

## **Agreement for Legal Services**

In this Agreement, the terms “you” and “your” refer to \_\_\_\_\_, and the terms “we,” “us,” and “our” refer to the Superior Court of California, County of Calaveras. This Agreement is effective as of July 1, 2024.

### **Background**

- Welfare and Institutions Code §317 requires us to appoint counsel to represent children (and occasionally other parties) in dependency proceedings, when we determine it is necessary or appropriate under the law.
- You are an attorney in good standing with the desire, background and ability to represent children in dependency proceedings that take place in our court, and we desire to engage you to provide these Services in accordance with Rule of Court 5.660.
- The parties enter into this Agreement to set forth the terms and conditions that apply when we appoint you to represent minor children in juvenile dependency proceedings under Welfare and Institutions Code §317 and in family law proceedings under Family Code Section 3150.

### **Agreement**

The parties agree as follows:

- 1. Services.** You will provide Services described in Exhibit A, “Scope of Services.”
- 2. Fees and Payment.** We will pay you the Compensation described in Exhibit B, “Payment Provisions.”
- 3. General Terms and Conditions.** The general terms and conditions that govern this Agreement are set forth in Exhibit C, “General Terms and Conditions.”
- 4. Definitions.** Capitalized terms in this Agreement have the definitions set forth in Exhibit D, “Definitions.”
- 5. Entire Agreement.** Exhibits A, B, C and D and schedules attached to the exhibits are a part of this Agreement. This Agreement contains the entire understanding of the parties related to the subject matter of this Agreement, and this Agreement supersedes all previous agreements between the parties regarding the subject matter of this Agreement.

## Signatures

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF CALAVERAS an entity of the  
California Judicial Branch organized under  
Article VI of the California Constitution  
(referred to in this Agreement as the “we,”  
“us” and “our”)

\_\_\_\_\_, an individual  
(referred to in this Agreement as “you” and  
“your”)

Signature: \_\_\_\_\_

Print Name: Margaret L. Smith

Title: Court Executive Officer

Date Signed: \_\_\_\_\_

Address: 400 Government Center Drive

San Andreas, CA 95249

Phone: (209) 754-6143

Email:

[msmith@calaveras.courts.ca.gov](mailto:msmith@calaveras.courts.ca.gov)

Approved by:

Signature: \_\_\_\_\_

Print Name: Timothy S. Healy

Title: Presiding Judge

Signature: \_\_\_\_\_

Print Name:

Title: Attorney at Law

Date Signed: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

# **EXHIBIT A**

## **SCOPE OF SERVICES**

### **1. Your Services**

- 1.1 Subject Matter (WIC).** Judges of the Superior Court of California, County of Calaveras, may appoint you to act as dependency counsel under Welfare and Institutions Code §317. Your appointment will require you to represent children:
- (A) at detention hearings and at all subsequent proceedings before the court;
  - (B) in termination proceedings;
  - (C) in proceedings relating to the institution or setting aside of a legal guardianship initiated through a dependency proceeding; and
- 1.2 Subject Matter (Family Code).** Judges of the Superior Court of California, County of Calaveras, may also appoint you to act as counsel representing children in family law matters pursuant to Family Code Section 3150, requiring you to appear at all short cause family law hearings and all long cause evidentiary hearings for matters on which you have been appointed.
- 1.3 Scope of Representation.** In addition to appearing at all noted dependency and family law hearings, your representation includes mandatory meetings with the represented minors prior to all hearings, home inspections as directed by the Court or as you deem appropriate, and pre-hearing conferences with all appropriate people involved with the minor, including, but not limited to, teachers, school administrators, counselors and therapists.
- 1.4 No Representation on Appeals.** Appointments can include one or more phases of a representation, including the prosecution of applications for extraordinary writs in state courts of review; however, this Agreement does not encompass representation on appeal.
- 2. Acceptance of Appointments.** You will accept all appointments unless prohibited due to an adverse interest. You will notify us immediately if your appointment in a specific matter would then require disclosure or withdrawal under applicable law regarding the representation of adverse interests, including Rule of Professional Responsibility 3-310 (“Avoiding the Representation of Adverse Interests”). For purposes of section F(3)(b) of that rule, we will be considered, only for purposes of making an appointment under this Agreement, a “public agency which provides legal

services to...the public.”

**3. Limitation on Scope of Agreement.** This Agreement does not affect your rights and duties related to any other appointment by us in a matter outside of the scope of your Services under this Agreement.

**4. Service Levels.**

**4.1 Competent Counsel.** You will perform your Services in such a manner that you meet the definition of “competent counsel” under Rule of Court 5.660(d) for dependency matters and be an attorney in good standing with the California State Bar and attend at least the minimum MCLE requirements for family law matters. In performing your Services, you will demonstrate competence generally, and specifically in the application to your cases, of:

(A) forensic skills;

(B) the applicable statutory scheme;

(C) the purposes and goals of dependency proceedings;

(D) the specific statutes, rules of court, and cases relevant to dependency proceedings; and

(E) procedures for filing petitions and extraordinary writs.

Upon execution of this agreement, you will file the Certificate of Competence required under Local Rule 8.1 and renew the Certificate of Competence as required under the rule.

**4.2 Professional Rules.** You will adhere to the State Bar Act and California Rules of Professional Conduct relative to the provision of your Services.

**5. Location and Availability.** You will maintain an office in the Calaveras/Amador/Tuolumne region, or other location approved by the Court, at your expense, although you will make Services available on a county-wide basis. You agree to stock office supplies and engage staff to provide clerical and other functions, as necessary or customary for attorneys generally who provide services like those you provide. You will make your office available at no charge for client meetings, depositions and other purposes related to the Services. You will use an answering or voice messaging system that allows messages to be left when the office phone is not answered. You will retrieve your mail and phone messages with regularity necessary to provide timely services and receive timely notice.

**6. Continuing Legal Education.** You will meet the minimum requirements for continuing education set forth in Rule of Court 5.660 (d) at your own expense.

**7. Term**

- 7.1 Initial Term.** The Initial Term of this Agreement is the period beginning on July 1, 2024, and terminating on June 30, 2025.
- 7.2 Option Period.** You grant us the option to extend this Agreement beyond the Initial Term for successive periods of up to one year in duration. This option will automatically be exercised unless either party to this agreement gives written notice of intent not to exercise this option within ninety (90) days prior to June 30<sup>th</sup> for that agreement period.

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# EXHIBIT B

## PAYMENT PROVISIONS

### 1. Compensation

#### 1.1 Fees

- (A) We will pay you fees at the rate of \$8,177.08 monthly, as your full Compensation for Services satisfactorily performed through the Termination Date.
- (B) The rate of \$8,177.08 per month represents an hourly rate of \$100.00 per hour.

#### 1.2 Expenses. In addition to providing fee Compensation, we will reimburse you, in arrears, for the following expenses you incur:

- (A) Witness fees, laboratory expenses, forensic services, medical or other technical experts, stenographic transcriptions, and interpreters in the courtroom, but only if these expenses are incurred as a result of a court order; and
- (B) Travel expenses for making court appearances outside of the County, at the State of California's standard reimbursement rates applicable to state employees traveling on state business, but only if we approve of the need for travel and the nature and amount of expenditures.

**2. Invoicing and Payment.** You will submit invoices to us monthly in arrears. Your invoices will include information and supporting documentation, including a workload report in the form we specify from time-to-time. You will adhere to billing guidelines we designate. Payment does not imply acceptance of your invoice or Services, and you will immediately refund any payment made in error. We may elect to place you on an auto-payment plan for all or a portion of your contract through our accounting system. This auto-payment plan, however, does not relieve you of your obligation to provide an invoice and any supporting documentation as referenced above.

**3. Availability of Funds.** Our obligation to pay your Compensation is subject to the availability of funds. We will notify you if funds become unavailable or limited during the term of this Agreement.

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# EXHIBIT C

## GENERAL PROVISIONS

### 1. Representations and Warranties.

**1.1 Your Representations and Warranties.** Except as set forth in Schedule C-1, you represent and warrant that the following statements are true:

- (A) **No Gratuities.** You have not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Entity or Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- (B) **No Conflict of Interest.** You have no interest that would constitute a conflict of interest under California Government Code §§1090 et seq. or §§87100 et seq.; or under California Rules of Court 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities;
- (C) **No Interference with other Agreements.** This Agreement does not constitute a conflict of interest or default under any other of your agreements;
- (D) **No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened against or affecting you, or your business as an attorney, your financial condition, or the Services to be performed under this Agreement;
- (E) **Compliance with Laws.**
  - (1) **General.** You are in compliance in all material respects with all laws, rules and regulations applicable to your business as an attorney, and you pay all undisputed debts when they come due; specifically:
  - (2) **Specific.**
    - a) **Non-discrimination.** You do not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental and physical) including HIV and AIDS, domestic partner status, marital status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender identity), and sexual orientation;

- b) **No Harassment.** You do not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom you may interact in the performance of this Agreement, and you take all reasonable steps to prevent harassment from occurring; and
- c) **Employment and Labor Laws.** You also comply with the federal Americans with Disabilities Act (42 U.S.C. 12101, *et. seq.*), California's Fair Employment and Housing Act, California Government Code §§12990 *et seq.*, and California Code of Regulations, title 2, §§7285 *et. seq.*;

(F) **Drug Free Workplace.** You provide a drug-free workplace as required by California Government Code §8355 through §8357.

**1.2 Representations and Warranties to Remain True.** During the term of this Agreement, you will not take an action, or omit to perform any act, that results in a representation and warranty becoming untrue. You will promptly notify us if any representation and warranty becomes untrue.

**2. Indemnity.** You will defend (with counsel satisfactory to us) and indemnify Court and Court personnel from any Loss resulting from (A) a matter or event related to your Services under this Agreement, or (B) your default under this Agreement, or both, except to the extent a Loss is due to the active negligence or willful misconduct of an indemnified party.

**3. Insurance.**

**3.1 Basic Coverage.** You will provide and maintain at your expense the following insurance during the term of this Agreement:

(A) **Workers Compensation and Employer's Liability.** The policy is required only if you have employees. It must include workers' Compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease;

(B) **Commercial General Liability.** The policy must cover bodily injury and property damage liability, including coverage for the products-completed operations hazard and liability assumed in a contract, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit;

(C) **Professional Liability.** The policy must cover liability resulting from errors or omissions committed in your performance of Services under this Agreement, at minimum limits of \$1 million per claim;

(D) **Commercial Automobile Liability.** The policy must cover bodily



injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$500,000 per occurrence, combined single limit.

- 3.2 “Claims Made” Coverage.** If any required policy is written on a “claims made” form, you will maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three years beyond the termination or expiration of this Agreement and our acceptance of all Services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any “claims made” policy must be no later than the date that Services commence under this Agreement.
- 3.3 Umbrella Policies.** You may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.
- 3.4 Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- 3.5 Deductibles and Self-Insured Retentions.** You will declare to us all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to our approval. Deductibles and self-insured retentions do not limit your liability.
- 3.6 Additional Insured Status.** You will require your commercial general liability insurer, your commercial automobile liability insurer, and, if applicable, your commercial umbrella liability insurer to name the Superior Court of California, County of Calaveras and its employees as additional insureds with respect to liability arising out of your Services.
- 3.7 Certificates of Insurance.** Before you begin performing Services, you will give us certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 days’ prior written notice to us. Certificates of the following policies must contain an additional insured endorsement naming the Superior Court of California, County of Calaveras as additional insureds:
- (A) Commercial general liability insurance;
  - (B) Commercial automobile liability basic coverage insurance; and
  - (C) Commercial umbrella liability insurance, if maintained in lieu of (A) or (B) above.

**3.8 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.

**3.9 Required Policy Provisions.** Each policy must provide, as follows:

(A) **Insurance Primary; Waiver of Subrogation.** The basic coverage provided is primary and non-contributory with any insurance or self-insurance maintained by Superior Court of California, County of Calaveras and its employees, and the basic coverage insurer waives any and all rights of subrogation against Superior Court of California, County of Calaveras and its employees; and

(B) **Separation of Insureds.** The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability;

**3.10 Partnerships.** If you are an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:

(A) **Separate.** Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or

(B) **Joint.** Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

**3.11 Consequences of Lapse.** If required insurance lapses during the Term of this Agreement, we are not required to process invoices after such lapse until you provide evidence of reinstatement that is effective as of the lapse date.

#### **4. Default and Remedies**

**4.1 Default.** A default exists under this Agreement if you:

(A) make a material misrepresentation in writing; or

(B) fail or are unable to meet or perform any of your duties under this Agreement, and

(1) are incapable of curing this failure, or

(2) do not cure this failure within 30 days following notice.

(C) are not appointed by the juvenile court in cases where you would otherwise be available for appointment under this agreement.

**4.2 Notice.** You will notify us immediately if you default, or if a third party claim or

dispute is brought or threatened that alleges facts that would constitute a default under this Agreement.

#### **4.3 Remedies.**

**(A) Available Remedies.** We may do any of the following:

- (1) require you to enter into non-binding mediation;
- (2) terminate this Agreement in accordance with this Exhibit C; and
- (3) seek any other available remedy at law or in equity.

**(B) Remedies Cumulative.** All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

### **5. Termination; Effect of Expiration or Termination**

#### **5.1 Early Termination**

**(A)** We may terminate this Agreement immediately “for cause” if you are in default. We may also limit your Services and, proportionately, your Compensation, if:

- (1) we determine that having you provide the Services has become infeasible due to changes in applicable laws or regulations, or
- (2) expected or actual funding to pay your Compensation is withdrawn, reduced or limited.

**(B)** Either party may terminate this entire Agreement, without cause, by giving 90- days’ notice to the other party.

**(C)** This entire Agreement will terminate immediately without further action of the parties upon the death, or temporary or permanent incapacity, of a natural person who is a party to this Agreement or a general partner of a partnership that is a party to this Agreement.

#### **5.2 Effect of Expiration and Early Termination; Survival.**

**(A)** Upon the Termination Date:

- (1) We will be released from Compensating you for Services, other than Services you satisfactorily performed before the Termination Date.
- (2) You will be released from performing Services to the extent you effectively withdraw as counsel of record (or substitute counsel) for any person then represented, without prejudice to us or any person you then represent, and without violating any law, rule or regulation. If you are not permitted to withdraw from all existing matters, you will give us notice at least 15 days before the Termination Date. The notice must describe the affected matters and the basis for your

assertions, and you and we will then confer in good faith. If we agree with your assertions or you are forbidden by law from withdrawing from all matters, then:

- Your duties under this Agreement will continue after the Termination Date solely with respect to the affected matters;
- Compensation following the Termination Date will be at the hourly rate provided in Exhibit B;
- In addition, we will reimburse you for any direct, reasonable, actual expenditures for long distance telephone and, if contained in a court order, third-party experts;
- You will modify your monthly workload reports so they are sufficient to support your Compensation and any reimbursement you claim.

(B) All rights and duties in this Exhibit C survive the expiration or termination of this Agreement, except for promises regarding the maintenance of insurance in §§3.1(A), (C) and (D).

## **6. Assignment and Subcontracting; Successors.**

### **6.1 Permitted Assignments and Subcontracts.**

(A) Neither party may assign or subcontract its rights or duties under this Agreement, except as follows:

- (2) We may assign our rights and duties to any Judicial Branch Entity. We will notify you in writing within 30 days following the assignment.
- (3) Either party may assign its rights and duties or subcontract portions of this Agreement to a third party if the non-assigning party gives advance written consent of the assigning party. Consent may be withheld for any reason or no reason. If a non-assigning party does consent, the consent will take effect only if there is a written agreement between the assigning or subcontracting party and all assignees and subcontractors, stating the assignees and subcontractors:
  - (a) are jointly and severally liable to the non-assigning party for performing the duties in this Agreement of the assigning/subcontracting party;
  - (b) affirm the rights granted in this Agreement to the non-assigning party;
  - (c) make the representations and warranties made by the assigning/subcontracting party in this Agreement; and

(d) appoint the non-assigning party an intended third party beneficiary under the written agreement with the assigning/subcontracting party.

(B) No assignment or subcontract will release either party of its duties under this Agreement.

**6.2 Successors.** This Agreement binds the parties as well as their heirs, successors, and assignees.

**7. Notices.** Notices under this Agreement must be in writing. Notices may be delivered in person, via a reputable express carrier, or by registered or certified mail (postage pre-paid). Notice is effective on receipt; however, any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be treated as effective on the first day that the notice was refused, unclaimed, or deemed undeliverable. Notices must be addressed to the individual(s) in the signature block of this Agreement. Either party may change its address for receipt of notice by giving notice at any time to the other party in the manner permitted by this section.

**8. Miscellaneous Provisions; Interpretation.**

**8.1 Independent Contractor.** You are an independent contractor. No employer- employee, partnership, joint venture, or agency relationship exists between you and us.

**8.2 Your Personnel.**

(A) You will assign to this project only persons who have sufficient training, education and experience to successfully perform your duties. If we are dissatisfied with any of your personnel based upon performance or other reasonable disqualifying issue(s), you will replace them with qualified personnel. You will use reasonable efforts to minimize turnover of personnel you assign to this project.

(B) You will cooperate with us if we decide to perform background checks on your personnel by obtaining, at no additional cost, all releases, waivers and permissions we require. You may not assign personnel who refuse to undergo a background check.

**8.3 Audit and Records**

(A) **Audit.** You will allow our designees and us to review and audit your documents and records relating to this Agreement, subject only to a lawyer's duty of confidentiality owed to a represented party. You will correct errors and deficiencies by the 20th day of the month following the review or audit.

(B) **Records.** You will retain copies of all records and materials related to performance of the Services and New Services under this Agreement for a minimum of four years after termination of Services and New

Services. This retention requirement does not apply to those records that are subject to a lawyer's duty of confidentiality and have been transferred to another attorney.

#### **8.4 Confidential Information; Publicity.**

**(A) Confidential Information.** You agree to hold in confidence the following confidential information you receive in connection with this Agreement:

- (1) The terms and conditions of this Agreement;
- (2) All written information that is marked confidential;
- (3) All non-public information in electronic form to which you have access; and
- (4) All verbal information we later confirm in writing is confidential.

We own the confidential information, and we authorize you to use it only for purposes of performing this Agreement. For example, you may give confidential information on a "need-to-know" basis to your professional services providers, employees and subcontractors who have also executed confidentiality agreements that protect our confidential information to the same extent as this section. You may also disclose our confidential information to the extent necessary to comply with law, provided you give us advance notice.

**(B) Publicity.** You will not make any public announcement or press release about this Agreement without our approval.

**(C) Specific Performance.** You understand a default under this section will result in irreparable damage for which no adequate remedy will be available. Accordingly, injunctive or other equitable relief is a remedy that we will be entitled to seek.

**8.3 Choice of Law.** California law, without regard to its choice-of-law provisions, governs this Agreement.

**8.4 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code §1654.

**8.5 Amendment and Waiver.** No amendment to this Agreement will be effective unless in writing. A party's waiver of enforcement of any of this Agreement's terms or conditions is effective only if in writing. A party's specific waiver does not constitute a waiver by that party of any earlier, concurrent, or later breach or default.

**8.6 Authority and Binding Effect.** Each party warrants it has the authority to

enter into this Agreement, it may perform the services provided for in this Agreement, and its representative who signs this Agreement has the authority to do so. Each party warrants this Agreement constitutes a valid and binding obligation of the party, enforceable in accordance with its terms.

- 8.7 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 8.8 Headings.** All headings are for reference purposes only and do not affect the interpretation of this Agreement.
- 8.9 Time of the Essence.** Time is of the essence in the performance of Services under this Agreement.
- 8.10 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

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SCHEDULE C-1  
EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES

None.



EXHIBIT D  
DEFINITIONS

As used in this Agreement, the following terms have the indicated meanings:

**“Compensation”** means all remuneration owed to you in respect of Services, including your professional fees, direct costs (including filing fees), indirect costs (including overhead expenses), profit, and taxes.

**“County”** means the location and local jurisdiction in which we are located. **“Court”** means the Superior Court of California that is a party to this Agreement. **“Effective Date”** means the date first stated in this Agreement.

**“Initial Term”** is defined in Exhibit A, section 7.1.

**“Loss”** as used in the indemnity provisions of this Agreement includes all actions, claims, demands, causes of action, fines, penalties, losses, liabilities, damages, costs, expenses, and attorneys’ fees.

**“Judicial Branch Entity”** has the meaning provided in Government Code sections 900.3 and 940.3: any superior court, court of appeal, the Supreme Court, the Judicial Council, or the Administrative Office of Courts; and these entities comprise the “Judicial Branch.”

**“Judicial Branch Personnel”** means members, judges, judicial officers, subordinate judicial officers, directors, officers, employees, agents, and representatives of a Judicial Branch Entity.

**“Judicial Council”** means the Judicial Council of California, the policymaking body of the state court system.

**“Option Period”** is defined in Exhibit A, section 7.2

**“Services”** are your duties set forth in Exhibit A, section 1.1.

**“Term”** comprises the Initial Term and any Option Period.

**“Termination Date”** means the date when this Agreement expires or is validly terminated.

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