Representation of Dallas County Justice of the Peace 1-1, Thomas Jones, in the matter before the State Commission on Judicial Conduct

Briefing Date: Mar 3 2020  
Funding Source: General Fund  
Originating Department: Comm Court Administration  
Prepared by: Angie Smith, Administrative Assistant  
Recommended by: Darryl Martin, County Administrator

BACKGROUND INFORMATION:  
Dallas County is requesting outside counsel to represent the Dallas County Justice of the Peace 1-1, Thomas Jones, in the matter before the State Commission on Judicial Conduct.

OPERATIONAL IMPACT:  
N/A

FINANCIAL IMPACT:  
As agreed in the attached contract.

LEGAL IMPACT:  
Terms of the agreement are outlined in the attached contract.

PROJECT SCHEDULE:  
N/A

SBE PARTICIPATION:  
N/A

RECOMMENDATION:  
Approve the Attorney Fee Contract with the Law Offices of Marc H. Richman for representation of Dallas County Justice of the Peace 1-1, Thomas Jones, in the matter before the State Commission on Judicial Conduct.

MOTION:  
On a motion made by TBD, and seconded by TBD, the following order will be voted on by the Commissioners Court of Dallas County, State of Texas:

Be it resolved and ordered that the Dallas County Commissioners Court does hereby
approve the Attorney Fee Contract with the Law Offices of Marc H. Richman for representation of Dallas County Justice of the Peace 1-1, Thomas Jones, in the matter before the State Commission on Judicial Conduct.

ATTACHMENTS:
PDF.Signed.Attorney Fee Contract - Marc Richman
ATTORNEY FEE CONTRACT

This Attorney Fee Contract (the "CONTRACT") sets out the relationship between the County of Dallas (the "COUNTY") and the Law Officers of Marc H. Richman (the "FIRM"), 304 South Record Street, Suite 200, Dallas, TX 75202-4378.

1. **Engagement.** This CONTRACT identifies the matter for which legal services are to be provided, the chargeable fees for services, and sets the cost of the billable expenses incurred in rendering services for the following matter:

   Representation of Dallas County Justice of the Peace 1-1, Thomas Jones, before the State Commission on Judicial Conduct (the "MAITER").

2. **Rates.** The COUNTY agrees to pay the following listed hourly rates for the legal services provided under this Contract:

   Partner: $275.00;  Associates: $160.00;  Paralegals: $100.00

The FIRM’s services shall not exceed $30,000.00 without prior approval of the Dallas County Commissioners Court.

3. **Term of Agreement.** This Agreement shall commence on the date this Contract is approved by the Commissioners Court, and end when the MAITER is concluded or the Agreement is terminated, whichever comes first.

4. The COUNTY shall not pay secretarial costs, overtime costs or other costs for administrative or support staff for the FIRM. The COUNTY also will not pay for additional counsel.

5. **Scope of Professional Services is described as follows:** the FIRM shall represent Dallas County and any other named defendant entitled to legal representation by Dallas County, in connection with the MAITER. The COUNTY is not engaging the FIRM for business advice; the FIRM’s professional services in connection with the MAITER are limited to legal matters.

6. **Modifying the Engagement.** Neither the FIRM nor the COUNTY may unilaterally change or expand the CONTRACT from what is set out in the CONTRACT. If the FIRM determines that the scope of the CONTRACT needs to be changed, the FIRM must notify the undersigned and submit an amended proposal for written approval. No work should be done on an expanded engagement.

7. **Invoice Review.** The COUNTY reviews and approves legal services and disbursements on invoices for payment when submitted by the FIRM. If there is an objection to a portion of an invoice or it needs additional information, a letter will accompany a check payment reduced by the charges, which are being questioned. The FIRM is requested to respond to the reduction letters within thirty (30) days of receipt, or payment is considered final. After the additional information on a particular invoice has been reviewed, you will either receive a second
check covering payment for the original reductions or you will receive a letter explaining the reason for the non-payment. In performing this function, the COUNTY enforces the rules set out by this CONTRACT.

8. **Communication with the COUNTY.** All communication regarding any matter handled by the FIRM must be directed to the person designated by the Commissioners’ Court except as to matters protected under attorney client privilege. The FIRM must take care to protect the attorney/client and work product privileges. Accordingly all memoranda and opinions submitted to the COUNTY should contain conspicuous notice that the writing is protected under those privileges, in connection with the defense of County.

9. **Advance Approval of Research.** All legal research must be authorized in advance. However, many issues demand short research projects. Therefore, the COUNTY policy is to pay for research of three (3) hours or less without formal written approval. Research requiring more than three (3) hours must be approved in writing in advance by the undersigned. The FIRM should make every effort to ascertain the availability of the Civil Division to conduct research before starting any research.

10. **Compliance with Applicable Law.** The FIRM is expected to assist the COUNTY in complying with all applicable laws and regulation pertaining to the MATTER. Please notify the COUNTY if you believe it has violated an applicable law in the course of a matter so that we may have a chance to cure the defect.

11. **Monitoring of Matters.** All matters will be actively monitored by the COUNTY. You may be asked upon engagement to identify the legal issues and defenses raised by the case or transaction as well as research that might be required.

12. **Notices.** The FIRM must immediately notify the COUNTY of the following. Notice to the attorney representative of the County is notice to the County:

   a. Filings or threatened filings of a motion to compel discovery, motion for sanctions, or any motion related to alleged spoliation of evidence;
   b. Notices to depose COUNTY representatives;
   c. All formal and informal offers to compromise litigation;
   d. All actual or potential conflicts of interest;
   e. All information related to the MATTER that may impact the COUNTY’s public relations;
   f. Significant rulings by the District Court or any court of appeal;
   g. Assignments of trial, mediation, arbitration, and hearing dates;
   h. Events that require the appearance or direct involvement of a COUNTY representative;
   i. All verdicts; and
   j. Any other matter which would have a material impact on the defense of County.

13. **Litigation Practices.** No appeals of any case or issue may be taken without the written approval of the undersigned and the Commissioners Court of Dallas County. Except for formal discovery, no information or photocopies should be released from the COUNTY files to any litigant or other third party without a subpoena. Opportunities for settlement or for alternative dispute resolution should be identified early in the litigation and given serious consideration. Settlements may not be announced except for written consent of a majority of a quorum of the Commissioners Court.

14. **Defensive Litigation Matters.** Notify the undersigned immediately of any claims, counterclaims or litigation against the COUNTY in connection with the MATTER. You must never accept service on behalf of the COUNTY.
15. **Billing Guidelines.** Invoices not prepared in accordance with the guidelines may be returned to the outside counsel without being processed for payment. The FIRM must:

a. bill by 1/10 of an hour;

b. itemize time entries by each task;

c. charge only actual costs of copies, faxes, postage, filing fees, long distance calls, and delivery/courier charges;

d. charge only actual travel costs (lodging, transportation, meals/incidentals) in accordance with the county Travel Policy as published in the Dallas County Code (https://www.dallascounty.org/Assets/uploads/docs/comert/county-code/DallasCountyCode_051518.pdf). See Dallas county Code, Section 86-711, Travel Policy. No amounts in excess of the County Travel Policy or rates shall be paid. The County provides reimbursement as follows:

- Meals and Incidental Expenses (M&IE): rate as set by GSA for the city traveled to. For travel requiring an overnight stay, the full M&IE per diem reimbursement may be requested for each full day spent. Half of the allowable per diem may be requested on a day in which the individual traveled to or from the destination;
- Transportation (taxi, ride-sharing, subway, bus, etc); and,
- Airfare: Airfare must be purchased sufficiently in advance to secure the best possible economy class refundable fare, preferably a minimum of 21 days in advance. The County will not reimburse for fares in excess of coach or economy, including upgrades.

The Firm must obtain written permission, for good cause shown, for travel expenses for more than one lawyer to attend a hearing, deposition, or other event arising from the duties under this agreement. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets, meal receipts). See Special Conditions on the last page;

e. order courier service only when necessary;

f. obtain written permission for more than one lawyer from the FIRM to attend a deposition, except for a deposition of one of the named defendants;

g. use or employment of expert witnesses shall be made only after written approval of the undersigned;

h. if an investigator is retained by the FIRM to assist in the investigation, the FIRM will seek and receive prior written approval of the contract for said services and will only bill the COUNTY or the actual cost for said services; and

i. the FIRM will notify the COUNTY in writing if or when the fees and costs associated with this CONTRACT reach $25,000.00.
16. **Non-billable.** The following examples are not all-inclusive but represent many items for which the COUNTY will not reimburse the FIRM:

a. Travel time, meetings or calls with lawyers in the same law firm, or updating the files;

b. Time spent preparing invoices, completing time slips or resolving billing questions;

c. Fees charged by electronic or other research services, e.g. Lexis Nexus and WestLaw charges and fees, library fees or online connection charges, are considered general law firm overhead and are not reimbursable or chargeable to the COUNTY;

d. Time spent by paralegals performing clerical, secretarial or administrative work;

e. Time spent by attorneys performing paralegal work;

f. Time training a new staff member, attorney or paralegal or time incurred as a result of staffing changes made by the FIRM;

g. Time spent on staffing issues. (An exception will be made for senior attorneys or the relationship attorney when assigning staff as part of the initial staff plan.);

h. File creation, organization, and maintenance, including data entry, input of project or matter information in the FIRM’s financial billing system or litigation support system, labeling, binding, indexing and sorting documents, reorganizing, re-filing and storage preparation, document disposal and retrieval of documents;

i. Internal conferences. Intra-office conferences are considered an internal law firm management tool. However, at the discretion of the COUNTY, conference charges may be paid where the conference adds value to the MATTER or results in cost-effective management of the MATTER. All conferences that are billed must be described in detail in the invoice, including the value added to the case; and

j. Other administrative support services such as those performed by library and computer or information systems.

17. **Authorized Research.** The description on the invoice for any research done should always identify the issue that was researched and identify the Assistant District Attorney who authorized the research. The FIRM is expected to be familiar with the basic substantive law at issue in the MATTER, and the COUNTY should not generally be charged for this type of research.

18. **Work Product.** Unless The FIRM is advised to the contrary, all written work product resulting from legal research must be sent to the COUNTY for retention and future use. Whenever possible, research should be provided electronically. If legal research benefits other clients, only the proportionate share of the cost should be billed to the COUNTY. Attorneys are not obligated to share privileged work product.

19. **Confidentiality.** In the course of representing County, the FIRM frequently has access to nonpublic and confidential information. The FIRM must have in place appropriate procedures to ensure the protection of all such
information. The FIRM must take appropriate measures to ensure that all legal and non-legal personnel are familiar with this requirement and are effectively supervised in this regard. The FIRM must consult with the COUNTY before disseminating any potentially sensitive information acquired from the COUNTY. In addition, third-party vendors engaged by the FIRM that acquire or have access to confidential or proprietary material of the COUNTY (including work product) should be requested to sign a Confidentiality Agreement. It is the responsibility of the FIRM to obtain a signed Confidentiality Agreement from third-party vendors and to retain it.

20. As technology advances, the FIRM will maintain the physical, electronic, and procedural safeguards necessary to maintain the confidence and security of the COUNTY’s personal financial information. The FIRM will notify the COUNTY of any changes in its ethical obligations that apply to the COUNTY’s confidential information or its practices with respect to fulfilling such obligations.

21. Submission of Invoices. If a monthly invoice would be less than $500 for services and expenses combined, firms may choose to forego sending an invoice until the cumulative charges exceed the $500 amount. However, invoices for those matters must be submitted at least once a quarter. You may submit monthly invoices for amounts less than $500. In any case, invoices exceeding $500 for individual matters must be submitted monthly.

22. Mediation. The FIRM agrees to seek approval from the COUNTY prior to agreeing to a mediator or settling at mediation.

23. Settlement. To be binding, any settlement between the County and a third party must be approved by the Dallas County Commissioners Court. No other party has authority to bind the COUNTY to a settlement.

24. Stipulations. The FIRM will not make any stipulation to any fact without the COUNTY’s prior approval, including any stipulation as to liability.

25. Waiver of Conflicts. Conflicts of interest may only be waived in writing by the undersigned. Requests for waivers should be directed to the Civil Division for forwarding to the COUNTY.

26. Venue and Choice of Law. The appropriate state courts in Dallas County, Texas, shall have jurisdiction over all matters arising under this CONTRACT and shall be the proper forum and venue in which to adjudicate such matters, including matters of construction, interpretation, validity, and enforcement. Texas law shall govern this contract.

27. The terms of this CONTRACT cannot be changed or terminated orally and the FIRM hereto acknowledges that any modification or variance to this CONTRACT must be in writing executed by a properly authorized representative of the COUNTY.

28. Attorney’s Fees. Attorney’s fees are recoverable in an action to enforce this CONTRACT by the prevailing party.

29. Malpractice Insurance. The FIRM representing the COUNTY is expected to maintain legal malpractice insurance coverage that is reasonable and prudent in relation to the types and sizes of matters handled. If the FIRM does not have coverage or if coverage is cancelled and not immediately replaced with comparable coverage, the FIRM must immediately report this to the COUNTY.

30. Media Contact. The FIRM shall not make any statements to the media on behalf of the COUNTY or relating to COUNTY matters without the express direction and approval of the Commissioners Court. The FIRM may be asked on occasion to assist in the development of media responses. All media inquiries, including questions regarding the COUNTY’s relationship with the FIRM, must be immediately reported to the Chief of the Civil DA Division.
31. **File Retention.** The FIRM shall retain pleadings, correspondence, verified discovery responses, deposition transcripts, and similar documents and work product for a period of no less than five (5) years from the date the MATTER is concluded or for the time period specified by rule or law in the jurisdiction in which the MATTER was pending, whichever is longer. The FIRM shall notify the COUNTY Civil DA Division no less than 30 days prior to destroying any file. Along with the notification, the FIRM shall submit an inventory of any original COUNTY documents contained in the file to be destroyed and a certification that any electronic version of the file also will be destroyed or deleted.

32. **Indemnification/Insurance.** The FIRM agrees to protect, defend, indemnify, and hold the COUNTY and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or due to any negligent act or omission of the FIRM, its employees, agents, and subcontractors in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof.

The FIRM shall procure and maintain in full force and effect, during its representation of the County in work arising from the Scope of Engagement, Professional Liability (Errors and Omissions Liability) insurance through a “AAA” (or equivalent) Best-Rated insurance carrier. The FIRM shall maintain Professional Liability insurance coverage that is reasonable and prudent in relation to the types and sizes of matters handled, but not less than an aggregate amount of $1 million, which shall cover professional misconduct or lack of ordinary skill for those activities listed in the Scope of the Engagement of this Agreement.

The FIRM shall furnish the COUNTY with a certificate of insurance for the Professional Liability coverage. The policy must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Agreement. If the FIRM does not have coverage or if coverage is cancelled and not immediately replaced with comparable coverage, the FIRM must immediately report this to the County Civil DA. Failure to maintain the policy as required by this Agreement or to provide evidence of renewal is a material breach of this Agreement.

33. **Termination/Cancellation.** This Agreement may be terminated, upon the giving of at least thirty (30) days prior written notice of the intention to terminate specifying in such notice the effective date of such termination, by:

1. the COUNTY, with or without cause; or,

2. the FIRM, subject to the rules of professional conduct, if (a) the continued representation would result in a violation of the applicable rules of professional conduct; (b) the termination can be accomplished without material adverse effect to the COUNTY’S interests; (c) the FIRM has a fundamental disagreement with the objective in this engagement; (d) the COUNTY substantially fails to discharge a material obligation regarding this engagement, including the payment of fees and expenses in accordance with this CONTRACT; or (e) other good cause for termination exist.

In the event of termination, the FIRM will take such steps as are reasonably practicable to protect the COUNTY’S interest in this matter. The FIRM shall also undertake reasonable, good faith efforts to assist in and facilitate the COUNTY’S transition to new representation, including, but not limited to, the prompt transfer of all documents and files to the COUNTY or its agent.
Any liability arising out of any services rendered shall not be terminated or released.

34. The FIRM agrees that should any provision of this CONTRACT be declared or be determined by any court to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable, and this CONTRACT shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this CONTRACT; and that the remaining provisions of this CONTRACT shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this CONTRACT.

35. Headings and Numbers are for convenience. Headings and Numbers will not be used to limit the provisions of this CONTRACT.

36. SPECIALCONDITIONS: Two lawyers are approved for every hearing, deposition, trial, or meeting with clients or witnesses.

AGREED AND APPROVED:

[Signature]
The Law Officers of Marc H. Richman (FIRM)

Date: 2-13-20

[Signature]
Dallas County, Texas (COUNTY)

Date: __________________

[Signature]
Approved As To Form:
RUSSELL H. RODEN
ASSISTANT DISTRICT ATTORNEY

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