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Jay Buckey, Executive Director
One Granite Place, Suite 226
Concord, New Hampshire 03301
www.judicialcouncil.nh.gov

May 16, 2025

Her Excellency, Governor Kelly A. Ayotte
and the Honorable Executive Council
State House
Concord, N.H. 03301

REQUESTED ACTION

Authorize the Judicial Council to enter into contracts with qualified attorneys in the State in an amount not to exceed $3,000,000 to provide representation of indigent defendants when, pursuant to RSA 604-B:8, the Public Defender Program is disqualified by a conflict of interest or not able to provide representation due to caseload limitations, effective July 1, 2025, upon Governor and Council approval through June 30, 2027. 100% General Funds.

Funds are anticipated to be available in Fiscal Years 2026 and 2027, upon the availability and continued appropriation of funds in the future operating budget, as follows:

		FY2026	FY2027
02-07-07-070010-1093-102	Contract Counsel	$1,500,000	$1,500,000

EXPLANATION

RSA 604-A:2-b provides that "[t]he state of New Hampshire, by the judicial council and with the approval of governor and council, may, within the limits of available appropriations, contract with any qualified attorney in the state to provide for the representation of indigents in circumstances where, pursuant to RSA 604-B, the public defender program is unavailable to provide such representation. The executive director of the judicial council shall authorize payments to contract attorneys provided for under this section."

RSA 604-B:2 provides that "Notwithstanding any other provisions of law to the contrary, when the appointment of counsel is required... for indigent defendants in criminal cases, or ... for juveniles charged as delinquents under RSA 169-B, the district, municipal, superior and supreme courts shall appoint the public defender program or a qualified attorney assigned by the court."

Beginning in 1985, and in each biennium thereafter, the Governor and Council have authorized the Judicial Council to enter into agreements (subject to the approval of the Attorney General as to form and execution) with qualified attorneys to provide for representation of indigent defendants when, pursuant to RSA 604-B, the Public Defender Program is disqualified or unavailable due to caseload limitations to provide such representation, in accordance with the provisions of RSA 604-A:2-b.

The attached contract was approved by the Judicial Council at its April 2025 meeting. It includes increased compensation rates as compared with last biennium. These increases are intended to mirror the median costs for assigned counsel. The rates are also intended to incentivize continued participation by lawyers currently in the Contract Counsel Program, which has seen a more than 50% decrease in participating lawyers since 2018, and to attract new lawyers to this program. Continued attorney participation in the Contract Attorney Program is critical to reducing the number of such cases which otherwise would be handled by the Assigned Counsel system, a more costly alternative.

The contract also includes provisions which are intended to clarify and strengthen repayment provisions related to attorneys who accept cases but do not complete the cases due to sickness, death, or change of employment.

The contract also includes provisions for a "Lawyer for the Day" Program, which, if instituted, would allow contract attorneys to attend arraignment sessions at participating courts. The goal of this program would be to increase judicial efficiency, save costs associated with staffing arraignments individually, and enable earlier case resolution.

The attached contract for the period July 1, 2025, through June 30, 2027, will serve as the basis for each individual contract that may be written for the period July 1, 2025, through June 30, 2027. The Attorney General has reviewed the attached contract as to form and substance. The Attorney General will also review and approve each finalized contract that is entered into between the Judicial Council and each separate contract attorney or law firm, as well as any amendments to these individual contracts before they become final. Consistent with past procedure, the individual contracts will not require Governor and Council approval.

Information about the qualifications necessary to serve as contract counsel in indigent defense cases is posted on the Judicial Council website. Applications to serve as appointed counsel in indigent defense cases are also available on the Judicial Council website.

Applicants are qualified by the Indigent Defense Subcommittee (IDS) of the Judicial Council based upon the submitted application and questionnaire and the attorneys criminal defense experience.

The size of each individual contract award is determined by considering several factors, including the anticipated demand for indigent defense representation in the attorney's geographic coverage area, the number of attorneys providing representation under the individual contract, the contractor's experience and past performance, the Judicial Council's estimation of reasonable caseload limits in the attorney's geographic coverage area, and the available appropriation.

Thank you for your consideration. This Agency will remain at your service to answer any questions you may have regarding the proposed contract and its importance to the orderly administration of justice.

Respectfully Submitted,

Jay M. Buckey

Executive Director

NEW HAMPSHIRE JUDICIAL COUNCIL
CONTRACT FOR ATTORNEY SERVICES, STATE FISCAL YEAR 2026

This Agreement is made and entered into by and between the State of New Hampshire (hereinafter "State"), acting through the Judicial Council (hereinafter "Council"), and attorneys qualified to provide indigent-defense representation, (hereinafter "Contractor").

Authority

NH RSA 604-A:2-b authorizes the Council to contract with qualified attorneys to provide indigent defense representation when the Public Defender Program is unavailable.

Notices and Law Firm's Designated Contact

All notices required to be given by this Agreement shall be delivered to the following addresses:

To the State:	N.H. Judicial Council 1 Granite Place South Ste. 226 Concord, NH 03301-6312	To the Contractor:	**XXXXXXXXXXXX** **XXXXXXXXXXXX** **XXXXXXXXXXXX**

One attorney in each firm shall be responsible for overseeing cases assigned to the firm and for certifying all reports. The designated attorney for this agreement is **XXXXXXX.**

Performance by Contractor

Term: Contractor agrees to provide representation in appointed cases during the period beginning **XXXXX** and ending **June 30, 2026**. Contractor further agrees to complete to final disposition of all units of representation undertaken pursuant to this Agreement.

Number of Units: Contractor will commence representation in **XXX** units of indigent defense services.

Courts: Such representation shall originate by assignment in the following courts:

Superior Courts: **XXXXXXXX**

Circuit Courts: **XXXXXXXXXXXX**
XXXXXXXXXXXX

Price Limitations and Payment Schedule

Maximum: The State agrees to pay Contractor a maximum of: **$SSSSSS.$$.**

Payment Schedule (check one):

___ **"Pay-As-You-Go"** – Contractor will be paid according to the number of units accepted each month.

___ **"Monthly Pro Rata"** – Beginning XXXX, 2025, Contractor will be paid in 12 installments of **$SSSSS.SS.**

Additional units may be awarded in accordance with the guidelines set forth in Appendix D.

Compensation and Unit Administration

(Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the actual appropriation of requested funds for the services provided herein.)

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Unit Value Table

1. The Judicial Council has established Fiscal Year 2026 unit values for **legal representation** as follows:

	Units	Total Compensation at $300/unit
Felony II*	5	$1,500.00
Misdemeanor	3	$900.00
Misdemeanor Appeal	4	$1,200.00
Preparation of Notice of Appeal	1	$300.00
Habeas Corpus Petition in Superior Court	1	$300.00
Specialty Court Appearance	0.5	$150.00
"Other" representation as defined by contract (including VOPs, sentence related representation, witness representation, parole revocation)	0.75	$225.00
Arraignment/bail hearing of incarcerated defendant (not considered "Other" representation).	0.5	$150.00
"Lawyer for the Day" Session	1.6	See Schedule D
Unit Value	$300	
*no "major crime cases" as defined by Supreme Court Rule 47 will be assigned under the contract.		

2. Contractor is entitled to an additional one (1) unit if the defendant is incarcerated during the pendency of a full felony appointment, and one half (1/2) a unit if the defendant is incarcerated during a misdemeanor full appointment (not including a defendant who is incarcerated at arraignment and then released). Contractor is entitled to one third (1/3) of a unit for representation of an incarcerated defendant at any "other" representation.

3. If Contractor represents a defendant at an incarcerated arraignment and subsequently takes the case the Contractor is entitled to compensation for both the incarcerated arraignment and underlying case.

4. Contractor may not seek separate compensation for covering a probable cause hearing and then accepting the underlying case (i.e. if Contractor covers a probable cause hearing and then accepts the full appointment, Contractor is only due compensation for the underlying case).

5. Pursuant to this Agreement an **Administrative Fee** is provided for each appointment. The Administrative Fee is the only reimbursement provided to address secretarial and other office support staff regularly employed by the Contractor and any additional office overhead expenditures Office overhead shall include, but not be limited to, rent, wages and benefits, office supplies, telephone, utilities, and library materials. The Judicial Council has established State Fiscal Year 2026 administrative fees as follows:

i.	Contract of 150 per fiscal year	$5,000
ii.	Full contract of 300 units per fiscal year	$10,000
iii.	Each additional 150 units beyond 300	$5,000

No administrative fees shall be paid prior to completion of all contracted for units for the fiscal year, nor prior to March 18, 2026, whichever shall occur later.

6. Payment for "services other than counsel" under RSA 604-A:6 and for witness fees shall be obtained by petitioning the Court and not through this Agreement.

7. If Contractor is paid "monthly pro rata," monthly payments may be made before a pro rata number of units has been assigned. If, however, the number of units assigned is less than 50% of the anticipated pro rata number of units in any period, the State may withhold or adjust payments. The final four monthly payments of the year, (March, April, May and June), may be withheld by the State pending final computation of the indigent defense units assigned during the term of the agreement.

8. When compensation paid under this Agreement exceeds the number of units actually assigned during the term and eventually completed to Final Disposition, the excess compensation shall be reimbursed to the State within 60 days after written notice from the Council that reimbursement is due.

9. When Contractor is appointed pursuant to this Agreement to represent an individual in a criminal case, Contractor shall not receive any fee or expense for representation of that individual in that case except as provided for under this Agreement.

10. When Contractor is privately retained by an individual in a criminal case, Contractor may not accept a court appointment at a later time to represent that individual in that case unless the court determines that such appointment is in the best interests of justice.

11. The Judicial Council will not accept for payment any "new open case" which is not reported within 60 days of the date of the appointment.

12. In the event that the Contractor fails to submit a closed case card within 30 days of Final Disposition or fails to comply with other record-keeping or reporting requirements established by the Council, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

13. In the event that the Contractor fails to complete a case to Final Disposition, other than in instances where continued representation would violate the New Hampshire Rules of Professional Conduct, or where the Contractor has been removed by the court, or as otherwise outlined below, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

14. In the event that the Contractor withdraws from representation in a case prior to Final Disposition, under circumstances where continued representation would violate the New Hampshire Rules of Professional Conduct, Contractor shall be entitled to receive credit for representation in that case at the rate of one-half of the unit value that the Contractor would otherwise have been entitled to receive. In instances where the discovery of such circumstances occurs late in the preparation of the case, and such discovery was unavoidably delayed, Contractor may request in writing that the Council waive this provision. A statement of the circumstances requiring withdrawal and the reasons why the delay in discovering those circumstances was unavoidable, shall be submitted in writing with any request for a waiver.

15. If the Contractor voluntary ceases private practice, Contractor must refund the Judicial Council for the full value of the cases not completed. However, if Contractor has given at least 30 days notice, and has ceased accepting new cases in that time, the Contractor may request to retain one half (1/2) of the unit value for any case which is open when the contractor withdraws. The Council, at its sole discretion, may allow contractor to retain the one-half value if the Council determines that the Contractor has performed substantial work on outstanding cases.

16. In instances where the Contractor must withdraw from cases due to medical issues or death prior to completion of the contract, the Contractor, or Contractor's estate, must return half the value of all incomplete cases to the Council for any case open longer than 30 days and fewer than 180 days, and must return the full value of all cases open fewer than 30 days from withdrawal. The Contractor is not required to refund any fees for cases open to contractor for more than 180 days. The date of withdrawal is either the date of the formal withdrawal from the case, date that the contractor notifies the courts or Council that it cannot proceed with cases, or the date of Contractor's death, whichever is sooner. This section does not apply when Contractor is a law firm and the firm retains the cases to final disposition.

17. The Designated Attorney is responsible for ensuring that Contractor retains sufficient funds to refund the Council for unearned fees under this agreement. The Designated Attorney may make

a written request to waive or modify any provision related to unearned fees. Any such modification must be approved, in writing, by the Executive Director and Chair of the Judicial Council.

18. Upon being assigned to the maximum number of units agreed to, Contractor shall immediately notify the Council that he/she is no longer available to accept court appointments pursuant to this Agreement. If the maximum number of units has been or is likely to be completed before the end of the Term, the Council, through the Executive Director, may assign additional units not to exceed 600 total and the maximum payment will be increased accordingly. Additional units beyond 600 may be assigned only upon further written agreement of the Council, acting through the Executive Director, and with the subsequent review of the Indigent Defense Subcommittee.

19. If the Judicial Council adopts updated billing software, the Judicial Council may require that contractors submit closed case cards, unit summaries, and other information required under this contract through that billing software.

20. By signing this contract, the Contractor certifies that neither it nor any attorney signing this agreement on its behalf has filed for bankruptcy within the last 12 months nor is contemplating filing for bankruptcy within 90 days from signing.

Law Practice Requirements

21. If Contractor is a law firm, lawyers associated with the firm may provide indigent defense representation only after obtaining approval to do so from the Council. Unless an attorney associated with the firm obtains approval from the Council after the execution of this Agreement, only those attorneys who sign the Waiver section of this Agreement (see Appendix A) are approved by the Council to provide representation under this Agreement.

22. No part of Contractor's performance under this Agreement may be assigned or subcontracted without the written consent of the Council. Students or attorneys engaging in apprentice practice under Supreme Court Rule 36 may not provide indigent defense services unless their work is conducted within the scope of a law school clinical program approved by the Council.

23. Contractor shall maintain a physical office or provide equivalent meeting space for clients convenient to the Contractor's designated courts.

24. Contractor shall make provision for prompt and effective communication with clients in cases undertaken pursuant to this contract. Such provision shall ensure that clients are able to have reasonable access to the Contractor by telephone from detention facilities.

25. Assignment to a case includes the obligation to provide representation in all criminal matters arising out of the factual transaction underlying the assigned case. Contractor is required to assist the client in matters which are related to the case, such as proceedings in which the client is required to testify as to factual matters related to the representation on the appointed case. Such representation is required when assistance is needed to protect the client's constitutional rights or when the results of such proceedings will have a direct impact on the result of the appointed case.

26. Assignment to a case includes the obligation to prepare and submit a formal Notice of Appeal when the client indicates his or her intention to appeal a final decision. Credit will be awarded separately for the preparation of the Notice of Appeal without the need for a new court appointment.

27. Any attorney approved under this contract may not carry an indigent defense caseload which exceeds such workload guidelines as may be established by the Council from time to time during Contractor's representation in cases undertaken during the term of this Agreement.

28. The Council or its Executive Director may direct the Contractor to restrict or suspend acceptance of new matters under this contract in a particular time period if the Council determines that such limitation is necessary to protect the interests of Contractor's clients or is otherwise necessary to accomplish the purposes of the indigent defense system.

29. Contractor shall not seek appointment in cases when the Public Defender Program is available, unless the appointment is in the best interests of the client and when specifically authorized by the Executive Director of the Council.

30. Subject to court orders to the contrary, Contractor shall seek appointment in the superior courts in cases assigned in the circuit court when those cases are bound over to the superior court, or when those cases proceed to the superior court by appeal or indictment.

31. In the event a Contractor accepts a case solely for arraignment, or for probable cause hearing, and resolves the entirety of the case at either of such hearings, the Contractor must file an appearance and is entitled to payment for the entire case as if they had accepted the entire appointment.

32. Contractor's representation of indigent defendants under this Agreement shall at all times comply with the Rules of Professional Conduct or any similar code of ethics to which attorneys may be subject.

33. In providing representation under this Agreement, Contractor shall at all times adhere to such performance standards as may be established by the Judicial Council during the time that representation is being provided pursuant to this Agreement.

Training

34. During the term of this contract, Contractor shall attend a minimum of ten (10) hours of training in the area of criminal defense or trial practice provided either by the Public Defender Program or another provider of continuing legal education approved by the Judicial Council.

Closing Cases and Representation following Disposition

35. Appointment termination shall be subject to the automatic withdrawal rules contained in Circuit Court – District Division Rule 1.3, I(3) and New Hampshire Rule of Criminal Procedure 5(j). No payment will be made for further representation absent a new appointment of counsel by the court. This termination of representation does not relieve any other ethical obligations under the Rules of Professional Conduct, particularly with regard to the filing of a notice of appeal.

36. Contractor will provide the client with a closing letter after the case has resolved. The closing letter will summarize the resolution of the case, including any action that the client is required to take. It will also provide basic information about the annulment process, if appropriate.

37. If the disposition of a case includes a requirement that the defendant complete a certain act

within a certain time (subject to the rules governing automatic withdrawal), the contractor shall participate as counsel to include any further scheduled hearing. This does not include requirements that are to be monitored by a correctional authority (i.e. jail or prison treatment programs) or routine (non-contested) specialty court appearances.

38. During the term of this Agreement and all successor Agreements, Contractor shall remain responsible to participate as counsel in deferred sentence proceedings in accordance with New Hampshire Rule of Criminal Procedure 5(j) and Circuit Court – District Division Rule 1.3, I(3), or any subsequent court rule or applicable Administrative Order of the courts.

39. If the client fails to appear and the client's whereabouts are unknown, the contractor should keep the case open for 30 days and, if there has been no contact from the client, the case should be closed and the contractor should file a notice of withdrawal.

Conflict Avoidance, Record Keeping and Reporting

40. Upon assignment of a new client, Contractor will make reasonable and diligent efforts to obtain and review relevant court documents, investigative reports, and other discovery materials as soon as possible to determine if any potential conflicts of interest exist in the case. Record-keeping systems will be maintained which facilitate the early and efficient identification of conflicts.

41. Contractor shall maintain such records and submit the reports described in Appendix A and such other reports as may be prescribed from time to time by the Council and other agencies of the State of New Hampshire and permit reasonable inspection of such records and reports by the Council subject to the attorney/client privilege. The Council may require Contractor to make required reports online via specific case management software if the Council should adopt such software. If Contractor fails to comply with such requirements, the Council may suspend payments under this Agreement until the Contractor's reporting practices are in compliance with this Agreement. As provided elsewhere in the Agreement and its appendices, the final payment under this Agreement may be withheld if the Executive Director of the Council determines that the Contractor has failed to comply with reporting and record-keeping requirements.

42. At a minimum, substantive portions of the **files of clients represented pursuant to this contract shall be retained for at least six (6) years** from the date of the last action taken on the case, (including submission of the closed case card), or on any matter related to the case, or beyond any applicable period of statutory limitations on actions, whichever is longer. If the Contractor intends to destroy or transfer custody of the files of clients represented pursuant to this contract, (other than to the clients themselves, in which case a copy of the materials provided must be made), Contractor shall notify the Judicial Council, in writing, at least sixty (60) days prior to taking the action. These contract terms do not limit the Contractor's other legal and ethical obligations to preserve client property and retain client files.

Administrative Requirements

43. Contractor agrees to carry professional liability insurance covering all services to be performed pursuant to this Agreement in an amount of not less than $100,000 per claim and $300,000 aggregate, and to provide to the Council a certificate of such insurance with execution of this Contract and to notify the Council immediately if such insurance is cancelled or expires during

the Term for any reason. Certificates of insurance shall require the insurer to give the Council at least thirty (30) days notice prior to cancellation, expiration or any other material change in the policy, and of any claim made pursuant to the policy. Termination of professional liability insurance during the Term shall be cause for immediate termination of this Agreement. In the event of termination of this Agreement under this Paragraph, Contractor shall reimburse the State for all fees paid and forfeit rights to payment for such matters.

44. If at any time Contractor ceases to be a member in good standing of the New Hampshire Bar Association, this Agreement terminates automatically. The Contractor shall notify the Council in writing immediately of any change in standing as a member of the New Hampshire Bar Association or any other Bar Association.

45. This Agreement may be terminated by either party without cause upon thirty (30) days prior notice in writing. Should this Agreement be terminated pursuant to this Paragraph, Contractor agrees to complete all assigned cases to Final Disposition and submit closed case cards in accordance with Appendix A, unless such completion would violate the New Hampshire Rules of Professional Conduct or if the Council requests otherwise. If this Agreement is terminated, Contractor shall reimburse the State for any excess compensation.

46. Contractor shall notify the Council in writing at least sixty (60) days prior to the expiration of the Term of Contractor's intention to seek renewal of the Agreement. Nothing contained herein, however, shall be construed as entitling Contractor to such renewal.

47. This Agreement constitutes the entire understanding between the parties with respect to the subject matter. No amendments to this Agreement shall be effective unless in writing and signed by duly authorized representatives of both parties.

48. It is understood and agreed to by the parties that in the performance of this Agreement, Contractor is in all respects an independent Contractor and is neither an agent nor an employee of the State or the Council, and that Contractor and its employees and agents are not entitled to any benefits, worker's compensation, or emoluments by the State, beyond those called for herein.

49. The Council reserves the right to renew the Contract for up to one (1) additional year, subject to the continued availability of funds, satisfactory performance of services, and approval by the Governor and Executive Council.

IN WITNESS WHEREOF, we have subscribed our hands, as representatives of the parties hereto.

For the Contractor

Contractor's printed name	Contractor's signature	Date
If a firm, title or capacity of signatory	Law Firm Name	
Designated Attorney printed name	Designated Attorney Signature	Date
Witness's printed name	Witness's signature	Date

For the Judicial Council:

Nina C. Gardner Chairperson, N.H. Judicial Council	Chairperson's signature	Date
Witness's printed name	Witness's signature	Date

Approved as to form and execution:

BY:

Assistant Attorney General	Signature	Date

Appendix A – Reporting and Disclosure Requirements

Contractor shall provide to the Judicial Council a closed case card for each case undertaken pursuant to this Agreement in the form prescribed by the Council. Contractor must submit to the Council the closed case card for each closed case within 30 days of final disposition of the case.

As of the 15th day of each month following the initial assignment of the case, the contractor shall report the "new open" cases on their monthly case status report and shall provide that report to the Council, along with the "Notification of Eligibility/Assignment of Counsel Form" applicable for each new open case. This report is due on or before the 20th day of each month. The report for the period June 15 through June 30 shall be submitted on or before the 5th day of July.

It shall be the responsibility of the Contractor to notify the Judicial Council in writing within 7 days of receipt of notice that a complaint has been docketed by the Attorney Discipline Office. The Judicial Council shall have the authority to exercise its right to review and access such records in conjunction with the signed confidentiality waiver provisions below:

Confidentiality Waiver: By signing below, each attorney providing indigent-defense representation under this Agreement waives his or her right to confidentiality as it relates to this contract and authorize the release by the Attorney Discipline Office to the New Hampshire Judicial Council any and all information that the Attorney Discipline Office or the Committee on Professional Conduct may deem necessary or desirable in the promotion of the proper administration of justice. Attorneys approved as of the date of execution of this Agreement are listed below and must sign and date this waiver:

Contractor's printed name	Contractor's signature	Date
Approved attorney's printed name	Approved attorney's signature	Date
Approved attorney's printed name	Approved attorney's signature	Date
Approved attorney's printed name	Approved attorney's signature	Date
Approved attorney's printed name	Approved attorney's signature	Date

Appendix B – Case Definitions, Scope of Representation

"Case"

A "case" for the purposes of this contract is defined as follows:

- A single charge; or,
- Multiple related charges that occur at the same time and place which are to be tried as one case regardless of the number of complaints, indictments or informations; or,
- Multiple charges that involve the same type of offense over a proximate period of time which are to be tried as one case regardless of the number of complaints, indictments or informations.

"Felony I"

Means all felonies defined as "major crime cases" by Supreme Court Rule 47 (not assigned under the contract).

"Felony II"

Means all felonies that are not defined as a "major crime cases" by Supreme Court Rule 47.

"Final disposition"

"Final disposition" shall mean the full disposition of all charges in a case, such as when the defendant enters a guilty or nolo or Alford plea or when the charges are tried to verdict, dismissed, or dropped. Under this definition the filing of notice of appeal to the Supreme Court occurs after final disposition and is counted as a separate "other."

"Indigent defense services"

"Indigent defense services" shall include representation of indigent defendants in criminal and such other representation of indigents as is required by the New Hampshire and United States Constitutions. Representation under this Agreement shall not include services in abuse or neglect proceedings, as a Guardian ad Litem, or in capital, first or second degree murder, manslaughter or negligent homicide cases. Except as otherwise set forth herein, performance of indigent defense services shall include representation of clients from the time of appointment until "final disposition" of the case and the submission of a closed case card.

"Others"

A case in the "other" category includes matters that are assigned by a court pursuant to RSA 604-A via an appointment of counsel form and matters where no new appointment of counsel form is generated but to which Contractor is entitled to payment under this Agreement. For specific examples of "others" seen on a regular basis (*see* Appendix C). The parties acknowledge that there may be situations that are not listed in the Appendix C to which Contractor is entitled to payment. If a court appoints counsel pursuant to RSA 604-A Contractor is always entitled to payment. If representation is for an event not listed in Appendix C and no new appointment is generated, it is presumed that no payment shall be made. The decision as to whether there should be entitlement to payment shall be at the sole discretion of the Executive Director of the Council. For purposes of compensation, "Other" representation does not include arraignments, which are governed by the payment schedule in the Unite Value Schedule.

When an "other" is assigned pursuant to RSA 604-A and an appointment of counsel form has been generated, Contractor shall report the case on their regular monthly report in the same manner as

reporting of felony and misdemeanor cases. In matters when the court does not generate a new appointment, and when it is clear to Contractor that a new appointment is required (*see* Appendix C), Contractor shall endeavor to get the court to issue an appointment of counsel form. If the court refuses, Contractor shall so notify the Executive Director.

When an "other" is assigned without a new appointment of counsel form, Contractor shall report the case on the monthly report in the first month after representation has been provided. The report shall include a copy of the Notice of Hearing or the applicable document (*see* Appendix C) for that "other." Failure to submit the case status report and the applicable supporting documentation in the month following the event will result in a waiver by the Contractor of the right to seek reimbursement for the event at anytime in the future. In no case will the Council pay for an "other" submitted more than 60 days after the representation has been provided.

For the purposes of this contract, Specialty Court appearances are established as a separate category within the "other case types" and will be compensated at a distinct unit value per court appearance.

"Unit"

For the purposes of this Agreement a "unit" is the monetary basis for compensation received under this contract. A unit shall be equal to $300.00.

Charges against a single defendant, which are severed by order of the court, will be counted as two or more cases, depending upon the number of severances granted by the court.

Designation of a case as either a felony or a misdemeanor when there are multiple charges in the case is determined by the most serious charge in that case. A felony case is not finally disposed of until the felony charge in that case has been finally resolved. A probable cause hearing is not a separate "case."

Contractor should report one assignment as one case. When Contractor believes that multiple charges from a single assignment should be counted as more than one case, Contractor must explain his/her basis for proposing that the case be so credited by submitting a written request and explanation to the Council. The Executive Director of the Council makes the final decisions regarding such requests.

A defendant facing one set of charges who is later arrested on charges completely unrelated to the first set of charges has two cases even if all charges are resolved in a consolidated fashion.

Appendix C: "OTHERS" IN THE NEW HAMPSHIRE INDIGENT DEFENSE SYSTEM

The NH Judicial Council produces this chart to provide guidance about the Council's position on when appointed counsel generally can expect case credit or additional compensation for certain routine "other" proceedings that are related to an original appointed case.

The Judicial Council considers these proceedings to be part of the original case; accordingly, no new appointment-of-counsel form is required from the Court:		**The Judicial Council does not consider these matters to be part of the original case. The award of credit must be based on a new appointment-of-counsel form, (an "NEA"), issued by the Court:**		
Appointed counsel is expected to provide representation on these matters as part of the original case within 30 days of disposition. No additional case credit is warranted. After 30 days from disposition the lawyer may request an appointment from the court to assist with the matters below.	**Appointed counsel should provide representation in these matters and is eligible for the award of case credit upon submission of a court order or hearing notice to the Judicial Council**	**N.H. recognizes a right to appointed counsel in these matters. The Court should issue a new appointment-of-counsel form for each.**	**Counsel has no contractual duty to assist a defendant in these matters. Case law gives courts discretion to appoint counsel if justice or judicial economy so require.**	**Counsel has no contractual duty to assist the defendant.** **The courts rarely, if ever, appoint counsel in these matters.**
Motion for credit for time served	The preparation of a Notice of Appeal	Contempt hearings	Motion to suspend or otherwise reduce a sentence	Annulment proceedings
Submission of progress reports, no hearing required	Submission of progress reports, hearing required	State's motion to bring forward a charge or sentence	Motion for Administrative Home Confinement	**Duration of Appointment** RSA 604-A:3 requires appointed counsel to provide representation from "initial appearance before the court at every stage of the proceedings until the entry of final judgment." **Withdrawal** Court rules define when
Motion to clarify an aspect of a sentence or order	Hearings held to review cases continued-to-be-dismissed or placed on file without finding	State's motion to impose a suspended sentence	Habeas Corpus proceedings, and other post-conviction extraordinary writs	
Motion to amend a technical aspect of a sentence	The defendant's motion to suspend a deferred sentence	Misdemeanor Appeals	Motion to withdraw a guilty plea or motion for new trial	

Motion to vacate the conviction contemplated by original sentencing order	The State's motion to impose a deferred sentence	Parole violations	Hearings on defendant's violation of a court order post trial after counsel has been withdrawn (e.g. non payment of fine).	counsel is "deemed withdrawn" after the conclusion of a case: Family Division Rule 3.11 District Division Rule 1.3 Superior Court Rule 14 Rule 5 (j)
Hearings or a motion to calculate restitution	Drug court termination hearings.	Probation violations	Motion for work release	
Habeas Corpus proceedings conducted pre-conviction	Hearings on defendant's violation of a court order pre-trial (e.g. bail order)	Sentence Review Board proceedings	Motion to terminate probation	
A motion to return property filed before counsel has closed the case or been deemed withdrawn by court rule				

Appendix D-"Lawyer for the Day"

Scope

1. Contractor may only engage in "Lawyer for the Day" services with agreement from a participating Court. The Court and Contractor will agree on specific dates when Contractor is expected to provide services.

2. Contractor agrees to provide the following services for each defendant who qualifies for court appointed counsel at arraignment as appropriate:

    a. Contractor will inform each client of the limited nature of the arraignment representation.

    b. Contractor will explain the nature and possible penalties for each charge. Contractor will assist Defendant in entering plea as appropriate (or enter no-plea if the matter is a felony)

    c. Contractor will address bail for all appointed cases.

    d. Contractor may assist defendant with entering into a plea agreement at arraignment if the client so desires. Contractor must file an appearance if the case is being resolved on the day of arraignment.

    e. Contractor will inform the court if the attorney has concerns regarding competency for trial. Contractor will file a formal written motion outlining such concerns if requested by the court.

    f. Contractor will prepare a brief, legible, memorandum for each case with pertinent information gathered by the attorney at arraignment. This memorandum will include contact information for the client outside of the place of incarceration, or an indication that the client will not be released. This memorandum will be forwarded to the Case Conflict Administrator by the end of the business day following the arraignment.

    g. Contractor will orally move for a probable cause hearing if appropriate.

    h. Contractor will be present at the assigned court for a four (4) hour period on the date of an arraignment session until the conclusion of all arraignments. The Contractor is expected to be clear of calendar conflicts during the scheduled arraignment session.

    i. Contractor agrees to have a means of screening potential arraignment clients for conflicts, so that the attorney is prepared to promptly communicate with clients upon receipt. If Contractor is provided with defendant names in advance, Contractor will screen cases in advance.

Appendix D-"Lawyer for the Day"

Payment

1. Payment: The State agrees to compensate Contractor for 1.6 Units per Lawyer of Day session. If the arraignment session (including plea and sentencing hearings) goes beyond four hours and fifteen minutes (4hrs 15 minutes), the Council will pay 2.5 Units.

2. If the Contractor appears for an arraignment session, and there are no cases set to be arraigned, or the Contractor is unable to accept any of the cases available due to conflicts of interest and was not provided the names of defendants in advance as contemplated by Scope Section 2.i, the attorney will be paid 1 Unit. Miscellaneous payments: If the Contractor is requested by the Court to file a formal competency motion for an arraignment, the attorney will be paid $90 for each such motion.

Appendix E - EXTRAORDINARY CASE GUIDELINES

I. The Judicial Council applies (but is not limited to) the following criteria to determine the award of Extraordinary Case Units ("ECCs"):
   1. The seriousness of the charge or charges;
   2. Complexity of legal and factual issues;
   3. Number and complexity of pre-trial motions filed;
   4. Number of in-court days for pre-trial issues and for trial;
   5. Estimate of total number of attorney hours spent on the case;
   6. Number of court appearances made by the contractor;
   7. Number of witnesses called by the parties;
   8. Nature and extent of investigation;
   9. Volume of discovery; and
   10. Whether the contractor was compelled to respond to a frivolous complaint as a result of accepting the case This compensation is limited to the time involved responding to such complaints if they are determined to be frivolous by the Council. The Council does not cover litigation expenses or settlements resulting from claims.

II. When seeking a review under this section, contractor must submit:

   1. A copy of the case summary generated by the Court (if available);
   2. A copy of the documents showing the final disposition of the case;
   3. Copies of any motions or memoranda the Contractor wishes to be considered;
   4. A written summary describing the case setting forth the reasons that review should be granted. This summary must include a description of any factors listed in part I that contractor deems relevant for the Council's consideration of the case;
   5. The number of units being sought.

Generally, an especially difficult or time-consuming misdemeanor may result in 1-5 ECCs. An especially difficult or time-consuming Superior Court case may result in 5-15 ECCs.

The Executive Director will provide a response to a request for ECC within 30 days of the Director's receipt of such request. The award of ECC is at the discretion of the Executive Director. The Executive Director may award up to 20 additional units on any request. The Executive Director must report to the Indigent Defense Subcommittee all awards of ECUs.

If the Contractor disagrees with the determination of the Executive Director, or if Contractor is seeking credit beyond 20 units, the Contractor may make a formal request for a review of the ECC application.

A formal request for review must be submitted to the Executive Director no more than 14 days after the Executive Director's decision. This request will be forwarded to the Chair of the Judicial Council who will determine whether the request for ECC should be reviewed by the Indigent Defense Subcommittee.

No case may be submitted for review for award of ECC more than 60 days after the close of the case. Nothing in this Appendix creates a right or entitlement to ECC in any case.