

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

MOTION NO. 23-055

APPROVING CONTRACT WITH MARK MIDDAGH
TO PROVIDE INDIGENT SERVICES FOR THE PERIOD FROM
JANUARY 1, 2023, THROUGH DECEMBER 31, 2023

WHEREAS, the Snohomish County Council and County Executive recognize the need to provide legally mandated indigent defense services in criminal cases where incarceration is possible; and

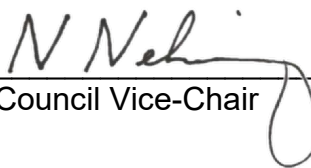
WHEREAS, through this negotiated contract with Mark Middaugh, Attorney at Law, the County will continue to provide mandated legal services for the indigent defendants for cases that are a conflict of interest with the Public Defender Association; and

WHEREAS, Mark Middaugh has the experience, expertise and capacity to provide the contracted indigent legal defense services needed in Snohomish County courts;

NOW, THEREFORE, ON MOTION, the Snohomish County Council authorizes the County Executive to sign the attached contract and any amendments thereto with Mark Middaugh to provide legal services to indigent defendants according to the terms therein from January 1, 2023, through December 31, 2023.


PASSED this 1st day of March, 2023.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Council Vice-Chair

ATTEST:



Deputy Clerk of the Council

ATTORNEY/CONTRACTOR: Mark Middaugh

COUNTY AGENCY: Snohomish County
Office of Public Defense

AMOUNT: Not to exceed \$250,000
annually

DURATION: January 1, 2023 through
December 31, 2023.
Extension period of two
(2) additional one (1)
year terms

CONTACT PERSON: Jason Schwarz,
Attorney Administrator
Office of Public Defense

**CONTRACT FOR LEGAL DEFENSE SERVICES
SNOHOMISH COUNTY CONFLICT PANEL**

THIS AGREEMENT is entered into by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (herein referred to as “the County”), and Mark Middaugh, a licensed Washington attorney practicing in Snohomish County (herein referred to as “the Contractor” and/or “Conflict Attorney”). In consideration of the terms and conditions set forth herein, the parties agree as follows:

1. Definitions:

"Administrator" means the Snohomish County Attorney Administrator in the Office of Public Defense or designee.

2. Scope of Services to be Performed. The purpose of this Agreement and scope of services are as defined in **Schedule A** attached hereto entitled, "Legal Defense Services" and by this reference made a part of this Agreement
3. Duration of Contract. This Contract shall govern services from January 1, 2023, through December 31, 2023. Unless terminated as provided herein, the term of this Contract may be extended for up to two (2) additional one (1) year terms, at the sole discretion of the Administrator and/or the County by written notice from the County to the Contractor. PROVIDED, HOWEVER, that the County's obligations after December 31, 2023, are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law.
4. Compensation: The County will pay the Contractor for services provided hereunder as set forth in **Schedule B** attached hereto and by this reference made part of the Contract.
5. Independent Contractor. The Contractor agrees that the Contractor will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. The Contractor specifically has the right to direct and control the Contractor's own activities in providing the agreed services in accordance with the specification set out in this Agreement. The County shall only have the right to ensure performance.
6. Representation and Warranty. The Contractor represents and warrants that she is a member in good standing of the Washington State Bar Association, and that no disciplinary proceedings are pending against her. The Contractor shall maintain good standing with the Washington State Bar Association throughout the duration of this Agreement. The Contractor will abide by the Rules of Professional Conduct.
7. Access to Books/Records. The County may, at reasonable times, inspect the books and records of the Contractor relating to performance of this Agreement. Nothing in this paragraph shall be construed as constituting a waiver of the attorney-client and/or work product privilege. The Contractor shall keep all records required by this Agreement for five (5) years after termination of this Agreement for audit purposes.
8. Hold Harmless and Indemnity. The Contractor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this agreement, or those of Contractor's employees, agents, or subcontractors. PROVIDED HOWEVER, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents. PROVIDED FURTHER, that in the event of the

concurrent negligence of the parties, the Contractor's indemnity obligations hereunder shall apply only to the percentage of fault attributable to the Contractor, its employees, agents, or subcontractors.

With respect to the Contractor's obligations to hold harmless, indemnify and defend provided for herein, but only as such obligations relate to claims, actions or suits filed against the County, the Contractor further agrees to waive its immunity under the Industrial Insurance Act, Title 51 RCW, for any injury or death suffered by the Contractor's employees caused by or arising out of the Contractor's acts, errors or omissions in the performance of this agreement. This waiver is mutually negotiated by the parties.

The Contractor's obligation hereunder shall include, but is not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission or breach of any common law, statutory or other delegated duty by the Contractor, Contractor's employees, agents, or subcontractors.

9. Insurance Requirements. The Contractor shall procure by the time of execution of this Contract, and maintain for the duration of this Contract, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

a. General. Professional Liability, Errors and Omissions coverage, may be written on a "claims made" basis. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Contract.

By requiring the minimum insurance coverage set forth in this Section 9, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

b. No Limitation on Liability. The Contractor's maintenance of insurance as required by this Contract shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

c. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage at least as broad as, and with limits no less than:

- (i) Professional Liability: \$1,000,000.

(ii) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

(iii) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.

(iv) If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

d. Subcontractors. The Contractor shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. Insurance coverages provided by subcontractors instead of the Contractor as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

10. Compliance with Laws.

- a. The Contractor shall comply with all applicable federal, state and local laws in performing this Agreement, including, but not limited to laws against discrimination.
- b. The Contractor shall comply with the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

11. Termination

- a. If the Contractor breaches any of its obligations hereunder, and fails to cure the same within five (5) days of written notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay the Contractor only for the costs of services accepted by the County, in accordance with paragraph 4.
- b. Either party may terminate this Agreement upon thirty (30) days' written notice to the other party for any reasons other than stated in subparagraph "a" above, in which case the County shall pay the Contractor for all services performed by the Contractor pursuant to this Agreement prior to the date of termination in accordance with paragraph 4.
- c. Prior to termination, the Contractor shall resolve all assigned cases unless otherwise provided as follows:
 - i. Upon notice of termination, the Contractor shall promptly, but in no event later than three (3) business days after notice of termination, identify to the Administrator all pending cases. The Administrator shall re-assign all cases that remain unresolved at the time of termination except for those cases in which special circumstances exist, such as imminent trial schedule, lengthy or complex course of litigation, special client circumstances, or other client or case-based interests that may require continued representation by the Contractor.
 - ii. For those cases that the Contractor retains due to the existence of special circumstances, the terms of the contract will remain in force and effect until final resolution of said retained cases. The Administrator will not assign any new cases to the Contractor during the period the Contractor is resolving retained cases under this provision.
- d. Termination shall not affect the rights of the County under any other paragraph herein.

12. Non Assignment. The Contractor shall not subcontract, assign or delegate any of the rights, duties or obligations, covered by this Agreement without the prior express written consent of the County, which consent may be reasonably withdrawn.

In the case of limited scheduling conflicts, vacations, or other short term unavailability (not to exceed 10 calendar days unless written approval from the Administrator), the Contractor may arrange for case(s) to be temporarily handled by another County contracted Conflict Attorney.

13. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

14. Conflicts Between Attachments and Text. Should any conflicts exist between any attached schedule and the text of this Agreement, the text of this Agreement shall prevail.
15. Governing Law and Stipulation of Venue. The laws of the State of Washington shall govern this Agreement and the parties stipulate that any lawsuit regarding this Agreement must be brought in Snohomish County, Washington.
16. Severability. Should any clause, phrase, sentence, or paragraph of this Agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.
17. Entire Agreement. This Agreement is the complete expression of the terms and conditions hereunder. Any oral or written representations or understandings not incorporated herein are specifically excluded.

Snohomish County

Ken Klein Digitally signed by Ken Klein
Date: 2023.03.02 16:45:09 -08'00'

County Executive Ken Klein Date
Executive Director

Mark Middaugh 1/20/23
Mark Middaugh Date

Approved as to Form Only:

"/s/" George B. Marsh 07/22/22

Deputy Prosecuting Attorney Date

Baer, Diane Digitally signed by Baer, Diane
Date: 2023.01.23 09:55:26 -08'00'

Risk Management Date

COUNCIL USE ONLY	
Approved	<u>3/1/2023</u>
ECAF #	<u>2023-0095</u>
MOT/ORD	<u>Motion 23-055</u>

SCHEDULE A LEGAL DEFENSE SERVICES

The Contractor shall, in accordance with the requirements of this Agreement, provide attorney services as follows:

1. Duties and Responsibilities of Counsel: The Contractor will provide legal representation as an attorney on case assignments made under this contract. The Contractor agrees to provide effective legal representation of all assigned clients from the date of notice of assignment through final adjudication. If a client has an appeal as a matter of right and wishes to appeal, the Contractor shall timely file a Notice of Appeal and a “Motion, Order and Affidavit of Indigency” in the Superior or District Court, whichever applies.
2. Responsibility for Expert Witness Fees and Other Costs Associated with Representation: Expert witness fees and other costs associated with representation are paid from the resources of the various courts.
3. Qualifications of Attorney. Contractor shall be admitted to practice law in the State of Washington and shall meet Standard Fourteen (14), “Qualification of Attorneys”, of the Washington Supreme Court’s Standards for Indigent Defense Services (adopted June 15, 2011) for the level of case complexity for which Contractor is contracting as set forth in Schedule B.
4. Contract Attorney Caseload Reporting Requirement. The Contractor must make an annual reporting of the extent of their caseload on a as required by RCW 10.101.050. Specifically, the Contractor must provide an annual reporting of:
 - A. The number and type of cases in their private practice, if any;
 - B. The number and type of other public defense contracts, if any; and
 - C. The total hours billed for non-public defense cases, if any.
5. Continuing Legal Education (CLE). The Contractor shall attend at least seven (7) hours of trainings approved by the Washington State Office of Public Defense; e.g. a CLE sponsored by the Washington Defender Association, Washington Association of Criminal Defense Lawyers, or the Washington State Office of Public Defense. The Attorney Administrator may request documentation of such attendance.
6. Attorney Certification. The Contractor must provide the Administrator with quarterly certification forms, pursuant to CrR 3.1, CrRLJ 3.1 and JuCR 9.2.
7. Invoices: Contractor shall submit invoices within 60 days of the work being performed. Final billings shall be submitted within 60 days of the date of last action on the case.

Failure to submit timely billings may result in denial of payment. Time must be reported in tenth-of-an-hour increments only and should not be billed in lesser increments. See time conversion table below:

01 – 06 minutes	0.1 hour
07 – 12 minutes	0.2 hour
13 – 18 minutes	0.3 hour
19 – 24 minutes	0.4 hour
25 – 30 minutes	0.5 hour
31 – 36 minutes	0.6 hour
37 – 42 minutes	0.7 hour
43 – 48 minutes	0.8 hour
49 – 54 minutes	0.9 hour
55 – 60 minutes	1.0 hour

8. Year-end Billings: Prior to the end of the fiscal year, the Administrator will notify the Contractor of a deadline for all billings for services provided during that year. These deadlines are necessary in order to meet the Snohomish County Finance Department deadlines for year-end accounting. Failure to meet year-end deadlines may result in non-payment for services performed.
9. Year-End Accounting: The Contractor shall annually provide the Administrator with a written report of final disposition and a reasonably accurate statement of total hours spent on the files assigned. Such report shall be made on or before December 31st of each year that this contract is in effect.
10. Public Records and Invoices: Attorney invoices and time records submitted to the County are matters of public record. Please exercise appropriate discretion when filing an invoice or time record with regard to maintaining client confidences.

SCHEDULE B
COMPENSATION

1. Case Assignment and Compensation:

The Contractor will be paid the following rate, in accordance with the case type(s) that may be assigned to the Contractor under this agreement, as designated below.

District Court for Snohomish County

Misdemeanors and Gross Misdemeanors: \$50 per hour

Everett District Court felony cases: \$50 per hour

Superior Court for Snohomish County for Adult Felony/Criminal cases indicated below (non-homicide):

Class A felonies: \$150/hour

Paralegal/Legal Assistant on hourly-billed Class A Felony representation: \$50 per hour

Class B felonies: \$1300 flat fee (\$260 Per half day trial per diem)

Class C felonies: \$825 flat fee (\$220 Per half day trial per diem)

Juvenile/Superior Court Juvenile Offender cases: \$65 per hour

Superior Court Miscellaneous proceedings: \$50 per hour

Superior Court miscellaneous proceedings include, but are not limited to, the following: Material Witness, Fugitive, Civil Contempt, Assignment for Sentencing Only, Motion to Withdraw Guilty Plea, Failure to Comply Hearing

RALJ: \$60 per hour

No Contact Order Representation : \$125 per hour

Child Representation in Dependency Proceedings: \$65 per hour

1. Bench Warrant. On case types where the Contractor was paid a flat fee, if a defendant fails to appear the Contractor will not bill again if the time between the issuance of a bench

warrant and the date the bench warrant is quashed is within one year. If the time between the issuance of the bench warrant and the date the defendant quashes the bench warrant is greater than one year, the Contractor may bill the flat fee again. Nothing in this paragraph shall prevent the Contractor from requesting relief, under extraordinary case compensation, as set forth in Paragraph 3 below.

2. Withdrawal Prior to Final Adjudication. Payment for files from which the Contractor withdraws prior to final adjudication of the case will be in the Administrator's sole discretion. The Administrator will consider, among other things, the work performed by the Contractor prior to reassignment.
3. Extraordinary Case Compensation: The Administrator may allow additional compensation for extraordinary cases where it is determined by the Administrator that further compensation is reasonable and necessary under the circumstances of the case. Upon written documentation by the Contractor, the Administrator shall consider additional compensation based upon the complexity of the case, the amount of reasonably necessary and documented attorney hours devoted to the case, taking into consideration any other pertinent circumstances such as the number of pre-trial motions filed and argued. Any additional compensation is at the sole discretion of the Administrator and must be expressly agreed to, in writing, signed by both the Contractor and Administrator.
4. Limitation of Hours. The amount of billable hours for any case assigned hereunder shall not exceed 300 total billable hours without prior, written approval of the Administrator. Any cases approved to exceed 300 hours will require the Contractor to submit a case management plan outlining the Contractor's expectation for the number of hours needed to complete the case, which plan shall be subject to the Administrator's approval.