

A.2015-03

**INTERAGENCY AGREEMENT IAA15247**

between

**STATE OF WASHINGTON  
OFFICE OF CIVIL LEGAL AID**

and

**PEND OREILLE COUNTY**

THIS AGREEMENT is entered into by and between the Office of Civil Legal Aid (OCLA) and Pend Oreille County ("County"), for the purpose of reimbursing County for allowable expenses associated with attorneys appointed to represent certain children in dependency proceedings pursuant to 2ESSB 6126 (Laws of 2014, Ch. 108).

**1. DEFINITIONS**

For purposes of this contract, the following definitions shall apply:

- a. "Legislation" means the provisions of 2ESSB 6126 enacted as Chapter 108, Laws of Washington 2014 Regular Session.
- b. "Client" means a child qualified for representation by an attorney under the Legislation ;
- c. "Case" means a court proceeding in which a client is represented by an attorney and also means any substantially associated court or administrative proceeding in which the client is a party, including but not limited to guardianships, reinstatement proceedings, authorized family law proceedings, educational resource, enrollment, or truancy proceeding, or proceedings to secure services.
- d. "Children's Attorney" means an attorney, licensed to practice law in the state of Washington, who has been identified by OCLA as capable and willing to provide effective legal representation for children in dependency cases consistent with the standards referenced in section 2(6) of 2ESSB 6126.
- e. "Children's Representation Program Manager" means the employee assigned by OCLA to manage and oversee the program pursuant to which state funding is made available to reimburse County for legal representation that is conducted consistent with the practice, caseload and training standards referenced in section 2(6) of 2ESSB 6126.
- f. "County" means the entity and associated officials (elected or appointed), employees or contractors with responsibility to assign and pay for attorneys to represent children in dependency cases filed under chapter 13.34 RCW.
- g. "OCLA-Approved Agency" means an agency or law firm that OCLA deems to have established a sufficient system to train, supervise and support its attorneys to consistently provide effective legal representation for children in dependency cases consistent with the standards referenced in section 2(6) of 2ESSB 6126.

**2. PURPOSE**

The parties recognize that effective July 1, 2014, judicial officers presiding in juvenile court dependency proceedings are required to appoint an attorney to represent children in such proceedings cases six months following termination of all parental rights. The parties further recognize that, consistent with section 2(6)(c)(ii) of 2ESSB 6126, the judicial officer

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may appoint a single attorney to represent members of a sibling group, unless it is determined that a conflict of interest exists or other reasons preclude common legal representation per the Rules of Professional Conduct.

The purpose of this Agreement is to implement the Legislation and to reimburse County for expenses associated with appointment of attorneys to represent children who remain legally free and subject to the jurisdiction of the juvenile court six months following termination of the legal rights of all parents. In order to be eligible for state reimbursement, such representation must comply with practice, caseload (as modified by section 2(6)(c)(ii)) and training standards developed by the Children's Representation Work Group established by chapter 5, section 180, Laws of 2010.

### **3. DESCRIPTION OF SERVICES TO BE PROVIDED BY COUNTY**

- a. By July 1, 2014, or 30 days after execution of this Contract, whichever is later, County, working with the Children's Representation Program Manager if needed by the County, will review all pending dependency cases and provide the Children's Representation Program Manager with an accurate number of cases for which attorneys will be required to be appointed pursuant to section 2(6) of 2ESSB 6126.
- b. In order for County to be eligible for reimbursement, and consistent with the requirements of 2ESSB 6126, attorneys must be appointed in qualifying cases from a list of Children's Attorneys identified and approved by OCLA or attorneys affiliated with OCLA-Approved Agencies. In the event a Children's Attorney or an attorney affiliated with an OCLA-Approved Agency is not available for appointment, County may nevertheless remain eligible for reimbursement if another attorney is appointed, and if the attorney:
  - i. Agrees in writing to provide legal representation consistent with the practice and training standards referenced in 2ESSB 6126;
  - ii. Has a total caseload (contract and private) that does not exceed the equivalent of than sixty (60) full time equivalent clients at any one time during the contract term, (including siblings as counted as provided under 2ESSB 6126), but including up to 80 cases for such clients;
  - iii. Agrees to participate in OCLA's case activity and outcome tracking requirements and use OCLA's Case Activity, Reporting and Oversight System (CAROS);
  - iv. Agrees to participate in an OCLA-sponsored webinar for children's attorneys which will be conducted by the Court Improvement Training Academy at the University of Washington School of Law prior to October 1, 2014;
  - v. Agrees to participate in a regional training for children's attorneys conducted by the Court Improvement Training Academy at the University of Washington School of Law in the spring of 2015 and further trainings as appropriate and consistent with applicable training standards.
  - vi. Maintains professional liability insurance with minimum coverage limits of not less than \$500,000 per claim and \$1,000,000 in aggregate liability.
- c. In order to be eligible for reimbursement, within 30 days following the end of each quarter, County will submit a Quarterly Billing Form (QBF) to the Children's

Representation Program Manager for reimbursement of actual costs associated with the representation of children by attorneys appointed pursuant to section 2(6) of 2ESSB 6126. If County contracts with individual attorneys on a case-by-case basis, said bill will be in the form set forth in Attachment A (individual attorney cost-per-case basis). In the event that County retains private counsel on a percentage FTE basis to represent multiple children in multiple cases, said bill will be in the form set forth in Attachment B (percentage FTE/caseload basis). In the event that assign cases to an OCLA-Approved Agency, said bill will be in the form set forth in Attachment C (OCLA-Approved Agency basis).

- d. County shall provide sufficient backup information documenting payments made for attorney representation and the number of active cases maintained by each attorney or OCLA-Approved Agency during the preceding quarter.

**4. DESCRIPTION OF SERVICES TO BE PROVIDED BY OCLA**

- a. Contemporaneously with the execution of this Contract and periodically thereafter, OCLA will provide County with a list of Children's Attorneys and OCLA-Approved Agencies certified as capable of providing effective, standards-based legal representation for children in dependency cases consistent with the requirements of 2ESSB 6126.
- b. By September 30, 2014, OCLA will provide County and attorneys representing children with access to a web-based Case Activity, Reporting and Oversight System (CAROS), use of which by attorneys representing children will be required in order for County to receive reimbursement for otherwise qualifying costs associated with appointment of children's attorneys under the Legislation .
- c. By September 30, 2014, OCLA will sponsor or otherwise make available a web-based training for all children's attorneys engaged by County and appointed to provide legal representation for children in dependency cases.

**5. PERIOD OF PERFORMANCE**

This Agreement shall be effective when fully executed and run through June 30, 2015. The Agreement may be extended by written agreement of the parties.

**6. COMPENSATION**

Reimbursement Ceiling: OCLA shall reimburse for payments made by County for attorney representation of children in qualifying cases under 2ESSB 6126; *provided that*, the OCLA will not reimburse for costs of such representation that exceed the equivalent of \$1500/case/year. The parties further agree, however, that if the County retains or contracts with an attorney or OCLA approved agency on an FTE basis that the equivalent maximum compensation under this formula is \$120,000/year /full time attorney with a full caseload.

Compensation Floor (individual and retained attorneys): Recognizing the minimum level of time needed for an attorney to provide effective legal representation for each child as set forth in the practice, caseload and training standards referenced in 2ESSB 6126 and the need to avoid financial disincentives for attorneys to comply with such standards, OCLA will not reimburse County for payments to individual or retained attorneys that effectively compensate such attorneys at less than \$80,000 for a full-time caseload of 2ESSB 6126 cases only (or the equivalent of \$1,333.33 per case)

- a. If this Agreement is terminated, County shall only receive payment for costs incurred for attorney representation provided prior to the effective date of termination. Payment will only be provided if there are no disputes regarding said costs and the invoice process is used as described in Section 3.d. of this Agreement.
- b. Payment to the County for approved invoices will be made by warrant or account transfer by OCLA within 30 days of receipt of a properly-completed QBF.
- c. County shall maintain sufficient backup documentation of payments made to attorneys appointed to represent children and for which reimbursement is sought pursuant to this Agreement.
- d. OCLA will use best efforts to ensure that funding appropriated to implement 2ESSB 6126 is sufficient to fully reimburse County for expenses associated with the appointment of attorneys in qualifying cases. If state appropriated funding will not cover all qualifying cases for which attorney representation is required, OCLA reserves the right, in its sole discretion and upon 30 days notice (Notice of Shortfall), to terminate this Agreement or propose alternative terms for modification of this Agreement

If a Notice of Shortfall is issued, OCLA will also notify appropriate legislative members and staff of the anticipated shortfall, OCLA's intent to take action to reduce or terminate payments and, if timely, submit a request for a supplemental appropriation in an amount sufficient to provide for full reimbursement of County.

- e. The parties expressly ratify and County may bill retroactively for payments associated with legal representation of children in qualifying cases provided between July 1, 2014 and the date of execution of this Contract.

**7. PROTECTION OF DATA**

Nothing in this agreement shall give OCLA any right, title, interest in or access to materials, documents or other data that is protected by the attorney-client privilege, the attorney work product, the Rules of Professional Conduct or the constitution or laws of the State of Washington or the United States.

**8. INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

**9. AGREEMENT ALTERATIONS AND AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**10. RECORDS, DOCUMENTS, AND REPORTS**

County shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by OCLA, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or Agreement. County will retain all books, records, documents, and other material

relevant to this Agreement for six years after settlement, and make them available for inspection by persons authorized under this provision. Nothing in this section shall give OCLA any right of access to books, records, documents or other materials that is protected by the attorney-client privilege, the attorney work product, the Rules of Professional Conduct or the constitution or laws of the State of Washington or the United States.

**11. RIGHT OF INSPECTION**

County shall provide right of access to its facilities to OCLA, or any of its designated employees, or to any other authorized agent or official of the state of Washington of the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

**12. DISPUTES**

Disputes arising under this Agreement shall be resolved by a panel consisting of one representative from OCLA, one representative from County, and a mutually agreed upon third party. The dispute panel shall thereafter decide the dispute with the majority prevailing. Neither party shall have recourse to the courts unless there is a showing of noncompliance or waiver of this section.

**13. TERMINATION**

Either party may terminate this Agreement upon thirty (30) days written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**14. GOVERNANCE**

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable state and federal statutes and rules;
2. This Agreement; and
3. Any other provisions of the agreement, including materials incorporated by reference.

**15. RESPONSIBILITIES OF THE PARTIES**

Each party to this Agreement assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, its officers and its agents. No party assumes any responsibility to the other party for the consequences of any claim, act or omission of any person, agency, firm, or corporation not a party to this Agreement.

**16. ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

**17. WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement

**18. SEVERABILITY**

If any provision of this Agreement, or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision and to this end the provisions of this Agreement are declared to be severable.

**19. HEADINGS**

The headings in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

**20. ENTIRE AGREEMENT**

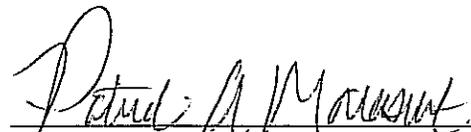
This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be considered to exist or to bind any of the parties to this agreement unless otherwise stated in this Agreement.

**AGREEMENT MANAGEMENT**

The program managers noted below shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement:

<p><b>Children's Representation Program Manager:</b>          Jill A. Malat          PO Box 41183          Olympia, WA 98504-1183           (360) 972-5794  <a href="mailto:jill.malat@ocla.wa.gov">jill.malat@ocla.wa.gov</a></p>	<p><b>County Authorized Agent:</b></p>
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Approved as to form:

  
 Authorized Legal Representative for Pend  
 Oreille County *Residing Judge*

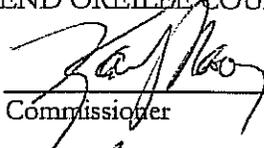
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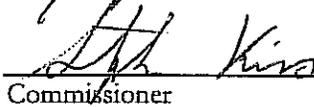
IN WITNESS WHEREOF, the parties have executed this Agreement:

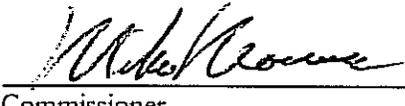
STATE OF WASHINGTON  
OFFICE OF CIVIL LEGAL AID

\_\_\_\_\_  
James A. Bamberger, Director (Date)

PEND OREILLE COUNTY, WASHINGTON

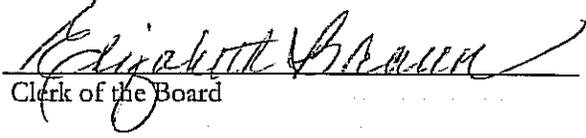
  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

  
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Commissioner

Constituting the Board of County Commissioners

Attest this 5th of January, ~~2014~~ <sup>2015</sup>

  
\_\_\_\_\_  
Clerk of the Board





