

STATE OF MONTANA
Office of State Public Defender

44 West Park Street Butte, Montana 59701
ph: (406) 496-6080 fx: (406) 496-6098

Flat Fee MOU Great Falls Municipal Court

This Memorandum of Understanding (MOU) is made between the State of Montana, Office of State Public Defender (OPD), and the undersigned Law Firm (Law Firm).

1. **Purpose:** The purpose of this MOU is to provide full and complete representation for Great Falls Municipal Court cases in the Eighth Judicial District, Cascade County.
2. **Effective Date and Duration of MOU**
 - A. This MOU shall be effective from May 1, 2022, until June 30, 2023, for a total of fourteen months. A month is a calendar month.
 - B. No provision herein shall limit the ability of the parties to enter subsequent MOUs to continue the purpose of the MOU past June 30, 2023.
 - C. The parties agree to meet in April 2023 to negotiate this MOU for the period of July 1, 2023, to June 30, 2024.
3. **Relation to Counsel's MOU**
 - A. All attorneys doing work on OPD cases will have an active MOU with OPD prior to starting work;
 - B. All provisions of attorneys' MOUs not in conflict with specific provisions herein and to the extent applicable are in force and effect for all work performed under this MOU;
 - C. It is not the intent of either party to alter or amend the provisions of attorneys' original MOU; and
 - D. This MOU shall not affect an attorney's ability to perform or receive other OPD work assigned pursuant to an attorneys' MOU with OPD.

4. **Scope of Services**

- A. OPD agrees to open and assign to the Law Firm and the Law Firm agrees to accept assignment of cases as follows:

<u>Type/Nature of Cases</u>	<u>Number of Cases</u>	<u>Location of Cases</u>
Criminal	Up to 1280 cases from May 1, 2022, to June 30, 2023	Great Falls Municipal Court

- B. The Law Firm shall perform all necessary representation for each case assigned under this MOU to completion. If the client wishes to appeal to District Court, the Law Firm will file a notice of appeal, do a motion to

withdraw and refer the case back to OPD to open a new case and assign counsel.

- C. OPD will staff all jail initial appearances. The Law Firm is not responsible for defendants assigned to the Mental Health Treatment Court.
- D. The Law Firm will inform OPD of all identified conflicts of interests. All cases that are conflicts for the Law Firm will be reassigned by OPD.
- E. If the Law Firm wishes to withdraw from the case and OPD is unwilling to reassign, the Law Firm will file a motion with the Court and the Court must order OPD to reassign. The Law Firm will follow the established protocol of State v. Gallagher.
- F. The Law Firm will apply for necessary client expenses through the normal MOU process. OPD will pay for necessary client specific costs.
- G. The Law Firm shall be available to perform under this MOU at all times that this MOU is in effect. Should the Law Firm's availability become impossible for any period this MOU is in effect, the Law Firm shall notify OPD no less than twenty-four (24) hours before any such unavailability so replacement counsel may be secured during the Law Firm's unavailability.
- H. Absent the parties entering a subsequent MOU to continue the purpose of this MOU beyond June 30, 2023, any cases assigned under this MOU still on-going on June 30, 2023, shall be completed by the Law Firm.

5. Compensation

- A. The Law Firm shall be compensated for work performed under this MOU on a Flat Fee basis at the rate of fifteen thousand dollars (\$15,000.00) per month, irrespective of the number of hours worked on cases assigned under this MOU in each month.
- B. This Flat Fee Agreement is inclusive of all non-client costs, including but not limited to, office supplies, postage, phone and/or internet service, or any travel related costs. The Law Firm shall not receive an office stipend nor reimbursement for mileage for work performed under this MOU.
- C. Total compensation for work performed under this MOU, if completed in its entirety, shall be two hundred ten thousand dollars (\$210,000.00).
- D. If the Law Firm becomes unavailable to perform under this MOU for any period of time this MOU is in effect, the Law Firm shall receive a pro-rated amount of the Monthly Flat Fee for the days the Law Firm was available to perform under this Agreement.

E. Should it become necessary, for any purpose, the Law Firm's hourly rate shall be calculated at fifty-six dollars (\$56.00) per hour.

6. Claims Procedure:

A. The Firm shall submit, as directed by OPD, a Monthly Flat Fee Claim for each month of service during which this MOU is in effect.

B. Any claim for a partial month of service shall be pro-rated by either the number of days this MOU was in effect for that month, the number of days the Law Firm was available to perform under this MOU for that month, or both.

C. The Firm shall attach a report containing the following information to the Law Firm's Flat Fee Claim as supporting documentation:

1. Total # of cases handled under this MOU;
2. Total # of cases resolved without contested hearing (i.e. though stipulation);
3. Total # of cases that proceeded to contested hearings with a judge; and,
4. Total # of cases that proceeded to contested hearings with a jury.

D. All claims under this MOU must be filed separately from any other claim for OPD.

7. Termination & Expiration of Addendum:

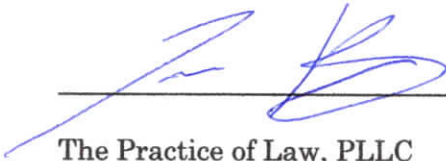
A. Either party may terminate this MOU, at any time and for any reason, upon written notice of termination, delivered by physical or electronic mail, by either party. A termination for a material breach of the services, duties, terms, or conditions contained in this MOU or an individual attorney MOU shall become effective immediately. A material breach of an individual attorney working under this MOU does not affect the entirety of this MOU with the Law Firm unless the Law Firm does not take corrective action to resolve the material breach. Notice of needed corrective action must be provided by OPD to the Law Firm and the Law Firm shall have fourteen (14) days to take the corrective action.

B. In the event of termination for material breach as described above, the Law Firm shall be paid a pro-rata amount of the monthly flat fee for work performed under this MOU up to the date of termination.

C. A termination for any other reason becomes effective thirty (30) days after notice of termination was issued unless the parties agree in writing to modify the effective date of termination.

- D. If OPD terminates this MOU, other than for a material breach that the Law Firm's fails to remedy, or expiration of this MOU, then OPD agrees to resume representation of take back all non-resolved criminal cases at the end of the notice period.
- E. Upon termination by the Law Firm, expiration of this MOU, or termination for a material breach, the Law Firm shall complete the representation of the cases it has been already assigned.
- F. In the event the OPD exceeds its budget during any fiscal period and must take steps to delay payment and/or withhold payment to its' contract attorneys and/or contractors because it does not have the funds available to pay them, then this does not automatically terminate the MOU. However, if this occurs then OPD agrees that this MOU gives the Law Firm priority for payment by placing the Law Firm first in line for payment of all contractors for the OPD providing attorney representation services.

My Signature Below Indicates My Acceptance of the Above Terms and Conditions.



The Practice of Law, PLLC
Zachary D. Kitchin, Law Firm Manager

Approved by: *Rhonda Lindquist* 4/15/22

Director