

**STATE OF WASHINGTON  
OFFICE OF PUBLIC DEFENSE**

**711 Capitol Way South, Suite 106  
PO Box 40957  
Olympia, WA 98504-0957**

**REQUEST FOR QUALIFICATIONS – CLIENT SERVICES CONTRACT  
RFQ 17002  
November 16, 2016**

**TITLE:** Indigent Appellate Representation Services in Division II and Division III of the Washington State Court Of Appeals and in the Washington State Supreme Court.

**SUBMISSION DUE DATE:** 5:00 p.m., November 30, 2016

**EXPECTED TIME PERIOD FOR CONTRACT:** December 12, 2016 through June 30, 2017

**PURPOSE AND BACKGROUND:** The Washington State Office of Public Defense (OPD) is expanding its panel of “contingent” contractors who can handle appellate representation for indigent clients. These contracts do not guarantee a particular caseload, but rather authorize a contractor to accept indigent appellate defense cases as available. Contingent contracts are equivalent to panel attorney positions in other public defense systems.

**MINIMUM QUALIFICATIONS**

Each attorney providing appellate indigent defense services shall meet the following requirements:

1. Be a licensed member of the WSBA, in good standing;
2. Be qualified for appellate representation under Standard of Indigent Defense (SID) 14.3; and
3. Follow applicable Standards for Indigent Defense, including the caseload limits defined in Standard 3.4.

**DESIRED QUALIFICATIONS:** OPD states a preference that each attorney meets one or more of the following criteria:

1. Demonstrated ability to manage an appellate caseload;
2. Experience with criminal, juvenile dependency, or civil commitment defense under Chapter 71.09 RCW; and
3. Demonstrated ability to produce high quality work in a timely and effective manner.

*Unless good cause is shown, no attorney may provide services under a contract with OPD if that attorney has been removed from representation in a case by order of the court for failure to perform basic services necessary to the case or to the client, or in any manner that has been found to be ineffective on appeal by either an ethics panel or by an appellate court.*

## **PERIOD OF PERFORMANCE**

The period of performance of any contracts resulting from this RFQ is scheduled to begin on or about December 12, 2016, and to end on June 30, 2017. Contracts may be extended by mutual agreement of the parties.

## **DEFINITIONS**

- 1. APPLICANT.** Individual, law firm, or other organization submitting a proposal in order to attain a contract. Proposals from law firms or other organizations should be submitted by the attorney that will be responsible for providing the legal services.
- 2. Contractor.** Individual, law firm, or other organization whose proposal has been accepted by OPD and is awarded a fully executed contract.
- 3. Proposal.** A formal offer submitted in response to this solicitation.
- 4. Request for Qualifications.** Formal procurement document in which services needed are identified and APPLICANTS are invited to provide their qualifications to provide the services.

## **RFQ ADMINISTRATION:**

- 1. RFQ COORDINATOR:** The RFQ Coordinator is the sole point of contact at OPD for this procurement. All communication between the APPLICANT and the OPD upon receipt of this RFQ shall be with the RFQ Coordinator, as follows:

Gideon Newmark, Appellate Program Manager  
Office of Public Defense  
Telephone: (360) 586-3164, ext. 105  
E-mail: [gideon.newmark@opd.wa.gov](mailto:gideon.newmark@opd.wa.gov)

**2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES**

<b>Issue Request for Qualifications</b>	<b>November 16, 2016</b>
<b>Question &amp; answer period</b>	<b>November 16, 2016 – November 23, 2016</b>
<b>Proposals due</b>	<b>November 30, 2016</b>
<b>Evaluate proposals</b>	<b>November 30, 2016 –December 9, 2016</b>
<b>Apparent Successful APPLICANTS announced by email, and notification to unsuccessful APPLICANTS sent by email</b>	<b>No later than December 9, 2016</b>
<b>Contracts executed</b>	<b>December 12, 2016, 2016</b>

OPD reserves the right to revise the above schedule.

3. **SUBMISSION OF PROPOSALS:** APPLICANTS are required to submit an electronic copy of their proposal by e-mail to the RFQ Coordinator. Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of OPD and will not be returned.
4. **QUESTIONS:** From November 16, 2016, through November 23, 2016, APPLICANTS may submit questions to the RFQ Coordinator in written form. Questions and answers will be available to the public on OPD’s website at [www.opd.wa.gov](http://www.opd.wa.gov) during the time the proposals are being formulated.
5. **ORAL PRESENTATIONS:** As part of the evaluation process, and at the discretion of OPD, APPLICANTS may be asked to clarify specific points in their respective proposals.
6. **REVISIONS TO THE RFQ:** In the event it becomes necessary to revise any part of this RFQ, addenda will be provided to all who were sent the original RFQ. OPD also reserves the right to cancel or to reissue the RFQ in whole or in part, prior to execution of the contracts.
7. **RESPONSIVENESS:** All proposals will be reviewed by the RFQ Coordinator to determine compliance with administrative requirements and instructions specified in this RFQ. APPLICANTS are specifically notified that failure to comply with any part of the RFQ may result in rejection of the proposal as non-responsive. OPD also reserves the right, however, at its sole discretion to waive minor administrative irregularities.
8. **CONTRACT AND GENERAL TERMS & CONDITIONS:** Apparent successful APPLICANTS will be expected to enter into a standard client services contract offered by OPD. APPLICANTS may

request exceptions as allowed in this solicitation. OPD will review requested exceptions and accept or reject the same at its sole discretion.

9. **COSTS TO PROPOSE:** OPD will not be liable for any costs incurred by APPLICANTS in preparation of a proposal submitted in response to this RFQ or any other activities related to responding to this RFQ.
10. **NO OBLIGATION TO CONTRACT:** This RFQ does not obligate the State of Washington or OPD to contract for services specified herein.
11. **REJECTION OF PROPOSALS:** OPD reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFQ.
12. **INSURANCE COVERAGE:** OPD requires professional liability insurance for all acts which occur pursuant to the contracts offered to successful APPLICANTS.

**PROPOSAL CONTENTS:** Each APPLICANT must submit:

- (1) a written proposal; and
- (2) a resume for each attorney requesting to handle indigent appellate cases.

All submissions will be acknowledged by email from the RFQ Coordinator as having been received. The proposal(s) must be received by the RFQ Coordinator no later than **5:00 p.m. on November 30, 2016.**

APPLICANTS should provide the following information in their proposal:

1. **BASIC INFORMATION:**

Name of APPLICANT:

WSBA number:

Address:

Phone number:

E-mail address:

For law firms or other organizations, include the name, resume and the WSBA number for each attorney who will provide legal services on appellate cases.

2. **DECLARATION:**

Include a declaration that APPLICANT:

- a. Meets the minimum qualifications for this request (specifying how APPLICANT meets the qualification requirements of SID 14.3);
- c. Is a member of the Washington State Bar Association in good standing; and
- d. Agrees to follow applicable Standards for Indigent Defense.

3. WRITING SAMPLES

Include one brief filed with the Court of Appeals or Supreme Court within the last two years. If no such brief is available, include two comparable writing samples such as: older Supreme Court of Court of Appeals briefs, RALJ appeal briefs filed with the Superior Court, motions for discretionary review to the Court of Appeals, briefs filed in support of Superior Court motions, or other similar examples of legal research and writing.

4. CASELOAD:

Provide the total number or preferred range of indigent appellate case appointments per year APPLICANT would be able to accept, consistent with SID 3.4.

For a law firm or organization APPLICANT, specify how the caseload will be distributed among attorneys who would be handling OPD appellate cases.

5. OTHER WORK IN ADDITION TO INDIGENT APPELLATE CASES, IF ANY:

Describe other case types maintained in APPLICANT's practice, and specify the average number of hours per month spent on legal services.

Explain how APPLICANT will manage OPD appellate work consistent with SID 3.4 and how APPLICANT will provide effective assistance and manage appellate cases within the existing practice.

6. COURTS:

Identify the divisions of the Court of Appeals where APPLICANT will accept appointments.

7. CASE TYPES:

List the case types APPLICANT is willing to accept for appointment:

1. Adult criminal

2. Juvenile offender
3. Aggravated Murder
4. Dependency/termination
5. Chapter 71.09 RCW

Include APPLICANT's qualifications and experience handling the specified case types.

8. CLIENT COMMUNICATION:

Include a statement that APPLICANT has adopted or will adopt client communication policies in accordance with the OPD Client Communications Protocol Guidelines, attached as part of the example contingent contract included with this RFQ packet.

9. PAST PERFORMANCE:

State whether APPLICANT has been removed from representation in a case by order of the court for failure to perform legal services necessary to the cases or to the client, or in any manner has been found to be ineffective on appeal by either an ethics panel or by an appellate court. If so, please list the incidents and explain the circumstances.

State whether APPLICANT has been sanctioned by a court for failure to meet court deadlines within the past two years. If so, include the number of sanctions imposed during this period.

**EVALUATION:** All proposals will be screened to determine whether the minimum requirements of the RFQ are met; those proposals which meet the minimum RFQ requirements will then be evaluated.

**Proposal Evaluation Criteria:** Following are the criteria which will be used in the selection of proposals, in the order of priority:

1. Demonstrated high quality defense representation, including the efficient and consistent delivery of services, exceptional work product and dedicated client communication.
2. Ability to accept appellate cases contingent on availability and to manage existing caseloads in accordance with SID 3.4.
3. Ability to adhere to the applicable Standards for Indigent Defense;
4. Ability to meet the general, geographic, and case-type appellate representation needs of indigent parties on appeal, as identified by OPD.

7. **POST EVALUATION EVENTS:** OPD expects to email notices to APPLICANTS on or before December 9, 2016.
8. **CONTRACT EXECUTION:** OPD intends to execute contracts with the successful APPLICANTS by December 12, 2016.

Thank you for your interest and participation.

EXAMPLE CONTINGENT CLIENT SERVICE CONTRACT  
BETWEEN  
STATE OF WASHINGTON  
OFFICE OF PUBLIC DEFENSE  
711 Capitol Way South, Suite 106  
PO Box 40957  
Olympia, Washington 98504-0957  
AND  
«Contractor\_Name»

This Contract is made and entered into by and between the State of Washington, Office of Public Defense, hereinafter referred to as “OPD,” and «Contractor\_Name», hereinafter referred to as “CONTRACTOR.” CONTRACTOR’s address is «ADD».

**PURPOSE**

The purpose of this Contract is to provide effective high quality appellate legal services for indigent clients on all Cases to which CONTRACTOR has been assigned.

**STATEMENT OF WORK**

CONTRACTOR shall provide the personnel and services necessary or incidental to the performance of this Contract. CONTRACTOR shall provide indigent appellate legal services for Cases appointed to CONTRACTOR within Division «Division» of the Court of Appeals, if OPD determines that any such cases are available for appointment. The representation shall be in compliance with the Rules of Appellate Procedure, the Rules of Professional Conduct, the Standards for Indigent Defense, and the applicable Washington State Bar Association standards. «Designate», shall provide all appellate services under this Contract.

**PERIOD OF PERFORMANCE**

Subject to other Contract provisions, the period of performance under this Contract will be from July 1, 2016 or date of last signature, whichever is later, through the completion of work on all appointed indigent appellate cases appointed between July 1, 2016 and June 30, 2017. The period of performance may also be extended by mutual written agreement of the parties.

**PRIOR CONTRACTS BETWEEN THE PARTIES**

Except for any contracts for death penalty representation, this Contract supersedes any prior indigent appellate defense services contracts between the parties, terminates the prior contracts, and governs the continued representation for indigent appellate defense cases appointed under any prior contracts.

## CASE ASSIGNMENTS

OPD may designate CONTRACTOR for appointment by the Court of Appeals on Cases for indigent clients. The number of Cases actually designated, if any, will depend upon the availability of cases and the need for appointment as determined at OPD's sole discretion. CONTRACTOR shall provide OPD with an email address at which to receive electronic notification of Case assignments and shall update the email address as necessary.

## DEFINITIONS

1. "Case" means:
  - a. Any matter considered by an appellate court to which a cause number has been assigned and in which appointment of counsel at public expense is authorized by statute or court rule.
  - b. Ordinarily, each appellate case number will be the equivalent of one Case. However, a Case may include more than one superior court cause number or more than one appellate cause number when matters are consolidated on appeal and require only one brief or brief equivalent and one Closing Event. If matters are consolidated or otherwise linked by the appellate court, the matters are presumed to be one Case.
  - c. A Case also includes a matter in which a discretionary review is granted in the Supreme Court.
2. "Brief or Brief Equivalent" means:
  - a. An opening brief in a direct criminal appeal, an appeal from termination of parental rights or dependency order, a probation revocation hearing, a disposition in a juvenile offense matter, a sexual predator hearing, or any other proceeding where expenditure of public funds for appellate indigent defense has been authorized;
  - b. A motion for accelerated review in a sentencing case, a termination of parental rights case, a dependency case, or a juvenile offense matter;
  - c. A personal restraint petition brief when the appointment of counsel at public expense is authorized;
  - d. An opening brief in a Supreme Court Case where a petition for review has been granted by the Supreme Court;
  - e. A motion for discretionary review to the Court of Appeals when filed after the record has been perfected in a Case where the right to counsel attaches at all stages of proceedings;
  - f. An answer or responsive pleading to an appeal or discretionary review filed by the State; or

- g. A voluntary withdrawal of an appeal by a defendant after the record has been perfected.
3. "Closing Event" means:
- a. For cases with oral argument, presentation of oral argument.
  - b. For cases without oral argument, the date of the court's consideration of the Case.
  - c. For motion for discretionary review cases, the date of denial of review.
  - d. A Closing Event does not occur if the client voluntary withdraws an appeal or if counsel files or an *Anders* brief.

**COMPENSATION/ PAYMENT**

OPD shall compensate CONTRACTOR for each appointed Case based upon the following three payment events:

- 1. Assignment – Appointment by the Court of Appeals or the Supreme Court
- 2. Brief – Filing a Brief or Brief Equivalent.
- 3. Closing – Occurrence of a Closing Event.

The payment for each event will be determined according to the following schedule:

Number of Pages of Transcript	Assignment Payment	Brief Payment	Closing Payment	Total Payment
Anders Brief, <i>regardless of transcript length.</i>	\$1,070	\$110.00	\$0.00	<b>\$1,180</b>
0 to 299 pages	\$1,070	\$1,020	\$225	<b>\$2,315</b>
300 to 499 pages	\$1,070	\$2,105	\$225	<b>\$3,400</b>
500 to 999 pages	\$1,070	\$2,405	\$225	<b>\$3,700</b>
1,000+ pages	\$1,070	\$2,705	\$225	<b>\$4,000</b>

In Cases that do not proceed to completion, payment shall be made as follows:

- 1. When a Case terminates after the statement of arrangements and designation of clerk's papers have been filed, but before a Brief or Brief Equivalent is filed, OPD will pay for assignment only.
- 2. If the Case is transferred to another attorney after the record is perfected and before a Brief or Brief Equivalent is filed, CONTRACTOR will retain only \$200.00 of the assignment fee.

The "Number of Pages of Transcript" referenced in the above schedule will be calculated based on the total of all invoices submitted by court reporters, reflecting the number of pages transcribed for each trial date, not including voir dire or opening statements. For cases without a trial the number of pages will include all proceedings transcribed. OPD reserves the right to review transcripts ordered and request reasonable justification for transcripts ordered by CONTRACTOR.

CONTRACTOR may request extraordinary compensation in addition to the payment schedule established above, in accordance with published standards and procedures established by OPD. OPD will pay only one assignment, brief, and closing fee per case, even if multiple payment events occur (such as a response to a motion for discretionary review followed by a respondent's brief after review is accepted). CONTRACTOR should request extraordinary compensation if such multiple payment events occur and significant additional work is required.

CONTRACTOR will receive reimbursement for out-of-county travel related to oral argument scheduled in an appellate court located outside of the county where CONTRACTOR's official place of business is located. Mileage will be calculated from CONTRACTOR's official place of business to the appellate court where oral argument is scheduled and back to CONTRACTOR's official place of business. Mileage reimbursement will be at the rate set by the Washington State Office of Financial Management (OFM). CONTRACTOR shall obtain OPD approval for lodging or airfare at least 14 days in advance of travel. To receive reimbursement, CONTRACTOR must complete the travel voucher form provided by OPD and provide all supporting documents, if required. Airfare and lodging will be reimbursed in accordance with the OFM State Accounting and Administrative Manual (SAAM) travel policies and rates.

CONTRACTOR shall bear all direct and indirect costs of providing legal representation to clients not specifically authorized by this Contract. CONTRACTOR may apply for reimbursement of exceptional costs to the Director of OPD. Such reimbursement must be approved in advance.

CONTRACTOR will not be required to pay for Verbatim Reports of Proceedings or Clerk's Papers for Cases assigned under this Contract.

This Contract excludes cases involving the death penalty.

The parties shall resolve any dispute regarding payment pursuant to RAP 15.5.

#### **BILLING PROCEDURE**

1. OPD shall pay CONTRACTOR upon receipt of properly completed invoices, which CONTRACTOR shall submit promptly.
2. Payment will be considered timely if made by OPD within 30 days after receipt of properly completed invoices. OPD shall send payment to the address designated by

CONTRACTOR or shall make direct payment to CONTRACTOR's designated direct deposit account.

3. OPD will not be required to pay any claims for services performed during this Contract's period of performance unless those claims are submitted by August 1, 2017.
4. OPD may, in its sole discretion, withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Contract.
5. OPD will not make any payments in advance or in anticipation of services to be provided under this Contract.

#### **DUPLICATION OF BILLED COSTS**

CONTRACTOR shall not bill, and OPD shall not pay, for any service if CONTRACTOR is entitled to payment or has been or will be paid by any other source, including grants, for that service. If CONTRACTOR receives payment from any other source for services OPD has paid for under this Contract, CONTRACTOR shall reimburse OPD.

#### **DISALLOWED COST**

CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

**ELECTRONIC BRIEFS:** CONTRACTOR shall send copies of CONTRACTOR's briefs, in acceptable electronic format, to OPD when submitting a Brief or Brief Equivalent invoice. CONTRACTOR grants OPD a royalty-free, irrevocable license to use, publish, translate, reproduce, deliver, perform, or dispose of the briefs.

**SUPPLEMENTAL INFORMATION:** CONTRACTOR shall comply with all OPD requirements for supplemental information or with any special requests for data that OPD makes from time to time.

#### **RESPONSIBILITIES**

CONTRACTOR shall perform the following for each Case assigned and for each Client:

- A. **Effective Assistance:** Provide effective assistance of counsel to the Client.
- B. **Completion of Work:** Remain counsel of record through the issuance of the mandate unless withdrawing in accordance with this Section.
- C. **Discretionary Pleadings:** File discretionary pleadings when appropriate or necessary, including but not limited to reply briefs, motions to modify, motions for reconsideration, and petitions or motions for review in the Washington Supreme Court.

- D. Client Communication:** Establish and maintain Client contact, keep the Client informed of the progress and evaluation of the client's case, establish a mechanism for obtaining Client responses as needed, and follow Client communication practices consistent with Exhibit C: OPD Client Communications Guidelines.
- E. Trial Counsel Cooperation:** Consult with the Client's trial counsel concerning issues to be raised on appeal, the portion of the trial record necessary for appeal, and other matters as needed.
- F. Conflicts Screening:** Check for conflicts at the earliest possible time after assignment of each Case.
- G. Notification of Conflicts or Other Circumstances Requiring Withdrawal:** Notify OPD as soon as possible of any legal conflicts or other circumstances requiring withdrawal before completion of work.
- H. Withdrawal:** If seeking to withdraw as counsel of record before the completion of work, do so in accordance with the Rules of Appellate Procedure and the Rules of Professional Conduct.
- I. Withdrawal Without Substitution:** Immediately notify OPD if seeking to withdraw without substituting alternate counsel, leaving the Client to proceed pro se, unless the Client has unambiguously requested to proceed pro se.
- J. Notice of Sanctions:** Inform OPD within three days of any sanctions ordered against CONTRACTOR.
- K. Cost Bills:** In the event that the State files a cost bill seeking appellate costs against the client, review the cost bill and object to the charges included if legal grounds exist for doing so.
- L. Remand:** In the event that the Client's case is remanded to the trial court, ensure that the Client is appointed counsel for any further trial court proceedings.

## EVALUATION

At OPD's request, CONTRACTOR shall participate in evaluation processes to assess the quality of CONTRACTOR's work.

## APPELLATE TRAINING

CONTRACTOR shall ensure that each attorney performing work under this Contract on an ongoing basis attends at least seven hours of Washington-certified Continuing Legal Education (CLE) credit in criminal, juvenile dependency and termination, civil commitment, or other relevant areas of law. CONTRACTOR shall provide OPD with certification of CLE training upon request.

## ELECTRONIC LEGAL RESEARCH

OPD shall provide access to and use of a brief bank of criminal, dependency or termination, and civil commitment briefs. OPD shall further provide access to any electronic legal research service with which OPD has a contract. Such access is restricted to use for assigned indigent appellate Cases.

**INSURANCE**

CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of CONTRACTOR or its subcontractors or agents of either, while performing under the terms of this Contract.

CONTRACTOR shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

Professional Liability, Errors and Omissions Insurance

CONTRACTOR shall maintain adequate Professional Liability or Errors and Omissions Insurance to cover all program activities by CONTRACTOR and licensed staff employed or under contract to CONTRACTOR. The State of Washington, its agents, and its employees need not be named as additional insureds under this policy.

The required insurance shall be issued by an insurance company(s) authorized to do business within the state of Washington.

All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give OPD 30-days advance notice of any insurance cancellation.

CONTRACTOR shall submit to OPD a certificate of insurance that outlines the coverage and limits defined in the insurance section before OPD will sign the Contract. In the event the insurance certificate expires during the Contract period, CONTRACTOR shall provide OPD with an updated certificate of insurance.

A governmental agency contractor covered by a governmental self-insurance program may satisfy the insurance requirement by providing verification of self-insurance.

**ASSURANCES**

All activity pursuant to this Contract will be in accordance with all the applicable current federal, state, and local laws, rules, and regulations.

**ORDER OF PRECEDENCE**

Each of the exhibits listed below is by this reference hereby incorporated into this Contract. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and state of Washington statutes and regulations.
2. Special Terms and Conditions as contained in this basic Contract instrument.
3. Exhibit A – General Terms and Conditions.

4. Exhibit B – Washington State Office of Public Defense Client Communications Protocol Guidelines.
5. OPD Appellate Payment Policies.
6. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

**ENTIRE AGREEMENT**

This Contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties hereto.

**CONFORMANCE**

If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

**APPROVAL**

This Contract is subject to the written approval of OPD's Director or the Director's authorized representative and will not be binding until so approved. This Contract may be altered, amended, or waived only by a written amendment executed by both parties.

This Contract is executed by the persons signing below who warrant that they have the authority to execute this Contract.

«Contractor\_Name»

Washington State Office of Public  
Defense

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Joanne I. Moore, Director

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT A  
GENERAL TERMS AND CONDITIONS**

**DEFINITIONS**

As used throughout this Contract, the following terms have the meanings set forth below:

- A. "Client" means an individual receiving services under this Contract.
- B. "CONTRACTOR" means the agency, firm, provider organization, individual, or other entity performing services under this Contract. It includes any subcontractor retained by CONTRACTOR as permitted under the terms of this Contract.
- C. "OPD" means the Washington State Office of Public Defense, any division, section, office, unit, or other entity of OPD, or any of the officers or other officials lawfully representing OPD.
- D. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

**ASSIGNMENT**

CONTRACTOR shall not transfer or assign this Contract or any claim arising under this Contract without OPD's prior written consent.

**CHANGE IN STATUS**

In the event of substantive change in the legal status, organizational structure, or fiscal reporting responsibility of CONTRACTOR, CONTRACTOR shall notify OPD of the change as soon as is practicable, but no later than 30 days after the change.

**CHANGES AND MODIFICATIONS**

Any change or modification to this Contract must be in writing and signed by both parties.

**DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties shall participate in mediation in good faith. The parties shall choose the mediator by mutual agreement. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. The parties agree that mediation must precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract will be construed to limit the parties' choice of a mutually acceptable alternative dispute resolution method such as a dispute resolution board or arbitration.

**GOVERNING LAW**

This Contract will be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder must be in the Superior Court for Thurston County.

**INDEMNIFICATION**

CONTRACTOR shall defend, protect, and hold harmless the state of Washington, including all elected officials, public agencies, officers, and employees thereof, from and against all claims, suits, and actions, including all costs of defense, arising from any negligent act or omission of CONTRACTOR or any authorized subcontractor or any employee or agent of either in the performance of this Contract.

**INDEPENDENT CAPACITY**

The parties to this Contract, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party will not be considered or construed to be employees or agents of the other party for any purpose whatsoever.

As provided in Chapter 236 Laws of 2012, CONTRACTOR and any employees of CONTRACTOR providing services under this Contract are not, as a result of providing services under this Contract, eligible for any public benefits, including membership in any public retirement programs of the State of Washington.

**INDUSTRIAL INSURANCE COVERAGE**

If required by law, CONTRACTOR shall provide or purchase industrial insurance coverage prior to performing work under this Contract. OPD will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for CONTRACTOR or any authorized subcontractor or employee of CONTRACTOR that might arise under the industrial insurance laws during the performance of duties and services under this Contract. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this Contract, those payments shall be made by CONTRACTOR; CONTRACTOR shall indemnify OPD and guarantee payment of such amounts.

**LICENSING AND ACCREDITATION STANDARDS**

CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of this Contract.

**NONDISCRIMINATION**

During the performance of this Contract, CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations, and policies. In the event of CONTRACTOR's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be terminated in whole or in part in accordance with the Termination for Default section below, and CONTRACTOR may be declared ineligible for further contracts with OPD.

**OVERPAYMENTS**

If an audit of CONTRACTOR's or OPD's records determines that fees paid pursuant to this Contract are in excess of those authorized under this Contract, CONTRACTOR shall immediately reimburse OPD for any excess amounts as determined by such audit.

**PROTECTION OF CONFIDENTIAL INFORMATION**

CONTRACTOR shall implement physical, electronic, and managerial safeguards to prevent unauthorized access to Clients' Personal Information.

**RECORDS, DOCUMENTS, AND REPORTS**

CONTRACTOR shall maintain all books, records, documents, data, and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, CONTRACTOR shall make these records, including materials generated under this Contract, available at all reasonable times to inspection, review, or audit by OPD, personnel duly authorized by OPD, the Office of the State Auditor, and federal and state officials so authorized by law, regulation, or agreement, subject to the Attorney/Client Confidentiality provisions of the Rules of Professional Conduct.

If any litigation, claim, or audit is started before the expiration of the six year period, CONTRACTOR shall retain all relevant records until all litigation, claims, or audit findings involving the records have been resolved.

**REGISTRATION WITH DEPARTMENT OF REVENUE**

CONTRACTOR shall complete registration with the Department of Revenue, General Administration Building, Olympia WA 98504, and will be responsible for payment of all taxes due on payments made under this Contract.

**RIGHT TO MONITOR**

CONTRACTOR shall provide right of access to its facilities to OPD or any of its officers at all reasonable times in order for OPD to monitor and evaluate performance, compliance, and

quality assurance under this Contract. OPD shall honor the right of Client confidentiality in any inspection.

All inspections and evaluations must be performed in such a manner that will not unduly interfere with CONTRACTOR's business or work hereunder.

### **SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, OPD may terminate this Contract. OPD shall in good faith provide as much notice as possible and may offer to renegotiate under such new funding limitations and conditions.

### **SEVERABILITY**

If any provision of this Contract or any provision of any document incorporated by reference is held invalid, such invalidity will not affect the other provisions of this Contract that can be given effect without the invalid provision if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Contract. To this end, the provisions of this Contract are declared to be severable.

### **SUBCONTRACTING**

CONTRACTOR shall not enter into subcontracts for the work contemplated under this Contract without obtaining OPD's prior written approval. CONTRACTOR shall not subcontract for the oral argument of any cases separately from the research and writing of the associated briefs. CONTRACTOR's employees are not considered subcontractors.

In no event will the existence of a subcontract operate to release or reduce the liability of CONTRACTOR to OPD for any breach in the performance of CONTRACTOR's duties.

### **TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this contract, either party may, by 90 days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part. If this Contract is so terminated, OPD will be liable only for payment required under the terms of this Contract for services rendered prior to the effective date of termination.

### **TERMINATION FOR DEFAULT**

OPD may terminate this Contract for default, in whole or in part, by written notice to CONTRACTOR if OPD has a reasonable basis to believe that CONTRACTOR has:

- failed to meet or maintain any requirement for contracting with OPD;
  - failed to render adequate representation to Clients or willfully disregarded the rights and best interests of a Client;
  - failed to perform under or otherwise breached any term or condition of this Contract;
- or

- violated any applicable law or regulation.

If it is later determined that CONTRACTOR was not in default, the termination will be considered a termination for convenience.

### **TERMINATION PROCEDURE**

Upon termination of this Contract, and except as otherwise directed by OPD, CONTRACTOR shall:

1. comply with all directions contained in OPD's notice of termination, including:
  - a. stopping work on any cases where OPD directs the cessation of work;
  - b. completing work on any cases where OPD directs the completion of work; and
  - c. complying with any other requirements for completion of work that OPD specifies.
2. withdraw from representation in compliance with RPC 1.16(d): Declining or Terminating Representation, on any case where OPD has directed the cessation of work; and
3. complete all necessary work on any cases where the court does not permit CONTRACTOR to withdraw.

On termination, OPD may withhold from any amounts due CONTRACTOR for completed work or services such sum as OPD determines to be reasonably necessary to protect OPD against potential loss or liability.

The rights of and remedies available to OPD provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or this Contract.

In the event of termination of this Contract, OPD reserves the right to require a bond to assure completion of the work by CONTRACTOR, pursuant to state law.

### **WAIVER OF DEFAULT**

Waiver of any default or breach under this Contract will not be deemed to be a waiver of any subsequent default or breach. Waiver will not be construed to be a modification of the terms of this Contract unless stated to be such in writing, signed by OPD's Director or the Director's designee.

**EXHIBIT B**

**CLIENT COMMUNICATION PROTOCOL GUIDELINES**

The Rules of Professional Conduct require attorneys to keep their clients reasonably informed to enable them to make informed decisions about their case. RPC 1.2; 1.4(a); 1.4(b). At a minimum, communication protocols need to address client communications as appropriate at the following points of the representation:

<p><b>Appointment Letter</b></p>	<p>At the initial time of the appointment, the attorney shall write to the client to outline the scope of the representation, to describe the stages of the appeal, to note the possible assessment of costs for appellate representation, and to provide an address and/or phone number by which the client can communicate with the attorney</p>
<p><b>Evaluative Communication or, Evaluative Letter</b></p>	<p>The attorney shall either:</p> <ul style="list-style-type: none"> <li>• communicate with the client, by letter or telephone, regarding the fact that the attorney has read the record and analyzed the case; regarding the specific means by which the client may contact the attorney to fully discuss the case’s merits; regarding other factors involved in the client’s case; and regarding the exercise of his or her options;</li> </ul> <p>or, alternatively,</p> <ul style="list-style-type: none"> <li>• summarize in a letter the results of the attorney’s investigation and analysis of the merits of the case; remind the client that costs may be assessed in case of an unsuccessful appeal; and provide an opportunity for the client to contact the attorney to exercise his or her options.</li> </ul> <p>Some attorneys may choose to provide an evaluative communication before writing the brief; others may choose to provide an evaluative communication after writing the brief or accompanying the brief.</p>
<p><b>Letter Accompanying Brief</b></p>	<p>The attorney shall send the client the opening brief and inform the client of the right to obtain a copy of the transcript and file a Statement of Additional Grounds for Review pursuant to RAP 10.10. The attorney should explain that a statement of additional grounds is limited to issues based on the trial record, and that a personal restraint petition is necessary to introduce new evidence on appeal.</p>
<p><b>Status Reports</b></p>	<p>While the case is on-going, the attorney should update the client on developments. Examples include informing the client of the date of oral argument and forwarding a copy of the State’s brief and any reply brief.</p>
<p><b>Letter Accompanying Decision</b></p>	<p>The attorney shall send the client a copy of the appellate court’s decision, and shall inform the client whether the attorney plans to file a Petition for Review or whether the client has the option to file such a petition, including the time constraints for such a petition.</p>
<p><b>Letter Accompanying Mandate</b></p>	<p>The attorney shall send the client a copy of the mandate and shall inform the client of the applicable time constraints for any further state or federal relief.</p>

## OPD Payment Policies

### Policy A -- Representation and applicability of policies

#### A1. Representation

Attorneys appointed to represent indigent appellate clients shall take all steps necessary to provide effective assistance of counsel on appeal, and to comply with the Rules of Appellate Procedure and Rules of Professional Conduct. These duties may include, but are not limited to: filing a designation of clerk's papers; filing a statement of arrangements; reviewing the clerk's papers and report of proceedings; consulting with the client at every critical stage of the proceedings; consulting with trial counsel and the clerk of the appellate court as necessary; conducting adequate legal research; drafting an appropriate brief or similar pleading; drafting a reply brief where appropriate; presenting any scheduled oral arguments in front of the clerk, commissioner or appellate court; and filing post-opinion motions or a petition for review where necessary and appropriate.

#### A2. Applicability

Both contract cases and non-contract cases will be handled in accordance with these policies. Contracts generally will be written in accordance with these policies. If in a particular case contract terms differ from these policies, the contract terms will control.

### Policy B — Payment & Case weighting

#### B1. Payment events — non-contract & contingent contracts

OPD pays attorneys at the time of three “payment events” –

- a) First payment event -- Appointment. Shall be paid when counsel is appointed to represent a client and the client has a right to counsel at public expense. Covers all necessary representation at preliminary stages of appeal, including reviewing the trial court file, ordering transcripts, communicating with the client, and filing a statement of arrangements with the court of appeals to perfect the appeal.
- b) Second payment event -- Filing a brief or brief equivalent, which includes:
  - e. An opening brief in a direct criminal appeal, an appeal from termination of parental rights or dependency order, a probation revocation hearing, a disposition in a juvenile offense matter, a sexual predator hearing, or any other proceeding where expenditure of public funds for appellate indigent defense has been authorized;
  - f. A motion for accelerated review in a sentencing case, a termination of parental rights case, a dependency case, or a juvenile offense matter;
  - g. A personal restraint petition when the appointment of counsel at public expense is authorized;

OPD APPELLATE PAYMENT POLICIES

- h. An opening brief in a Supreme Court case where the Supreme Court has granted the petition for review;
  - i. A motion for discretionary review to the Court of Appeals when filed after the record has been perfected in a case where the right to counsel attaches at all stages of proceedings;
  - j. An answer or responsive pleading to an appeal or discretionary review filed by the state; or
  - k. A voluntary withdrawal of an appeal by a defendant after the record has been perfected.
- c) Third payment event – Closing, which occurs:
- (6) For cases with oral argument, on presentation of an oral argument.
  - (7) For cases without oral argument, on the date of the Court’s consideration of the case or the date of opinion.
  - (8) For motion for discretionary review cases, on the date of denial of review.

**B2. Payment Schedule — non-contract & contingent contracts**

<b>Number of Pages of Transcript</b>	<b>Assignment Payment</b>	<b>Brief Payment</b>	<b>Closing Payment</b>	<b>Total Payment</b>
Anders Brief, <i>regardless of transcript length.</i>	\$1,070	\$110.00	\$0.00	<b>\$1,180</b>
0 to 299 pages	\$1,070	\$1,020	\$225	<b>\$2,315</b>
300 to 499 pages	\$1,070	\$2,105	\$225	<b>\$3,400</b>
500 to 999 pages	\$1,070	\$2,405	\$225	<b>\$3,700</b>
1,000+pages	\$1,070	\$2,705	\$225	<b>\$4,000</b>

NOTE: OPD will pay only one assignment, brief, and closing fee per case, even if multiple payment events occur (such as a response to discretionary review followed by a respondent’s brief after review is accepted). Attorneys should request extraordinary compensation under section C2 below if such multiple payment events occur.

“Number of Pages of Transcript” refers to the trial transcript, excluding pre-trial, post-trial, voir dire, and opening statements. For cases where no trial took place, it includes all transcript pages. If a case has an usually large number of transcript pages outside of the trial, counsel should request extraordinary compensation pursuant to section C2 below.

**B3. Case Weighting — monthly contracts**

Appellate cases under a monthly contract will be weighted at the time of perfection according to the following case weighting schedule:

Credits	VRP
2	800+
3	1600+
4	2400+
5	3200+
6	4000+

**Policy C — When invoices shall be filed**

**C1. Invoices of counsel**

- a) Attorneys who are assigned indigent appellate cases should invoice OPD within 30 days of each of the three specified payment events.
- b) OPD’s fiscal year runs from July 1 to June 30. OPD cannot pay expenses from one fiscal year with money appropriated for the next year. As such, **all invoices from a given fiscal year must be turned in by August 1 of the following fiscal year to qualify for payment.**

**C2. Extraordinary compensation**

- a) Counsel may petition OPD for additional compensation reflecting unusual work in a case beyond basic services. Factors that OPD may consider in deciding whether to award extraordinary compensation include:
  - i. Complex or unusual legal issues requiring unusual research or costs.
  - ii. Issues of first impression under the law of Washington requiring unusual research.
  - iii. Complex and lengthy trial record relevant to issues raised on appeal.
  - iv. Supplemental briefing requested or authorized by the appellate court.
  - v. Cases creating an unusual financial hardship upon the attorney.
  - vi. A certification of extraordinary status by the court hearing the case.
- b) Attorneys seeking extraordinary compensation must submit an affidavit using the form provided by OPD and any other supporting materials necessary for a review of the request.

**C3. Invoices of court reporters**

Invoices of court reporters may be submitted as soon as the report of proceedings has been filed by the court reporter. Submission of an invoice more than 60 days from the date the record is filed will result in late penalties of 10% of the original invoice per month or partial

month, unless good cause is shown, as determined by OPD in its discretion.

#### **C4. Invoices of the superior court clerks**

Invoices of superior court clerks may be submitted as soon as the clerks' papers or other requested documents have been prepared and must be submitted no more than 60 days after the clerks' papers or other requested documents have been prepared.