

## **LEGAL SERVICES AGREEMENT**

This Agreement made this 25<sup>th</sup> day of October 2016, by and between the Spotsylvania County Attorney's Office, hereinafter referred to as the "County Attorney" and Vanderpool, Frostick & Nishanian, PC, a professional corporation, duly authorized to practice law in the Commonwealth of Virginia, hereinafter referred to as "Legal Counsel".

WHEREAS, the Spotsylvania Department of Social Services ("SDSS") requires the services of an attorney to represent the Department's interests in court and the interests of their clients who are in need of Child Protective Services ("CPS"), Adult Protective Services ("APS"), and other legal advocacy in the courts of Virginia; and

WHEREAS, the County Attorney desires to outsource the provision of legal services to SDSS to outside counsel, whose work shall be subject to the supervision of the County Attorney.

### **WITNESSETH:**

In consideration of the mutual promises and undertakings contained herein, the sufficiency of which is acknowledged by the parties, County Attorney and Legal Counsel agree as follows:

### **Section 1.**

#### **LEGAL REPRESENTATION**

1.1. Legal Representation: All legal services to be provided under this Agreement will be provided by Robert F. Beard, an attorney with a formalized professional relationship with Legal Counsel and duly authorized to practice law in the Commonwealth of Virginia, unless otherwise expressly provided herein. In the event that Robert F. Beard is unavailable, Legal Counsel may select an

attorney within the firm to serve as his substitute on an on-call basis, provided that the provisions of this Agreement pertaining to licensing and competency shall be applicable to any substitute counsel undertaking the subject work. Legal Counsel shall provide County Attorney and SDSS with reasonable notice of the substitution including the name, address and contact information of the substitute attorney, in order to provide the County Attorney with an opportunity to object to the selection.

1.2. Licensing: All attorneys providing legal services to SDSS under the terms of this agreement shall be duly licensed to practice law by the Virginia State Bar, and shall hold a license in good standing throughout the term of this Agreement.

1.3. Competency: As long as this Agreement remains in effect, Legal Counsel shall ensure Robert F. Beard and any other firm attorney providing services to SDSS, attend, without expense to the County Attorney or SDSS, continuing legal education courses that are necessary to maintain his license to practice law in Virginia and shall also attend all required courses offered by Virginia Department of Social Services and/or the Virginia Supreme Court that relate to child or adult protective services law.

1.4. Scope of Services: The following duties are to be performed by Legal Counsel as needed:

1.4.1. Represent SDSS in any court on petitions involving protective orders, transfer or assignment of custody, guardianship, abuse and/or neglect, emergency or preliminary removal, foster care plans, Child in Need of Services ("CHINS"), sale of real estate of a ward, and/or petitions seeking the termination of residual parental rights;

1.4.2. Assist SDSS in any judicial review of plans for foster children in SDSS's care;

1.4.3. Represent SDSS in matters of adult protective services;

1.4.4. Render legal advice and court representation when necessary regarding compliance with subpoenas duces tecum requesting access to SDSS' files, including Child Protective Services (CPS), Adult Protective Services (APS) and Foster Care files, or agency worker's testimony in divorce and/or custody disputes, and including when the employee is asked to reveal the source of a CPS report or other confidential information;

1.4.5. Assist SDSS in preparation of petitions for court and in preparation for court hearings;

1.4.6. Assist SDSS in determining and evaluating legal options available and provide representation regarding legal issues arising in various complex situations, such as multi-jurisdictional cases, conflict of laws issues, quashing of subpoenas, and interpretation of applicable law, in all instances when necessary to ensure the protection of SDSS;

1.4.7. Legal Counsel is cognizant of the fact that SDSS may, from time to time, have need of legal assistance, advice, and counsel regarding emergency situations which arise outside normal business hours. Legal Counsel shall provide SDSS with a means to access legal services, either in person, through electronic, digital or wire communications outside of normal business hours, which shall include nights, weekends, and holidays for the purpose of consultation with respect to emergency situations;

1.4.8. Legal Counsel shall provide legal representation to SDSS on cases appealed to higher courts;

1.4.9. Legal Counsel shall conduct, at the request of SDSS, training sessions for the purpose of training agency workers with respect to court protocol, the application of legal principles, statutes, and case law regarding juvenile and domestic relations and child and adult welfare and protective laws and procedures;

1.4.10. Legal Counsel shall represent SDSS in the local conference level of administrative appeals, but only in such situations where the petitioner is represented by counsel and at the request of the SDSS Director;

1.4.11. Legal Counsel shall represent SDSS in all state level administrative appeals of child protective services decisions made by SDSS;

1.4.12. If requested by SDSS, Legal Counsel agrees to consult with SDSS on fraud matters involving SDSS benefit programs;

1.4.13. Notwithstanding the foregoing, Legal Counsel shall not be obligated to represent SDSS on any matters which constitute a conflict of interest, under the rules of legal ethics or state law.

1.4.14. Legal Counsel is responsible for scheduling court appearances so that there is no scheduling conflict regarding court appearances. Should a scheduling or other conflict arise so that Robert F. Beard cannot represent a client, Legal Counsel shall notify County Attorney and SDSS and arrange to have a licensed and competent attorney provide such representation. Legal Counsel shall provide reasonable notice to the County Attorney in advance of the court appearance, whenever possible. In the event of emergency or other situation in which advance notice to the County Attorney is not feasible, the Legal Counsel shall provide information regarding such substitute counsel within twenty-four (24) hours after the court appearance.

1.5. Hours of Work: Legal Counsel shall provide however many hours may be required to competently perform the duties set forth herein.

## **Section 2.**

### **PERIOD OF SERVICES**

2.1. Term: The term of this Agreement shall begin on October 1, 2016 and expire on September 30, 2017, provided sufficient funds are appropriated by the Spotsylvania County Board of Supervisors. This Agreement may be renewed up to three times. A renewal period, if any, shall not exceed one year. Renewal is at the sole option of the County. Renewal, if any, shall be in writing, and, such

writing shall be executed by County Attorney and Legal Counsel, thirty (30) days prior to the expiration of the then current term.

2.2. Continuing Representation: At the time of termination/expiration of the Agreement, Legal Counsel shall continue to represent SDSS on pending matters until SDSS is represented by new legal counsel and the files have been duly transferred to said legal counsel. SDSS will use due diligence in obtaining new legal counsel as soon as possible once placed on notice of the termination/expiration of the Agreement.

### **Section 3.**

#### **COMPENSATION & PAYMENT**

3.1. Monthly Retainer: As payment and compensation for the performance and completion of those duties described in Section 1.4, Scope of Services, and performed in a manner acceptable to the County Attorney and SDSS, Legal Counsel shall be paid a retainer in the amount of Six Thousand Dollars (\$6,000.00) per month (the "Retainer"), following the receipt of a monthly invoice from Legal Counsel, once such invoice has been approved by the County Attorney.

3.2. Services Covered Exclusively by Retainer: The Retainer shall represent maximum compensation for the following services performed under this Agreement regardless of the billable hours of service provided in regard to such services:

3.2.1. Handling of child protective care casework and foster care work, which includes foster care and preventive foster care, involving litigation in the Spotsylvania County Juvenile and Domestic Relations Court;

3.2.2. Responding to inquiries from SDSS employees relating to child welfare case work;

3.2.3. Coverage of additional, non-foster care SDSS work that is properly before the Spotsylvania Juvenile and Domestic Relations Court;

3.2.4. Performance of necessary work associated with the Spotsylvania County Community Policy and Management Team (CMPT) and employee relations;

3.2.5. Management of all aspects of local conference level administrative hearings but only, in such situations where the petitioner is represented by counsel; and

3.2.6. Management of all aspects of state level administrative hearings.

3.3. Services to be Billed at Hourly Rate: As payment and compensation for the performance and completion of those duties and services described in Section 1.4, Scope of Services, and for which payment is not capped pursuant to Section 3.2, Legal Counsel shall be paid the hourly rate of Two Hundred Dollars (\$200.00) per hour worked. Payment shall be made to Legal Counsel by SDSS following the receipt of a monthly invoice from Legal Counsel once such invoice is approved by the County Attorney. Such bill shall include the following specific services performed under this Agreement and such other legal services that are included in Section 1.4 but not in Section 3.2:

3.3.1. Representation of SDSS in appeals of foster care work to the Circuit Court including, but not limited to, adoptions, guardianships, and petitions for approval of sale of real estate of a ward;

3.3.2. Handling of any appellate work in the Virginia Court of Appeals or Virginia Supreme Court; and

3.3.3. Coverage of adult protective services work.

3.4 Payment Credit for Unused Retainer: If fewer than ninety (90) billable hours per quarter have been billed by Legal Counsel, and approved by County Attorney and SDSS, for those services described in Section 3.2, using an hourly rate of Two Hundred Dollars (\$200.00) per hour for such computations, then any

unused portions of the Retainers for that quarter shall be credited against the bill for legal services performed pursuant to Section 3.3.

3.5. Paralegal Rate: Legal duties performed by a paralegal, qualified to do the subject work, shall be billed at an hourly rate of fifty dollars (\$50.00).

3.6. Invoices: Legal Counsel shall submit to County Attorney on a monthly basis an invoice summarizing the work performed and services provided by employees and/or contractors of Legal Counsel on behalf of SDSS. The summary shall include (i) case name, (ii) case status, and (iii) hours worked attributable to each particular matter, regardless of whether the matter is included under the retainer or subject to the hourly rate. Legal Counsel shall also include reimbursement requests in the monthly invoice. Each reimbursement item shall be listed on a separate line identifying the exact nature of the service or good for which reimbursement is sought. An original receipt or bill shall accompany the reimbursement request.

3.7. Reimbursable Expenses:

3.7.1. Legal Counsel shall use all available means, consistent with sound professional practices and the exercise of reasonable judgment, to limit and minimize expenses incurred during the performance of this Agreement.

3.7.2. Legal Counsel shall be reimbursed for reasonable and necessary costs for photocopying and reproducing materials and court documents; postage; courier and express mail service costs; court filing fees; court reporter and transcript fees; mileage in excess of fifty (50) miles (at the current IRS standard rate); and witness fees and costs. Legal Counsel shall submit invoices for payment of such costs, including original receipts, to County Attorney for review and approval. Invoices should be hand delivered, mailed, e-mailed, or faxed to:

Karl R. Holsten, Esq.  
Spotsylvania County Attorney  
9105 Courthouse Road  
P.O. Box 308  
Spotsylvania, Virginia 22553  
attorney@spotsylvania.va.us  
Fax: 540.507.7028

With a copy to:

Gail Crooks, Director  
Spotsylvania County Department of Social Services  
P.O. Box 249  
Spotsylvania, Virginia 22553  
gail.crooks@dss.virginia.gov  
Fax: 540.507.7810

3.7.3. County Attorney must approve, in advance, any single reimbursement item in excess of five hundred dollars (\$500.00) except for: (i) Orders of Publication and (ii) Court reporters used for termination appeal hearings in Circuit Court, and (iii) preparation and filing of briefs for appeals to Virginia Court of Appeals and Virginia Supreme Court.

3.9. Legal Counsel Costs: SDSS shall not be responsible for expenses incurred by Legal Counsel for performing the necessary work, including the license fee for the Virginia State Bar, required CLE courses, and other fees and costs necessary to maintain the status of any attorney employed by Legal Counsel as an attorney at law practicing in Virginia; legal malpractice insurance; and normal and reasonable operational expenses.

3.10. Timing of Payment: Payment of fees due to Legal Counsel pursuant to this Agreement shall be made within sixty (60) days of receipt of monthly invoice.

3.11. Payment Not Evidence of Satisfaction: Payments made to Legal Counsel shall not be considered as evidence of satisfactory performance of the work by



Legal Counsel, either in whole or in part, nor shall any payment be construed as acceptance by County Attorney of any work not meeting professional standards.

#### **Section 4.**

#### **TERMINATION**

4.1. Termination. The County Attorney or Legal Counsel may terminate this Agreement at any time upon thirty (30) days written notice. The parties, however, will endeavor to provide the maximum notice practicable beyond thirty (30) days, where possible.

#### **Section 5.**

#### **INSURANCE**

5.1. Malpractice Insurance. Legal Counsel shall obtain and maintain in force during the term of this Agreement, at his sole cost and expense, a malpractice policy with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per claim and Five Hundred Thousand 00/100 (\$500,000.00) in the aggregate inclusive or in higher amounts if necessary to fully protect the firm, its employees, and agents from any and all claims of errors, omissions, negligence, and/or malpractice regarding the services provided by Legal Counsel under this Agreement. Legal Counsel shall deliver to County Attorney a copy of the original certificate of such insurance upon the execution of this Agreement and shall provide County Attorney with copies of all renewals thereof at least thirty (30) days prior to the termination of the existing policy.

#### **Section 6.**

#### **GENERAL PROVISIONS**

6.1. Documents: All documents and client files are the property of SDSS and shall remain in possession of SDSS.

6.2. Indemnification: Legal Counsel shall indemnify and save harmless the County, the County Administrator, the County Attorney, SDSS, and their officers, agents, and employees from any and all losses occurring or resulting to any and all persons, firms, or corporations furnishing work, services, materials, or supplies in connection with Legal Counsel's performance of his duties under this Agreement, and for any and all claims and losses resulting to any person, firm, or corporation that may be injured or damaged by the negligence of Legal Counsel in his performance under this Agreement.

6.3. Equal Employment:

6.3.1. Non-Discrimination: During the performance of this Agreement, Legal Counsel will not discriminate against any employee or applicant for employment because of disability, race, religion, sex, color, national origin, pregnancy, or marital status. Legal Counsel agrees to post, in conspicuous places in his workplace, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

6.3.2. EEO Employer: Legal Counsel in all solicitations or advertisements for employees placed by or on behalf of Legal Counsel will state that Legal Counsel is an equal opportunity employer.

6.3.3. Notices/Advertisements: Notices, advertisements, and solicitations placed in accordance with Federal Law, rule, shall be deemed sufficient for the purposes of meeting the requirements of this section.

6.4. Employment of Unauthorized Aliens: Legal Counsel shall not during the performance of this Agreement knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 and in accordance with Virginia Code § 2.2-4311.1.

6.5. Drug-Free Workplace: Legal Counsel, during the performance of this Agreement agrees to (i) provide a drug-free workplace, as defined in § 2.2-4312

of the Code of Virginia, for Legal Counsel's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Legal Counsel's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Legal Counsel that he maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

6.6. Jurisdiction: This Agreement shall be construed pursuant to the laws of the Commonwealth of Virginia. Any legal action brought as a result of the alleged performance, non-performance, or breach of this Agreement shall be brought in the Circuit Court of Spotsylvania County, Virginia and in no other forum.

6.7. Titles: The titles and section headings are inserted only for convenience and shall not be construed as a limitation on the scope of the provisions to which they refer.

6.8. Modification: This Agreement constitutes the entire agreement and understanding between County Attorney and Legal Counsel and it is not to be modified or altered, changed, or amended in any respect unless in writing and signed by the parties hereto.

6.9. Conflict of Interest: During the term of this Agreement, Legal Counsel shall not provide legal advice or representation to any group, entity, individual or other client that would result in a conflict of interest with the County of Spotsylvania, and specifically shall not provide legal advice or representation to such persons or entities with respect to any claim, action or suit against the

County, without the written consent of the County Attorney. The County Attorney understands that Legal Counsel represents other local DSS agencies and, as a result, may have potential conflicts. Legal Counsel will apprise County Attorney of any actual conflicts if and when they arise.

6.10. Employment Relationship: Throughout the course of this Agreement and while performing services hereunder, Legal Counsel shall perform such services as an independent contractor and shall be responsible for filing and paying all of his own local, state, federal and social security taxes. Legal Counsel is not an officer, agent or employee of the County. Legal Counsel agrees to obtain a business license if required by the Code of Virginia or the locality where his office is located.

## **Section 7.**

### **NOTICES**

7.1. Notice to County Attorney: Any written notice to County Attorney required under this Agreement shall be sent by certified mail to:

Karl R. Holsten, Esq.  
Interim Spotsylvania County Attorney  
9105 Courthouse Road  
P.O. Box 308  
Spotsylvania, Virginia 22553  
attorney@spotsylvania.va.us  
Fax: 540.507.7028

With a copy to:

Gail Crooks, Director  
Spotsylvania County Department of Social Services  
P.O. Box 249  
Spotsylvania, Virginia 22553  
gail.crooks@dss.virginia.gov  
Fax: 540.507.7810

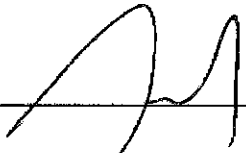
7.2. Notice to Legal Counsel: Any written notice to Legal Counsel required under this Agreement shall be sent by certified mail to:

Vanderpool, Frostick & Nishanian, PC  
9200 Church Street, Suite 400  
Manassas, VA 20110  
rbeard@vfnlaw.com  
Fax: 703-369-3653

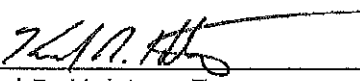
**WITNESS** the following signatures and seals in agreement with the above terms:


**LEGAL COUNSEL**

**VANDERPOOL, FROSTICK & NISHANIA, PC**

By:  (SEAL)  
Its: President

**SPOTSYLVANIA COUNTY ATTORNEY'S OFFICE**

By:  (SEAL)  
Karl R. Holsten, Esq.  
Interim County Attorney

APPROVED AS TO FORM:  
  
Senior Assistant COUNTY ATTORNEY