changes to ATTORNEY staff included in the RFP response shall involve input from COUNTY and the Court bench.
25. **SUPERVISION AND EVALUATION:**
ATTORNEY shall maintain a procedure for internal systematic supervision and evaluation of staff performance. Performance evaluations are to be based upon personal monitoring by the ATTORNEY's Director or Chief Attorney and shall be augmented by regular, formalized comments by judges, other defense lawyers and clients.
26. **PROFESSIONAL DEVELOPMENT**
A. ATTORNEY shall provide funds and sufficient staff-time to permit systematic and comprehensive training to attorneys and professional staff at least in accordance with the State Bar's Minimum Continuing Legal Education (MCLE) requirements. Resources shall include continuing legal education programs, attendance at local training programs, and the opportunity to review training and professional publications and tapes; and
- B. ATTORNEY shall advise the COUNTY and Court at the beginning of each fiscal year as to ATTORNEY'S training plan and goals and objectives for all employees.
27. **MENTORING:**

ATTORNEY shall maintain a process by which the most skilled attorneys are available to assist in the development of new attorneys and to those ready to begin handling more difficult cases.

28. INDEPENDENT CONTRACTOR STATUS:

- A. Nothing in this Contract is intended nor shall be construed to create an employer-employee relationship, a joint-venture relationship, or to allow COUNTY to exercise direction or control over the professional manner in which ATTORNEY performs the services under this Contract; provided always that the services to be provided herein by ATTORNEY are in a manner consistent with the standards governing such services and the provisions of this Contract. For all purposes arising under this Contract, ATTORNEY shall be an independent contractor as provided by law; and ATTORNEY and each and every member, employee, agency, servant, partner, shareholder, contractor or subcontractor of ATTORNEY shall not be, for any purpose of the Contract, an employee of the COUNTY. Furthermore, this Contract shall not under any circumstances be construed or considered to be a joint venture. As an independent contractor, the following shall apply under this Contract:
1. ATTORNEY shall determine the method, details and means of performing the services to be provided as described in this Contract;
 2. ATTORNEY shall be responsible to COUNTY for the requirements and results specified by this Contract and shall not be subject to COUNTY's control with respect to the means, method, physical actions or activities of ATTORNEY in fulfillment of the requirements of the Contract;
 3. ATTORNEY is not, and shall not, be entitled to receive from or through COUNTY, and COUNTY shall not provide, or be obligated to provide, ATTORNEY with Workers' Compensation coverage, unemployment insurance coverage or any other type of employment or worker insurance or benefit required by any federal, state or local law or regulation for, or normally afforded to, any COUNTY employee;
 4. ATTORNEY shall not be entitled to participate in, or receive any benefit from, or make any claim against, any COUNTY employee benefit program, including, but not limited to coverage required or provided by and federal, state or local law or regulation for, or normally afforded to, any employee of COUNTY;
 5. COUNTY shall not withhold or pay, on behalf of ATTORNEY, any federal, state or local tax, including but not limited to, any personal income tax owed by ATTORNEY;
 6. ATTORNEY shall not have the authority, express or implied, to act on behalf of, bind or obligate COUNTY or any COUNTY department, COUNTY agent, or COUNTY employee in any way.

29. HOLD HARMLESS AND INDEMNIFICATION:

- A. ATTORNEY and its subcontractors agree to protect, defend, indemnify, and hold COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the Contract. ATTORNEY agrees to investigate, handle, respond to, provide

defense for, and defend any such claims, demand, or suit at its sole expense. ATTORNEY also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against ATTORNEY or the COUNTY, or to enlarge in any way the ATTORNEY'S liability but is intended solely to provide for indemnification of COUNTY from liability for damages or injuries to third persons or property arising from ATTORNEY'S performance pursuant to this Contract.

B. As used above, the term COUNTY means Placer County or its officers, agents, employees, and volunteers.

30. **INSURANCE AND INDEMNITY REQUIREMENTS:**

Incorporated herein and made a part of this agreement are the Insurance Requirements specified in RFP Number 9554, Attachment E, Insurance and Indemnity Requirements.

31. **NON ASSIGNMENT OF CONTRACT:**

Inasmuch as this Contract is intended to secure the specialized services of ATTORNEY, ATTORNEY shall not assign, transfer, or subcontract this Contract or any part thereof, without the written consent of COUNTY; nor shall ATTORNEY assign any monies due or to become due herein without the written consent of COUNTY.

32. **SUBCONTRACTORS REPRESENTED IN ATTORNEY RFP RESPONSE:**

ATTORNEY represents and COUNTY hereby consents, contingent upon the delivery of certificates of insurance for each contracted attorney, in the type and amount specified in Section 29, prior to the effective date of this Contract, to the utilization of one (1) contracted attorney: Barry Zimmerman.

33. **COVENANT:**

This Contract has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the state of California. All duties and obligations of the parties created herein are performable in Placer County, which shall be the venue for any action, or proceeding that may be brought, or arise out of, in connection with, or by reason of this Contract.

34. **INTERPRETATION OF CONTRACT:**

No inference in the interpretation or construction of this Contract is to be drawn or given because of the fact that it has been drawn by the COUNTY. The parties agree and represent that this Contract resulted from an equal bargaining position and that it reflects the entire understanding and agreement between the parties on those matters to which it relates.

35. **NO TERMS NOT INCLUDED, ENTIRE CONTRACT, AND MODIFICATION:**

A. This Contract contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or likewise, regarding the subject matter of the Contract shall be deemed to exist or to bind either of the parties hereto; and

B. This Contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations to this Contract shall be effective unless in writing and signed by both parties.

C. ATTORNEY specifically acknowledges that in entering into and executing this Contract, ATTORNEY relied solely upon the representations and agreements contained in RFP Number 9554, and this Contract, and no others.

COUNTY OF PLACER, "COUNTY"

By: _____
Bill Santucci, Chairman,
Placer County Board of Supervisors

ATTESTED BY:

PLACER COUNTY CLERK OF THE BOARD

Law Office of Mark Berg, "ATTORNEY":

Dated: _____

By: _____

Dated: _____

By: _____

PLACER COUNTY SUPERIOR COURT

Dated: _____

By: _____

Dated: _____

Approved as to Form:

By: 
Anthony LaBouff, County Counsel

- Attachment A: Attorney Scope of Service
- Attachment B: Contract Payment Schedule
- Attachment C: Attorney Case Records Requirement
- Attachment D: Indigent Public Defense Program Monthly Statistical Report
- Attachment E: Insurance and Indemnity Requirements
- Attachment F: Superior Court's Policy for Declaration of Conflicts of Interest in Criminal and Juvenile Cases

INDIGENT DEFENSE SERVICES
SCOPES OF WORK

1.0 Category A – Primary Public Defender

- 1.1 Primary Public Defender services are utilized for the legal representation of financially eligible accused persons without expense to the defendant except as provided by Section 987.8 of the Penal Code. Any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the courts is eligible for indigent defense services at all stages of the proceedings, including the preliminary examination. The primary public defender gives counsel and advice to an accused about any charges against the accused upon which he is conducting defense. In addition, the primary public defender shall prosecute all appeals to a higher court or courts of any person who has been convicted where, in the opinion of the primary public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction. All legal services described in this RFP are from the time of appointment to final adjudication or disposition and, as necessary, filing appeal or other legal documents pursuant to Penal Code Section 1240.1.
- 1.2 Services related to juvenile dependency and family law proceedings are contracted directly by the Courts, with the exception of: "Appointed Counsel" for Termination of Parental Rights in Adoption proceedings (Family Code, Chap 5, Section 7660-7730 and; "Appointed Counsel" for Minor Child to Declare Free from Parental Custody and Control (Family Code Part 4, Chap 1, 7800-7895, and; "Appointed Counsel" for Guardianship, Conservatorship, and Other Protective Proceedings (Probate Code, Chap 4, Section 1471,1472. Also, per Probate Code section 1471 and 1472 the court can appoint counsel for a proposed conservatee or a proposed ward (i.e. the minor), and; "Appointed Counsel" for Contempt proceedings in either Civil or Family cases where criminal charges could be preferred. These would be covered under GC 77003."
- 1.3 Additional primary public defender services include:
- (a) Prosecution of actions for the collection of wages and other demands of any person who is not financially able to employ counsel where the sum involved does not exceed One Hundred Dollars (\$100), and where, in the judgment of the primary public defender, the claim urged is valid and enforceable in the Courts.

- (b) Representation of any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the primary public defender, the person is being persecuted or unjustly harassed.
- (c) Representation of any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code.
- (d) Representation of any person who is not financially able to employ counsel in proceedings under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, relating to the Lanterman-Petris-Short Act.
- (e) Representation of any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, relating to Juvenile Court Law, when such proceedings are concerned with a person alleged to be or who has been found to be within the description of the provisions of Sections 601 and 602 thereof.
- (f) Representation of any indigent person who requires counsel pursuant to Section 686.1 of the Penal Code (capital cases).
- (g) Representation of any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile delinquency proceedings.
- (h) Representation of all indigent persons in paternity cases in which the County or the state has filed suit against such indigent individual.
- (i) Representation of any indigent person falling under mental health proceedings, including attending these hearings at any court or other location as specified by the Court.
- (j) Representation of all indigent persons in Habeas Corpus proceedings pertinent to underlying criminal cases.
- (k) In those cases in which a change of venue is ordered transferring a case from Placer County to another county, the primary public defender shall defend such defendant in such other county.

- 1.4 The Contractor shall maintain records on the cases assigned under the contract, including, but not limited to, the data elements listed in **Attachment C**.
- 1.5 The Contractor shall also submit a monthly report, as detailed in **Attachment D**, ad hoc reports as periodically requested by the County, an annual report, and other relevant workload and case related statistics as requested. Failure to provide the monthly report to the County within twenty (20) calendar days from the end of month and within thirty (30) calendar days of a quarterly or annual period may result in a monthly payment withholding of 10% until the reports are delivered. Upon delivery of reports, the County will immediately prepare a payment document to be processed by the Auditor/Controller. In addition, the offeror will be required to actively participate in any and all cost-recapture mechanisms for services provided as specified by statute, county policy or local court rule.

2.0 Category B – First Level Conflict Public Defender

- 2.1 Conflict Public Defender Services are utilized for the legal representation of accused persons as described under Category A where the Primary Public Defender has a legal conflict of interest or other lawful liability in accordance with Section 987.2 of the Penal Code. All legal services described in this RFP are from the time of appointment up to and including final adjudication or disposition and, as necessary, filing appeal or other legal documents pursuant to Penal Code Section 1240.1.
- 2.2 The responsibility to defend the individual extends to change of venue cases. Special payment arrangements will be made for death penalty offenses.
- 2.3 The Contractor will also be responsible for providing the County with relevant workload and case-related statistics as required, and to actively participate in any and all cost-recapture mechanisms for services provided as specified by statute, County policy or local court rules.
- 2.4 The Contractor will be responsible for all felony conflict cases that originate in the Tahoe court once the case has been transferred out of the Tahoe court. The majority of these cases will be post preliminary hearing, however, on occasion; some cases will be prior to preliminary hearing. The Contractor will not carry any misdemeanor cases that originate in the Tahoe court.

3.0 Category C – Second Level Conflict Public Defender Services

- 3.1 Second Level Conflict services will be utilized for the legal representation of accused persons where the primary and conflict public defenders have a legal conflict of interest. All legal services described in this RFP are from the time of appointment up to and including final adjudication or disposition and, as necessary, filing appeal or other legal documents pursuant to Penal Code Section 1240.1.
- 3.2 The responsibility to defend the individual extends to change of venue cases. Special payment arrangements will be made for death penalty offenses.
- 3.3 The Contractor will also be responsible for providing the County with relevant workload and case-related statistics, as required, and to actively participate in any and all cost-recapture mechanisms for services provided as specified by statute, County policy or local court rules.

ATTACHMENT B - CONTRACT PAYMENT SCHEDULE
Law Offices of Mark A. Berg

Payment Due:		Annual Balance	Remaining
YEAR ONE - July 1, 2006 - June 30, 2007			\$ 1,057,968.00
July 1, 2006	\$ 88,164.00	\$ 969,804.00	
August 1, 2006	\$ 88,164.00	\$ 881,640.00	
September 1, 2006	\$ 88,164.00	\$ 793,476.00	
October 1, 2006	\$ 88,164.00	\$ 705,312.00	
November 15, 2006	\$ 88,164.00	\$ 617,148.00	
December 1, 2006	\$ 88,164.00	\$ 528,984.00	
January 1, 2007	\$ 88,164.00	\$ 440,820.00	
February 1, 2007	\$ 88,164.00	\$ 352,656.00	
March 1, 2007	\$ 88,164.00	\$ 264,492.00	
April 1, 2007	\$ 88,164.00	\$ 176,328.00	
May 1, 2007	\$ 88,164.00	\$ 88,164.00	
June 1, 2007	\$ 88,164.00	\$ -	
Total Year One	\$ 1,057,968.00		
YEAR TWO - July 1, 2007 - June 30, 2008			\$ 1,100,286.00
July 1, 2007	\$ 91,690.50	\$ 1,008,595.50	
August 1, 2007	\$ 91,690.50	\$ 916,905.00	
September 1, 2007	\$ 91,690.50	\$ 825,214.50	
October 1, 2007	\$ 91,690.50	\$ 733,524.00	
November 1, 2007	\$ 91,690.50	\$ 641,833.50	
December 1, 2007	\$ 91,690.50	\$ 550,143.00	
January 1, 2008	\$ 91,690.50	\$ 458,452.50	
February 1, 2008	\$ 91,690.50	\$ 366,762.00	
March 1, 2008	\$ 91,690.50	\$ 275,071.50	
April 1, 2008	\$ 91,690.50	\$ 183,381.00	
May 1, 2008	\$ 91,690.50	\$ 91,690.50	
June 1, 2008	\$ 91,690.50	\$ -	
Total Year Two	\$ 1,100,286.00		
YEAR THREE - July 1, 2008 - June 30, 2009			\$ 1,312,455.00
July 1, 2008	\$ 109,371.25	\$ 1,203,083.75	
August 1, 2008	\$ 109,371.25	\$ 1,093,712.50	
September 1, 2008	\$ 109,371.25	\$ 984,341.25	
October 1, 2008	\$ 109,371.25	\$ 874,970.00	
November 1, 2008	\$ 109,371.25	\$ 765,598.75	
December 1, 2008	\$ 109,371.25	\$ 656,227.50	
January 1, 2009	\$ 109,371.25	\$ 546,856.25	
February 1, 2009	\$ 109,371.25	\$ 437,485.00	
March 1, 2009	\$ 109,371.25	\$ 328,113.75	
April 1, 2009	\$ 109,371.25	\$ 218,742.50	
May 1, 2009	\$ 109,371.25	\$ 109,371.25	
June 1, 2009	\$ 109,371.25	\$ -	
Total Year Three	\$ 1,312,455.00		
YEAR FOUR - July 1, 2009 - June 30, 2010			\$ 1,364,953.00
July 1, 2009	\$ 113,746.08	\$ 1,251,206.92	
August 1, 2009	\$ 113,746.08	\$ 1,137,460.83	
September 1, 2009	\$ 113,746.08	\$ 1,023,714.75	
October 1, 2009	\$ 113,746.08	\$ 909,968.67	
November 1, 2009	\$ 113,746.08	\$ 796,222.58	
December 1, 2009	\$ 113,746.08	\$ 682,476.50	
January 1, 2010	\$ 113,746.08	\$ 568,730.42	
February 1, 2010	\$ 113,746.08	\$ 454,984.33	
March 1, 2010	\$ 113,746.08	\$ 341,238.25	
April 1, 2010	\$ 113,746.08	\$ 227,492.17	
May 1, 2010	\$ 113,746.08	\$ 113,746.08	
June 1, 2010	\$ 113,746.08	\$ -	
Total Year Four	\$ 1,364,953.00		

**INDIGENT DEFENSE SERVICES
DATA COLLECTION REQUIREMENTS**

1. Client Records

The contractor must maintain reliable records to permit the County to audit billings, workload and performance, including client records that identify:

1. Name of Client
2. Date assigned to the case
3. Financial eligibility of client
4. Category of representation:
 - a. Juvenile Delinquency
 - b. Adult Misdemeanor
 - c. Adult Felony
 - d. Paternity
 - e. Adult Probation
 - f. LPS/Conservatorship
 - g. Drug Court
 - h. Modifications:
 - From Juvenile Dependency
 - To Juvenile Dependency
 - i. Other
5. Case number
6. The charge or nature of the case
7. Applicable code section(s)
8. Hours worked, by case and major task; e.g. investigations, court appearances
9. Name(s) of attorney staff
10. Other staff
11. Outside personnel or expert witnesses used
13. Disposition of cases
14. Judge of court disposing of case
15. Record of court appearances
16. Date case closed
17. Attorney shall refer client to Revenue Services for evaluation of ability to pay as provided in the process approved by the County and Courts. Attorney shall keep sufficient records to account for hours dedicated to the case for use in any subsequent hearings held by the court.

2. Financial Records

Financial records shall comply with Generally Accepted Accounting Principles (GAAP), and shall be capable of capturing costs by case.

PLACER COUNTY INDIGENT PUBLIC DEFENSE Monthly Statistical Report

Submission required 20 days following the end of each month

Name of Provider: _____

Month/Year: _____

Date Prepared: _____

Prepared by: _____

Case/Load:	+			-			Disposition of Closed Cases:						Total Hours	
	Beg Cases Outstanding	Cases Appointed	Cases Closed	Balance	FTA	Dismissed	Relieved	Relieved Conflict	GUILTY Pleas	Trials	Trials to Verdict			
Adult Felony														
Adult Misdemeanor														
Adult Violation of Probation														
Juvenile Delinquency														
LPS/Conservatorship														
Paternity														
Drug Court														
Civil Contempt														
Criminal Contempt														
Proposition 36														
Mental Health Modification														
Miscellaneous														
Other assigned cases (list type):														
TOTALS	0	0	0	0	0	0	0	0	0	0	0	0	0	0

CERTIFICATION STATEMENT:

I certify that the information contained in this report is true and accurate to the best of my knowledge, and that the conflicts policy has been adhered to with respect to supervisory review and approval.

Signature _____

Date: _____

Title _____

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INDIGENT PUBLIC DEFENSE CONFLICT CASE DECLARATIONS
1st LEVEL CONFLICT PUBLIC DEFENDER

Name of Provider: _____

Month/Year: _____

Please use additional sheets if necessary

Reasons for Conflict Declaration:	# of Cases conflicted to 2nd level	*Case Name	Case #	Principal Charge	Cite section from Conflict Policy for each case listed (see left margin)
1. Due to private practice					
2. Specific Section From Conflict Policy:					
3. Multiple Party Cases					
4. Conflicts with current clients					
5. Former clients as witnesses or victims					
6. Other circumstances:					
b.i. - Substantial Appearance of Conflict					
b.ii. - Staff/Family					
b.iii. - Colorable Claim/Marsden					
b.iv. - Non-frivolous suit against counsel					
b.v. - Other					
7. F - Related Case					
7 generally. Non Disclosure/Basis Privileged or Proceedings In Camera					

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PROVIDER STAFFING DETAIL

Due on the first month of each calendar quarter based on 1st month information

Name of Provider: _____
Month/Year: _____

Name	Position Title	Courtroom Assignment
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INDIGENT DEFENSE SERVICES
INDEMNIFICATION AND INSURANCE REQUIREMENTS

All Contractors and Subcontractors shall adhere to the following indemnification and insurance requirements:

1.0 HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

Contractor hereby agrees to protect, defend, indemnify, and hold the County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of this contract or agreement. Contractor agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Contractor. Contractor also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Contractor or the County or to enlarge, in any way, the Contractor's liability, but is intended solely to provide for indemnification of the County from liability for damages or injuries to third persons or property arising from Contractor's performance pursuant to this contract or agreement.

As used above, the term "County" means Placer County or its officers, agents, employees and volunteers.

2.0 INSURANCE

Upon execution of contract, the Contractor shall file with County a Certificate of Insurance, in companies acceptable to County, with a Best's Rating of no less than A:VII showing.

2.1 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

- A) Workers' Compensation Insurance shall be provided, as required, by any applicable law or regulation. Employers' liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.
- B) If there is an exposure of injury to Contractor's employees under the U.S. Longshoremen and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

- C) Each Workers' Compensation policy shall be endorsed with the following specific language:
Cancellation Notice "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the County."
- D) Contractor shall require all sub-Contractors to maintain adequate Workers' Compensation Insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

2.1 GENERAL LIABILITY INSURANCE

- A) Comprehensive General Liability or Commercial General Liability insurance shall be provided covering all operations by, or on behalf of Contractor, covering bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for contractual liability insuring the obligations assumed by Contractor in this Agreement.
- B) One of the following forms is required:
 - 1. Comprehensive General Liability;
 - 2. Commercial General Liability (Occurrence); or
 - 3. Commercial General Liability (Claims Made).
- C) If Contractor carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
 - 1. One million dollars (\$1,000,000) each occurrence;
 - 2. One million dollars (\$1,000,000) aggregate.
- D) If Contractor carries a Commercial General Liability (Occurrence) policy:
 - 1. The limits of liability shall not be less than:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) for Products-Completed Operations;
 - iii) One million dollars (\$1,000,000) General Aggregate.
 - 2. If the policy does not have an endorsement providing that the General Aggregate Limit applies separately to this contract, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

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E) Special Claims Made Policy Form Provisions:

Contractor shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:

1. The limits of liability shall not be less than:
 - i. One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii. One million dollars (\$1,000,000) aggregate for Products-Completed Operations;
 - iii. One million dollars (\$1,000,000) General Aggregate.

The insurance coverage provided by Contractor shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

E) Endorsements:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

1. "The County, its officers, agents, employees and volunteers, and the County of Placer, its officers, agents, employees and volunteers, are to be covered as insureds for all liability arising out of operations, or on behalf of, the named insured in the performance of this Agreement."
2. "The insurance provided by the Contractor, including any excess liability or umbrella form coverage, is primary coverage to the County with respect to any insurance or self-insurance programs maintained by County, and no insurance held or owned by County shall be called upon to contribute to a loss."
3. "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to County."

2.2 AUTOMOBILE LIABILITY INSURANCE

Automobile Liability insurance shall be provided covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

2.3 PROFESSIONAL LIABILITY INSURANCE (ERRORS AND OMISSIONS)

Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than five hundred thousand dollars (\$500,000) in aggregate.

The insurance coverage provided by contractor shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

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PLACER COUNTY SUPERIOR COURT
POLICY FOR DECLARATION OF CONFLICTS OF INTEREST
(Rev. 1/19/06)

The following policy is adopted for the purpose of giving guidance to the court and counsel regarding the circumstances under which a conflict of interest is to be declared regarding the representation of a criminal defendant.

1. **APPLICATION OF THE POLICY:**
The conflicts policy shall be applicable to declarations of conflict by any appointed counsel, whether such counsel is the Placer County Public Defendant, Conflicts Firm, or private attorney appointed by the court.

2. **CONSTRUCTION OF POLICY:**
Whenever possible, consistent with legal ethics and the fundamental right of any criminal defendant to be represented by counsel who is free of conflicts of interest, this policy shall be liberally construed to *avoid* a declaration of conflict so as to give full and appropriate effect to contractual arrangements between the County of Placer and appointed counsel.

3. **MULTIPLE DEFENDANT CASES:**
 - a. Counsel appointed by the court shall not represent different defendants involved in the same or related criminal conduct, whether or not the defendants are separately or jointly charged.
 - b. Privately retained counsel shall not represent multiple defendants charged in the same criminal proceeding unless a full and knowledgeable waiver is obtained from each defendant in writing and orally in open court after inquiry by the court.
 - c. Declarations of conflict in multiple defendant cases may be made by any attorney without the prior approval of a supervising attorney.
 - d. Whenever a conflict is declared, the Public Defendant shall retain the client having the more serious or complex case from that of the Conflicts Firm; the conflicts Firm shall retain the client having the more serious or complex case from that of private appointed counsel.

4. **CONFLICTS WITH CURRENT CLIENTS:**
 - a. Counsel appointed by the court shall not represent a defendant where an *adverse* witness or victim is a client currently being represented by such counsel. For the purposes of this policy, "currently being represented" means:
 1. A client who has an active, pending charge or violation of probation,
 2. A defendant for whom counsel is actively seeking post-judgment relief, or

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3. Counsel currently is counsel of record for a minor in a juvenile delinquency or dependency proceeding, whether or not there currently is a pending petition in such juvenile proceeding.
 - b. Absent unusual circumstances, the fact that counsel represents a witness *supporting* the defendant will not disqualify counsel from representing the defendant.
 - c. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.
5. **FORMER CLIENTS AS WITNESSES OR VICTIMS:**
 - a. A declaration of conflict shall not be made merely from the fact that a former client is a victim or witness in the current action.
 - b. A declaration of conflict may be made if all of the following circumstances are present:
 1. Counsel is in possession of confidential information concerning the former client. "Confidential information" does not include information that is part of the public record or may readily be obtained by opposing counsel, such as records of conviction, employment and school records.
 2. The confidential information is relevant to the current proceeding.
 3. Counsel will or may be called upon to use the confidential information against the former client in the defense of the client in the current case.
 - c. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.
6. **DECLARATION OF CONFLICT IN OTHER CIRCUMSTANCES:**
 - a. Merely because a conflict existed in the past does not mean that there is a conflict in the current case. Each case is to be evaluated as to current conflicts. It is presumed, for example, that the Public Defender shall represent a defendant on a current probation violation, even though there had been a conflict in representation on the original case.
 - b. Counsel may declare a conflict in the following additional cases:
 1. Where there is a substantial appearance of conflict. Examples of such circumstances include former clients who were frequently represented by counsel, or cases where the former client has had a recent and substantial case with counsel.
 2. Where a witness or victim is a member of the office staff of counsel or a member of such staff's family. Merely having knowledge of or acquaintance with the witness or victim shall not be grounds for a declaration of conflict of the entire office of counsel, but may warrant re-assignment of the case within counsel's firm.
 3. Where a former client seeks to set aside a conviction and there is a colorable claim of ineffective assistance of counsel. "Colorable claim" means one which would credibly establish the possibility

that the prior counsel had failed to perform with reasonable diligence and that, in absence of counsel's failings, the conviction would not have resulted. The colorability of the claim may be determined in a procedure generally in the style of a *Marsden* motion.

4. Suit against counsel by the current client unless the suit is patently frivolous, the suit is based on grounds already determined by the court in a *Marsden* motion to be without merit, and there is no conflict of interest other than as reflected in the suit. (*People v. Horton (1995)* 11 Cal.4th 1068, 1104-1107.)
 5. Any other circumstance where counsel reasonable believes a conflict should be declared.
 - c. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.
7. WHEN A CONFLICT IS DECLARED:
- a. Conflicts shall be declared as soon as discovered.
 - b. Notice of the declaration of conflict made by the Public Defender shall be immediately given to the Conflicts Firm, including a brief explanation of the nature of the conflict.
 - c. Counsel shall safeguard any confidential information obtained from a client to avoid any unnecessary "contamination" of other counsel.
 - d. The file, absent any confidential information, shall promptly be given to the next appointed counsel. The following procedure shall be used when conflicts are discovered in cases in Departments 8 and 13: If the conflict is declared in open court with Conflicts counsel present, the file shall be exchanged in open court. If Conflicts counsel is not present, the file shall be deposited in a box for that purpose located in the clerk's office for the department.
 - e. Whenever a conflict appears possible, particularly in a multiple defendant cases, counsel will conduct themselves in a manner to minimize conflicts in any realignment of counsel.
 - f. When a conflict is declared, the new attorney generally will assume representation of the client in all pending matters, even though no conflict exists as to the other matters.
 - g. The court shall inquire into the circumstances of the conflict, including, if necessary, holding proceedings in camera. Counsel, however, shall not be required to disclose confidential information, even to the court.

**CONTRACT FOR LEGAL REPRESENTATION
OF INDIGENT PERSONS IN THE
COUNTY OF PLACER**

THIS CONTRACT is made and entered into this 13th day of June 2006, by and between the COUNTY OF PLACER ("COUNTY") and the Law Firm of Balcom & Carbone ("ATTORNEY") or jointly referred to as "Parties":

WITNESSETH

WHEREAS, the right of all persons against whom criminal prosecutions are brought to be represented by counsel is guaranteed by the Constitution of the United States and the Constitution of the state of California; and

WHEREAS, COUNTY is obligated by law to provide legal services in certain cases for persons financially unable to retain counsel; and

WHEREAS, the cost and expense of such counsel in the representation of indigent defendants is a proper and lawful charge upon COUNTY; and

WHEREAS, ATTORNEY has submitted a proposal pursuant to Request for Proposal (RFP) Number 9554 to perform second level conflict Public Defender services and related duties on a contractual basis for a period of four (4) years, with options to renew for two subsequent two-year extensions; and

WHEREAS, it is in the public interest that COUNTY employ private counsel to render the usual and customary legal services of a conflict public defender, and the parties desire to contract with respect thereto; and

WHEREAS, ATTORNEY represents and warrants that it is competent to render all legal services required by the Contract.

NOW, THEREFORE, the Parties hereto agree:

1. **RFP NUMBER 9554**: - COUNTY's issuance of, and ATTORNEY's response to, RFP Number 9554 is hereby incorporated and made a part of this Contract, as are all Contract attachments referenced herein.
2. **SCOPE OF ATTORNEY SERVICES**: -ATTORNEY agrees to perform functions, duties, and professional legal services in accordance with Attachment A, ATTORNEY Scope of Service.
3. **CONTRACT TERMS: TERMINATION**:
 - A. Term: This Contract shall be for a period of four (4) years, with options to renew for two subsequent two-year extensions, unless extended by mutual written consent or terminated per this Section.

B. Termination:

1. This Contract may be terminated by the Parties upon the provision of no less than one hundred twenty (120) calendar days' written notice.
2. COUNTY may terminate this Contract by providing no less than thirty (30) calendar days' advance written notice for any of the following actions or in-actions by ATTORNEY:
 - a. Pleading no contest to, or being found guilty of, a felony or a crime involving moral turpitude;
 - b. Persistent failure to perform the duties of this Contract, including failure to provide required information and reports;
 - c. Disability that substantially interferes with the performance of duties and is permanent or is likely to become permanent;
 - d. Conduct prejudicial to the administration of justice which brings the ATTORNEY into disrepute; or
 - e. Undertaking to represent at COUNTY expense persons who are not, in fact, indigent and, thus, are not entitled to ATTORNEY services;
 - f. Refusal of the Placer County Superior Court (Court) to appoint ATTORNEY as conflict counsel in criminal cases;
 - g. Disqualification from the practice of law.

4. REPRESENTATION OF CASES AFTER EXPIRATION:

- A. At the expiration of this Contract, ATTORNEY shall carry to conclusion all cases pending at that time unless relieved by the Court.
- B. Compensation for services under this Section as mandated by the Court shall be based upon the rates set forth in the then-effective Court rules and in accordance with Penal Code Section 987.3. A prerequisite to any payment for such services shall be the submission by ATTORNEY to COUNTY of full documentation of services rendered, rates charged, and activities billed.
- C. As to pending cases where the Courts are willing to authorize a substitution of counsel to a new provider of COUNTY conflict public defender services, at the expiration of the Contract, ATTORNEY shall be relieved of the obligation to provide further representation.
 1. At the expiration of this Contract, ATTORNEY agrees to assign all existing open assigned cases and closed case files and other applicable records to the successor conflict public defender.
 2. Attorney shall execute any and all documents necessary to effect this provision.

5. **CONTRACT COMPENSATION:**

- A. COUNTY agrees to pay ATTORNEY, as full compensation for services herein, the total sum of One Million Three Hundred Forty Four Thousand Nine Hundred Fifty Six Dollars (\$1,344,956) for a four (4) year service period, payable in monthly installments in accordance with the payment schedule on Attachment B; and
- B. Upon written agreement of the Parties, the payment schedule on Attachment B may be amended by COUNTY for the purpose of advancing funds, which may become necessary for ATTORNEY to procure new office space. Such payment schedule amendment shall in no way whatsoever mean, or imply to mean, that the reimbursable value of this contract has changed, unless changes are provided to the total contract value in this Section by written agreement of the Parties; and
- C. ATTORNEY agrees to carry up to one (1) non-capital homicide cases within a two (2) year time period. Any additional non-capital homicide cases appointed by the Court, would be paid for by COUNTY as additional compensation upon proper Court order for services in accordance with Court rules, and only upon the submission of a proper claim by service provider in accordance with COUNTY procedures; and
- D. ATTORNEYS' failure to provide reports to COUNTY pursuant to Section 16 herein within twenty (20) calendar days following the end of each month will result in a monthly payment withholding of ten percent (10%) until such time as the reports are delivered. Upon delivery of reports, COUNTY will immediately prepare a payment document representing any amounts withheld pursuant to this Section, and to be processed by the Auditor/Controller; and
- E. ATTORNEY agrees to accept appointment of cases outside this contract to assist with any transition involving primary public defense services, to the extent staff is available and caseloads permit. Attorney will be compensated on an hourly basis in accordance with local Court rules; and
- F. COUNTY is not obligated to compensate ATTORNEY for any month in which the Court, for any reason, fails or refuses to appoint ATTORNEY second level conflict cases.

6. **PARTIES' COOPERATIVE APPROACH TO NEW PROGRAMS AND GRANT FUNDING:**

Parties agree to work cooperatively in the pursuit of additional funding that may become available for application by public defender programs; provided, however, that such additional revenue is not utilized to supplant existing funding for services. With Parties' prior written agreement, and at COUNTY's discretion, application of COUNTY resources related to this section may be invoiced to, and reimbursed by, ATTORNEY. Any funds pursuant to this section, which involve, as a condition of funding, a pass through from COUNTY to ATTORNEY, may correspondingly involve the assessment of an ongoing COUNTY administrative fee pursuant to any such grant application budget and award. Pass-through grants pursuant to this Section will require a written contract amendment pursuant to Section 33 herein, prior to transfer of any such funds from COUNTY to ATTORNEY.

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7. **EXTRAORDINARY EXPENSES: COST TO COUNTY:**

Costs for expert witnesses, special investigations, tests, interpreters and reports from third parties, and the cost of non-capital homicide investigations, medical and psychiatric expenses and ancillary costs may supplement the services to be provided under this contract. Such costs shall be borne by COUNTY only upon proper Court order for services in accordance with Court rules, and paid by COUNTY only upon the submission of a proper claim by service provider in accordance with COUNTY procedures.

8. **INCIDENTAL EXPENSES: COST TO ATTORNEY:**

ATTORNEY shall provide, at ATTORNEY's expense, all costs of operations required for the competent and effective performance of ATTORNEY, including but not limited to office space, utilities, supplies, attorneys, support staff, investigators, travel, library, communications including information technology, equipment, and all other costs of operations of any kind or nature whatsoever.

9. **DETERMINATION OF CLIENT FINANCIAL ELIGIBILITY:**

A. As requested by the Court, ATTORNEY will participate in the determination of a defendant's financial ability to employ counsel pursuant to Government Code 27707: the court in which the proceeding is pending may make the final determination in each case as to whether a defendant or person described in Attachment A is financially able to employ counsel and qualifies for the services of the public defender; and

B. ATTORNEY shall, however, render legal services as provided in Attachment A for any person the Court determines is not financially able to employ counsel until such time as a contrary determination is made by the Court. If a contrary determination is made, ATTORNEY thereafter may not render services for such person except in a proceeding to review the determination of that issue or in an unrelated proceeding; and

C. In order to assist the Court or ATTORNEY in making the determination, the Court or ATTORNEY may require a defendant or person requesting representation to file a financial statement under penalty of perjury. The financial statement shall be confidential and privileged and shall not be admissible as evidence in any criminal proceeding except the prosecution of an alleged offense of perjury based upon false material contained in the financial statement. The financial statement shall be made available to the prosecution only for purposes of investigation of an alleged offense of perjury based upon false material contained in the financial statement at the conclusion of the proceedings for which such financial statement was required to be submitted. The financial statement shall not be confidential and privileged in a proceeding under Section 987.8 of the Penal Code.

10. **PERFORMANCE UNDER CONTRACT TO BE PRINCIPAL BUSINESS OF ATTORNEY; LIMITED PRIVATE PRACTICE PERMISSIBLE:**

A. ATTORNEY represents and warrants to the COUNTY that, while this Contract is in effect, the performance of the legal services under this Contract shall be its principal and first priority business; and

B. ATTORNEY covenants to decline to advise or represent clients, or undertake cases or legal projects, which would, or in the foreseeable future could, conflict with services under this Contract.

11. **LEGAL CONFLICTS OF INTEREST:**

A. ATTORNEY shall adhere to the Superior Court's Policy for Declaration of Conflicts of Interest in Criminal and Juvenile Cases (Attachment F) in its then-current form, for determining which cases to decline in the event that a conflict of interest requires ATTORNEY to continue representation of one client while seeking relief from further representation of another; and

B. If a Court determines that a conflict of interest exists which would prevent ATTORNEY from representing one or more eligible defendants in a pending criminal proceeding, ATTORNEY shall be relieved of providing legal services in that proceeding.

12. **DISCRIMINATORY CONDUCT PROHIBITED:**

ATTORNEY and its subcontractors shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, color, sex, religion, national origin, age, disability, sexual orientation, political beliefs, veteran's status, other non-merit factors unrelated to job duties, or any other legally protected characteristic in: hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; and accepting or terminating representation of any client.

13. **DRUG-FREE WORKPLACE:**

ATTORNEY and its subcontractors shall comply with the provisions of a Drug-Free Workplace in accordance with Government Code Section 8355.

14. **SEXUAL HARASSMENT AND HOSTILE WORKPLACE PROHIBITION:**

ATTORNEY shall maintain an organization and workplace free of legally defined harassment, including but not limited to: Quid Pro Quo or unwelcome sexual advances made either explicitly or implicitly as a term or condition of employment, advancement used as the basis for employment decisions, or determination of service level; a hostile or offensive environment unreasonably interfering with an individual's work or performance; harassment by non-employees; and any related retaliation.

15. **APPOINTMENT OF OTHER COUNSEL; COSTS TO BE BORNE BY ATTORNEY:**

A. Should ATTORNEY be unable, ineligible or unavailable to provide services included in this Contract for any reason other than a documented legal conflict of interest in accordance with Section 11 herein, or is dilatory in providing such services, the Court may appoint other counsel; and

B. If the Court should determine that other counsel must be appointed for any reason other than a documented conflict of interest, ATTORNEY shall be responsible for all costs associated with such court-appointed counsel; and

C. Compensation provided in Section 5 shall be offset by an amount equivalent to the cost COUNTY incurs as a result of services provided by such other counsel as

described in this Section. COUNTY shall provide cost detail to ATTORNEY concerning any such payment offsets at the time an offset is effected.

16. RECORDS AND REPORTS:

- A. ATTORNEY shall maintain a case reporting and management information system to provide COUNTY with financial, caseload and performance data and management, and workload and statistical reports as set forth in RFP Number 9554. ATTORNEY shall maintain records and reports:
1. As required and requested by COUNTY including, but not limited to, reports to enable the Court, in appropriate proceedings, to determine the amount of reasonable attorney's fees for the purpose of assessment of costs pursuant to Penal Code 987.4 and 987.8; and
 2. To enable COUNTY to obtain reimbursement from the state of California under the provisions of Government Code 15200-15204; and
 3. As otherwise required by COUNTY to determine sufficient caseload management; and
 4. At a minimum, such records shall be maintained for each case in accordance with the requirements of RFP Number 9554 and Attachment C, and shall include the number of hours spent by ATTORNEY, associate attorneys, support staff, investigators, associated charges, and any other related charges incurred in the defense of said case, provided that such disclosure shall not violate attorney-client privilege.
- B. ATTORNEY shall provide the Presiding Judge of the Superior Court with the names of the attorneys of the firm, their experience, qualifications, and areas of specialization, and shall update this information as applicable and necessary.
- C. ATTORNEY shall submit a monthly report to the COUNTY on the then-current COUNTY prescribed report (Attachment D) no later than the twentieth (20th) calendar day of each following month. Only those cases determined by the COUNTY and the Courts as fitting the definition of a Case shall be reported.

17. RECORDS RETENTION AND COUNTY ACCESS:

- A. ATTORNEY shall maintain, in safe storage, all significant administrative files, i.e. personnel and financial, including time records and billing reports, for at least seven (7) years; and
- B. ATTORNEY shall maintain case records in accordance with a Records Management Retention schedule, or longer as necessary for compliance with applicable sections of California law.
1. Death penalty and homicide case records shall be retained for at least the life of the individual sentenced, with documents copied and mailed to COUNTY pertaining to any records released to other entities per Court order; and
 2. County shall have access to such files as necessary for administration of this Contract or a successor Contract. COUNTY guarantees confidential treatment of such files. COUNTY shall not be permitted access to any case file without a Court order or the written consent of ATTORNEY.

18. **STANDARDS OF REPRESENTATION:**

- A. ATTORNEY agrees to follow applicable public defender standards published by the American and California Bar Associations, including the California Bar Association's Rules of Professional Conduct; and applicable provisions of California law; and
- B. Attorney shall provide quality representation of indigent defendants consistent with constitutional and professional standards, providing diligent and conscientious services to clients.
- C. Parties agree that the application of standards contained in this Section shall not represent financial compensation to ATTORNEY over and above the amount stated in Section 5 herein.

19. **CASE ASSIGNMENT AND REVIEW:**

Case assignment shall be based on counsel's experience and/or training in order to provide ethical, high-quality representation.

20. **OVERSIGHT:**

- A. COUNTY and a representative of the Superior Court bench shall confer on at least a quarterly basis to maintain oversight and evaluation of public defender services. Such oversight shall include recommendations and related implementation review applicable to maintaining services in conformance with standards as set forth in this Contract, and generally acceptable practices by public defender programs in California; and
- B. COUNTY and Courts shall review and provide input concerning any changes to ATTORNEY staff; and
- C. COUNTY may, at its discretion, appoint an Oversight Committee to satisfy the conditions in this Section.

21. **OFFICE REQUIREMENTS:**

Business Office: ATTORNEY shall maintain a publicly accessible office within Placer County as necessary to competently and capably fulfill the requirements of the Contract.

22. **STAFFING REQUIREMENTS:**

- A. ATTORNEY shall employ attorneys, investigators, law clerks, interviewers and administrative staff sufficient to provide coverage for all Courts located throughout Placer County, and, as necessary, to competently and capably fulfill the requirements of this Contract, at a minimum as follows:
Minimum attorney staff shall be equivalent to four (4) full-time attorneys.
- B. ATTORNEY'S failure to provide minimum staff levels as stated herein may result in payment deductions pursuant to Section 15 herein; and
- C. Changes to ATTORNEY staff included in the RFP response shall involve input from COUNTY and the Court bench.

23. **SUPERVISION AND EVALUATION:**

ATTORNEY shall maintain a procedure for internal systematic supervision and evaluation of staff performance. Performance evaluations are to be based upon personal monitoring by the ATTORNEY's Director or Chief Attorney and shall be augmented by regular, formalized comments by judges, other defense lawyers and clients.

24. **PROFESSIONAL DEVELOPMENT**

- A. ATTORNEY shall provide funds and sufficient staff-time to permit systematic and comprehensive training to attorneys and professional staff at least in accordance with the State Bar's Minimum Continuing Legal Education (MCLE) requirements. Resources shall include continuing legal education programs, attendance at local training programs, and the opportunity to review training and professional publications and tapes; and
- B. ATTORNEY shall provide at the beginning of each fiscal year a written training plan that includes specific goals and objectives for all employees.

25. **MENTORING:**

ATTORNEY shall maintain a process by which the most skilled attorneys are available to assist in the development of new attorneys and to those ready to begin handling more difficult cases.

26. **INDEPENDENT CONTRACTOR STATUS:**

- A. Nothing in this Contract is intended nor shall be construed to create an employer-employee relationship, a joint-venture relationship, or to allow COUNTY to exercise direction or control over the professional manner in which ATTORNEY performs the services under this Contract; provided always that the services to be provided herein by ATTORNEY are in a manner consistent with the standards governing such services and the provisions of this Contract. For all purposes arising under this Contract, ATTORNEY shall be an independent contractor as provided by law; and ATTORNEY and each and every member, employee, agency, servant, partner, shareholder, contractor or subcontractor of ATTORNEY shall not be, for any purpose of the Contract, an employee of the COUNTY. Furthermore, this Contract shall not under any circumstances be construed or considered to be a joint venture. As an independent contractor, the following shall apply under this Contract:
1. ATTORNEY shall determine the method, details and means of performing the services to be provided as described in this Contract;
 2. ATTORNEY shall be responsible to COUNTY for the requirements and results specified by this Contract and shall not be subject to COUNTY's control with respect to the means, method, physical actions or activities of ATTORNEY in fulfillment of the requirements of the Contract;
 3. ATTORNEY is not, and shall not, be entitled to receive from or through COUNTY, and COUNTY shall not provide, or be obligated to provide, ATTORNEY with Workers' Compensation coverage, unemployment insurance coverage or any other type of employment or worker insurance or benefit required by any federal, state or local law or regulation for, or normally afforded to, any COUNTY employee;
 4. ATTORNEY shall not be entitled to participate in, or receive any benefit from, or make any claim against, any COUNTY employee benefit program, including, but

not limited to coverage required or provided by and federal, state or local law or regulation for, or normally afforded to, any employee of COUNTY;

5. COUNTY shall not withhold or pay, on behalf of ATTORNEY, any federal, state or local tax, including but not limited to, any personal income tax owed by ATTORNEY;
6. ATTORNEY shall not have the authority, express or implied, to act on behalf of, bind or obligate COUNTY or any COUNTY department, COUNTY agent, or COUNTY employee in any way.

27. **HOLD HARMLESS AND INDEMNIFICATION:**

A. ATTORNEY and its subcontractors agree to protect, defend, indemnify, and hold COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the Contract. ATTORNEY agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at its sole expense. ATTORNEY also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against ATTORNEY or the COUNTY, or to enlarge in any way the ATTORNEY'S liability but is intended solely to provide for indemnification of COUNTY from liability for damages or injuries to third persons or property arising from ATTORNEY'S performance pursuant to this Contract.

B. As used above, the term COUNTY means Placer County or its officers, agents, employees, and volunteers.

28. **INSURANCE AND INDEMNITY REQUIREMENTS:**

Incorporated herein and made a part of this agreement are the Insurance Requirements specified in RFP Number 9554, Attachment E, Insurance and Indemnity Requirements.

29. **NON ASSIGNMENT OF CONTRACT:**

Inasmuch as this Contract is intended to secure the specialized services of ATTORNEY, ATTORNEY shall not assign, transfer, or subcontract this Contract or any part thereof, without the written consent of COUNTY; nor shall ATTORNEY assign any monies due or to become due herein without the written consent of COUNTY.

30. **SUBCONTRACTORS REPRESENTED IN ATTORNEY RFP RESPONSE:**

ATTORNEY represents and COUNTY hereby consents, contingent upon the delivery of certificates of insurance for each contracted attorney, in the type and amount specified in Section 28, prior to the effective date of this Contract, to the utilization of contracted attorneys.

31. **COVENANT:**

This Contract has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the state of California. All duties

and obligations of the parties created herein are performable in Placer County, which shall be the venue for any action, or proceeding that may be brought, or arise out of, in connection with, or by reason of this Contract.

32. INTERPRETATION OF CONTRACT:

No inference in the interpretation of construction of this Contract is to be drawn or given because of the fact that it has been drawn by the COUNTY. The parties agree and represent that this Contract resulted from an equal bargaining position and that it reflects the entire understanding and agreement between the parties on those matters to which it relates.

33. NO TERMS NOT INCLUDED, ENTIRE CONTRACT, AND MODIFICATION:

- A. This Contract contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or likewise, regarding the subject matter of the Contract shall be deemed to exist or to bind either of the parties hereto; and
- B. This Contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations to this Contract shall be effective unless in writing and signed by both parties.
- C. ATTORNEY specifically acknowledges that in entering into and executing this Contract, ATTORNEY relied solely upon the representations and agreements contained in RFP Number 9554, and this Contract, and no others.

COUNTY OF PLACER, "COUNTY"

By: _____
Bill Santucci, Chairman,
Placer County Board of Supervisors

ATTESTED BY:

PLACER COUNTY CLERK OF THE BOARD

Law Firm of Balcom & Carbone, "ATTORNEY":

Dated: _____

By: _____

Dated: _____

By: _____

PLACER COUNTY SUPERIOR COURT

Dated: _____

By: _____

Dated: _____

Approved as to Form:

By: 
Anthony LaBouff, County Counsel

- Attachment A: Attorney Scope of Service
- Attachment B: Contract Payment Schedule
- Attachment C: Attorney Case Records Requirement
- Attachment D: Indigent Public Defense Program Monthly Statistical Report
- Attachment E: Insurance and Indemnity Requirements
- Attachment F: Superior Court's Policy for Declaration of Conflicts of Interest in Criminal and Juvenile Cases

INDIGENT DEFENSE SERVICES
SCOPES OF WORK

1.0 Category A – Primary Public Defender

- 1.1 Primary Public Defender services are utilized for the legal representation of financially eligible accused persons without expense to the defendant except as provided by Section 987.8 of the Penal Code. Any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the courts is eligible for indigent defense services at all stages of the proceedings, including the preliminary examination. The primary public defender gives counsel and advice to an accused about any charges against the accused upon which he is conducting defense. In addition, the primary public defender shall prosecute all appeals to a higher court or courts of any person who has been convicted where, in the opinion of the primary public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction. All legal services described in this RFP are from the time of appointment to final adjudication or disposition and, as necessary, filing appeal or other legal documents pursuant to Penal Code Section 1240.1.
- 1.2 Services related to juvenile dependency and family law proceedings are contracted directly by the Courts, with the exception of: "Appointed Counsel" for Termination of Parental Rights in Adoption proceedings (Family Code, Chap 5, Section 7660-7730 and; "Appointed Counsel" for Minor Child to Declare Free from Parental Custody and Control (Family Code Part 4, Chap 1, 7800-7895, and; "Appointed Counsel" for Guardianship, Conservatorship, and Other Protective Proceedings (Probate Code, Chap 4, Section 1471,1472. Also, per Probate Code section 1471 and 1472 the court can appoint counsel for a proposed conservatee or a proposed ward (i.e. the minor), and; "Appointed Counsel" for Contempt proceedings in either Civil or Family cases where criminal charges could be preferred. These would be covered under GC 77003."
- 1.3 Additional primary public defender services include:
- (a) Prosecution of actions for the collection of wages and other demands of any person who is not financially able to employ counsel where the sum involved does not exceed One Hundred Dollars (\$100), and where, in the judgment of the primary public defender, the claim urged is valid and enforceable in the Courts.

- (b) Representation of any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the primary public defender, the person is being persecuted or unjustly harassed.
- (c) Representation of any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code.
- (d) Representation of any person who is not financially able to employ counsel in proceedings under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, relating to the Lanterman-Petris-Short Act.
- (e) Representation of any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, relating to Juvenile Court Law, when such proceedings are concerned with a person alleged to be or who has been found to be within the description of the provisions of Sections 601 and 602 thereof.
- (f) Representation of any indigent person who requires counsel pursuant to Section 686.1 of the Penal Code (capital cases).
- (g) Representation of any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile delinquency proceedings.
- (h) Representation of all indigent persons in paternity cases in which the County or the state has filed suit against such indigent individual.
- (i) Representation of any indigent person falling under mental health proceedings, including attending these hearings at any court or other location as specified by the Court.
- (j) Representation of all indigent persons in Habeas Corpus proceedings pertinent to underlying criminal cases.
- (k) In those cases in which a change of venue is ordered transferring a case from Placer County to another county, the primary public defender shall defend such defendant in such other county.

- 1.4 The Contractor shall maintain records on the cases assigned under the contract, including, but not limited to, the data elements listed in **Attachment C**.
- 1.5 The Contractor shall also submit a monthly report, as detailed in **Attachment D**, ad hoc reports as periodically requested by the County, an annual report, and other relevant workload and case related statistics as requested. Failure to provide the monthly report to the County within twenty (20) calendar days from the end of month and within thirty (30) calendar days of a quarterly or annual period may result in a monthly payment withholding of 10% until the reports are delivered. Upon delivery of reports, the County will immediately prepare a payment document to be processed by the Auditor/Controller. In addition, the Contractor will be required to actively participate in any and all cost-recapture mechanisms for services provided as specified by statute, county policy or local court rule.

2.0 Category B – First Level Conflict Public Defender

- 2.1 Conflict Public Defender Services are utilized for the legal representation of accused persons as described under Category A where the Primary Public Defender has a legal conflict of interest or other lawful liability in accordance with Section 987.2 of the Penal Code. All legal services described in this RFP are from the time of appointment up to and including final adjudication or disposition and, as necessary, filing appeal or other legal documents pursuant to Penal Code Section 1240.1.
- 2.2 The responsibility to defend the individual extends to change of venue cases. Special payment arrangements will be made for death penalty offenses.
- 2.3 The Contractor will also be responsible for providing the County with relevant workload and case-related statistics as required, and to actively participate in any and all cost-recapture mechanisms for services provided as specified by statute, County policy or local court rules.
- 2.4 The Contractor will be responsible for all felony conflict cases that originate in the Tahoe court once the case has been transferred out of the Tahoe court. The majority of these cases will be post preliminary hearing, however, on occasion, some cases will be prior to preliminary hearing. The Contractor will not carry any misdemeanor cases that originate in the Tahoe court.

3.0 Category C – Second Level Conflict Public Defender Services

- 3.1 Second Level Conflict services will be utilized for the legal representation of accused persons where the primary and conflict public defenders have a legal conflict of interest. All legal services described in this RFP are from the time of appointment up to and including final adjudication or disposition and, as necessary, filing appeal or other legal documents pursuant to Penal Code Section 1240.1.
- 3.2 The responsibility to defend the individual extends to change of venue cases. Special payment arrangements will be made for death penalty offenses.
- 3.3 The Contractor will also be responsible for providing the County with relevant workload and case-related statistics, as required, and to actively participate in any and all cost-recapture mechanisms for services provided as specified by statute, County policy or local court rules.

ATTACHMENT B - CONTRACT PAYMENT SCHEDULE
Law Firm of Balcom & Carbone

Payment Due:		Annual Balance
		Remaining
YEAR ONE - July 1, 2006 - June 30, 2007		\$ 316,680.00
July 1, 2006	\$ 26,390.00	\$ 290,290.00
August 1, 2006	\$ 26,390.00	\$ 263,900.00
September 1, 2006	\$ 26,390.00	\$ 237,510.00
October 1, 2006	\$ 26,390.00	\$ 211,120.00
November 15, 2006	\$ 26,390.00	\$ 184,730.00
December 1, 2006	\$ 26,390.00	\$ 158,340.00
January 1, 2007	\$ 26,390.00	\$ 131,950.00
February 1, 2007	\$ 26,390.00	\$ 105,560.00
March 1, 2007	\$ 26,390.00	\$ 79,170.00
April 1, 2007	\$ 26,390.00	\$ 52,780.00
May 1, 2007	\$ 26,390.00	\$ 26,390.00
June 1, 2007	\$ 26,390.00	\$ -
Total Year One	\$ 316,680.00	
YEAR TWO - July 1, 2007 - June 30, 2008		\$ 326,178.00
July 1, 2007	\$ 27,181.50	\$ 298,996.50
August 1, 2007	\$ 27,181.50	\$ 271,815.00
September 1, 2007	\$ 27,181.50	\$ 244,633.50
October 1, 2007	\$ 27,181.50	\$ 217,452.00
November 1, 2007	\$ 27,181.50	\$ 190,270.50
December 1, 2007	\$ 27,181.50	\$ 163,089.00
January 1, 2008	\$ 27,181.50	\$ 135,907.50
February 1, 2008	\$ 27,181.50	\$ 108,726.00
March 1, 2008	\$ 27,181.50	\$ 81,544.50
April 1, 2008	\$ 27,181.50	\$ 54,363.00
May 1, 2008	\$ 27,181.50	\$ 27,181.50
June 1, 2008	\$ 27,181.50	\$ -
Total Year Two	\$ 326,178.00	
YEAR THREE - July 1, 2008 - June 30, 2009		\$ 342,487.00
July 1, 2008	\$ 28,540.58	\$ 313,946.42
August 1, 2008	\$ 28,540.58	\$ 285,405.83
September 1, 2008	\$ 28,540.58	\$ 256,865.25
October 1, 2008	\$ 28,540.58	\$ 228,324.67
November 1, 2008	\$ 28,540.58	\$ 199,784.08
December 1, 2008	\$ 28,540.58	\$ 171,243.50
January 1, 2009	\$ 28,540.58	\$ 142,702.92
February 1, 2009	\$ 28,540.58	\$ 114,162.33
March 1, 2009	\$ 28,540.58	\$ 85,621.75
April 1, 2009	\$ 28,540.58	\$ 57,081.17
May 1, 2009	\$ 28,540.58	\$ 28,540.58
June 1, 2009	\$ 28,540.58	\$ -
Total Year Three	\$ 342,487.00	
YEAR FOUR - July 1, 2009 - June 30, 2010		\$ 359,611.00
July 1, 2009	\$ 29,967.58	\$ 329,643.42
August 1, 2009	\$ 29,967.58	\$ 299,675.83
September 1, 2009	\$ 29,967.58	\$ 269,708.25
October 1, 2009	\$ 29,967.58	\$ 239,740.67
November 1, 2009	\$ 29,967.58	\$ 209,773.08
December 1, 2009	\$ 29,967.58	\$ 179,805.50
January 1, 2010	\$ 29,967.58	\$ 149,837.92
February 1, 2010	\$ 29,967.58	\$ 119,870.33
March 1, 2010	\$ 29,967.58	\$ 89,902.75
April 1, 2010	\$ 29,967.58	\$ 59,935.17
May 1, 2010	\$ 29,967.58	\$ 29,967.58
June 1, 2010	\$ 29,967.58	\$ 0.00
Total Year Four	\$ 359,611.00	

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**INDIGENT DEFENSE SERVICES
DATA COLLECTION REQUIREMENTS**

1. Client Records

The contractor must maintain reliable records to permit the County to audit billings, workload and performance, including client records that identify:

1. Name of Client
2. Date assigned to the case
3. Financial eligibility of client
4. Category of representation:
 - a. Juvenile Delinquency
 - b. Adult Misdemeanor
 - c. Adult Felony
 - d. Paternity
 - e. Adult Probation
 - f. LPS/Conservatorship
 - g. Drug Court
 - h. Modifications:
 - From Juvenile Dependency
 - To Juvenile Dependency
 - i. Other
5. Case number
6. The charge or nature of the case
7. Applicable code section(s)
8. Hours worked, by case and major task; e.g. investigations, court appearances
9. Name(s) of attorney staff
10. Other staff
11. Outside personnel or expert witnesses used
13. Disposition of cases
14. Judge of court disposing of case
15. Record of court appearances
16. Date case closed
17. Attorney shall refer client to Revenue Services for evaluation of ability to pay as provided in the process approved by the County and Courts. Attorney shall keep sufficient records to account for hours dedicated to the case for use in any subsequent hearings held by the court.

2. Financial Records

Financial records shall comply with Generally Accepted Accounting Principles (GAAP), and shall be capable of capturing costs by case.

PLACER COUNTY INDIGENT PUBLIC DEFENSE

Monthly Statistical Report

Submission required 20 days following the end of each month

Name of Provider: _____

Month/Year: _____

Date Prepared: _____

Prepared by: _____

Case/Load:	+ - =			Disposition of Closed Cases:						Total Hours			
	Beg Cases Outstanding	Cases Appointed	Cases Closed	Balance	FTA	Dismissed	Relieved	Relieved	Conflict		Guilt Pleas	Trial Verdict	Trial Verdict
Adult Felony													
Adult Misdemeanor													
Adult Violation of Probation													
Juvenile Delinquency													
LPS/Conservatorship													
Paternity													
Drug Court													
Civil Contempt													
Criminal Contempt													
Proposition 36													
Mental Health Modification													
Miscellaneous													
Other assigned cases (list type):													
TOTALS	0	0	0	0	0	0	0	0	0	0	0	0	0

CERTIFICATION STATEMENT:

I certify that the information contained in this report is true and accurate to the best of my knowledge, and that the conflicts policy has been adhered to with respect to supervisory review and approval.

Signature _____

Date: _____

Title _____

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INDIGENT PUBLIC DEFENSE CONFLICT CASE DECLARATIONS
2nd LEVEL CONFLICT PUBLIC DEFENDER

Name of Provider: _____

Month/Year: _____

Please use additional sheets if necessary

Reasons for Conflict Declaration:	# of Cases conflicted to Panel	*Case Name	Case #	Principal Charge	Cite section from Conflict Policy for each case listed (see left margin)
1. Due to private practice					
2. Specific Section From Conflict Policy:					
3. Multiple Party Cases					
4. Conflicts with current clients					
5. Former clients as witnesses or victims					
6. Other circumstances:					
b.i. - Substantial Appearance of Conflict					
b.ii. - Staff/Family					
b.iii. - Colorable Claim/Marsden					
b.iv. - Non-frivolous suit against counsel					
b.v. - Other					
7. F. - Related Case					
7 generally. Non Disclosure/Basis Privileged or Proceedings In Camera					

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PROVIDER STAFFING DETAIL

Due on the first month of each calendar quarter based on 1st month information

Name of Provider: _____

Month/Year: _____

<u>Name</u>	<u>Position Title</u>	<u>Courtroom Assignment</u>
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**INDIGENT DEFENSE SERVICES
INDEMNIFICATION AND INSURANCE REQUIREMENTS**

All Contractors and Subcontractors shall adhere to the following indemnification and insurance requirements:

1.0 HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

Contractor hereby agrees to protect, defend, indemnify, and hold the County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of this contract or agreement. Contractor agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Contractor. Contractor also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Contractor or the County or to enlarge, in any way, the Contractor's liability, but is intended solely to provide for indemnification of the County from liability for damages or injuries to third persons or property arising from Contractor's performance pursuant to this contract or agreement.

As used above, the term "County" means Placer County or its officers, agents, employees and volunteers.

2.0 INSURANCE

Upon execution of contract, the Contractor shall file with County a Certificate of Insurance, in companies acceptable to County, with a Best's Rating of no less than A:VII showing.

2.1 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

- A) Workers' Compensation Insurance shall be provided, as required, by any applicable law or regulation. Employers' liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.
- B) If there is an exposure of injury to Contractor's employees under the U.S. Longshoremen and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

- C) Each Workers' Compensation policy shall be endorsed with the following specific language:
Cancellation Notice "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the County."
- D) Contractor shall require all sub-Contractors to maintain adequate Workers' Compensation Insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

2.1 GENERAL LIABILITY INSURANCE

- A) Comprehensive General Liability or Commercial General Liability insurance shall be provided covering all operations by, or on behalf of Contractor, covering bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for contractual liability insuring the obligations assumed by Contractor in this Agreement.
- B) One of the following forms is required:
 - 1. Comprehensive General Liability;
 - 2. Commercial General Liability (Occurrence); or
 - 3. Commercial General Liability (Claims Made).
- C) If Contractor carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
 - 1. One million dollars (\$1,000,000) each occurrence;
 - 2. One million dollars (\$1,000,000) aggregate.
- D) If Contractor carries a Commercial General Liability (Occurrence) policy:
 - 1. The limits of liability shall not be less than:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) for Products-Completed Operations;
 - iii) One million dollars (\$1,000,000) General Aggregate.
 - 2. If the policy does not have an endorsement providing that the General Aggregate Limit applies separately to this contract, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).
- E) Special Claims Made Policy Form Provisions:

Contractor shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:

- I. The limits of liability shall not be less than:
 - i. One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii. One million dollars (\$1,000,000) aggregate for Products-Completed Operations;
 - iii. One million dollars (\$1,000,000) General Aggregate.

The insurance coverage provided by Contractor shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

F) Endorsements:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

1. "The County, its officers, agents, employees and volunteers, and the County of Placer, its officers, agents, employees and volunteers, are to be covered as insureds for all liability arising out of operations, or on behalf of, the named insured in the performance of this Agreement."
2. "The insurance provided by the Contractor, including any excess liability or umbrella form coverage, is primary coverage to the County with respect to any insurance or self-insurance programs maintained by County, and no insurance held or owned by County shall be called upon to contribute to a loss."
3. "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to County."

2.2 AUTOMOBILE LIABILITY INSURANCE

Automobile Liability insurance shall be provided covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

2.3 PROFESSIONAL LIABILITY INSURANCE (ERRORS AND OMISSIONS)

Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than five hundred thousand dollars (\$500,000) in aggregate.

The insurance coverage provided by contractor shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

PLACER COUNTY SUPERIOR COURT
POLICY FOR DECLARATION OF CONFLICTS OF INTEREST
(Rev. 1/19/06)

The following policy is adopted for the purpose of giving guidance to the court and counsel regarding the circumstances under which a conflict of interest is to be declared regarding the representation of a criminal defendant.

1. **APPLICATION OF THE POLICY:**
The conflicts policy shall be applicable to declarations of conflict by any appointed counsel, whether such counsel is the Placer County Public Defendant, Conflicts Firm, or private attorney appointed by the court.

2. **CONSTRUCTION OF POLICY:**
Whenever possible, consistent with legal ethics and the fundamental right of any criminal defendant to be represented by counsel who is free of conflicts of interest, this policy shall be liberally construed to *avoid* a declaration of conflict so as to give full and appropriate effect to contractual arrangements between the County of Placer and appointed counsel.

3. **MULTIPLE DEFENDANT CASES:**
 - a. Counsel appointed by the court shall not represent different defendants involved in the same or related criminal conduct, whether or not the defendants are separately or jointly charged.
 - b. Privately retained counsel shall not represent multiple defendants charged in the same criminal proceeding unless a full and knowledgeable waiver is obtained from each defendant in writing and orally in open court after inquiry by the court.
 - c. Declarations of conflict in multiple defendant cases may be made by any attorney without the prior approval of a supervising attorney.
 - d. Whenever a conflict is declared, the Public Defendant shall retain the client having the more serious or complex case from that of the Conflicts Firm; the conflicts Firm shall retain the client having the more serious or complex case from that of private appointed counsel.

4. **CONFLICTS WITH CURRENT CLIENTS:**
 - a. Counsel appointed by the court shall not represent a defendant where an *adverse* witness or victim is a client currently being represented by such counsel. For the purposes of this policy, "currently being represented" means:
 1. A client who has an active, pending charge or violation of probation,
 2. A defendant for whom counsel is actively seeking post-judgment relief, or

3. Counsel currently is counsel of record for a minor in a juvenile delinquency or dependency proceeding, whether or not there currently is a pending petition in such juvenile proceeding.
 - b. Absent unusual circumstances, the fact that counsel represents a witness *supporting* the defendant will not disqualify counsel from representing the defendant.
 - c. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.

5. **FORMER CLIENTS AS WITNESSES OR VICTIMS:**
 - a. A declaration of conflict shall not be made merely from the fact that a former client is a victim or witness in the current action.
 - b. A declaration of conflict may be made if all of the following circumstances are present:
 1. Counsel is in possession of confidential information concerning the former client. "Confidential information" does not include information that is part of the public record or may readily be obtained by opposing counsel, such as records of conviction, employment and school records.
 2. The confidential information is relevant to the current proceeding.
 3. Counsel will or may be called upon to use the confidential information against the former client in the defense of the client in the current case.
 - c. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.

6. **DECLARATION OF CONFLICT IN OTHER CIRCUMSTANCES:**
 - a. Merely because a conflict existed in the past does not mean that there is a conflict in the current case. Each case is to be evaluated as to current conflicts. It is presumed, for example, that the Public Defender shall represent a defendant on a current probation violation, even though there had been a conflict in representation on the original case.
 - b. Counsel may declare a conflict in the following additional cases:
 1. Where there is a substantial appearance of conflict. Examples of such circumstances include former clients who were frequently represented by counsel, or cases where the former client has had a recent and substantial case with counsel.
 2. Where a witness or victim is a member of the office staff of counsel or a member of such staff's family. Merely having knowledge of or acquaintance with the witness or victim shall not be grounds for a declaration of conflict of the entire office of counsel, but may warrant re-assignment of the case within counsel's firm.
 3. Where a former client seeks to set aside a conviction and there is a colorable claim of ineffective assistance of counsel. "Colorable claim" means one which would credibly establish the possibility

that the prior counsel had failed to perform with reasonable diligence and that, in absence of counsel's failings, the conviction would not have resulted. The colorability of the claim may be determined in a procedure generally in the style of a *Marsden* motion.

4. Suit against counsel by the current client unless the suit is patently frivolous, the suit is based on grounds already determined by the court in a *Marsden* motion to be without merit, and there is no conflict of interest other than as reflected in the suit. (*People v. Horton* (1995) 11 Cal.4th 1068, 1104-1107.)
 5. Any other circumstance where counsel reasonable believes a conflict should be declared.
 - c. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.
7. **WHEN A CONFLICT IS DECLARED:**
- a. Conflicts shall be declared as soon as discovered.
 - b. Notice of the declaration of conflict made by the Public Defender shall be immediately given to the Conflicts Firm, including a brief explanation of the nature of the conflict.
 - c. Counsel shall safeguard any confidential information obtained from a client to avoid any unnecessary "contamination" of other counsel.
 - d. The file, absent any confidential information, shall promptly be given to the next appointed counsel. The following procedure shall be used when conflicts are discovered in cases in Departments 8 and 13: If the conflict is declared in open court with Conflicts counsel present, the file shall be exchanged in open court. If Conflicts counsel is not present, the file shall be deposited in a box for that purpose located in the clerk's office for the department.
 - e. Whenever a conflict appears possible, particularly in a multiple defendant cases, counsel will conduct themselves in a manner to minimize conflicts in any realignment of counsel.
 - f. When a conflict is declared, the new attorney generally will assume representation of the client in all pending matters, even though no conflict exists as to the other matters.
 - g. The court shall inquire into the circumstances of the conflict, including, if necessary, holding proceedings in camera. Counsel, however, shall not be required to disclose confidential information, even to the court.

