

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-4

Urgent

Routine

CEO Concurs with Recommendation YES NO

(Information Attached)

AGENDA DATE March 1, 2011

4/5 Vote Required YES NO

SUBJECT:

Approval to Renew Agreements for Indigent Defense Legal Services with Grisez, Orenstein & Hertle, and Perry & Associates and Authorize the Chief Executive Officer to Finalize and Execute the Agreements

STAFF RECOMMENDATIONS:

Authorize the Chief Executive Officer to finalize and execute the agreements for the period of July 1, 2011 through June 30, 2014, with the law firm of Grisez, Orenstein & Hertle and the law firm of Perry & Associates for the continued provision of legal representation of indigents which the Public Defender is unable to represent due to conflict of interest.

FISCAL IMPACT:

The County's current contracts with the Law Firms of Grisez, Orenstein & Hertle (Conflicts I), and Perry & Associates (Conflicts II) for legal representation of indigents, which the Public Defender is unable to represent due to conflict of interest, expires June 30, 2011. A new three year agreement has been negotiated and will be effective from July 1, 2011 to June 30, 2014. The new agreement includes a 10% decrease in the first year and remains the same for the following two years. The combined annual cost for both firms is \$1,256,232 for Budget Year 2011-2012. This is a \$139,581 decrease from Fiscal Year 2010-2011.

BOARD ACTION AS FOLLOWS:

No. 2011-122

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST:


CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Renew Agreements for Indigent Defense Legal Services with Grisez, Orenstein & Hertle, and Perry & Associates and Authorize the Chief Executive Officer to Finalize and Execute the Agreements

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DISCUSSION:

The existing Contracts with Grisez, Orenstein and Hertle (Conflicts I) and Perry & Associates (Conflicts II), the two local law firms providing representation to indigent persons in Stanislaus County for whom the Public Defender cannot represent, are due to expire June 30, 2011. The County has contracted with both Grisez, Orenstein and Hertle and Perry & Associates for over twenty years to provide legal services for indigent clients.

These contracts cover the cost of professional legal and investigative services for indigent clients that the Public Defender's office is unable to represent due to a conflict of interest. Many of the conflicts are associated with multiple defendant cases. In these cases, the Public Defender can represent only one defendant. The co-defendants are then represented by Conflicts I and II respectively and when there are more than three co-defendants, members of the private bar are appointed by Superior Court.

The legal system and code of professional conduct does not permit the Public Defender to keep all cases. It is advantageous to the County to keep a majority of cases within the Public Defenders Office and the two conflict firms where the total cost to the County is fixed. Both conflict firms have complied with their existing contracts to represent indigent clients that they are legally and ethically able to retain.

Agreement has been reached through negotiation with both firms to extend the contract through June 30, 2014. The recommended contracts for Conflicts I and Conflicts II include a 10% decrease the first year of the contract totaling \$1,256,232 and remains the same for the following two years. This contract also includes language that allows for renegotiation of the compensation with both Conflicts I and Conflicts II in the event that the County implements a negotiated Cost of Living adjustment for attorneys classification in the Department of the Public Defender. There has also been additional information included in the contracts that request additional information in the monthly report to the Public Defender and Chief Executive Office.

Feedback from the Superior Court who handle criminal and juvenile dependency matters indicated satisfaction with the services provided by both firms on behalf of the County.

Approval to Renew Agreements for Indigent Defense Legal Services with Grisez, Orenstein & Hertle, and Perry & Associates and Authorize the Chief Executive Officer to Finalize and Execute the Agreements

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The Public Defender receives revenue from court ordered attorney fees. When the court appoints a Public defender, or other counsel, the defendant is referred to the Treasurer/Tax Collector office for a determination of ability to pay a portion or all of his/her attorney's fees. All referred are required to pay a registration fee of \$25. If the client has sufficient assets or income, the court may order him or her to pay the Public Defender or appointed counsel for its legal services, or reimburse the County for fees paid to appointed counsel. This registration fee is currently being reviewed by the Public Defender and will be increased to \$50 effective April 1, 2011, fees vary among counties. While some do not charge this fee and include it in their court ordered attorney fees other counties charge up to \$50. This fee currently brings in an average of \$49,000 annually to offset the costs for Public Defender – Indigent Defense and appointed counsel services.

Barring a valid conflict of interest, keeping the majority of cases within the Public Defender's Office and the two conflict firms where the total cost is fixed, continues to be advantageous to the County. It is our assessment that indigent persons in Stanislaus County are receiving effective legal representation in accordance with the provisions of the law.

POLICY ISSUES

The County has the obligation to provide indigent defense in the most cost-effective manner possible, while ensuring an adequate defense for those persons found to be indigent by the Superior Court. In evaluating the renewal to extend both contracts, the Board may consider whether the continuation of the contracts at fixed rate amounts is consistent with the objective and the stated Board priorities of maintaining A Safe Community and Efficient Delivery of Public Services.

STAFFING IMPACT

There is no staffing impact associated with these recommendations.

CONTACT

Monica Nino, Assistant Executive Officer. Telephone: (209) 652-1246.

**CONTRACT FOR LEGAL REPRESENTATION OF ELIGIBLE
INDIGENTS WHERE THE PUBLIC DEFENDER HAS A
LEGAL CONFLICT OF INTEREST OR OTHER INABILITY TO ACT**

THIS CONTRACT, made this first day of March 2011, between the County of Stanislaus (hereinafter referred to as "COUNTY") located at 1010 - Tenth Street, Modesto, California 95354, and Grisez, Orenstein and Hertle (hereinafter referred to as "CONFLICTS I") located at 724-10th Street, Modesto, CA 95354.

WHEREAS, the Stanislaus County Superior Court is required by law to appoint alternative counsel in cases in which the court finds that, because of a legal conflict of interest or other inability to act, the Public Defender has properly refused, is not legally required or permitted, is otherwise unable, or has otherwise failed to represent an eligible indigent; and

WHEREAS, section 987 and following of the Penal Code provides that the court shall assign counsel to represent persons charged with commission of a public offense but who are unable to employ counsel; and

WHEREAS, section 987.2 provides that, in the case in which the court finds that because of a conflict of interest or other reasons the Public Defender has properly refused to represent the person accused, counsel shall be assigned and receive a reasonable sum for compensation and necessary expenses to be determined by the court and paid out of the general fund of the COUNTY; and

WHEREAS, section 987.2 further provides that compensation of assigned counsel may be determined by contract between the court and one or more responsible attorneys after consultation with the Board of Supervisors as to the amount thereof which shall be within the amount of funds allocated by the Board of Supervisors; and

WHEREAS, COUNTY deems it appropriate to insure the competence and availability of counsel to discharge COUNTY'S statutory obligation to provide

representation of indigent persons not served by the Public Defender, and it is in the interest of justice and judicial economy that COUNTY employ by contract private counsel to render the usual and customary legal services where required by law to be provided to individuals and in circumstances where the Public Defender declares a legal conflict of interest or is unable to act as determined by the court; and

WHEREAS, COUNTY has entered into a contract with a law firm (hereinafter referred to as "CONFLICTS I") to provide legal services to indigent persons not served by the Public Defender; and

WHEREAS, COUNTY has determined that the program contemplated herein to be performed by CONFLICTS I is within its legal authority to grant and will provide competent legal representation to persons financially unable to employ counsel; and

WHEREAS, CONFLICTS I represent they have the requisite experience, training, skill, and competence to provide competent legal services as assigned counsel and are willing to provide the services agreed upon herein,

NOW, THEREFORE, the parties hereto agree as follows:

I. DUTIES:

A. CONFLICTS I shall provide legal representation for eligible indigents in the Superior Court in Stanislaus County when appointed as required by law after a determination that a Public Defender is unable to represent an indigent due to a legal conflict or other inability to act except as provided in Section VII, and where a conflict of interest is discovered after the effective commencement date provided by the terms of the contract.

1. In addition to the duties of CONFLICTS I set forth in this contract, CONFLICTS I agree to assume appointment for the representation of indigents in civil paternity actions, including minor indigents whom a Guardian Ad Litem has

been appointed, minor children in actions to sever parental custody and control rights, indigent defendants in which the Public Defender has been relieved following Marsden hearings, indigent defendants in actions to withdraw guilty pleas in criminal cases when the Public Defender has represented the defendant, and indigent defendants accused of probation violations where the Public Defender has a legal conflict.

2. CONFLICTS I agree to meet and confer with the County, upon ninety (90) days notice, concerning any needs for further indigent legal services not specifically set forth above or in the subject contract, including but not limited to changes associated with the County's ability to effectively and efficiently provide appropriate indigent legal services.

B. For purposes of this contract, an "eligible indigent" shall be defined as a person for whom the Superior Court of Stanislaus County are required, by current statute or case law, to appoint and compensate counsel at public expense for whom the Public Defender's Office is unable or fails to act.

C. CONFLICTS I staff shall consist of such attorneys, in-office interpreters, paralegal and clerical personnel in sufficient quantity and quality to meet all constitutional, statutory, and case law requirements for the defense of indigents in Stanislaus County.

D. Cases requiring travel outside Stanislaus County may be considered extraordinary, and COUNTY may, by prior order, provide for reimbursement for such travel and other related expenses. CONFLICTS I shall be reimbursed by COUNTY for actual and reasonable costs associated with and caused by change of venue cases. The costs reimbursed to CONFLICTS I shall include lodging, meals, transportation, and other expenses not to exceed that which is paid COUNTY employees.

E. CONFLICTS I shall provide in a professional and diligent manner all legal representation of indigent persons it is properly appointed to represent consistent with section 27706(a) of the Government Code but excluding post-trial appeals to the appellate and supreme courts.

F. CONFLICTS I shall provide legal representation and support services for all of Stanislaus County in any manner which the Public Defender may be appointed, including, but not limited to, all misdemeanor and felony cases; or delinquency matters including periodic review hearings; mental health, guardianship, and conservatorship matters including any periodic review hearings; commitment for mentally retarded persons (Welfare and Institutions Code Section 6500); habeas corpus proceedings; appeals from misdemeanor cases to the Appellate Department of the Superior Court; probation violations, civil contempt matters, freedom from parental custody and control actions and all cases where second counsel is ordered by the respective court.

G. CONFLICTS I shall provide legal representation in the appellate courts when CONFLICTS I deem that an adequate legal representation requires application for extraordinary relief prior to conviction or pending appeal.

H. CONFLICTS I shall be required to assist indigents as directed by the Court and COUNTY in the preparation and filing of financial declarations to determine eligibility under this contract.

I. CONFLICTS I shall not be permitted to decline court appointment in any cases except for legal conflict of interest or other legal grounds.

J. CONFLICTS I will assist in the preparation and filing of all necessary financial documents to enable the court to determine reimbursement to COUNTY for services under Penal Code sections 987.4 and 987.8 and/or other law (to be heard at the same

time as the probation and sentencing hearing or immediately following verdict or judgment).

K. Conflicts I agrees to honor the following requests made by the Superior Court as follows:

1. Conflicts I shall provide adequate staffing to ensure that all adult courts are covered five (5) days a week.
2. Conflicts I shall attend Superior Court and Criminal Justice Forum meetings as set by the Superior Court. These typically held on the third Monday of each month.
3. Conflicts I agrees to provide and maintain an e-mail address, pager number and/or cell phone number with the Superior Court.

II. OFFICES:

A. CONFLICTS I shall, at their sole expense, maintain their principal office in Modesto, California, within fifteen (15) minutes response time to the courthouse. CONFLICTS I shall maintain business hours at the principal office Monday through Friday from 8:00 a.m. to 5:00 p.m., and they shall be available in all other areas of Stanislaus County to serve all the courts in Stanislaus County as the need arises. Offices shall be of sufficient size to accommodate clients in a reasonable and professional manner at the sole expense of the CONFLICTS I.

III. STAFF:

A. CONFLICTS I shall maintain sufficient staff to fulfill the terms of the contract, to provide daily representation as necessary, and to avoid otherwise unnecessary delays in continuances.

B. CONFLICTS I agrees to maintain one primary full-time staff Attorney qualified under Rule 4.117(d) or 4.117(f) of the California Rules of Court to provide

representation in capital cases and one secondary Attorney qualified under Rule 4.117(d) or 4.117(f) to be available if the primary capital case Attorney is not available. CONFLICTS I agrees to confirm the qualifications of the primary and secondary capital case qualified Attorneys by providing COUNTY a written statement from the Stanislaus County Superior Court record confirming their qualifications under Rule 4.117(d) or 4.117(f) of the California Rules of Court. CONFLICTS I agrees to notify COUNTY in writing within seven calendar days if CONFLICTS I no longer employs the primary or secondary Attorney qualified under Rule 4.117(d) or 4.117(f) of the California Rules of Court and will communicate a plan to fill the vacancy with a qualified attorney. Rules 4.117(d) and 4.117(f) of the California Rules of Court are attached to this agreement for reference as Attachment I.

C. Upon request, CONFLICTS I shall provide COUNTY, and the Superior Court in Stanislaus County, a list of CONFLICTS I attorneys providing services. Each list shall contain a *brief biographical sketch pertaining to each attorney's professional experience*. CONFLICTS I shall notify the Court of any proposed changes in attorney staffing, and the court's approval of such attorney and changes shall be obtained by CONFLICTS I prior to any work being done by such attorney.

D. CONFLICTS I shall designate, in writing, a managing attorney who shall be authorized to speak for CONFLICTS I with respect to the contract and its performance.

IV. REPORTS:

A. CONFLICTS I shall maintain proper records to enable the Court and COUNTY to verify the separate categories of costs of representing each indigent person in court proceedings including the number of persons represented and the types of proceedings and the average number of hours per type of case. CONFLICTS I shall make such records and/or copies thereof available to COUNTY and Court for inspection and/or in

any proceedings to recover such costs from the state or whoever may be obligated to reimburse COUNTY.

B. CONFLICTS I shall provide the COUNTY and the Public Defender with a monthly report of total cases assigned and concluded per month and fiscal year, average time spent on cases, average cost of the case, and number of cases conflicted. The report should also include court appearances per type of case and any other activities. The report shall be provided on forms designated by the COUNTY and received in final form by the COUNTY from CONFLICTS I by the fifteenth (15th) day of the month following the month in which the services are rendered. Sample of monthly report is referenced as Attachment II. All reports shall be sent to the Chief Executive Office of Stanislaus County and the Public Defender. CONFLICTS I agrees to join in discussions with the Public Defender, COUNTY and Conflicts II in order to agree to a consistent method of reporting cases handled, including those cases conflicted. CONFLICTS I agrees to provide documentation as requested by the Public Defender and/or court on juvenile dependency cases, to include time spent by CONFLICTS I on the case. CONFLICTS I agrees to begin tracking and reporting each month the case number and case name for cases initially referred to CONFLICTS I in which CONFLICTS I declares a conflict and refers the case to other counsel for representation. CONFLICTS I agrees to note those cases that involved a conflict due to co-defendants in the case. CONFLICTS I agrees to join in discussion with the Public Defender, COUNTY and Conflicts II to review the statistical caseload data gathered by CONFLICTS I and the potential for automated reporting of caseload data to the COUNTY.

C. CONFLICTS I shall maintain for at least ten (10) years following the completion of the case all files and time records. COUNTY shall provide reasonable

space accessible for storage of those files which are five (5) or more years old. CONFLICTS I shall have access to such files as necessary, and COUNTY shall guarantee the confidentiality and protection of said files. Time records, and all reports maintained by CONFLICTS I directly related to the services performed pursuant to this contract, shall be available for inspection by COUNTY or the courts at all reasonable times.

V. TERMINATION:

A. This contract shall be effective for all cases assigned, on July 1, 2011, and continue in effect for all cases on, and including, June 30, 2014, unless the parties agree to extend the agreement and provided that the funds are budgeted by the COUNTY and the contract has not been canceled as provided herein.

B. Upon termination of this contract as herein provided or by natural expiration of this contract on, June 30, 2014, unless specifically relieved by the Superior Court, Conflicts I shall be required to complete representation of all clients in all cases where previously appointed to do so. Unless the parties agree to an extension of the agreement, COUNTY shall have no obligation to compensate or pay CONFLICTS I except for services provided prior to termination subject to the following:

Upon expiration or termination (by cancellation or otherwise), unless specifically relieved by the Superior Court, CONFLICTS I shall be required to complete representation of all clients in all cases where previously appointed to do so where the case is resolvable within 30 days. All cases in post-trial litigation shall become COUNTY'S responsibility thirty (30) days following termination of the contract. In all instances where the case becomes the responsibility of COUNTY following termination of the contract COUNTY may, at COUNTY'S option, deem that the attorneys in the law firm of Grisez, Orenstein and Hertle have been

appointed to handle the cases at the then prevailing COUNTY rate commencing with the day after the termination of the contract.

C. The term of this contract is from July 1, 2011 to June 30, 2014. This contract may be extended for an additional period at the same or different contract price upon the consent of all contract parties beyond June 30, 2014. Parties agree to meet no less than sixty (60) days prior to the expiration of the contract to discuss an extension and the terms and conditions of an extension.

D. Decision to cancel this contract may be made by the COUNTY without cause upon a 90 day written notice. Upon decision to cancel the contract, COUNTY will advise CONFLICTS I, in writing, with a ninety (90) day notice of said cancellation.

E. Notwithstanding any other term or provision of this contract, the failure of CONFLICTS I to comply with the terms of this contract, and any reasonable directions by or on behalf of COUNTY or the court pursuant thereto, shall constitute a material breach of the contract by CONFLICTS I; and, in addition to other remedy authorized by law, the COUNTY shall have the right to terminate the contract immediately. Failure to exercise this right of termination shall not constitute waiver of such right, which may be exercised at any subsequent time. This contract may be terminated, at the option of COUNTY with the approval of the Board of Supervisors, upon the occurrence of any of the following:

1. Violation of any material provision of the contract;
2. Institution of proceedings by, or against, CONFLICTS I or any partner in CONFLICTS I providing services for CONFLICTS I under this contract pursuant to the bankruptcy laws of the United States;
3. Discovery of the COUNTY that this contract was obtained through fraud, by commission or omission;

4. Suspension of business operations, failure, or receivership of attorneys;
5. Assignment of the contract without prior written approval;
6. Cancellation of malpractice liability insurance coverage or Workers' Compensation coverage; and
7. The commencement of criminal prosecution against any of the individual attorneys providing services for CONFLICTS 1 under this contract.

VI. COMPENSATION:

A. COUNTY shall pay CONFLICTS I for the above-rendered services the sum of fifty two thousand two hundred and ninety dollars and forty-eight cents (\$52,290.48) per month effective July 1, 2011 to June 30, 2014 with the first payment of this contract at this amount made on August 1, 2011 and subsequent payments to be made on the first day of the month following the month services were rendered in the preceding month. The COUNTY may decrease payments to CONFLICTS I by eight hundred and seventy-one dollars and fifty-one cents (\$871.51) per calendar day should CONFLICTS I not comply with the staffing standards identified in Section III-B of this agreement for greater than 120 consecutive calendar days. Further, CONFLICTS I shall be relieved from any payment for DISCOVERY material received from the District Attorney for the term of this contract.

B. Compensation provided for pursuant to this contract or any amendment, addendum, or supplement to it shall be subject to offset as provided below.

C. By prior order of the Court, CONFLICTS I may employ experts and expert witnesses as may be required for an adequate defense; and the expense of said experts and expert witnesses shall be paid in addition to the compensation provided under this contract upon prior order of the court.

D. COUNTY and CONFLICTS I agree the monthly compensation was previously increased by three thousand one Hundred ninety-one dollars (\$3,191.00) to cover the cost of investigative services and is added to the monthly compensation as specified in Subsection A herein. The additional compensation as set forth above shall cover all investigative costs associated with the defense of indigent cases assigned by the Courts as provided herein by this contract. CONFLICTS I shall have the latitude in determining the appropriate level of investigative services on assigned cases. The amount provided shall cover all investigative costs and CONFLICTS I agrees and understands that petition to COUNTY for provision of these services outside of this contract may be made only in the case of extraordinary and unusual circumstances. In cases deemed death penalty eligible Conflicts I is authorized to petition the appropriate judge pursuant to California Penal Code section 987.9 for funds for investigation. In the event that the "special circumstances" clause is stricken, or prosecution declares that they will not be seeking death, all additional investigations shall be at the expense of Conflicts I as provided by this paragraph.

E. COUNTY acknowledges its independent obligation to provide adequate legal defense to indigent criminal defendants in need thereof. COUNTY does, and will, undertake to provide such representation and reserves the right to take any steps appropriate to meet said obligation. Under extraordinary circumstances or circumstances not contemplated within this contract, COUNTY reserves unto itself the right to consider application by CONFLICTS I for change and terms of this contract. Extraordinary circumstance shall generally be limited to prolonged capital cases (e.g. Peterson, Manson-type cases) involving extreme expenses. In the event that CONFLICTS I is required to devote an extraordinary expenditure of time and effort not foreseen by this contract, CONFLICTS I shall apply to the County Chief Executive

Officer for additional reasonable compensation. A request for such extraordinary compensation shall be provided to the COUNTY no less than fourteen (14) days prior to said request being filed with the court. The court shall conduct a hearing on the request, and the COUNTY will have a right to contest said request.

F. The parties agree to meet and confer regarding the amount of compensation under Subdivision A of Section VI if and when the County implements a negotiated Cost of Living Adjustment ("COLA") for attorneys classification in the Department of the Public Defender. Any negotiated increase in compensation shall not exceed the rate of any COLA for attorneys classification in the Department of the Public Defender.

VII. CONFLICT:

A. It is acknowledged by COUNTY that in cases or related matters involving more than two (2) defendants, in cases where CONFLICTS I or their staff have certain knowledge of the events or parties, and some other circumstances designated justifiable by a court, CONFLICTS I may not be available to represent all defendants because of legal prohibitions or because of canons of professional ethics relating to conflicts of interest. Such determination shall be made by the Court. CONFLICTS I shall seek to immediately minimize the number of conflicts declared and seek waiver of such conflicts whenever it is ethically appropriate. The Public Defender, CONFLICTS I and Conflicts II shall agree to meet to discuss possible standards for such waivers.

B. CONFLICTS I shall not knowingly or negligently provide any legal services outside the scope of this contract if the provisions of such legal services would render CONFLICTS I ineligible to provide legal services to COUNTY under this contract.

C. Should CONFLICTS I be unable, ineligible, or unavailable to provide services as provided for herein for any reason or are dilatory in providing such services, the Court may appoint other counsel. The compensation provided in Section VI shall be

offset by an amount equivalent to the cost the COUNTY incurs as a result of services provided by other counsel.

D. Notwithstanding any other provision of this contract, it is agreed by the parties that the judges of the Superior Court shall have the right to review and pass upon the qualifications, experience, and competence of any attorney assigned by CONFLICTS I to a case and to reject any attorney who, in the judge's sole opinion, lacks satisfactory expertise or experience to handle the case before the court. In the event CONFLICTS I fail, within a reasonable time, to assign an attorney to a given case who is acceptable to a court, the Court may assign other counsel to the case at the sole expense of CONFLICTS I. Should COUNTY incur any expense as a result of court's appointment of other counsel under Section VII, the compensation provided in Section VI shall be offset by an amount equivalent to the cost COUNTY incurred by providing said services.

VIII. STATUS OF CONFLICTS I:

A. The parties agree that this contract does not create the relationship of attorney and client nor employee and employer between CONFLICTS I and the COUNTY. CONFLICTS I are an independent contractor. CONFLICTS I are, and shall at all times be, deemed independent and shall be wholly responsible for the manner in which CONFLICTS I perform the services required by the terms of this contract.

B. CONFLICTS I shall be deemed to be independent ATTORNEYS, and under no circumstances shall they, or their employees, agents, and servants be deemed to be employees, servants, or agents of the County of Stanislaus.

C. CONFLICTS I shall be wholly responsible for the manner in which it performs the service required by the terms of this contract. CONFLICTS I exclusively assumes the responsibility for the acts of CONFLICTS I subcontractors, associates, and

employees relative to the services provided during the term and scope of their employment.

D. CONFLICTS I understand and agree they have no right to medical, dental, retirement or other such benefits provided to COUNTY employees, and the COUNTY shall not be responsible or pay for any injury of CONFLICTS I staff arising out of services performed under this contract.

IX. LIABILITY AND INSURANCE:

A. CONFLICTS I shall assume the defense and indemnify and hold harmless the COUNTY of all suits, actions, damage, or claims of every name and description that it may be subjected to or put to by reason of injury to persons during the performance of this contract resulting from, or alleged to have resulted from, the negligence or carelessness or from willful acts of CONFLICTS I or their agents in the performance of the CONFLICTS I legal specialties. In the event that such proceedings are brought against any of the parties to this contract, CONFLICTS I shall obtain proper and adequate defense, and there shall be no expense to the COUNTY. COUNTY shall not be liable for any damage or injuries resulting from the acts or omission of CONFLICTS I in the performance of the contract.

B. During the term of any contract with the COUNTY, the CONFLICTS I will at all time maintain at their expense the following:

1. Workers' Compensation liability insurance.
2. Comprehensive general liability insurance naming the COUNTY, its Board of Supervisors, officer, and employees as additional insureds. Comprehensive general liability insurance would not be less than two hundred fifty thousand dollars (\$250,000.00) per person, and five hundred thousand dollars (\$500,000.00) per

accident for bodily injury and twenty-five thousand dollars (\$25,000.00) for property damage.

C. In addition, participating CONFLICTS I shall obtain and maintain, in the minimum amount of five hundred thousand dollars (\$500,000.00) a policy of insurance covering errors and omissions.

D. CONFLICTS I guarantee COUNTY at least ten (10) days written notice prior to cancellation or change of terms of any insurance required by this contract.

E. In the event CONFLICTS I fails to maintain all necessary insurance as set forth in paragraph B above, COUNTY may purchase such necessary insurance and deduct said amount from CONFLICTS I compensation provided in Section VI.

X. GENERAL:

A. CONFLICTS I shall not be prohibited from engaging in the private practice of law, including the defense of those charged with crimes in any and all proceedings, provided that no private case shall be accepted which may cause a conflict of interest to arise wherein CONFLICTS I would be unable to represent an indigent person whom the Public Defender cannot represent in court.

B. If CONFLICTS I represents a person in a private case which then results in his or her inability to accept an appointment by way of this contract, the COUNTY shall be entitled to an off-set as stated in Section VII.


C. CONFLICTS I shall in no event accept anything of value from the indigent in consideration for services rendered under this contract.

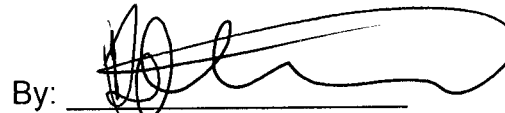
D. Upon the request of the contractor, COUNTY agrees to meet three (3) times each year for general discussion purposes.


EXECUTED THIS FIRST DAY OF MARCH, 2011.

COUNTY OF STANISLAUS

GRISEZ, ORENSTEIN & HERTLE


By: 
Richard W. Robinson
Chief Executive Officer
COUNTY

By: 
Robert Orenstein
CONFLICTS I

By: 
Mary Ellen Hertle
CONFLICTS I

ATTEST:

Christine Ferraro Tallman
Clerk to the Board of Supervisors
Of the County of Stanislaus
State of California

By: 
Christine Ferraro Tallman
Clerk of the Board

APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL

By: 
John P. Doering
County Counsel

2011 California Rules of Court

Rule 4.117. Qualifications for appointed trial counsel in capital cases

(d) Qualifications of lead counsel

To be eligible to serve as lead counsel, an attorney must:

- (1) Be an active member of the State Bar of California;
- (2) Be an active trial practitioner with at least 10 years' litigation experience in the field of criminal law;
- (3) Have prior experience as lead counsel in either:
 - (A) At least 10 serious or violent felony jury trials, including at least 2 murder cases, tried to argument, verdict, or final judgment; or
 - (B) At least 5 serious or violent felony jury trials, including at least 3 murder cases, tried to argument, verdict, or final judgment;
- (4) Be familiar with the practices and procedures of the California criminal courts;
- (5) Be familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;
- (6) Have completed within two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and
- (7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(Subd (d) amended effective January 1, 2007.)

(f) Alternative qualifications

The court may appoint an attorney even if he or she does not meet all of the qualifications stated in (d) or (e) if the attorney demonstrates the ability to provide competent representation to the defendant. If the court appoints counsel under this subdivision, it must state on the record the basis for finding counsel qualified. In making this determination, the court must consider whether the attorney meets the following qualifications:

- (1) The attorney is an active member of the State Bar of California or admitted to practice *pro hac vice* under rule 9.40;
- (2) The attorney has demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases;
- (3) The attorney has had extensive criminal or civil trial experience;
- (4) Although not meeting the qualifications stated in (d) or (e), the attorney has had experience in death penalty trials other than as lead or associate counsel;
- (5) The attorney is familiar with the practices and procedures of the California criminal courts;
- (6) The attorney is familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;
- (7) The attorney has had specialized training in the defense of persons accused of capital crimes, such as experience in a death penalty resource center;
- (8) The attorney has ongoing consultation support from experienced death penalty counsel;
- (9) The attorney has completed within the past two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and
- (10) The attorney has been certified by the State Bar of California's Board of Legal Specialization as a criminal law specialist.

(Subd (f) amended effective January 1, 2007.)

ATTACHMENT II

FIRM: _____

CURRENT MONTH: _____

FISCAL YEAR: _____

NUMBER OF CASES	CASES PER MONTH	CASES PER FISCAL YEAR	AVERAGE TIME SPENT ON CASE	AVERAGE COST OF CASE	CONFLICT DECLARED
Murder Cases Assigned					
Murder Cases Concluded					
Other Felony Cases Assigned					
Other Felony Cases Concluded					
Misdemeanor Cases Assigned					
Misdemeanor Cases Concluded					
Juvenile Cases Assigned					
Juvenile Cases Concluded					
Other Cases Assigned					
Other Cases Concluded					
Total Cases Assigned	_____	_____	_____	_____	_____
Total Cases Concluded	_____	_____	_____	_____	_____

COURT APPEARANCES

Felony Cases					
Misdemeanor Cases					
Juvenile Cases					
All Other Cases					
Total Court Appearances	_____	_____	_____	_____	_____

OTHER ACTIVITY

Number of Jury Trials
 Number of Days in Jury Trial

**CONTRACT FOR LEGAL REPRESENTATION OF ELIGIBLE
INDIGENTS WHERE THE PUBLIC DEFENDER HAS A
LEGAL CONFLICT OF INTEREST OR OTHER INABILITY TO ACT**

THIS CONTRACT, made this first day of March, 2011 between the County of Stanislaus (hereinafter referred to as "COUNTY") located at 1010 - Tenth Street, Modesto, California, 95354, and Perry & Associates (hereinafter referred to as "CONFLICTS II") located at 948 11th Street, Suite 16, Modesto, California, 95354.

WHEREAS, the Stanislaus County Superior Court is required by law to appoint alternative counsel in cases in which the court finds that, because of a legal conflict of interest or other inability to act, the Public Defender has properly refused, is not legally required or permitted, is otherwise unable, or has otherwise failed to represent an eligible indigent; and

WHEREAS, section 987 and following of the Penal Code provides that the court shall assign counsel to represent persons charged with commission of a public offense but who are unable to employ counsel; and

WHEREAS, section 987.2 provides that, in the case in which the court finds that because of a conflict of interest or other reasons the Public Defender has properly refused to represent the person accused, counsel shall be assigned and receive a reasonable sum for compensation and necessary expenses to be determined by the court and paid out of the general fund of the COUNTY; and

WHEREAS, section 987.2 further provides that compensation of assigned counsel may be determined by contract between the court and one or more responsible attorneys after consultation with the Board of Supervisors as to the amount thereof which shall be within the amount of funds allocated by the Board of Supervisors; and

WHEREAS, COUNTY has entered into a contract with a law firm (hereinafter

referred to as "CONFLICTS II") to provide legal services to indigent persons not served by the Public Defender; and

WHEREAS, COUNTY deems it appropriate to insure the competence and availability of counsel to discharge COUNTY'S statutory obligation to provide representation of indigent persons not served by the Public Defender or CONFLICTS I acting as the primary conflicts law firm, and it is in the interest of justice and judicial economy that COUNTY employ by contract additional private counsel, hereinafter referred to as "CONFLICTS II", to render the usual and customary legal services where required by law to be provided to individuals and in circumstances where the Public Defender and Conflicts I declare a legal conflict of interest or is unable to act as determined by the court; and

WHEREAS, COUNTY has determined that the program contemplated herein to be performed by CONFLICTS II is within its legal authority to grant and will provide competent legal representation to persons financially unable to employ counsel; and

WHEREAS, CONFLICTS II represent they have the requisite experience, training, skill, and competence to provide competent legal services as assigned counsel and are willing to provide the services agreed upon herein.

NOW, THEREFORE, the parties hereto agree as follows:

I. DUTIES:

A. CONFLICTS II shall provide legal representation for eligible indigents in the Superior Court in Stanislaus County when appointed as required by law after a determination that the Public Defender and CONFLICTS I are unable to represent an indigent due to a legal conflict of interest or other inability to act except as provided in Section VII, and where a conflict of interest is discovered after the effective commencement date provided by the terms of the contract.

B. For purposes of this contract, an "eligible indigent" shall be defined as a person for whom the Superior Court is required by current statute or case law, to appoint and compensate counsel at public expense for whom the Public Defender's Office and Conflicts I are unable to represent or fail to act.

C. For purposes of this contract, an "inability to act" on the part of Conflicts I or the Public Defender, includes, but is not limited to, cases of which either the Public Defender or Conflicts I have been relieved following Marsden hearings; cases in actions to withdraw guilty pleas in criminal cases when either the Public Defender or Conflicts I represented the defendant and feels obligated to withdraw as counsel; and all cases where the court relieves the Public Defender or Conflicts I for reasons contemplated by this contract. The term "inability to act" does not include cases where there is a refusal to act for reasons other than those contemplated herein.

D. CONFLICTS II staff and subcontractors shall consist of such attorneys, in-office interpreters, paralegal and clerical personnel in sufficient quantity and quality to meet all constitutional, statutory, and case law requirements for the defense of indigents in Stanislaus County and to adequately and professionally carry out the duties and obligations set forth in this contract.

E. Cases requiring travel outside Stanislaus County may be considered extraordinary, and COUNTY may, by prior order, provide for reimbursement for such travel and other related expenses. CONFLICT II shall be reimbursed by COUNTY for actual and reasonable costs associated with and caused by change of venue cases. The costs reimbursed to CONFLICT II shall include lodging, meals, transportation, and other expenses not to exceed that which is paid COUNTY employees.

F. CONFLICTS II shall complete in a professional and diligent manner all legal representation of indigent persons it is properly appointed to represent consistent with

section 27706(a) of the Government Code, but excluding post-trial appeals to the appellate and supreme courts.

G. When the Public Defender and Conflicts I are unable to provide representation, CONFLICTS II shall provide legal representation and support services for all of Stanislaus County in any manner which the Public Defender or Conflicts I may be appointed, including, but not limited to, all misdemeanor and felony cases in the Superior Court of Stanislaus County; or delinquency matters including periodic review hearings; commitment for mentally retarded persons (Welfare and Institutions Code Section 6500); mental health, guardianship, and conservatorship hearings, including periodic review hearings; habeas corpus proceedings, appeals from misdemeanor cases to the Appellate Department of the Superior Court, probation violations; civil contempt matters; civil paternity matters, including minor indigents for whom a Guardian Ad Litem has been appointed; and freedom from parental custody and control actions and all cases where third counsel is ordered by the respective court.

H. In addition to the foregoing duties, CONFLICTS II agree to four hundred (400) felony cases for each twelve (12) month term of the contract, excluding only those listed in Penal Code Sections 799 and 800, in which the Public Defender would otherwise be eligible for appointment. COUNTY further agrees that only in the instance of assigned cases as provided by this paragraph, felony cases at the "third strike level", will not be assigned to CONFLICTS II. These felony cases are in addition to any felony cases received through conflict wherein the exception for three-strike cases and those cases governed by Sections 799 and 800 do not apply.

I. CONFLICTS II agree to meet and confer with COUNTY, upon receipt of ninety (90) days notice by COUNTY, concerning any needs for further indigent legal services

not specifically set forth above or in the subject contract, including modifications associated with potential changes to the indigent legal services system.

J. CONFLICTS II shall provide legal representation in the appellate courts when CONFLICTS II deem that an adequate legal representation requires application for extraordinary relief prior to conviction or pending appeal.

K. CONFLICTS II shall be required to assist indigents as directed by the Court and COUNTY in the preparation and filing of financial declarations to determine eligibility under this contract.

L. CONFLICTS II shall not be permitted to decline court appointment in any cases except for legal conflict of interest or other legal grounds.

M. CONFLICTS II will assist in the preparation and filing of all necessary financial documents to enable the Court to determine reimbursement to the COUNTY for services under Penal Code Sections 987.4 and 987.8 and/or other law (to be heard at the same time as the probation and sentencing hearing; or immediately following verdict or judgment).

N. CONFLICTS II agrees to provide contract oversight and administration services should the COUNTY request CONFLICTS II to subcontract groups of available conflict cases. CONFLICTS II and the COUNTY agree to negotiate service levels with the proposed providers should the COUNTY request CONFLICTS II to perform contract oversight and administration services.

O. Conflicts II agrees to honor the following requests made by the Superior Court as follows:

1. Conflicts II shall provide adequate staffing to ensure that all adult courts are covered five (5) days a week.

2. Conflicts II shall attend Superior Court and Criminal Justice Forum meetings as set by the Superior Court. These typically are held on the third Monday of each month.
3. Conflicts II agrees to provide and maintain an e-mail address, pager number and/or cell phone number with the Superior Court.

II. OFFICES:

A. CONFLICTS II shall, at their sole expense, maintain their principal office in Modesto, California, within fifteen (15) minutes response time to the courthouse. CONFLICTS II shall maintain business hours at the principal office Monday through Friday from 8:00 a.m. to 5:00 p.m., and they shall be available in all other areas of Stanislaus County to serve all the courts in Stanislaus County as the need arises. Offices shall be of sufficient size to accommodate clients in a reasonable and professional manner at the sole expense of CONFLICTS II.

III. STAFF:

A. CONFLICTS II shall maintain sufficient staff to fulfill the terms of the contract, to provide daily representation as necessary, and to avoid otherwise unnecessary delays and continuances.

B. CONFLICTS II agrees to maintain one primary full-time staff Attorney qualified under Rule 4.117(d) or 4.117(f) of the California Rules of Court to provide representation in capital cases and one secondary Attorney qualified under Rule 4.117(d) or 4.117(f) to be available if the primary capital case Attorney is not available. CONFLICTS II agrees to confirm the qualifications of the primary and secondary capital case qualified Attorneys by providing COUNTY a written statement from the Stanislaus County Superior Court record confirming their qualifications under Rule 4.117(d) or 4.117(f) of the California Rules of Court. CONFLICTS II agrees to notify COUNTY in

writing within seven calendar days if CONFLICTS II no longer employs the primary or secondary Attorney qualified under Rule 4.117(d) or 4.117(f) of the California Rules of Court and will communicate a plan to fill the vacancy with a qualified attorney. Rules 4.117(d) and 4.117(f) of the California Rules of Court are attached to this agreement for reference as Attachment I.

C. Upon request, CONFLICTS II shall provide COUNTY, and the Court in Stanislaus County, a list of CONFLICTS II attorneys providing services. Each list shall contain a brief biographical sketch pertaining to each attorney's professional experience. CONFLICTS II shall notify COUNTY and the Court of any proposed changes in attorney staffing, to include subcontractors, and court's approval of such attorney and changes shall be obtained by CONFLICTS II prior to any work being done by such attorney.

D. CONFLICTS II shall designate, in writing, a managing attorney who shall be authorized to speak for CONFLICTS II with respect to the contract and its performance.

IV. REPORTS:

A. CONFLICTS II shall maintain proper records to enable the Court and COUNTY to verify the separate categories of costs of representing each indigent person in court proceedings including the number of persons represented and the types of proceedings and the average number of hours per type of case. CONFLICTS II shall make such records and/or copies thereof available to COUNTY and Court for inspection and/or in any proceedings to recover such costs from the state or whoever may be obligated to reimburse COUNTY.

B. CONFLICTS II shall provide the COUNTY and the Public Defender with a monthly report of total cases assigned and concluded per month and fiscal year, average time spent on cases, average cost of the case, and number of cases conflicted.

The report should also include court appearances per type of case and any other activities. The report shall be provided on forms designated by the COUNTY and received in final form by the COUNTY from CONFLICTS II by the fifteenth (15th) day of the month following the month in which the services are rendered. Sample of monthly report is referenced as Attachment II. All reports shall be sent to the Chief Executive Office of Stanislaus County and the Public Defender. CONFLICTS II agrees to join in discussions with the Public Defender, COUNTY and Conflicts I in order to agree to a consistent method of reporting cases handled, including those cases conflicted.

CONFLICTS II agrees to begin tracking and reporting each month the case number and case name for cases initially referred to CONFLICTS II in which CONFLICTS II declares a conflict and refers the case to other counsel for representation. CONFLICTS II agrees to note those cases that involved a conflict due to co-defendants in the case.

CONFLICTS II agrees to join in discussion with the Public Defender, COUNTY and Conflicts I to review the statistical caseload data gathered by CONFLICTS II and the potential for automated reporting of caseload data to the COUNTY.

C. CONFLICTS II shall maintain for at least ten (10) years following the completion of the case all files and time records. COUNTY shall provide reasonable space accessible for storage of those files which are five (5) or more years old. CONFLICTS II shall have access to such files as necessary, and COUNTY shall guarantee the confidentiality and protection of said files. Time records, and all reports maintained by CONFLICTS II directly related to the services performed pursuant to this contract, shall be available for inspection by COUNTY or the courts at all reasonable times.

V. TERMINATION:

A. This contract shall be effective for all cases assigned on July 1, 2011 and shall continue in effect for all cases on, and including, June 30, 2014, unless the parties agree to extend the contract an additional period of time, provided that the funds are budgeted by the COUNTY and the contract has not been canceled as provided herein.

B. Upon termination of this contract as herein provided or by natural expiration of this contract on June 30, 2014, unless the parties agree to an extension of the contract, COUNTY shall have no obligation to compensate or pay CONFLICTS II except for services provided prior to termination subject to the following terms:

Upon expiration or termination (by cancellation or otherwise), unless specifically relieved by the Superior Court, CONFLICTS II shall be required to complete representation of all clients in all cases where previously appointed to do so where the case is resolvable within 30 days. This includes cases wherein CONFLICTS II was appointed pursuant to Section I, "DUTIES", paragraph H (non-conflict cases). All cases in post-trial litigation shall become COUNTY'S responsibility thirty (30) days following termination of the contract. In all instances where the case becomes the responsibility of COUNTY following termination of the contract COUNTY may, at COUNTY'S option, deem that the attorneys in the law firm of Perry & Associates have been appointed to handle the cases at the then prevailing COUNTY rate commencing with the day after the termination of the contract.

C. The term of this contract is from July 1, 2011, to June 30, 2014. This contract may be extended for an additional one or up to two-year period at the same or different contract price upon the consent of all contract parties beyond June 30, 2014. The

parties agree to meet no less than sixty (60) days prior to the expiration of the contract to discuss an extension and the terms and conditions of an extension. Furthermore, CONFLICTS II agrees to meet with COUNTY upon request to discuss a modification of the assigned felony cases and/or oversight by CONFLICTS II of the appointed cases outside of the Public Defender's Office, Conflicts I and CONFLICTS II.

D. Decision to cancel this contract may be made by COUNTY, without cause, upon a ninety (90) day written notice. Upon decision to cancel the contract, COUNTY will advise CONFLICTS II, in writing, with a ninety-day (90) notice of said cancellation.

E. Notwithstanding any other term or provision of this contract, the failure of CONFLICTS II to comply with the terms of this contract and any reasonable directions by or on behalf of the COUNTY or the court pursuant thereto shall constitute a material breach of the contract by CONFLICTS II; and, in addition to other remedy authorized by law, COUNTY shall have the right to terminate the contract immediately. Failure to exercise this right of termination shall not constitute waiver of such right, which may be exercised at any subsequent time. This contract may be terminated, at the option of COUNTY with the approval of the Board of Supervisors, upon the occurrence of any of the following:

1. Violation of any material provision of the contract;
2. Institution of proceedings by, or against, CONFLICTS II or any partner of the firm providing services for CONFLICTS II under this contract pursuant to the bankruptcy laws of the United States;
3. Discovery of COUNTY that this contract was obtained through fraud, by commission or omission;
4. Suspension of business operations, failure, or receivership of attorneys;
5. Assignment of the contract without prior written approval;

6. Cancellation of malpractice liability insurance coverage or Workers' Compensation coverage; and
7. The commencement of criminal prosecution against any of the individual attorneys providing services for CONFLICTS II under this contract.

VI. COMPENSATION:

A. COUNTY shall pay CONFLICTS II for the above-rendered services the sum of fifty two thousand three hundred and ninety-five dollars and fifty-one cents (\$52,395.51) per month effective July 1, 2011 to June 30, 2014 with the first payment of this contract at this amount made on August 1, 2011 and subsequent payments to be made on the first day of the month following the month services were rendered in the preceding month. The COUNTY may decrease payments to CONFLICTS II by eight hundred and seventy-three dollars and twenty-six cents (\$873.26) per calendar day should CONFLICTS II not comply with the staffing standards identified in Section III-B of this agreement for greater than 120 consecutive calendar days. Further, CONFLICTS II shall be relieved from any payment for DISCOVERY material received from the District Attorney for the term of this contract.

B. Compensation provided for or pursuant to this contract or any amendment, addendum, or supplement to it shall be subject to offset as provided below.

C. By prior order of the court, CONFLICTS II may employ experts and expert witnesses as may be required for an adequate defense; and the expense of said experts and expert witnesses shall be paid in addition to the compensation provided under this contract upon prior order of the court.

D. COUNTY and CONFLICTS II agree the monthly compensation was previously increased by three thousand one hundred ninety-one dollars (\$3,191.00) to cover the cost of investigative services and is added to the monthly compensation as specified in

Subsection A herein. The additional compensation as set forth above shall cover all investigative costs associated with the defense of indigent cases assigned by the Courts as provided herein by this contract. CONFLICTS II shall have the latitude in determining the appropriate level of investigative services on assigned cases. The amount provided shall cover all investigative costs and CONFLICTS II agrees and understands that petition to COUNTY for provision of these services outside of this contract may be made only in the case of extraordinary and unusual circumstances. In cases deemed death penalty eligible Conflicts II is authorized to petition the appropriate judge pursuant to California Penal Code section 987.9 for funds for investigation. In the event that the "special circumstances" clause is stricken, or prosecution declares that they will not be seeking death, all additional investigations shall be at the expense of Conflicts II as provided by this paragraph.

E. COUNTY acknowledges its independent obligation to provide adequate legal defense to indigent criminal defendants in need thereof. The COUNTY does, and will, undertake to provide such representation and reserves the right to take any steps appropriate to meet said obligation. Under extraordinary circumstances or circumstances not contemplated within this contract, COUNTY reserves unto itself the right to consider application by CONFLICTS II for change and terms of this contract. Extraordinary circumstance shall generally be limited to prolonged capital cases (e.g. Peterson, Manson-type cases) or the cumulative effect of multiple homicide cases involving extreme expenses. In the event that CONFLICTS II is required to devote an extraordinary expenditure of time and effort not foreseen by this contract, CONFLICTS II shall apply to the Stanislaus County Chief Executive Officer for additional reasonable compensation. A request for such extraordinary compensation shall be provided to the COUNTY no less than fourteen (14) days prior to said request being filed with the court.

The court shall conduct a hearing on the request, and the COUNTY will have a right to contest said request.

F. The parties agree to meet and confer regarding the amount of compensation under Subdivision A of Section VI if and when the County implements a negotiated Cost of Living Adjustment ("COLA") for attorneys classification in the Department of the Public Defender. Any negotiated increase in compensation shall not exceed the rate of any COLA for attorneys classification in the Department of the Public Defender.

VII. CONFLICT:

A. It is acknowledged by the COUNTY that in cases or related matters involving more than three (3) defendants, in cases where CONFLICTS II or their staff have certain knowledge of the events or parties, and some other circumstances designated justifiable by a court, CONFLICTS II may not be available to represent all defendants because of legal prohibitions or because of canons of professional ethics relating to conflicts of interest. Such determination shall be made by the court. CONFLICTS II shall seek to immediately minimize the number of conflicts declared and seek waiver of such conflicts whenever it is ethically appropriate. The Public Defender, Conflicts I and CONFLICTS II shall agree to meet to discuss possible standards for such waivers.

B. CONFLICTS II shall not knowingly or negligently provide any legal services outside the scope of this contract if the provisions of such legal services would render CONFLICTS II ineligible to provide legal services to COUNTY under this contract.

C. Should CONFLICTS II be unable, ineligible, or unavailable to provide services as provided for herein for any reason other than a legitimate conflict of interest as determined by the courts or are dilatory in providing such services, the Court may appoint other counsel. The compensation provided in Section VI shall be offset by an

amount equivalent to the cost the COUNTY incurs as a result of services provided by other counsel.

D. Notwithstanding any other provision of this contract, it is agreed by the parties that the judges of the Superior Court shall have the right to review and pass upon the qualifications, experience, and competence of any attorney assigned by CONFLICTS II to a case and to reject any attorney who, in the judge's sole opinion, lacks satisfactory expertise or experience to handle the case before the court. In the event CONFLICTS II fail, within a reasonable time, to assign an attorney to a given case who is acceptable to a court, the Court may assign other counsel to the case at the sole expense of CONFLICTS II. Should COUNTY incur any expense as a result of a court's appointment of other counsel under Section VII, the compensation provided in Section VI shall be offset by an amount equivalent to the cost COUNTY incurred by providing said services.

VIII. STATUS OF CONFLICTS II:

A. The parties agree that this contract does not create the relationship of attorney and client nor employee and employer between CONFLICTS II and the COUNTY. CONFLICTS II is an independent contractor. CONFLICTS II is, and shall at all times be, deemed independent and shall be wholly responsible for the manner in which CONFLICTS II perform the services required by the terms of this contract.

B. CONFLICTS II shall be deemed to be independent attorneys and under no circumstances shall the law firm, or its employees, agents, and servants be deemed to be employees, servants, or agents of the County of Stanislaus.

C. CONFLICTS II shall be wholly responsible for the manner in which it performs the service required by the terms of this contract. CONFLICTS II exclusively assumes the responsibility for the acts of CONFLICTS II subcontractors, associates, and

employees relative to the services provided during the term and scope of their employment.

D. CONFLICTS II understand and agree they have no right to medical, dental, retirement or other such benefits provided to COUNTY employees, and the COUNTY shall not be responsible or pay for any injury of CONFLICTS II or staff arising out of services performed under this contract.

IX. LIABILITY AND INSURANCE:

A. CONFLICTS II shall assume the defense and indemnify and hold harmless the COUNTY of all suits, actions, damage, or claims of every name and description that it may be subjected to or put to by reason of injury to persons during the performance of this contract resulting from, or alleged to have resulted from, the negligence or carelessness or from willful acts of CONFLICTS II or their agents in the performance of the CONFLICTS II legal specialties. In the event that such proceedings are brought against any of the parties to this contract, CONFLICTS II shall obtain proper and adequate defense and there shall be no expense to the COUNTY. COUNTY shall not be liable for any damage or injuries resulting from the acts or omission of CONFLICTS II in the performance of the contract.

B. During the term of any contract with COUNTY, CONFLICTS II will, at all times, maintain at their expense the following:

1. Workers' Compensation liability insurance.
2. Comprehensive general liability insurance naming the COUNTY, its Board of Supervisors, officers, and employees as additional insureds. Comprehensive general liability insurance would not be less than two hundred fifty thousand dollars (\$250,000.00) per person, and five hundred thousand dollars (\$500,000.00) per

accident for bodily injury and twenty-five thousand dollars (\$25,000.00) for property damage.

C. In addition, CONFLICTS II attorneys shall obtain and maintain, in the minimum amount of five hundred thousand dollars (\$500,000.00) a policy of insurance covering errors and omissions.

D. CONFLICTS II guarantee COUNTY at least ten (10) days written notice prior to cancellation or change of terms of any insurance required by this contract.

E. In the event CONFLICTS II fails to maintain all necessary insurance as set forth in paragraph B above, COUNTY may purchase such necessary insurance and deduct said amount from CONFLICTS II compensation provided in Section VI.

X. GENERAL:

A. CONFLICTS II shall not be prohibited from engaging in the private practice of law, including the defense of those charged with crimes in any and all proceedings, provided that no private case shall be accepted which may cause a conflict of interest to arise wherein CONFLICTS II would be unable to represent an indigent person whom the Public Defender cannot represent in court.


B. If CONFLICTS II does represent a person in a private case which then results in his or her inability to accept an appointment by way of this contract, COUNTY shall be entitled to an off-set as stated in Section VII.

C. CONFLICTS II shall in no event accept anything of value from the indigent in consideration for services rendered under this contract.


D. Upon the request of the contractor, COUNTY agrees to meet three (3) times each year for general discussion purposes.

EXECUTED THIS FIRST DAY OF MARCH, 2011

COUNTY OF STANISLAUS

By: 
Richard W. Robinson
Chief Executive Officer
COUNTY

PERRY & ASSOCIATES

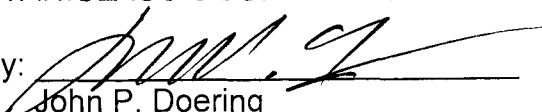
By: 
Bruce Perry
CONFLICTS II

ATTEST:

Christine Ferraro Tallman
Clerk to the Board of Supervisors
Of the County of Stanislaus
State of California

By: 
Christine Ferraro Tallman
Clerk of the Board

APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL

By: 
John P. Doering
County Counsel

2011 California Rules of Court

Rule 4.117. Qualifications for appointed trial counsel in capital cases

(d) Qualifications of lead counsel

To be eligible to serve as lead counsel, an attorney must:

- (1) Be an active member of the State Bar of California;
- (2) Be an active trial practitioner with at least 10 years' litigation experience in the field of criminal law;
- (3) Have prior experience as lead counsel in either:
 - (A) At least 10 serious or violent felony jury trials, including at least 2 murder cases, tried to argument, verdict, or final judgment; or
 - (B) At least 5 serious or violent felony jury trials, including at least 3 murder cases, tried to argument, verdict, or final judgment;
- (4) Be familiar with the practices and procedures of the California criminal courts;
- (5) Be familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;
- (6) Have completed within two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and
- (7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(Subd (d) amended effective January 1, 2007.)

(f) Alternative qualifications

The court may appoint an attorney even if he or she does not meet all of the qualifications stated in (d) or (e) if the attorney demonstrates the ability to provide competent representation to the defendant. If the court appoints counsel under this subdivision, it must state on the record the basis for finding counsel qualified. In making this determination, the court must consider whether the attorney meets the following qualifications:

- (1) The attorney is an active member of the State Bar of California or admitted to practice *pro hac vice* under rule 9.40;
- (2) The attorney has demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases;
- (3) The attorney has had extensive criminal or civil trial experience;
- (4) Although not meeting the qualifications stated in (d) or (e), the attorney has had experience in death penalty trials other than as lead or associate counsel;
- (5) The attorney is familiar with the practices and procedures of the California criminal courts;
- (6) The attorney is familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;
- (7) The attorney has had specialized training in the defense of persons accused of capital crimes, such as experience in a death penalty resource center;
- (8) The attorney has ongoing consultation support from experienced death penalty counsel;
- (9) The attorney has completed within the past two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and
- (10) The attorney has been certified by the State Bar of California's Board of Legal Specialization as a criminal law specialist.

(Subd (f) amended effective January 1, 2007.)

FIRM: _____

CURRENT MONTH: _____

FISCAL YEAR: _____

NUMBER OF CASES	CASES PER MONTH	CASES PER FISCAL YEAR	AVERAGE TIME SPENT ON CASE	AVERAGE COST OF CASE	CONFLICT DECLARED
Murder Cases Assigned					
Murder Cases Concluded					
Other Felony Cases Assigned					
Other Felony Cases Concluded					
Misdemeanor Cases Assigned					
Misdemeanor Cases Concluded					
Juvenile Cases Assigned					
Juvenile Cases Concluded					
Other Cases Assigned					
Other Cases Concluded					
Total Cases Assigned	_____	_____	_____	_____	_____
Total Cases Concluded	_____	_____	_____	_____	_____

COURT APPEARANCES

Felony Cases				
Misdemeanor Cases				
Juvenile Cases				
All Other Cases				
Total Court Appearances	_____	_____	_____	_____

OTHER ACTIVITY

Number of Jury Trials
 Number of Days in Jury Trial