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THE HONORABLE MICHAEL COOPER

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KITTITAS COUNTY

JEFFREY BEST, DANIEL CAMPOS, and
GARY DALE HUTT, on behalf of
themselves and all others similarly situated;
and GREG HANSEN,

Plaintiffs,

v.

GRANT COUNTY, a Washington county,

Defendant.

NO. 04-2-00189-0

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is hereby entered into by and between
plaintiffs Jeffrey Best, Daniel Campos, Gary Dale Hutt and Greg Hansen, for themselves
and for the plaintiff class certified by the Court in this action (collectively, "Plaintiffs"), and
defendant Grant County (collectively with Plaintiffs, the "Parties") as of October 31, 2005.

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RECITALS

1. Plaintiffs Best, Campos, Hutt and Hansen filed a complaint on April 4, 2004 seeking injunctive and declaratory relief to remedy alleged deficiencies in Grant County's public defense system.

2. Grant County denied and continues to deny that there were any deficiencies in its public defense system.

3. The Court entered an order on September 13, 2004 certifying a plaintiff class consisting of "[a]ll indigent persons who have or will have criminal felony cases pending in Grant County Superior Court, who are appointed an attorney, and who have not entered into a plea agreement or been convicted."

4. The Court issued a Memorandum Decision on October 14, 2005, in which the Court denied the County's motion for summary judgment, granted in part the plaintiffs' two motions for partial summary judgment, found that class members have a well-grounded fear of immediate invasion of their rights to effective assistance of counsel, did not rule on whether the Grant County public defense system actually deprives class members of effective assistance of counsel, and ruled that the trial should focus on devising a public defense system that protects class members' rights. A copy of the Memorandum Decision is attached hereto as Appendix A.

5. The Parties believe that settlement of this lawsuit is in the best interests of all parties.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations and agreements contained herein, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

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I. DEFINITIONS

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

- A. "Public defense system" means any system or program under which Grant County provides, has provided or is obligated to provide for the criminal defense of any indigent person charged with a felony in Grant County Superior Court.
- B. "Public defender" means any attorney who is hired by or contracts with Grant County to represent indigent persons charged with felony crimes in Grant County Superior Court.
- C. "WSBA-Endorsed Standards" means the standards developed by the Washington Defender Association, adopted by the Washington State Bar Association and endorsed by the Washington Legislature, *see* RCW 10.101.030, and attached as Appendix B to this Agreement.
- D. The "Monitor" is the individual selected under Section III of this Agreement.
- E. The "Effective Date" of this Agreement shall be the date on which the Court enters an order approving the settlement pursuant to CR 23.

II. THE PUBLIC DEFENSE SYSTEM

A. Commitment to Provide Effective Assistance of Counsel

Grant County agrees to maintain and operate a public defense system that provides effective assistance of counsel to all indigent persons charged with felony crimes in Grant County.

B. Supervising Attorney

1. Grant County shall contract with or hire a full-time Supervising Attorney. The Supervising Attorney shall supervise the public defense system on behalf of Grant County. The Supervising Attorney's duties shall include but not be limited to: selecting

1 public defenders; drafting and negotiating contracts with public defenders; establishing
2 policies and procedures for public defense; assigning felony cases to public defenders in
3 accordance with this Agreement; supervising, training and mentoring public defenders;
4 preparing reports concerning the public defense system; reviewing and tracking caseloads;
5 establishing performance guidelines; responding to client complaints; ensuring that public
6 defenders provide effective assistance of counsel; and providing information to the Monitor,
7 to the Board of County Commissioners and (if needed) to the Grant County Superior Court.
8 The Supervising Attorney shall not maintain his or her own caseload, except to act as co-
9 counsel to other public defenders in accordance with this Agreement. The Supervising
10 Attorney shall not engage in any private practice.

20
21 2. The Supervising Attorney shall have experience in public defense, shall be
22 qualified to handle Class A felonies within the meaning of the WSBA-Endorsed Standards
23 and shall be qualified to fulfill the duties set forth herein. Grant County shall contract with
24 or hire Alan White as the Supervising Attorney in 2006, with the understanding that he may
25 require training and will require supervision and mentoring by the Monitor, in order to
26 adequately carry out his supervisory duties. The compensation paid to the Supervising
27 Attorney shall be not less than the compensation paid to Alan White in 2005, adjusted for
28 cost of living increases as approved by the Board of County Commissioners equally for all
29 represented and unrepresented employees. If in the future Grant County opts for an in-house
30 public defense system, the compensation and benefits paid to the Supervising Attorney shall
31 be comparable to those of the Grant County Prosecuting Attorney.

32
33 3. The Monitor will oversee and assess the Supervising Attorney's performance
34 and may conduct or recommend training on supervising a public defense system. The
35 Monitor may recommend the Supervising Attorney's termination if the Monitor determines

1 that the Supervising Attorney lacks the skills, ability or other attributes necessary to
2 supervise the public defense system. If for any reason Alan White's role as Supervising
3 Attorney ceases, the County shall promptly contract with or hire a replacement Supervising
4 Attorney. The Monitor must approve any such replacement in writing.
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9 4. The Supervising Attorney must establish a complaint system that affords and
10 informs all indigent criminal defendants of the right to make complaints regarding the
11 quality of their public defense. This system must include a toll-free telephone line with a
12 message system in English and Spanish. All complaints shall be promptly logged and
13 investigated and be provided to the Monitor for review. Priority complaints shall include,
14 but not be limited to:
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- 20 a. failure to meet and interview defendants promptly;
 - 21 b. failure to fully inform clients at all stages of the defense; and
 - 22 c. failure to investigate cases.
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27 **C. Training and Qualifications of Public Defenders**

28
29 1. Grant County shall hire or contract with enough full-time public defenders to
30 handle all felony case assignments in accordance with the caseload limitations set forth in
31 the following Section D of this Agreement. Notwithstanding the foregoing, Grant County
32 may contract with or hire up to two (2) part-time public defenders with prior approval of the
33 Monitor.
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39 2. All public defenders must satisfy the NLADA Performance Guidelines for
40 Criminal Defense Representation, attached as Appendix C to this Agreement.
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43 3. No public defender may be assigned to handle a case that he or she is not
44 qualified to handle according to the WSBA-Endorsed Standards. Notwithstanding the
45 foregoing, with the approval of both the Supervising Attorney and the Monitor, a public
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1 defender may be assigned up to five (5) cases each year for which he or she lacks the
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3 requisite qualifications under the WSBA-Endorsed Standards, provided that: (a) no lawyer
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5 with less than two (2) years of felony prosecution or defense experience may be assigned a
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7 Class A felony or persistent offender case under any circumstance; (b) the Supervising
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9 Attorney must co-counsel with the public defender on all aspects of the case; and (c) the
10
11 assignment of such a case must receive advance written approval from the Monitor. Under
12
13 no circumstances will a public defender be assigned a death penalty case unless the public
14
15 defender meets the minimum professional qualification standards of the WSBA-Endorsed
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17 Standards.

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19 4. Until qualified under the WSBA-Endorsed Standards, Jeffrey Goldstein and
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21 Elizabeth Vasiliades may only be assigned up to 130 Class C felony case equivalents each,
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23 provided that the Monitor approves the case assignments or the assignments conform to
24
25 guidelines established by the Monitor. Under no circumstances may Mr. Goldstein or Ms.
26
27 Vasiliades be assigned a Class B, Class A or persistent offender felony unless qualified to
28
29 handle the case according to the WSBA-Endorsed Standards.

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31 5. The County shall in no event hire or otherwise contract with the persons
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33 listed on Exhibit A (which is to be filed under seal) to provide indigent defense services.
34
35 The County agrees to prohibit all public defenders from hiring the persons listed on Exhibit
36
37 A or to in any way employ them in connection with any matter related to the public defense
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39 system.

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41 6. The public defense system and each public defender shall satisfy the NLADA
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43 Defender Training and Development Standards, attached to this Agreement as Appendix D,
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45 except where inconsistent with this Agreement or determined to be not applicable by the
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1 Supervising Attorney and the Monitor. The Supervising Attorney shall be responsible for
2
3 ensuring that training requirements are satisfied.

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5 **D. Caseloads of Public Defenders**

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7 1. Each public defender's caseload shall in no event exceed 150 case equivalents
8
9 per year. The County shall prohibit full-time public defenders from engaging in private
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11 practice, provided however, that a full-time public defender may maintain a limited private
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13 practice not to exceed 120 hours per year, provided that (i) the private practice does not
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15 interfere with the performance of his or her duties, (ii) there is a reduction of 10 case
16
17 equivalents in the public defender's maximum caseload limit, and (iii) the private practice is
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19 approved in advance by both the Supervising Attorney and the Monitor.

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21 2. Case equivalents shall be calculated as follows:

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Type of Case	Case equivalent
Material witness	1/3 case equivalent
Probation violation	1/3 case equivalent
Contempt	1 case equivalent
First or second degree murder	2 case equivalents
Extraordinary cases	1 case equivalent for each 15 hours spent on case
All felony cases not enumerated above	1 case equivalent

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37 3. The following cases will be considered "extraordinary cases" for the purposes
38
39 of determining case equivalents:

- 40
41 a. Persistent offender cases;
- 42
43 b. Fraud cases that have over five (5) counts or where the total alleged
44
45 loss exceeds \$250,000;
- 46
47 c. Aggravated murder cases with or without a death notice; and

1 d. Any other case determined by the Supervising Attorney, subject to
2 review by the Monitor, to be extraordinary in light of the amount and complexity of
3 the evidence, complexity of the legal issues, number of defendants, length of trial, or
4 similar factors.
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9 **E. Compensation and Payment for Services Other than an Attorney**

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11 1. Compensation. Each full-time public defender's yearly compensation may
12 vary according to his or her experience and qualifications, as long as the average yearly
13 compensation for all public defenders is at least \$97,500 in 2006. The Supervising
14 Attorney's compensation shall not be included in calculating the average yearly
15 compensation for public defenders. Part-time public defenders will receive no less than
16 \$650 per case equivalent in compensation. In addition to the yearly compensation, Grant
17 County shall pay each public defender \$350 per diem for each day (or portion thereof) in
18 trial. The yearly compensation and per diem amount will be adjusted for cost of living
19 increases as approved by the Board of County Commissioners equally for all represented
20 and unrepresented employees during the period of the Agreement. If at any time during the
21 term of this Agreement Grant County creates an in-house public defense system, public
22 defenders under that system must receive compensation and benefits comparable to their
23 counterparts at the Grant County Prosecuting Attorney's Office.
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37 2. Investigators: Grant County shall provide funds for one (1) full-time
38 investigator for every four (4) full-time public defenders. Investigators shall be paid by the
39 County from funds separate from those that pay public defender compensation. The County
40 shall pay for additional investigators as needed to: (a) avoid conflicts of interest on the part
41 of any full-time investigator contracted with or hired by the County; and (b) ensure that a
42 ratio of one (1) full-time investigator for every four (4) full-time public defenders is
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1 maintained. (Thus, for example, if the County contracts with or hires six (6) full-time public
2 defenders, then the County must provide the services of one full-time investigator plus
3 another 20 hours per week, on average, of investigative services from other sources.) Each
4 public defender shall have the authority to retain an investigator with approval of the
5 Supervising Attorney and shall not be required to seek court approval of the retention of an
6 investigator. Before the County or a public defender may contract with or hire any
7 investigator, the Monitor shall review the investigator's experience and qualifications and
8 determine that the contracting or hiring of the investigator for felony defense investigations
9 is appropriate. In determining the qualifications of the investigator, the Monitor shall take
10 into consideration his or her ability to speak Spanish.

20 3. Experts. Grant County shall pay reasonable compensation for expert
21 witnesses necessary for the defense of indigent defendants, including investigation,
22 preparation and trial of a case. Expert witness fees shall be allocated from funds separate
23 from those provided for public defender compensation and the County will not limit such
24 funds in any way. The budget for expert witness fees shall have no impact on selection or
25 contracting or hiring of experts. Public defenders shall obtain funds for expert witness fees
26 by *ex parte* motion to the Grant County Superior Court. Motions for payment of experts
27 shall be filed with the Grant County Superior Court under seal. Public defenders shall be
28 free to retain experts of their choosing and the County shall in no event publish a list of pre-
29 approved experts. Under no circumstances may members of the Grant County Prosecuting
30 Attorney's Office be given access to motions for the appointment of experts or to invoices
31 submitted by experts to the County for payment. Public defenders may redact billing entries
32 (other than an indication of the hours spent and rate charged) from expert invoices for
33 purposes of submitting them for payment by the County.

1 4. Administrative Support. Each public defender shall maintain a minimum of
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3 ¼-time secretarial/paralegal support unless and until the Monitor concludes that a given
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5 public defender does not require such administrative support. Each public defender shall
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7 maintain appropriate documentation of that public defender's arrangements for staff support
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9 and shall provide copies of that documentation to the Supervising Attorney. Each public
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11 defender will maintain a bilingual (English-Spanish) telephone and message system or other
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13 comparable system that allows incarcerated clients and other clients to leave messages.

14 5. Translation Services. Grant County shall provide funds for court-certified
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16 translators to interpret for public defenders at the Grant County Jail and at other locations at
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18 all times when public defenders need access to interpreter services. Interpreters shall be
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20 paid by Grant County from funds separate from those that pay public defender
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22 compensation. No public defender shall use jail trustees to provide translation services
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24 under any circumstances. Public defenders shall use translation services provided at County
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26 expense. Whenever possible, public defenders shall use translation services other than those
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28 provided by the translator for the Grant County Superior Court.

29 6. Initial Appearances. Grant County shall provide representation at initial
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31 appearances for all indigent defendants and shall provide representation at all other critical
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33 stages of felony criminal prosecutions.
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37 **F. Conflicts of Interest**

38 1. The Supervising Attorney and each public defender shall design and
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40 implement a conflicts-check system and procedure. This conflict-check system and
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42 procedure must be approved by the Monitor.
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44 2. The County will maintain a list of attorneys who satisfy the WSBA-Endorsed
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46 Standards, who are approved by the Monitor, and who have agreed to represent indigent
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1 defendants in the event that all full-time public defenders have conflicts ("Conflicts
2 Counsel"). In no event may any person listed on Exhibit A serve as Conflicts Counsel.
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4 3. When the Supervising Attorney determines that no full-time public defender
5 can handle the defense of a case due to a conflict of interest, he or she will assign that case
6 to Conflicts Counsel and immediately report the assignment to the Monitor. The Monitor
7 may reject the assignment of any case to Conflicts Counsel if he or she believes that
8 assignment is inappropriate.
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10 4. Grant County shall compensate Conflicts Counsel a minimum of \$650 per
11 case equivalent plus \$350 per diem for each day (or portion thereof) in trial, but is free to
12 provide greater compensation as negotiated with Conflicts Counsel.
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14 **G. Involvement of the Prosecuting Attorney's Office**

15 The Grant County Prosecuting Attorney's Office, or any other Prosecuting Attorney's
16 Office, shall not have any involvement in any issue relating to the public defense system.
17 This includes, but is not limited to: establishing, designing, operating or structuring the
18 public defense system; drafting or negotiating of public defense contracts; drafting
19 resolutions, guidelines, procedures or other documents concerning public defense; selecting,
20 managing, overseeing, disciplining, or terminating public defenders; evaluating or assessing
21 potential or actual public defenders; evaluating or commenting upon requests for payment or
22 for the incurring of costs by public defenders; and determining compensation for public
23 defenders.
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25 **H. WSBA-Endorsed Standards**

26 Except as expressly set forth in this Agreement, the Grant County public defense
27 system and its public defenders shall comply at all times with the WSBA-Endorsed
28 Standards.
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III. MONITORING AND ENFORCEMENT

A. Monitor

1. Duties. The parties shall select a Monitor with experience in the field of public defense in the manner set forth in paragraph 2 below. The Monitor shall have the duty and authority to ensure that Grant County implements the terms of this Agreement. To that end, the Monitor shall have the power and authority to receive and obtain information, make recommendations and reports to the Court and to resolve disputes among the parties concerning this Agreement and concerning the operation of the public defense system consistent with the terms of this Agreement. The Monitor's powers shall be limited to those powers necessary to carry out the Monitor's duties hereunder, and the Monitor shall not have authority to oversee or monitor any operations of Grant County other than the public defense system.

2. Selection. The Parties shall select the Monitor as follows:

a. Within fifteen (15) days after the Effective Date of this Agreement, Plaintiffs will identify five (5) candidates for the position of Monitor and will so notify the County. The candidates (i) shall not have served as an expert in this case for any party or as counsel for any party, (ii) shall not have represented any party or counsel for any party in this case, (iii) shall not have worked for or been engaged by any of Plaintiffs' counsel in connection with any other case seeking structural challenges to a public defense system, and (iv) shall not be a current officer or employee of counsel for any party in this case. The County may strike any candidate who does not meet these criteria, in which case the Plaintiffs shall promptly identify a replacement candidate.

1 b. Within 15 days of receiving notice pursuant to subparagraph (a),
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3 Grant County may strike up to three (3) of the candidates for any reason or no
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5 reason. In order to assist Grant County to determine whether to strike a candidate,
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7 Grant County shall have the right to ask the candidate to provide a curriculum vitae
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9 and to personally interview each candidate at Grant County's own expense.

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11 c. Plaintiffs will promptly select one (1) candidate from the remaining
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13 candidates.

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15 d. The Monitor shall serve for the term of this Agreement. The Monitor
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17 shall not be removed unless (i) the Monitor resigns, (ii) the parties stipulate and
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19 agree in writing that the Monitor should be removed, or (iii) the Court determines
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21 that the Monitor engaged in fraudulent or dishonest conduct with respect to the
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23 Monitor's duties hereunder. In the event that the Monitor resigns or is otherwise
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25 removed under this paragraph before the expiration of the term of this Agreement,
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27 the parties shall select a new Monitor using the same procedure as set forth herein,
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29 provided, however that Plaintiffs will have 30 days from notice of the resignation or
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31 removal of the Monitor to identify five (5) replacement candidates and to so notify
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33 the County.

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35 3. Payment. Grant County shall pay the Monitor's reasonable fees and actual
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37 expenses, including access to translation services. Fees shall be charged at the Monitor's
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39 usual and customary rates. Grant County's obligation to pay the Monitor shall not be subject
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41 to any limit or cap. Nothing in this section precludes the County from requesting an
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43 anticipated budget for future work.

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45 4. Access to Information. The Monitor shall have access to all information in
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47 the possession, custody, or control of Grant County, the Grant County Superior Court

1 Clerk's records, the Supervising Attorney and all public defenders concerning the public
2 defense system (excluding privileged communications and protected work product),
3 including but not limited to access to all documents, reports and data concerning the public
4 defense system and the right to interview all persons with knowledge about the public
5 defense system. Grant County shall cooperate with the Monitor and shall promptly provide
6 information requested by the Monitor. Grant County shall require the Supervising Attorney
7 and public defenders to cooperate fully with the Monitor and promptly to provide all
8 information (excluding privileged communications and protected work product) requested
9 by the Monitor.
10

11 5. Monthly Reports by the County. Grant County (or the Supervising Attorney
12 on behalf of Grant County) shall submit monthly written reports to the Monitor and
13 Plaintiffs' counsel. Such reports shall include: (i) current data concerning the case
14 assignments and caseloads (including number and type of cases) of each public defender; (ii)
15 a summary of all complaints received by the Supervising Attorney or Grant County
16 concerning the public defense system or any representation provided by any public
17 defender; (iii) a representation by the Supervising Attorney that, to the best of his or her
18 knowledge, Grant County has complied, during the period covered by the report, with all of
19 its obligations under this Agreement; (iv) copies of all policies and procedures that have
20 been created for the purposes of complying with this Agreement or managing the public
21 defense system; and (v) such other information as the Monitor may request concerning the
22 public defense system.
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24 6. Quarterly Reports by the Monitor. The Monitor shall provide the Court,
25 Plaintiffs' counsel, and Grant County with quarterly reports regarding the public defense
26 system and Grant County's implementation of this Agreement. Reports for the preceding
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1 three calendar months shall be due April 15, July 15, September 15, and January 15 of each
2 year during the Term of this Agreement
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5 7. Termination. The duties of the Monitor shall terminate at the end of the term
6 of this Agreement.
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9 8. Changes. The Monitor must approve any change to the form of the public
10 defense system not addressed in this Agreement, including but not limited to the
11 implementation of an in-house or non-profit public defense office. No such change shall
12 relieve the County of its obligations under this Agreement, including but not limited to its
13 obligations to comply with the WSBA-Endorsed Standards, NLADA Performance
14 Guidelines for Criminal Defense Representation and the NLADA Defender Training and
15 Development Standards. All proposed changes must be submitted to the Monitor and
16 Plaintiffs' counsel at least 120 days prior to the enactment of the change.
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25 **B. Enforcement**
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27 1. Access to Information. Until the lawsuit is dismissed by the Court pursuant
28 to Section III.C. below, Grant County shall provide to Plaintiffs' counsel all documents
29 requested in writing within ten (10) days of the request, which shall be copied to Grant
30 County's counsel. Plaintiffs' counsel may communicate directly with the Monitor, the
31 Supervising Attorney, public defenders, public defense clients and counsel for Grant County
32 concerning any matter related to the public defense system or the performance of this
33 Agreement.
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41 2. Informal Resolution. Any party may informally raise questions concerning
42 compliance with this Agreement with the Monitor. The Monitor shall attempt to informally
43 resolve any questions so raised.
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1 3. Submission of Formal Disputes to Monitor. In the event that a dispute
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3 between the Parties arises concerning the implementation or performance of this Agreement,
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5 the public defense system or any amounts due pursuant to this Agreement, the Parties shall
6
7 submit the dispute, in writing, with a copy to other Parties and their counsel, in the first
8
9 instance to the Monitor, who shall rule on the dispute within 14 days. Either party may
10
11 respond in writing to the complaint and ask the Monitor to make formal findings of fact and
12
13 recommendations to resolve the question. Whenever requested to do so, the Monitor shall
14
15 make findings of fact and recommendations. If the Monitor does not rule on the dispute
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17 within 14 days, either party may move the Court for appropriate relief.

18 4. Court Review. A party may seek Court review of any ruling or
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20 recommendation by the Monitor within 30 days. The party challenging the ruling or
21
22 recommendation shall bear the burden of persuasion. Grant County shall pay all fees and
23
24 costs incurred by Plaintiffs' counsel in connection with any such review unless the Court
25
26 finds that Grant County is the substantially prevailing party with respect to the matter under
27
28 review.
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31 **C. Jurisdiction, Stay and Dismissal**

32 1. Upon approval by the Kittitas County Superior Court, the Parties agree to a
33
34 stay of this litigation for the term of the Agreement, provided however, that the Kittitas
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36 County Superior Court will retain jurisdiction over all matters that relate to the performance
37
38 of this Agreement or for which a party seeks review under Section III.B.
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40 2. Thirty (30) days before the conclusion of the term of the Agreement, the
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42 Monitor shall determine whether the County has substantially performed the terms of the
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44 Agreement and shall report the determination to the Court. If the Court finds that the
45
46 County has substantially complied with the Agreement, the Court shall dismiss the lawsuit
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1 with prejudice. If the Court does not find that the County has substantially performed the
2 terms of the Agreement, the Court may order such further relief as it determines to be
3 appropriate.
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5 6 7 **IV. APPROVAL AND TERM OF AGREEMENT**

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9 1. Approval. The parties agree that this Agreement will be of no force and
10 effect unless and until approved by the Kittitas County Superior Court. Counsel for the
11 Plaintiffs shall move the Court for approval of the settlement pursuant to CR 23. Grant
12 County shall bear all costs incurred in connection with approval by the Court and any notice
13 in connection with such approval, excluding the attorneys' fees incurred by the Plaintiffs.
14

15
16 2. Interim Stay. In order to permit the parties to seek Court approval of this
17 settlement, the parties shall move the Court for a stay of this action pending the Court's
18 ruling on whether to approve the settlement.
19

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21 3. Effect of Non-Approval. In the event that the Court does not approve the
22 Parties' settlement, the interim stay shall automatically be lifted, and this Agreement shall be
23 null and void and of no force and effect whatsoever.
24

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26 4. Term. Subject to Section V.2. below, the term of this Agreement shall be six
27 (6) years from the Effective Date, provided however, that if, at the end of five (5) years, the
28 Monitor and the Court find that Grant County has fully complied at all times with its
29 obligations under this Agreement, the Agreement will terminate five (5) years after the
30 Effective Date.
31

32 33 34 **V. ATTORNEYS' FEES AND COSTS**

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36 1. Base Payment. Not later than two weeks after the Effective Date, Grant
37 County shall pay Plaintiffs' counsel the sum of \$500,000 in partial payment of the attorneys'
38 fees and costs incurred by Plaintiffs' counsel during the litigation of this action.
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1 2. Additional Payments. At the end of each calendar year during which this
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3 Agreement is in effect, not to exceed the initial six years, Grant County shall pay to
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5 Plaintiffs' counsel the amount of \$100,000 (the "Annual Payment") in further partial
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7 payment of the attorneys' fees and costs incurred by Plaintiffs' counsel prior to settlement of
8
9 this action, provided however, that Grant County need not pay an Annual Payment if, during
10
11 the prior year, Grant County was in full compliance with Sections II(B)(1) and (2), (C)(1),
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13 (C)(3)-(5), (D), (E) (F)(2) and (4) and (G) and in substantial compliance with the remaining
14
15 sections of this Agreement as determined by the Court. For purposes of this provision only,
16
17 Grant County will be considered in full compliance with Sections II(B)(1) and (2), (C)(1),
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19 (C)(3)-(5), (D), (E) (F)(2) and (4) or (G) unless: (a) Grant County has breached any such
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21 section, and (b) Grant County has failed to cure the breach within the cure period. Grant
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23 County will be considered in substantial compliance with the remaining sections of this
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25 Agreement unless (a) Grant County is not in substantial compliance with one or more of
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27 those sections, and (b) Grant County has failed to cure the non-compliance within the cure
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29 period. The maximum cure period for any breach that occurs on or before December 31,
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31 2007 shall be three (3) months from the date of receipt of the Monitor's findings of fact
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33 and/or recommendations, or such earlier date as the Monitor may designate. The maximum
34
35 cure period for any breach that occurs after December 31, 2007, shall be one (1) month from
36
37 the date of receipt of the Monitor's findings of fact and/or recommendations, or such earlier
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39 date as the Monitor may designate. If the Monitor finds that Grant County has not been in
40
41 full compliance with this Agreement at any time after December 31, 2007, the Monitor may
42
43 extend the term of the Agreement by up to one year (for a total of seven years).
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3. Other Fees and Costs. All remaining attorneys' fees and costs incurred by Plaintiffs up to the Effective Date of this Agreement shall be discharged at that time. Defendant shall bear its own fees and costs.

VI. OTHER MATTERS

1. Plaintiffs' counsel. Plaintiffs' counsel shall continue to act as counsel for the class. Grant County will provide Plaintiffs' counsel with copies of all reports and documents that it provides to the Monitor.

2. Defendant's counsel. Defense counsel will continue to act as counsel for Grant County, until withdrawal or replacement in writing.

3. Amendments. This Agreement may not be amended or modified except in writing, signed by the Parties to be bound thereby, or signed by their respective attorneys as authorized and approved by the Court pursuant to CR 23.

4. No Admission of Liability. This Agreement reflects a compromise of disputed claims. The parties acknowledge that the execution of this Agreement and the agreed upon terms, conditions and considerations hereunder are not and shall not be construed in any way as an admission of wrongdoing or liability on the part of the County. The County expressly denies any liability. The fact, negotiation and terms of this Agreement shall not be used as evidence in proceedings, except to enforce its terms, and shall be subject to the full protections of Evidence Rule 408 and other applicable law.

5. Authority and Assistance of Counsel. Each Party represents and warrants that the person executing this Agreement on its behalf is duly authorized to do so. Each Party has carefully read the foregoing Agreement, knows the contents thereof, and has consulted with legal counsel concerning the legal effect of this Agreement. Each Party to this Agreement, with the assistance of competent counsel, has participated in the drafting of

1 this Agreement, and any ambiguities shall not be construed against any Party on account of
2 such drafting.
3

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5 6. Notice. Any Notice to be given to a party under this Agreement, shall be sent
6
7 to the following addresses in accordance with the Court's Order regarding service in this
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9 action:
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1 For the Plaintiff Class:

2
3 Joachim Morrison
4 Columbia Legal Services
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7 [joe.morrison@](mailto:joe.morrison@columbialegal.org)
8 columbialegal.org
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Seattle, WA 98104
talner@aclu-wa.org

10
11 Donald B. Scaramastra
12 Garvey Schubert Barer
13 1191 2nd Avenue #1800
14 Seattle, WA 98101
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17
18 For Defendant Grant County:

19
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24 ffloyd@floyd-pflueger.com
25

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Ephrata, WA 98823
JerryMoberg@canfield-associates.com

26
27 Michael E. McFarland
28 Evans, Craven, & Lackie, P.S.
29 818 W. Riverside, Ste 250
30 Spokane, WA 99201
31 MmcFarland@ecl-law.com
32
33

34 7. Admissibility of Agreement. The Parties agree that this Agreement and the
35 negotiations and discussions surrounding this Agreement shall not be admissible in any
36 lawsuit, arbitration, action, or other proceeding brought by any Party to this Agreement
37 against any other Party to this Agreement, except as shall be necessary to apply or enforce
38 the terms of this Agreement.
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43 8. Applicable Law. This Agreement shall be governed by Washington law,
44 without regard to any rules regarding choice of law. Any action arising from or relating to
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1 this Agreement shall be brought in Kittitas County Superior Court, which shall be the
2
3 exclusive venue for any such action.

4
5 9. Entire Agreement. This Agreement constitutes the full and complete
6
7 settlement of all litigation under the Kittitas County Superior Court case, *Best et. al v. Grant*
8
9 *County*, Case No. 04-2-00189-0. This Agreement, along with Appendices A-D, constitutes
10
11 the full agreement of the parties and no other agreements or provisions exist. Nothing in this
12
13 Agreement shall release any claim held by any individual member of the class certified
14
15 herein, including but not limited to claims for damages or for the reversal, vacation or
16
17 modification of any criminal conviction or sentence.

18
19 10. Counterparts. This Agreement may be executed in several counterparts
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21 (including by facsimile transmission) by one or more of the Parties named herein and all
22
23 such counterparts once so executed shall together be deemed to constitute one final
24
25 agreement, as if one document had been signed by all parties hereto; and each such
26
27 counterpart, upon execution and delivery, shall be deemed a complete original, binding the
28
29 parties to this Agreement.
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Entered into this 2nd day of November, 2005.

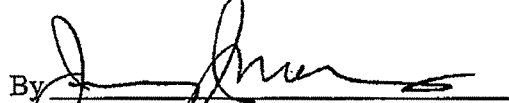
FLOYD & PFLUEGER, P.S.

By 

Francis S. Floyd, WSBA #10642

Attorneys for Defendant Grant County

JERRY MOBERG & ASSOCIATES

By 

Jerry Moberg, WSBA #5282

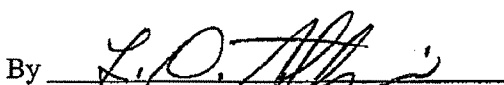
Attorneys for Defendant Grant County

EVANS, CRAVEN, & LACKIE, P.S.

By  *for*

Michael E. McFarland, WSBA #23000

Attorneys for Defendant Grant County

By 

LeRoy C. Allison

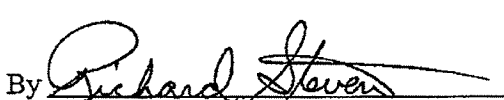
Grant County Commissioner

By *Excused* *by Grant Co. Clerk of the Board*

Deborah Moore

Grant County Commissioner

Barbara G. Vasquez

By 

Richard Stevens

Grant County Commissioner

SETTLEMENT AGREEMENT - 24

[25610-0031-000000/Settlement Agreement 110105.DOC]

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