

# **PUBLIC DEFENDER CONTRACT FOR BACKUP REPRESENTATION OF PARENTS/RESPONDENTS IN NEGLECT/ABUSE CASES**

This contract, effective October 1, 2016, is made between the Muskegon County Public Defender's Office, with an address of 165 E. Apple Avenue, 3rd Floor, Muskegon, Michigan 49442, herein the "Public Defender's Office", and **Edward E. Wasiura**, with an address of 1189 Peck Street, Muskegon, MI 49442, herein the "ATTORNEY".

**WHEREAS**, the Public Defender's Office desires to obtain court appointed legal services for representation of parents/respondents in neglect/abuse cases that the Public Defender's Office is otherwise conflicted off of; and

**WHEREAS**, the ATTORNEY has submitted a proposal to provide these services at the COURT's request, and said ATTORNEY hereby represents to the COURT he/she is capable of performing the legal services required of him/her pursuant to the terms of this contract;

**NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises contained herein, the parties agree as follows:

## **TERMS OF CONTRACT**

This contract shall take effect October 1, 2016 and shall be for one (1) year, commencing October 1, 2016, with the contract to terminate on September 30, 2017.

Effective October 1, 2016, the ATTORNEY shall provide legal services to respondent parents in Neglect/Abuse cases when more than one parent is a respondent and/or the Public Defender's Office is conflicted off of a case and cannot represent a respondent parent.

The ATTORNEY shall absorb an existing caseload effective October 1, 2016 that will consist of representing both parents and children. As new cases come in and older cases close, the ATTORNEY will eventually have a caseload of primarily representing a respondent parent when there is more than one respondent on a case.

### **ATTORNEY AGREES TO PROVIDE:**

A. Legal representation for parents/respondents in neglect/abuse proceedings. Legal services will include, but not necessarily be limited to, the following court appearances and all out of court preparation therefore:

1. Preliminary hearings; adjourned preliminary hearings;
2. Pre-trial Conferences;
3. Trials and Pleas;

4. Dispositional hearings;
5. Review hearings;
6. Re-hearings;
7. Appeals;
8. Termination hearings;
9. Mileage and travel expenses;
10. Overhead expenses;
11. Other hearings – Motions, Reimbursement, Show Cause, etc.;

The Public Defender's Office will pay for service fees and witness fees for subpoenas, but the ATTORNEY must issue the subpoenas and arrange for service, first utilizing the Muskegon County Sheriff's Department or Circuit Court personnel.

B. The ATTORNEY shall render service in a prompt and timely manner and shall arrange his/her schedule so as to be available to represent clients under the terms of this contract.

C. In the event the ATTORNEY experiences a bona fide conflict of interest with an assigned case, the ATTORNEY will notify the assigned judge in writing with a copy to the Public Defender's Office.

D. The ATTORNEY agrees to accept all pleadings and relevant case related documents via email at an established email address provided to the Public Defender's Office and the Court prior to the commencement of this agreement, or by other electronic means as directed by the Court.

E. The ATTORNEY will, under the terms of this contract, continue to provide representation for all currently pending cases before the Court in which the ATTORNEY has already been appointed.

G. The ATTORNEY agrees that his/her obligations under this Agreement to represent indigent parents/respondents shall take precedence over any and all other commitments that he/she might have in the course of his/her legal practice.

H. The ATTORNEY shall be required to keep adequate records of all appearances and services on behalf of defendants represented under this Agreement and shall make such records available to the Public Defender's Office and the Court.

I. Upon termination of this contract, the Public Defender's Office in its discretion may continue such representation by the ATTORNEY previously appointed for those cases under this contract, if deemed in the best interest of the clients. The Public Defender's Office, however, shall not be required to continue such representation and shall have the right to substitute and appoint new attorneys to handle such pending cases when this contract terminates.

J. The parties understand and agree that **Edward E. Wasiura**, is primary counsel in regard to this contract and should he/she cease to act in this capacity, the contract may be terminated by the Public Defender's Office.

## **INDEPENDENT CONTRACTOR**

It is understood the ATTORNEY is an independent contractor.

The ATTORNEY agrees to provide and maintain during the term of this Contract, malpractice insurance coverage at a minimum of One Hundred Thousand Dollars (\$100,000) per incident and to provide proof of same to the Public Defender's Office upon request.

The ATTORNEY understands and acknowledges that he/she is not entitled to any benefits of a County employee including, but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment

The Public Defender shall not be responsible for paying any taxes on the ATTORNEY'S behalf. Should County be required to do so by State, Federal or local taxing agencies, the ATTORNEY agrees to promptly reimburse the County for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following, FICA (Social Security), unemployment insurance contributions, income tax, disability insurance and workers' compensation insurance.

The ATTORNEY agrees to indemnify and hold the County of Muskegon harmless from any and all complaints filed against County by third party as a result of or attributable to acts or omissions of the ATTORNEY to this Contract.

## **STANDARD OF PERFORMANCE**

Attorney represents that Attorney has the skills, expertise, and license necessary to perform the services required under this Agreement. Attorney further represents that he/she is licensed to practice law in the State of Michigan and is in good standing with the State Bar of Michigan. Attorney shall perform all services under this Agreement in the manner and according to the standards observed by a competent practitioner of the law. Attorney further covenants that he/she will comply with the Michigan Rules of Professional Conduct and the Michigan Court Rules. Attorney agrees to notify the Public Defender's Office in writing immediately upon receiving any Formal Complaint from the Attorney Grievance Commission and/or any disciplinary action in relation to his/her license to practice law.

The Attorney assures that in accordance with Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title IX of the Education Amendment of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.), the Regulations issued thereunder by the U.S. Department of Health and Human Services (45 CFR Parts 80, 84, 86 and 91), the Michigan Handicapper's Civil Rights Act (1976, P.A. 220), and the Michigan Civil Rights Act (1976, P.A. 453), no individual shall, on the ground of race, creed, age, color, national origin or ancestry, religion, sex, marital status, or handicap be excluded from participation, be denied the benefit of, or be otherwise subjected to discrimination or harassment under any services or activity provided by this Attorney.

## **COMPENSATION**

The base contract price for the fiscal year 2016-2017 shall be Twenty Thousand Dollars (\$20,000) payable at the rate of One Thousand Six Hundred Sixty-Six Dollars and Sixty Six Cents (\$1666.66) per month.

## **TERMINATION OF CONTRACT**

This contract shall terminate on September 30, 2017; provided, however, that if a change in the Michigan Court Rules, Statutes or Case Law results in a change in the requirements regarding attorney representation in the areas covered by this contract, after giving the ATTORNEY sixty (60) days notice, all parties will negotiate in good faith in an attempt to enter into a new contract, taking into consideration the changed requirements.

If the ATTORNEY fails to meet his/her responsibilities under this contract, such failure is cause for the Public Defender's Office to terminate that ATTORNEY's participation under this contract for non-performance.

Either party may terminate this contract by giving the other party written notice postmarked or hand delivered at the addresses stated above, at least thirty (30) days prior to the intended date of termination. If the Attorney's address changes, he/she will notify the Public Defender's Office within ten (10) days of said change.

## **MISCELLANEOUS PROVISIONS**

No person dealing with the Public Defender's Office or Attorney shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement. This Agreement is not intended to, nor shall it be interpreted to create a special relationship between the Public Defender's Office or the Attorney and any staff, visitors, residents, or other individuals who may have business through the County of Muskegon.


Attorney understands that this is not an exclusive Agreement and the Public Defender's Office shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Attorney as the Public Defender's Office and the County of Muskegon desire.

This Agreement shall be governed by the laws of the State of Michigan. Any litigation regarding this Agreement or its contents shall be filed in the County of Muskegon, if in State Court, or in the United States District Court for the Western District of Michigan, if in Federal Court.


The terms and conditions used in this Agreement shall be given their common and ordinary definition and will not be construed against either party.

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be

construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Dated: 10-11, 2016 BY:   
Terry J. Sabo, Chairperson  
Muskegon County Board of Commissioners

Dated: Oct 6, 2016 BY:   
Fred Johnson, Chief  
Muskegon County Public Defender's Office

Dated: 9-29, 2016 BY:   
Edward J. Wasiura  
Contract Attorney