

## LEGAL SERVICES AGREEMENT

28 This **Legal Services Agreement** (the "Agreement") is hereby made and entered into this day of July, 2016 between **Devona Roseberry**, Attorney at Law (hereinafter referred to as the "Attorney"), and **Newton County, Georgia** a political subdivision of the State of Georgia, acting by and through its governing authority, the Newton County Board of Commissioners (hereinafter referred to as the "County"), collectively referred to as the Parties.

### WITNESSETH:

**WHEREAS**, the County is charged by law with the responsibility for providing competent legal representation to children involved in certain proceedings before the Juvenile Court of Newton County;

**WHEREAS**, the County is charged by law with the responsibility for providing competent legal representation to indigent parents in certain proceedings before the Juvenile Court of Newton County;

**WHEREAS**, the County has approved funding for the legal representation of said children and indigent parents; and

**WHEREAS**, the Attorney is in the business of providing legal representation to children and parents entitled to legal services in connection with proceedings before the Juvenile Court of Newton County, and further desires to provide said services in accordance with the terms and conditions of this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises herein contained, and for such other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

- (1) **Services-** Subject to the terms and conditions of this Agreement, the County hereby engages the Attorney to provide competent legal representation and services to children and parents as assigned by the Court (hereinafter referred to as the "Work") in connection with the Juvenile Court Indigent Defense Program (hereinafter referred to as the "Program"). The Attorney agrees to provide competent legal representation and services to children and parents (hereinafter referred to as the "Client") assigned by the Court in the following types of cases:
  - a. All services as Attorney or Guardian ad Litem in deprivation cases, incompetency cases, transfer cases from Probate Court, and all other motions and special proceedings related to these matters, arising in the Juvenile Court of Newton County and in which cases said Court is obligated by law to provide such Attorney and/or Guardian ad Litem; and

- b. Any appeals which might be made to the Georgia Supreme Court or Court of Appeals in connection with any of the above cases.
- (2) **Term-** This Agreement is effective as of July 1, 2016 and shall terminate on the 30th day of June, 2017. The term of this Agreement may be reduced in the manner hereinafter set forth under Paragraph (5) entitled "Termination."
- (3) **Compensation-** During the term of this Agreement, the County shall pay to the Attorney the sum of Forty Thousand Dollars (\$40,000.00), to be paid in monthly installments of Three Thousand Three Hundred Thirty-three Dollars and 33/100 (\$3,333.33). There shall be no reimbursement for costs and/or expenses.
- (4) **Budgetary Limitations-** Attorney agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of Attorney's profession and industry. Attorney shall take no calculated risk in the performance of the Work. Specifically, Attorney agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principles of Attorney's profession and industry, Attorney will give written notice immediately to County.
- (5) **Independent Contractor Status-** Attorney hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as agent or employees either Newton County or the Juvenile Court of Newton County. Nothing in this Agreement shall be construed to make Attorney or any of its employees, servants, or subcontractors, an employee, servant or agent of County for any purpose. Attorney controls the Work afforded under the terms of this Agreement and agrees to be solely responsible for its own matters relating to the time and place the Work is performed and the method used to perform such Work; hiring of consultants, agents or employees to complete the Work; and the payment of employees, including benefits and matters. Attorney agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. Any provisions of this Agreement that may appear to give County the right to direct Attorney as to the details of the services to be performed by Attorney or to exercise a measure of control over such services will be deemed to mean that Attorney shall follow the directions of County with regard to results of such services only. Attorney is not entitled to participate in Newton County's health insurance program, pension plan, and/or other benefits provided to full-time employees of Newton County. Attorney shall not be entitled to unemployment compensation upon termination of this Agreement or worker's compensation for any injuries sustained while performing the scope of work under this Agreement. Attorney shall provide his or her own transportation and pay all related expenses such as gasoline, maintenance, insurance, repairs, license fees, and ad valorem taxes. It is further understood that this Agreement is not exclusive, and County may hire additional entities to perform the Work related to this Agreement.

Insamuch as the County and attorney are independent of each other, neither has the authority to bind the other to any third person or otherwise to act in any way as the

representative of the other, unless otherwise expressly agreed to in writing signed by both Parties hereto. Attorney agrees not to represent itself as County's agent for any purpose to any party or to allow any employee of Attorney to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. Attorney shall assume full liability for any contracts or agreements Attorney enters into on behalf of County without the express knowledge and prior written consent of County.

- (6) **County's Reliance on the Work-** Attorney acknowledges and agrees that County does not undertake to approve or pass upon matters of expertise of Attorney and that, therefore, County bears no responsibility for Attorney's Work performed under this Agreement. Attorney acknowledges and agrees that the acceptance of Work by County is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. County will not, and need not, inquire into adequacy, fitness, suitability, and correctness of Attorney's Work under professional and industry standards, or for performing services under this Agreement in accordance with sound and accepted professional and industry principles.
- (7) **Confidentiality-** Attorney acknowledges that it may receive confidential information of County and that will protect the confidentiality of any such confidential information and will require any of its subcontractors, Attorneys, and/or staff to likewise protect such confidential information. Attorney agrees that confidential information it learns or receives or such reports, information, opinions or conclusions that Attorney creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of County. Attorney shall exercise reasonable precautions to prevent the unauthorized disclosure and use of County information whether specifically deemed confidential or not.

Attorney acknowledges that County's disclosure of documentation is governed by Georgia's Open Records Act, and Attorney further acknowledges that if Attorney submits records containing trade secret information, and if Attorney wishes to keep such records confidential, Attorney must submit and attach to such records and affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

- (8) This Agreement may be terminated, upon delivery of written notice, in accordance with the following:
- a. Termination for Convenience: Newton County may terminate this Agreement at any time for any reason (or no reason) upon fifteen (15) days prior written notice. As full compensation under this Agreement, Attorney shall be entitled to compensation earned prior to the date of the notice of termination plus one additional payment of One Thousand Six Hundred Sixty-six Dollars and 66/100 (\$1,666.66).

This Agreement may be terminated in the event that each of the parties mutually agree in writing. As full compensation under this Agreement, Attorney shall be entitled to compensation earned prior to the agreed upon date of termination.

b. Termination for Cause: This Agreement may be terminated by Newton County immediately and without prior notice for any of the following:

- 1) Attorney's failure to perform his or her duties in a competent manner, as determined by the Juvenile Court Judge, in her sole discretion;
- 2) Attorney's failure to perform the duties assigned, as determined by the Juvenile Court Judge, in her sole discretion;
- 3) Attorney is charged with a felony, crime of moral turpitude, act of fraud or other crime involving dishonesty, or any crime against children;
- 4) Attorney violates any applicable duties of confidentiality;
- 5) Attorney uses any illegal drug; or
- 6) Attorney commits any act or acts that could reflect discredit on or bring disrepute to the County.

As full compensation under this Agreement, Attorney shall be entitled to compensation earned prior to the date of the for cause termination.

This Agreement may be terminated by the Attorney in the event the County defaults in the performance of a material provision of this Agreement and such default continues uncured for a period of thirty (30) days after receipt by the County of a written notice from the Attorney stating the specific default. ***Under no circumstances shall the Attorney, upon his or her belief of a default, discontinue services or cause a case to be continued or the docket disrupted unless approved by the presiding judge of the case(s).***

- c. Conversion to Termination for Convenience: If County terminates this Agreement for cause and it is later determined that County did not have grounds to do so, the termination will be converted to and treated as a termination for convenience under the terms of Section 8(a) above.
- d. Requirements Upon Termination: Upon termination or expiration of this Agreement, Attorney shall continue to provide legal representation and services to all clients assigned under the Program until the conclusion of all proceedings initiated during the term of this Agreement unless the withdrawal of the Attorney is approved by the presiding judge of the case.

- e. **Reservation of Rights and Remedies:** The rights and remedies of County and Attorney provided in this Article are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

- (9) **Indigent Defense Program-** The Indigent Defense Program of the Juvenile Court of Newton County is governed by the Court. The Attorney agrees to abide by the rules and regulations of the Program. The Program consists of attorneys providing legal services pursuant to this Agreement and attorneys appointed by the Court to handle cases pursuant to a fee schedule prescribed by the Program. The Attorney acknowledges and agrees to cooperate with other attorneys under the Program and with the Court to ensure an equitable caseload distribution and the efficient administration of the Program. Individual cases that cannot be handled by the Attorney as a result of a conflict of interest or as a result of reaching maximum caseload size will be assigned to an attorney on the court-appointed list in the manner prescribed by the Program. The Attorney acknowledges and agrees to be present at each and every hearing in all cases assigned to the Attorney, including but not limited to, pre-trial matters, depositions, adjudications, dispositions, custody extensions, annual reviews, etc. The Attorney acknowledges and agrees to manage his or her law practice in such a manner to ensure his or her presence at each and every hearing and to avoid conflicts with other cases in other Courts.
- (10) **Insurance-** The Attorney shall have and maintain in full force and effect for the duration of this Agreement, adequate insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by Attorney, its agents, representatives, employees or subcontractors. Such insurance shall include, but is not limited to, professional services and caused by Attorney's errors, omissions, or negligent acts. All policies shall be subject to approval by County as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the County Manager.
- (11) **Assignment-** Except as otherwise set forth in this Agreement, neither party shall assign, sell, or otherwise transfer this Agreement, or any interest therein, without prior written consent of the other party.
- (12) **Subcontracting and Delegation-** In order to discharge the obligations hereunder, the Attorney may engage certain attorneys as independent contractors rather than employees. If the Attorney is a law firm, the Attorney may employ associates properly admitted to the State Bar of Georgia and in good standing to handle cases assigned to the Attorney in connection with the Program. Neither contract Attorneys in solo practice nor law firms shall subcontract, associate an attorney, or delegate within the law firm an attorney, unless said attorney has practiced law for at least five (5) years *and* has at least two (2) years extensive Juvenile Court experience. Any exceptions to these requirements must receive the prior approval of the Juvenile Court Judge. The Attorney shall exercise administrative supervision over such associates or independent contractors necessary to ensure strict fulfillment of the obligations contained in this Agreement, including the responsibility to provide competent legal representation to each and every Client.

- (13) **Licensure-** The Attorney and all associates or subcontractors provided or made available by the Attorney shall be licensed to practice law in the State of Georgia and shall be in good standing with the State Bar of Georgia at all times during the term of this Agreement. The Attorney shall be licensed to practice law before the Georgia Supreme Court and the Georgia Court of Appeals. Unless approved by the Juvenile Court Judge, the Attorney and all associates and subcontractors shall have practiced law for at least five (5) years *and* have at least two (2) years extensive Juvenile Court experience.
- (14) **Ethics Code; Conflict of Interest-** Attorney agrees that it shall not engage in any activity or conduct that would result in a violation of the Newton County Code of Ethics or any other similar law or regulation. Attorney certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest during the Term of this Agreement, Attorney shall immediately notify County. If County determines that a conflict of interest exists, County may require that Attorney take action to remedy the conflict of interest or terminate the Agreement without liability. County shall have the right to recover any fees paid for services rendered by Attorney when such services were performed while a conflict of interest existed if Attorney had knowledge of the conflict of interest and did not notify County within five (5) business days of becoming aware of the existence of the conflict of interest.
- (15) **Indemnification and Hold Harmless-** The Attorney agrees to indemnify and hold harmless the County, its divisions, departments and affiliates, officers (including elected, appointed, and Constitutional officers), directors, employees, representatives, servants, agents, officials, elected and appointed persons, insurers and attorneys, in their official and individual capacities, together with their predecessors, successors and assigns, both jointly and severally, (individually an "Indemnified Party" and collectively "Indemnified Parties") from any and all claims, actions, lawsuits, damages, judgments, costs, expenses, losses, or liabilities of any kind whatsoever arising out of the operation and maintenance of the Program in which legal services are provided by the Attorney, it being the express understanding of the parties hereto that the Attorney shall provide the actual legal services to the clients assigned under the Program and have complete responsibility for such legal services. The County shall immediately notify the Attorney of any incident, claims, or lawsuit of which the County becomes aware and shall fully cooperate in the defense of such claim, but the Attorney shall retain sole control of the defense while the action is pending.

In any and all claims against an Indemnified Party, by any employee of Attorney, its subcontractor, anyone directly or indirectly employed by Attorney or subcontractor or anyone for whose acts Attorney or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Attorney or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefits acts. This obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement,

provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement.

- (16) **Authority to Contract-** The individual executing this Agreement on behalf of Attorney covenants and declares that it has obtained all necessary approvals of Attorney's board of directors, general partners, limited partners or similar authorities to simultaneously execute and bind Attorney to the terms of this Agreement, if applicable.
- (17) **Entire Agreement-** This Agreement represents the sole and entire agreement between the Attorney and the County and all offers, negotiations or agreements between the parties are merged herein. Attorney represents that it has reviewed and become familiar with this Agreement and has notified County of any discrepancies, conflicts or errors herein.
- (18) **Modification-** No modification of the contract is binding unless it is in writing and signed by the parties hereto.
- (19) **Governing Law-** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.
- (20) **Waiver-** The waiver by either party of any breach by the other party of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any other breach of the same or of a different provision of this Agreement. There shall be no waiver unless in writing signed by the party against whom the waiver is sought to be enforced. Further, no express waiver shall affect any Term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.
- (21) **Notices-** Any and all notices, requests, payments, demands, and other communications, required or permitted hereunder, shall be in writing and delivered personally, sent by overnight mail, or sent by U.S. Certified or Registered Mail, postage prepaid, return receipt requested to the address set forth below or to such other address as either party may specify by notice to the other in accordance with this paragraph. Notices shall be deemed effective when delivered if personally delivered, or by the date indicated on the receipt if sent by overnight mail or, three (3) days after deposit in the United States mail or the date indicated on the return receipt as the delivery date, whichever is earlier, if mailed by certified or registered mail.

If to the Attorney, notices shall be sent to:

Roseberry Law LLC  
P.O. Box 81242  
Conyers, GA 3013

If to County, notices shall be sent to:

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- (22) **Immunities-** Nothing contained in this Agreement shall be construed to be a waiver of County's sovereign immunity or any individual's qualified, good faith or official immunities.
- (23) **No Third Party Rights-** This agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.
- (24) **Interpretation-** No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement.
- (25) **Headings-** The headings which are used in this Agreement are for convenience only and shall not affect, in any manner, the meaning or interpretation of this Agreement.
- (26) **Duplicate Originals-** This Agreement may be executed in any number of counterpart copies, all of which constitute one and the same agreement and each of which shall constitute an original.
- (27) **Binding Effect-** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- (28) **Survival-** All obligations of the parties which have accrued as of the termination or expiration of this Agreement shall survive any termination or expiration of this Agreement.
- (29) **Material Condition-** Each term of this Agreement is material, and Attorney's breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to County at law or in equity.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 28<sup>th</sup>  
day of July, 2016.

ATTORNEY

Devona B Roseberry  
Devona Roseberry

Attest: Terina Kiserup

NEWTON COUNTY, GEORGIA

By: Keith Ellis  
Keith Ellis, Chairman

Attest: Jackie Smith  
Jackie Smith, Clerk

