

PURSUANT TO A.R.S. §38-431.01, THE GILA COUNTY BOARD OF SUPERVISORS WILL HOLD AN OPEN MEETING IN THE SUPERVISORS' HEARING ROOM, 1400 EAST ASH STREET, GLOBE, ARIZONA. ONE OR MORE BOARD MEMBERS MAY PARTICIPATE IN THE MEETING BY TELEPHONE CONFERENCE CALL OR BY INTERACTIVE TELEVISION VIDEO (ITV). **ANY MEMBER OF THE PUBLIC IS WELCOME TO ATTEND THE MEETING VIA ITV WHICH IS HELD AT 610 E. HIGHWAY 260, BOARD OF SUPERVISORS' CONFERENCE ROOM, PAYSON, ARIZONA.** THE AGENDA IS AS FOLLOWS:

SPECIAL MEETING - TUESDAY, December 11, 2018 - 10:00 A.M.

1. **CALL TO ORDER - PLEDGE OF ALLEGIANCE**
2. **REGULAR AGENDA ITEMS:**
 - A. Information/Discussion/Action to approve two professional services contracts for attorneys Michael Ziemba and Thomas Henager to provide capital defense in Superior Court case CR201800596. **(Jonathan Bearup)**
3. **CALL TO THE PUBLIC:** A call to the public is held for public benefit to allow individuals to address the Board of Supervisors on any issue within the jurisdiction of the Board of Supervisors. Board members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. §38-431.01(H), at the conclusion of an open call to the public, individual members of the Board of Supervisors may respond to criticism made by those who have addressed the Board, may ask staff to review a matter or may ask that a matter be put on a future agenda for further discussion and decision at a future date.
4. At any time during this meeting pursuant to A.R.S. §38-431.02(K), members of the Board of Supervisors and the County Manager may present a brief summary of current events. No action may be taken on information presented.

IF SPECIAL ACCOMMODATIONS ARE NEEDED, PLEASE CONTACT THE RECEPTIONIST AT (928) 425-3231 AS EARLY AS POSSIBLE TO ARRANGE THE ACCOMMODATIONS. FOR TTY, PLEASE DIAL 7-1-1 TO REACH THE ARIZONA RELAY SERVICE AND ASK THE OPERATOR TO CONNECT YOU TO (928) 425-3231.

THE BOARD MAY VOTE TO HOLD AN EXECUTIVE SESSION FOR THE PURPOSE OF OBTAINING LEGAL ADVICE FROM THE BOARD'S ATTORNEY ON ANY MATTER LISTED ON THE AGENDA PURSUANT TO A.R.S. §38-431.03(A)(3).

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING.

ARF-5233

Regular Agenda Item 2. A.

Special BOS Meeting

Meeting Date: 12/11/2018

Submitted For: Jonathan Bearup, Court Administrator

Submitted By: Betty Hurst, Contracts Administrator

Department: Finance

Fiscal Year: 2019

Budgeted?: Yes

Contract Dates 12-18-18 to 06-30-19

Grant?: No

Begin & End:

Matching No

Fund?: Renewal

Requirement?:

Information

Request/Subject

Approval of Professional Services Contract for Attorneys in Capital Case

Background Information

On November 20, 2018, the County Attorney filed a Notice of Intent to Seek the Death Penalty in Superior Court case CR201800596. Such a notification requires the defense of the case by attorneys qualified under Rule 6.8, Arizona Rules of Criminal Procedure.

Evaluation

The Court does not currently have attorneys so qualified under contract and had to seek legal services outside of the contracted Defense Bar. Four attorneys returned the Court's request for qualifications and were subsequently graded. Ultimately two attorneys, Michael Ziemba and Thomas Henager, were selected. The two selected attorneys are qualified under Rule 6.8 and would satisfy the obligation for specialized defense counsel.

Conclusion

Approval of contracts for the services of the two attorneys would meet the requirements for defense in capital cases.

Recommendation

Court Administration recommends approval of contracts for the professional legal services of Michael Ziemba and Thomas Henager for capital defense.

Suggested Motion

Information/Discussion/Action to approve two professional services contracts for attorneys Michael Ziemba and Thomas Henager to provide capital defense in Superior Court case CR201800596. **(Jonathan Bearup)**

Attachments

Professional Services Contract - Tom Henager

Professional Services Contract - Michael Ziemba

Grading Matrix

INDIGENT ATTORNEY REPRESENTATION AGREEMENT

THIS INDIGENT ATTORNEY REPRESENTATION AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2018, by and between Gila County, a political subdivision of the State of Arizona, hereinafter (the "County") on behalf of the Gila County Superior Court, hereinafter (the "Superior Court") and Thomas Henager, Attorney at Law, hereinafter (the "Co- Counsel"). (The County, Superior Court and Co-Counsel shall be collectively referred to hereafter as "the Parties" and individually as a "Party").

RECITALS

Whereas, Mr. Sterling Randall Hunt (the "Defendant") is charged in Gila County Criminal Case # CR201800596 with a capital offense wherein the County is seeking the death penalty (the "Criminal Case"); and

Whereas, pursuant to Rule 6.2 (b) (Arizona Rules of Criminal Procedure) in a capital trial proceeding, where the defendant is indigent, the presiding judge of the Superior Court of the County must appoint two attorneys (lead counsel and co-counsel) eligible for appointment under Rule 6.8(b) (Arizona Rules of Criminal Procedure) to provide indigent criminal legal representation to the Defendant; and

Whereas, the Superior Court has determined that the Co-Counsel is eligible for appointment in a capital case under Rule 6.8 (Arizona Rules of Criminal Procedure) and is agreeable to representing the Defendant in the Criminal Case as Co-Counsel, subject to appointment by the Superior Court; and

Whereas, pursuant to A.R.S. 11-254.01 D, the County has the authority to contract with the Co-Counsel on behalf of the Superior Court to provide legal representation to the Defendant in the Criminal Case.

Now, Therefore, in consideration of the mutual promises contained in the Agreement and the mutual benefits to result therefrom, the Parties hereby agree as follows:

AGREEMENTS

1. **CERTIFICATION.** Co-Counsel hereby certifies to the Superior Court that he is eligible for appointment in a capital case under Rule 6.8 (Arizona Rules of Criminal Procedure) to act as Co-Counsel for the Defendant in the Criminal Case.

2. **TERM AND TERMINATION.** This Agreement shall become effective on the date it is fully executed by the Parties and will continue for consecutive one (1) year periods through the trial and penalty phase of the Criminal Case, unless further extended by the agreement of the Parties to cover an appeal or

any postconviction relief proceeding of the Criminal Case unless terminated pursuant to the terms of the Agreement.

Notwithstanding any provision in this Agreement to the contrary that may provide for the termination of the Agreement, in no event shall the Agreement or the obligations of the Co-Counsel to represent the Defendant in the Criminal Case terminate until and unless the presiding judge of the Superior Court allows the Co-Counsel to withdraw and a replacement Co-Counsel is appointed and approved by the Superior Court.

Subject to the foregoing paragraph, the Agreement may be terminated immediately upon written notice to the Co-Counsel in the event of a material breach of the Agreement.

3. LEGAL REPRESENTATION. During the term of the Agreement, the Co-Counsel shall comply with the Arizona Rules of Professional Conduct, state and local court rules, and any written administrative and policies and procedures established by the Superior Court and diligently provide competent, effective and timely legal representation to the Defendant consistent with the imposition of a potential of death penalty as an outcome of the Criminal Case. Co-Counsel shall immediately advise the Superior Court of any ethical complaints pending against Co-Counsel before the State Bar of Arizona or any other State or Federal Bar of which Co-Counsel is a member. Failure to do so will place Co-Counsel in default and may be grounds for termination of the Agreement.

In the event Co-Counsel is unable to complete the legal representation of the Defendant in the Criminal Case and is allowed to withdraw by order of the Superior Court, Co-Counsel shall have a continuing duty and obligation to diligently represent the Defendant until the Superior Court has terminated the representation and a replacement Co-Counsel is appointed and approved by the Superior Court.

4. COMPENSATION AND EXPENSES.

A. Legal Fees. The County shall compensate the Co-Counsel at the hourly rate of \$105 per billable hour, where billable time means time spent for the benefit of the Defendant that substantially advances the Criminal Case toward conclusion, including court time, legal research, interviews of the Defendant and witnesses, and other work required to effectively represent the Defendant for the duration of the appointment

B. Expense Reimbursements. In addition to the legal fees, the Co-Counsel may be reimbursed for expenses that are reasonable and necessary for the legal representation of the Defendant, including reimbursement for mileage plus travel at ½ the hourly rate, but excluding other items that are

compensated through Co-Counsel's billable hourly rate, including secretarial expenses and other items that are generally considered an ordinary cost of doing business.

(1) **Requests for Expense Reimbursement.** Except for the reimbursement for travel expenses as provided above and routine expenses incurred by Co-Counsel in the legal representation of the Defendant under \$1,000, Co-Counsel shall submit for approval by the Court Administrator, Jonathan Bearup, all requests for expense reimbursement including the payment for expert witness fees, investigators, mitigation specialists and paralegals. Failure to obtain prior approval may result in non-payment for the expenditure and the obligation shall become the personal responsibility of the Co-Counsel. When billing for reimbursement, receipts for all expenses must be included.

(2) **Investigators.** Co-Counsel shall submit for approval by the Court Administrator, Jonathan Bearup any request for appointment of investigators with compensation at the standard rate of \$40.00 per hour. Co-Counsel will be responsible for reviewing and certifying the investigator's billings prior to payment by the County. Failure to obtain prior approval for the work of an investigator may result in non-payment and the debt shall become the personal responsibility of the Co-Counsel.

(3) **Mitigation Specialists.** Co-Counsel shall submit for approval by the Court Administrator, Jonathan Bearup any request for appointment of mitigation specialists with compensation at the standard rate of \$60.00 per hour. Co-Counsel will be responsible for reviewing and certifying the mitigation specialists' billings prior to payment by the County. Failure to obtain prior approval for the work of a mitigation specialist may result in non-payment and the debt shall become the personal responsibility of the Co-Counsel.

(4) **Paralegals.** Co-counsel shall submit for approval by the Court Administrator, Jonathan Bearup any request for appointment of paralegals with compensation at the standard rate of \$45.00 per hour. Co-counsel will be responsible for reviewing and certifying the paralegal's billings prior to payment by the County. Failure to obtain prior approval for the work of a paralegal may result in non-payment and the debt shall become the personal responsibility of the Co-Counsel.

5. **COMPLIANCE WITH LAWS.** Co-Counsel shall comply with all laws, including rules and regulations of all governmental accrediting and regulatory authorities, including the State of Arizona and the State Bar of Arizona, relating to the licensure and regulation of attorneys.

6. **LEGAL ARIZONA WORKERS ACT COMPLIANCE.** Co-Counsel hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Co-Counsel's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the

“State and Federal Immigration Laws”). Co-Counsel shall further ensure that each contractor who performs any work for Co-Counsel under this Agreement likewise warrants compliance with the State and Federal Immigration Laws. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement. The County retains the legal right to inspect the employment record of the Co-Counsel or subcontractor who works on the Agreement to ensure compliance with the foregoing warranty.

7. CANCELLATION FOR CONFLICT OF INTEREST. This Agreement is subject to cancellation for conflict of interest as provided in A.R.S. § 38-511, which is hereby fully incorporated herein by this reference as if the same is fully set forth in this Agreement.

8. ENTIRE AGREEMENT. The Parties agree that this Agreement represents the complete and exclusive statement of agreement between the Parties and supersedes all proposals, oral or written, and all other communications relating to the subject matter of this Agreement.

9. WAIVER. Failure or delay in enforcing any term, provision or condition of this Agreement by either Party will not operate as a waiver and no waiver of any term, provision or condition of this Agreement will be valid unless in writing and signed by the Party agreeing to such waiver. Any waiver by either Party of any condition, term or provision of this Agreement will not operate or be considered as a waiver of any other condition, term or provision of a waiver of any future event or circumstance.

10. MODIFICATIONS. This Agreement may be modified or amended only by a written instrument duly signed by an authorized representative of the governing body of each Party.

11. SEVERABILITY. If any provision of this Agreement is determined by an arbitration panel or court of competent jurisdiction to be invalid or unenforceable, then such provision shall be deemed modified to the extent necessary to render such provision valid and enforceable; if such provision may not be so saved, it shall be severed, and the remainder of this Agreement shall remain in full force and effect.

12. GOVERNING LAW AND JURISDICTION. The Parties agree that the Agreement shall be governed by the laws of the State of Arizona and the jurisdiction for any legal disputes arising out of this Agreement shall be the Superior Court of the State of Arizona. The Parties acknowledge and agree that even if this Agreement does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this Agreement by this reference as though they were specifically listed herein.

13. INSURANCE. Prior to undertaking any work under this Agreement, Co-Counsel shall provide the County with proof of Lawyers Professional Liability Insurance with limits of \$250,000 per claim/

\$500,000 aggregate. Failure by Co-Counsel to maintain such coverage shall be deemed a material default of the Agreement and may result in the termination of the Agreement.

14. INDEMNIFICATION. Co-Counsel shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any fault or negligence by Co-Counsel in connection with the performance of this Agreement.

15. RELATIONSHIP OF PARTIES. The relationship between the Parties of this Agreement is that of independent contractors. This Agreement does not constitute a partnership or joint venture between the Parties. Each Party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of any other Party. Each Party shall be solely and entirely responsible for its acts or acts of its agents and employees during the performance of this Agreement. Nothing contained in this Agreement shall confer any right to any person or entity not a party to this Agreement.

16. COUNTERPARTS. This Agreement may be executed in two counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

17. PAYMENT/BILLING. All invoices for legal fees and expense reimbursements shall be submitted to Gila County Accounts Payable, 1400 E. Ash St., Globe, Arizona and include the following information:

- Contract Number
- Attorney's Name and Address

The County employs a "Net 15" payment term for legal fees and expense reimbursements, meaning the payment will be issued fifteen (15) days from the date the County receives the invoice from the Co-Counsel.

The Co-Counsel shall have a current I.R.S. W-9 form on file with the County unless not required by law. The County shall not remit payment if the Co-Counsel does not have a current W-9.

18. NOTICES AND CONTACT LIST.

All notices or demands upon any Party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

Gila County:	Attorney:
Jonathan Bearup Court Administrator 1400 E. Ash Street Globe, AZ 85501	Thomas Henager Attorney at Law 1334 West Sells Drive Phoenix, AZ 85013

The Parties may update by written notice to the other Party the above-referenced legal contacts in this section without requiring a written amendment to this Agreement.

IN WITNESS THEREOF, the Parties to this Agreement have caused their names to be affixed hereto by their proper offices on the date indicated above.

GILA COUNTY BOARD OF SUPERVISORS

Thomas Henager, Co-Counsel

Tim R. Humphrey, Chairman

ATTEST

Marian Sheppard, Clerk of the Board

APPROVED AS TO FORM

Gila County Attorney's Office

Timothy Wright

Presiding Judge, Gila County Superior Court

INDIGENT ATTORNEY REPRESENTATION AGREEMENT

THIS INDIGENT ATTORNEY REPRESENTATION AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2018, by and between Gila County, a political subdivision of the State of Arizona, hereinafter (the "County") on behalf of the Gila County Superior Court, hereinafter (the "Superior Court") and Michael R. Ziemba, Attorney at Law, hereinafter (the "Lead Counsel"). (The County, Superior Court and Lead Counsel shall be collectively referred to hereafter as "the Parties" and individually as a "Party").

RECITALS

Whereas, Mr. Sterling Randall Hunt (the "Defendant") is charged in Gila County Criminal Case # CR201800596 with a capital offense wherein the County is seeking the death penalty (the "Criminal Case"); and

Whereas, pursuant to Rule 6.2 (b) (Arizona Rules of Criminal Procedure) in a capital trial proceeding, where the defendant is indigent, the presiding judge of the Superior Court of the County must appoint two attorneys (lead counsel and co-counsel) eligible for appointment under Rule 6.8(b) (Arizona Rules of Criminal Procedure) to provide indigent criminal legal representation to the Defendant; and

Whereas, the Superior Court has determined that the Lead Counsel is eligible for appointment in a capital case under Rule 6.8 (Arizona Rules of Criminal Procedure) and is agreeable to representing the Defendant in the Criminal Case as lead counsel, subject to appointment by the Superior Court; and

Whereas, pursuant to A.R.S. 11-254.01 D, the County has the authority to contract with the Lead Counsel on behalf of the Superior Court to provide legal representation to the Defendant in the Criminal Case.

Now, Therefore, in consideration of the mutual promises contained in the Agreement and the mutual benefits to result therefrom, the Parties hereby agree as follows:

AGREEMENTS

1. **CERTIFICATION.** Lead Counsel hereby certifies to the Superior Court that he is eligible for appointment in a capital case under Rule 6.8 (Arizona Rules of Criminal Procedure) to act as Lead Counsel for the Defendant in the Criminal Case.

2. **TERM AND TERMINATION.** This Agreement shall become effective on the date it is fully executed by the Parties and will continue for consecutive one (1) year periods through the trial and penalty phase of the Criminal Case, unless further extended by the agreement of the Parties to cover an appeal or any postconviction relief proceeding of the Criminal Case unless terminated pursuant to the terms of the Agreement.

Notwithstanding any provision in this Agreement to the contrary that may provide for the termination of the Agreement, in no event shall the Agreement or the obligations of the Lead Counsel to represent the Defendant in the Criminal Case terminate until and unless the presiding judge of the Superior Court allows the Lead Counsel to withdraw and a replacement lead counsel is appointed and approved by the Superior Court.

Subject to the foregoing paragraph, the Agreement may be terminated immediately upon written notice to the Lead Counsel in the event of a material breach of the Agreement.

3. LEGAL REPRESENTATION. During the term of the Agreement, the Lead Counsel shall comply with the Arizona Rules of Professional Conduct, state and local court rules, and any written administrative and policies and procedures established by the Superior Court and diligently provide competent, effective and timely legal representation to the Defendant consistent with the imposition of a potential of death penalty as an outcome of the Criminal Case. Lead Counsel shall immediately advise the Superior Court of any ethical complaints pending against Lead Counsel before the State Bar of Arizona or any other State or Federal Bar of which Lead Counsel is a member. Failure to do so will place Lead Counsel in default and may be grounds for termination of the Agreement.

In the event Lead Counsel is unable to complete the legal representation of the Defendant in the Criminal Case and is allowed to withdraw by order of the Superior Court, Lead Counsel shall have a continuing duty and obligation to diligently represent the Defendant until the Superior Court has terminated the representation and a replacement lead counsel is appointed and approved by the Superior Court.

4. COMPENSATION AND EXPENSES.

A. Legal Fees. The County shall compensate the Lead Counsel at the hourly rate of \$145 per billable hour, where billable time means time spent for the benefit of the Defendant that substantially advances the Criminal Case toward conclusion, including court time, legal research, interviews of the Defendant and witnesses, and other work required to effectively represent the Defendant, for the duration of the appointment

B. Expense Reimbursements. In addition to the legal fees, the Lead Counsel may be reimbursed for expenses that are reasonable and necessary for the legal representation of the Defendant, including reimbursement for mileage plus travel at ½ the hourly rate, but excluding other items that are compensated through Lead Counsel's billable hourly rate, including secretarial expenses and other items that are generally considered an ordinary cost of doing business.

(1) **Requests for Expense Reimbursement.** Except for the reimbursement for travel expenses as provided above and routine expenses incurred by Lead Counsel in the legal representation of the Defendant under \$1,000, Lead Counsel shall submit for approval by the Court Administrator, Jonathan Bearup, all requests for expense reimbursement including the payment of expert witness fees, investigators, mitigation specialists and paralegals. Failure to obtain prior approval may result in non-payment for the expenditure and the obligation shall become the personal responsibility of the Lead Counsel. When billing for reimbursement, receipts for all expenses must be included.

(2) **Investigators.** Lead Counsel shall submit for approval by the Court Administrator, Jonathan Bearup any request for appointment of investigators with compensation at the standard rate of \$40.00 per hour. Lead Counsel will be responsible for reviewing and certifying the investigator's billings prior to payment by the County. Failure to obtain prior approval for the work of an investigator may result in non-payment and the debt shall become the personal responsibility of the Lead Counsel.

(3) **Mitigation Specialists.** Lead Counsel shall submit for approval by the Court Administrator, Jonathan Bearup any request for appointment of mitigation specialists with compensation at the standard rate of \$60.00 per hour. Lead Counsel will be responsible for reviewing and certifying the mitigation specialists' billings prior to payment by the County. Failure to obtain prior approval for the work of a mitigation specialist may result in non-payment and the debt shall become the personal responsibility of the Lead Counsel.

(4) **Paralegals.** Lead counsel shall submit for approval by the Court Administrator, Jonathan Bearup any request for appointment of paralegals with compensation at the standard rate of \$45.00 per hour. Lead counsel will be responsible for reviewing and certifying the paralegal's billings prior to payment by the County. Failure to obtain prior approval for the work of a paralegal may result in non-payment and the debt shall become the personal responsibility of the Lead Counsel.

5. **COMPLIANCE WITH LAWS.** Lead Counsel shall comply with all laws, including rules and regulations of all governmental accrediting and regulatory authorities, including the State of Arizona and the State Bar of Arizona, relating to the licensure and regulation of attorneys.

6. **LEGAL ARIZONA WORKERS ACT COMPLIANCE.** Lead Counsel hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Lead Counsel's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Lead Counsel shall further ensure that each contractor who

performs any work for Lead Counsel under this Agreement likewise warrants compliance with the State and Federal Immigration Laws. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement. The County retains the legal right to inspect the employment record of the Lead Counsel or subcontractor who works on the Agreement to ensure compliance with the foregoing warranty.

7. CANCELLATION FOR CONFLICT OF INTEREST. This Agreement is subject to cancellation for conflict of interest as provided in A.R.S. § 38-511, which is hereby fully incorporated herein by this reference as if the same is fully set forth in this Agreement.

8. ENTIRE AGREEMENT. The Parties agree that this Agreement represents the complete and exclusive statement of agreement between the Parties and supersedes all proposals, oral or written, and all other communications relating to the subject matter of this Agreement.

9. WAIVER. Failure or delay in enforcing any term, provision or condition of this Agreement by either Party will not operate as a waiver and no waiver of any term, provision or condition of this Agreement will be valid unless in writing and signed by the Party agreeing to such waiver. Any waiver by either Party of any condition, term or provision of this Agreement will not operate or be considered as a waiver of any other condition, term or provision of a waiver of any future event or circumstance.

10. MODIFICATIONS. This Agreement may be modified or amended only by a written instrument duly signed by an authorized representative of the governing body of each Party.

11. SEVERABILITY. If any provision of this Agreement is determined by an arbitration panel or court of competent jurisdiction to be invalid or unenforceable, then such provision shall be deemed modified to the extent necessary to render such provision valid and enforceable; if such provision may not be so saved, it shall be severed, and the remainder of this Agreement shall remain in full force and effect.

12. GOVERNING LAW AND JURISDICTION. The Parties agree that the Agreement shall be governed by the laws of the State of Arizona and the jurisdiction for any legal disputes arising out of this Agreement shall be the Superior Court of the State of Arizona. The Parties acknowledge and agree that even if this Agreement does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this Agreement by this reference as though they were specifically listed herein.

13. INSURANCE. Prior to undertaking any work under this Agreement, Lead Counsel shall provide the County with proof of Lawyers Professional Liability Insurance with limits of \$250,000 per claim/\$500,000 aggregate. Failure by Lead Counsel to maintain such coverage shall be deemed a material default of the Agreement and may result in the termination of the Agreement.

14. INDEMNIFICATION. Lead Counsel shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any fault or negligence by Lead Counsel in connection with the performance of this Agreement.

15. RELATIONSHIP OF PARTIES. The relationship between the Parties of this Agreement is that of independent contractors. This Agreement does not constitute a partnership or joint venture between the Parties. Each Party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of any other Party. Each Party shall be solely and entirely responsible for its acts or acts of its agents and employees during the performance of this Agreement. Nothing contained in this Agreement shall confer any right to any person or entity not a party to this Agreement.

16. COUNTERPARTS. This Agreement may be executed in two counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

17. PAYMENT/BILLING. All invoices for legal fees and expense reimbursements shall be submitted to Gila County Accounts Payable, 1400 E. Ash St., Globe, Arizona and include the following information:

- Contract Number
- Attorney's Name and Address

The County employs a "Net 15" payment term for legal fees and expense reimbursements, meaning the payment will be issued fifteen (15) days from the date the County receives the invoice from the Lead Counsel.

The Lead Counsel shall have a current I.R.S. W-9 form on file with the County unless not required by law. The County shall not remit payment if the Lead Counsel does not have a current W-9.

18. NOTICES AND CONTACT LIST.

All notices or demands upon any Party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

Gila County:	Attorney:
Jonathan Bearup Court Administrator 1400 E. Ash Street Globe, AZ 85501	Michael R. Ziemba Attorney at Law 1830 East Erie Street Gilbert, AZ 85295

The Parties may update by written notice to the other Party the above-referenced legal contacts in this section without requiring a written amendment to this Agreement.

IN WITNESS THEREOF, the Parties to this Agreement have caused their names to be affixed hereto by their proper offices on the date indicated above.

GILA COUNTY BOARD OF SUPERVISORS

Michael R. Ziemba, Lead Counsel

Tim R. Humphrey, Chairman

ATTEST

Marian Sheppard, Clerk of the Board

APPROVED AS TO FORM

Gila County Attorney's Office

Timothy Wright

Presiding Judge, Gila County Superior Court

Grading Matrix of Qualifications

Active Member of State Bar (in good standing)?

Qualified under Rule 6.8?

Years of experience (as attorney)?

Years of experience (handling capital cases)?

Number of Capital Cases (if known)

Cost for Services

Objective Comment (if any) - Judge Scales*

Objective Comment (if any) - Todd Zweig**

Objective Comment (if any) - Judge Duber***

Other

RATING:

<u>Raynak</u> Yes	<u>Ziemba</u> Yes	<u>Henager</u> Yes	<u>Washington</u> Yes
Yes	Yes	Yes	Yes
33	18	7	21
32	9	3	15
50	25+	UNK	UNK
\$145 / hour	\$145 / hour	\$105 / hour	\$145 / hour
Positive. Recommends.	Knows him. No opinion.	Doesn't know him.	Knows her. Not recommended.
Positive.	Positive.	Doesn't know him.	Doesn't know her.
By reputation. Positive.	By reputation. No opinion	Doesn't know him.	Doesn't know her.
<i>Past Bar discipline (multiple)</i>	<i>Partners w Henager First Chair</i>	<i>Partners w Ziemba Second Chair</i>	
2	1	1	3

* Judge Scales worked as a high-level felony attorney in Maricopa County for many years.

** Todd Zweig is the current Court Administrator in Pinal County and is familiar with many capital attorneys through his professional experience.

*** Judge Duber has been an attorney (and Judge) for over thirty years; he also handled a capital case for Maricopa and is familiar with the attorney community.

Michael R. Ziemba
1830 East Erie Street
Gilbert, AZ 85295

November 27, 2018

Dear Mr. Bearup,

I am writing this letter to express my interest in being appointed to represent the Defendant in *State v. Sterling Hunt* pursuant to our conversation on November 26, 2018.

I have been a practicing lawyer since October of 2000. My entire practice has been in the area of criminal defense. I began work at the Maricopa County Public Defender's Office ("MCPD") in October of 2000, doing mostly felonies in Group C in Mesa Arizona. While in trial division, I completed 23 jury trials as either a first or a second-chair (a spread sheet of cases with case numbers and results is available by request). In March of 2009, I was promoted to the Capital Unit at MCPD as a second-chair attorney. As a second-chair attorney, I worked on 10 capital or pre-capital First Degree Murder cases and 1 Second Degree Murder as the first-chair attorney. At the end of 2015, I was promoted to first-chair attorney and assigned my own team to run. Since that appointment, I have worked on 14 more First Degree Murder cases (as capital or pre-file capital cases), appointed as the first chair in 10 of them (a separate spread sheet detailing work on all First Degree Murder cases is also available upon request). I have also filed and obtained an order of appointment as lead counsel in capital cases pursuant to Rule 6.8(d) of the Arizona Rules of Criminal Procedure by the Arizona Supreme Court.

In September of 2018, the Maricopa County Capital Defense Review Committee has awarded me a contract as a lead counsel in capital cases in Maricopa County. Also, in September of 2018, I was appointed to the CJA Panel to accept federal criminal cases and I have been sworn in so that I can appear and represent clients in Federal District Court.

As compensation, I would request that Gila County pay the same contract rate that I will earn for capital cases that I work for the Office of Public Defense Services in Maricopa County; \$145 an hour for lead counsel and \$105 an hour for the second-chair attorney. I would intend to work with my current attorney partner, Thomas Henager, who is qualified under Rule 6.8 of the A.R.C.P. as co-counsel in capital cases. I would also request reimbursement for case-related travel expenses.

Please let me know if you need any additional information; a resume and references are available upon request.

Sincerely,

Michael Ziemba

Michael R. Ziemba
Attorney-at-Law

Thomas Henager
Arizona State Bar No. 28958
1334 West Sells Drive
Phoenix, Arizona 85013
thomas.henager@gmail.com
602.349.5991

Dear Mr. Bearup,

I am writing this letter to express my interest in being appointed as capital co-counsel to Michael Ziemba to represent the defendant in *State v. Sterling Hunt* as we discussed yesterday.

I have worked as a capital co-counsel since November, 2015, with the majority of my capital cases being worked alongside Mr. Ziemba. The Arizona Supreme Court and Maricopa County Superior Court agree that I meet the qualifications for capital co-counsel under Rule 6.8. I have also worked at the Maricopa County Office of the Public Defender handling felony cases from April, 2012, until now. Recently I was awarded a new contract to represent capital defendants in the role of co-counsel in Maricopa County.

My goal is ethically and effectively represent capital defendants statewide while maintaining the highest professional court standards, no matter which court I am in. My requested rate of pay as capital co-counsel is \$105 per hour, which is the standard rate for this role in Maricopa County.

I am available to answer any questions you have for me at your convenience. Thank you in advance for your consideration.

Best,

A handwritten signature in dark ink, appearing to be 'TH' followed by a long horizontal stroke.

Thomas Henager

Bearup, Jonathan

From: Dan Raynak <Dan@raynaklaw.com>
Sent: Monday, November 26, 2018 4:38 PM
To: Bearup, Jonathan
Subject: Capital Case

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon Mr. Bearup – please allow this letter to serve as verification of my interest in being appointed a capital case out of Gila County. I am death qualified and was assigned my first capital case around 1986. I have handled in excess of 50 capital cases, have tried quite a few, and have never had anyone on death row when I have been first chair. Should you need any additional information, please let me know. Please also let me know you got this email. Thank you.

Daniel R. Raynak
Attorney at Law
2601 N. 16th Street
Phoenix, Arizona 85006
Phone: (602) 992-7776
Fax : (602) 992-7646

This communication, including attachments, is confidential, may be subject to legal privileges, and is intended for the sole use of the addressee. Any use, duplication, disclosure or dissemination of this communication, other than by the addressee, is prohibited. If you have received this communication in error, please notify the sender immediately and delete or destroy this communication and all copies.

VICTORIA E. WASHINGTON

7301 N. 16TH ST., SUITE 102 ▪ PHOENIX, ARIZONA 85020 ▪ PHONE (602)403-9392

PROFILE

Solid background in negotiation, trial litigation, team work and crisis management. I have exceptional communication skills, practical managerial and instructional experience. I practice law with honor, civility, and integrity with an added emphasis on client services

EXPERIENCE

2014-Present, Masada Law, PLLC Phoenix, AZ; ***Owner/Operator***

- Solo Practitioner providing Criminal Defense
- Provide Criminal Advocacy on an As Needed Basis
- Felony and Misdemeanor Cases
- Capital Litigation Defense (Death Penalty)

2003 - 2014 Maricopa County Public Defender's Office Phoenix, AZ
Capital Litigation Attorney, Rule 6.8 Qualified Lead Attorney

- Extensive Capital Pre-Trial, Motion Practice and Appellate Special Action Writing
- Extremely proficient in Mitigation Investigation
- Extensive familiarity with Mental Health Issues and Cognitive Deficiencies
- Lead Counsel Capital Jury Trial Experience(s) (From Phase I through Phase III verdicts)
- Experienced working with Foreign Nationals and MCLAP (Mexican Capital Legal Assistance Project)
- Successful Plea Negotiator
- Current Capital PCR Co-Counsel
- Designed and Implemented Office Wide Capital Mitigation Training Seminar for Capital Mitigation Specialists

2003-2004 Maricopa County Public Defender's Office Phoenix, AZ
Supervisory Trial Counsel

- Supervised 11 trial attorneys
- Attorney Evaluation
- Attorney Training
- Attorney Discipline
- Voluntarily transitioned into the Capital Litigation Unit

1997-2003 Maricopa County Public Defender's Office Phoenix, AZ

Trial Attorney

- Litigated over 80 felony jury trials
- Responsible for Major Felony caseload consisting of Violent Crimes
- Promoted to Supervisor

1989-1993 Columbia Police Department Columbia, MO

Police Officer

- Routine Patrol Duties
- Assigned to specialized Gang and Drug Enforcement Squad
- Promoted to Detective in the Juvenile Unit

EDUCATION

1982- 1987 University of Missouri-Columbia Columbia, MO

B.A. Interdisciplinary Studies

1993-1996 Arizona State University Tempe, AZ

- J.D.

1997 Admitted to State Bar of Arizona

Bearup, Jonathan

From: Victoria Washington <MasadaLaw@outlook.com>
Sent: Tuesday, November 27, 2018 11:28 AM
To: Bearup, Jonathan
Subject: Capital Case
Attachments: Updated VEW Resume[2365].doc

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Bearup,

I am writing to express my interest in representing capital clients in Gila County.

I am Rule 6.8 Capital qualified. I have been working exclusively in the area of Capital Defense for the last 15 years. I have litigated 3 capital jury trials and currently have a capital contract with the Office of Public Defense Services.

I believe in working as quickly as possible to **keep** the death penalty off the table or if it is alleged, I work hard to give the prosecutors a reason to take death off the table and submit a plea offer. Please find attached to this email a current resume.

Sincerely,

Victoria E. Washington

Sent from [Mail](#) for Windows 10

Rule 6.8. Standards for Appointment and Performance of Counsel in Capital Cases

Arizona Revised Statutes Annotated Rules of Criminal Procedure

Rule 6.8. Standards for Appointment and Performance of Counsel in Capital Cases

(a) Generally. To be eligible for appointment in a capital case, an attorney must:

- (1) have been a member in good standing of the State Bar of Arizona for at least 5 years immediately before the appointment;
- (2) have practiced criminal litigation in Arizona state courts for 3 years immediately before the appointment;
- (3) have demonstrated the necessary proficiency and commitment that exemplifies the quality of representation appropriate to capital cases;
- (4) have successfully completed, within one year before the initial appointment, at least 6 hours of relevant training or educational programs in the area of capital defense; and successfully completed within one year before any later appointment, at least 12 hours of relevant training or educational programs in the area of criminal defense;
- (5) be familiar with and guided by the performance standards in the 2003 American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, and the 2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.

If an attorney is a member in good standing of the State Bar of Arizona, the attorney's practice in a federal jurisdiction or in another state may be considered for purposes of satisfying the requirements of (a)(1) and (a)(2).

(b) Trial Counsel.

(1) *Lead Counsel.* To be eligible for appointment as lead trial counsel, an attorney must meet the requirements of (a) and must have:

- (A) practiced criminal litigation in Arizona state courts for 5 years immediately before the appointment; and
- (B) been lead counsel in at least 9 felony jury trials that were tried to completion, and have been lead counsel or co-counsel in at least one capital jury trial.

(2) *Co-Counsel.* To be eligible for appointment as co-counsel, an attorney must be a member in good standing of the State Bar of Arizona and meet the requirements of (a)(4) and (a)(5).

(c) Appellate Counsel. To be eligible for appointment as appellate counsel, an attorney must meet the qualifications set forth in (a) and the attorney must:

- (1) within 3 years immediately before the appointment, have been lead counsel in an appeal in a case in which a death sentence was imposed (including petitions for review of post-conviction proceedings); and prior experience as lead counsel in the appeal of at least 3 felony convictions; or
- (2) prior experience as lead counsel in merits briefing in the appeal of at least 6 felony convictions, including two appeals from first- or second-degree murder convictions.

(d) Post-Conviction Counsel. To be eligible for appointment as post-conviction counsel, an attorney must meet the qualifications set forth in (a) and the attorney must:

(1) within 3 years immediately before the appointment, have been lead counsel in a trial in which a death sentence was sought or in an appeal or post-conviction proceeding in a case in which a death sentence was imposed, and prior experience as lead counsel in the appeal of at least 3 felony convictions and a trial or post-conviction proceeding with an evidentiary hearing; or

(2) have been lead counsel in the appeal of at least 6 felony convictions, including two appeals from first- or second-degree murder convictions, and lead counsel in at least two felony trials or post-conviction proceedings with evidentiary hearings.

(e) Exceptions. In exceptional circumstances, a court may appoint an attorney who does not meet the qualifications set forth in this rule if:

(1) the Supreme Court consents;

(2) the attorney meets the requirements set forth in (a)(3)--(5);

(3) the attorney's experience, stature, and record establishes that the attorney's ability significantly exceeds the standards set forth in this rule; and

(4) the attorney associates with a lawyer who meets the qualifications set forth in this rule and the associating attorney is appointed by the court for this purpose.

BRADLEY M. SOOS
Chief Deputy County Attorney
BAR ID#: 012897
714 S. Beeline Highway, Suite 202
Payson, AZ 85541
Telephone: (928) 474-4068
Facsimile: (928) 474-9066
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF GILA

Plaintiff,

vs.

Defendant.

) CR2018-00596
)
) STATE'S NOTICE OF INTENT TO SEEK
) DEATH PENALTY

The State of Arizona, by and through undersigned counsel, pursuant to Rule 15.1(i)(1), Arizona Rules of Criminal Procedure, provides notice to the defendant that the State intends to seek the death penalty on Counts One, Two and Three of the Indictment.

Submitted this 20th day of November, 2018.

BRADLEY D. BEAUCHAMP
GILA COUNTY ATTORNEY

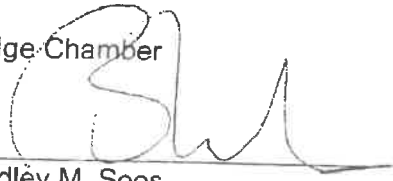
By:

Bradley M. Soos
Chief Deputy County Attorney

Copy delivered this 20th day of November, 2018 to:

Anna Ortiz
Defense Counsel

Judge Chamber

A handwritten signature in black ink, appearing to read 'BS', written over a horizontal line.

Bradley M. Soos
Chief Deputy County Attorney

BRADLEY D. BEAUCHAMP
GILA COUNTY ATTORNEY

BRADLEY M. SOOS
Chief Deputy County Attorney
BAR ID#: 012897
714 S. Beeline Highway, Suite 202
Payson, AZ 85541
Telephone: (928) 474-4068
Facsimile: (928) 474-9066
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF GILA

THE STATE OF ARIZONA,)	CR2018-00596
)	
Plaintiff,)	STATE'S NOTICE OF AGGRAVATING
)	CIRCUMSTANCES
vs.)	
)	
STERLING RANDALL HUNT,)	
)	
Defendant.)	
)	
)	
)	

The State of Arizona, by and through undersigned counsel, pursuant to Rule 15.1(i)(2), Arizona Rules of Criminal Procedure, provides notice to the defendant that the State intends to prove the following aggravating circumstances in the aggravation phase of the trial as to Counts One, Two and Three of the Indictment:

1. In the commission of the offense the defendant knowingly created a grave risk of death to another person or persons in addition to the persons murdered during the offense. A.R.S. §13-751.F3
2. The defendant committed the offense in an especially heinous, cruel or depraved manner. A.R.S. §13-751.F6
3. The defendant has been convicted of one or more other homicides, as defined in §13-1101, that were committed during the commission of the offense. A.R.S. §13-751.F8

4. The offense was committed in a cold, calculated manner without
pretense of moral or legal justification. A.R.S. §13-751.F13

Dated this 20th day of November, 2018.

BRADLEY D. BEAUCHAMP
GILA COUNTY ATTORNEY

By: 

Bradley M. Soos
Chief Deputy County Attorney

Copy delivered this 20th
day of November 2018 to:

Anna Ortiz
Defense Counsel

Judge Chamber


Bradley M. Soos