

# Report of Investigation

**Allegation that former employee Rachael C. Gagliano, Administrative Support Specialist, accepted monetary compensation from one or more forensic psychiatrists employed by the Coroner's Office in exchange for handling their after-hours and weekend mental health duty calls, known as Orders of Protective Custody**

Final Report • November 26, 2019



**FINAL**  
**REPORT OF INVESTIGATION**

**19-0008-I**

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**TITLE:** Allegation that former employee Rachael C. Gagliano, Administrative Support Specialist, accepted monetary compensation from one or more forensic psychiatrists employed by the Coroner's Office in exchange for handling their after-hours and weekend mental health related duty calls, known as Orders of Protective Custody

**LOCATION OF OCCURRENCE:** City of New Orleans, Orleans Parish Louisiana

**DATE OF OCCURRENCE:** On or about January, 2018 through January, 2019

**INVESTIGATED BY:** Investigator Terence Barrett

**VIOLATIONS:**

1. Terms of the Cooperative Endeavor Agreement for Professional Forensic Psychiatry Services
2. R.S. 42: 1111C(1)(a), Receipt of a thing of economic value for the performance of a service substantially related to public duties

**ACTION TAKEN:** Investigative findings reported to the Orleans Parish Coroner's Office

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**BASIS FOR INVESTIGATION**

On January 14, 2019, Brian Lapeyrolerie, Chief Investigator for the Orleans Parish Coroner's Office, contacted the City of New Orleans Office of Inspector General concerning allegations that former employee Rachael C. Gagliano, Administrative Support Specialist accepted monetary compensation from one or more contract forensic psychiatrists employed by the Coroner's Office. Specifically, forensic psychiatrists were paying Gagliano to handle their after-hours and weekend mental health related duty calls concerning Orders of Protective Custody (OPC).<sup>1</sup>

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<sup>1</sup> Pursuant to LA R.S. 28:53.2, the Coroner's Office may issue an Order for Protective Custody (OPC) upon the request of a credible person who reasonably asserts that a person is a danger to themselves or others or is gravely disabled. This impairment must be a result of mental illness or substance abuse and the person is unwilling to seek treatment on their own.

## **BACKGROUND**

The OPC is pre-signed by the Coroner and given to those Coroner Office employees who are authorized to complete the OPC. The forensic psychiatrists employed on contract by the Coroner's Office can also complete the OPC. The OPC authorizes the New Orleans Police Department to transport the subject to a treatment facility for a mental health evaluation by a medical professional. Once at the treatment facility, the subject will be examined by a medical professional who will determine if the subject is a danger to themselves, a danger to others, or is gravely disabled as a result of mental illness or substance abuse, and is unwilling to seek a voluntary admission. If it is determined that the person needs treatment, a physician will execute a Physicians Emergency Certificate (PEC). This detains the person, against their will, for up to 72 hours. If a PEC is issued and the subject remains detained, the law requires a second examination/evaluation to be conducted by the Coroner's Office.

In this situation, the facility will contact the Coroner's Office for a second opinion/evaluation in order to keep the patient at the facility for up to 15 additional days. A forensic psychiatrist, contracted by the Coroner's Office, will respond to the facility and examine the subject. If it is determined that the subject is still dangerous or disabled, the forensic psychiatrists will issue a Coroner's Emergency Certificate (CEC).

## **EXTENT AND RESULTS OF INVESTIGATION**

Forensic psychiatrists, up until recently, were also on the after-hours and weekend duty call list of persons to be contacted for mental health evaluations related to OPCs. The Coroner's Office employs an answering service under contract to handle after-hours and weekend duty calls. The answering service contacts the on-call coroner's personnel or forensic psychiatrist, designated to respond to after-hours and weekend duty calls on that particular date.

However, there have been instances where the answering service was unable to contact the on-call contract psychiatrist for mental health evaluations related to OPCs. It was reported that during one weekend, sometime in January 2019, the answering service was unable to reach the on-call contract psychiatrist, Dr. Garrick Klaybor, to complete a mental health evaluation related to an OPC. The answering service was allegedly unable to reach Dr. Klaybor the entire weekend. The Coroner's Office Chief Investigator, Brian Lapeyrolerie, stated that when he became aware of this situation he removed the forensic psychiatrists from the after-hours and weekend duty call list.

Rachael Gagliano was employed as an Administrative Support Specialist by the Orleans Parish Coroner's Office from July 3, 2006, until her termination on January 6, 2019.

The OIG interviewed several Coroner's Office employees concerning the allegation that Rachael C. Gagliano accepted monetary compensation from one or more forensic psychiatrists employed by the Coroner's Office in exchange for handling their after-hours and weekend duty calls for involuntary mental health commitments, or OPCs. Their identities will remain confidential because they have not consented to have their identities disclosed.<sup>2</sup>

Employees reported that, although she was just a clerk, Rachael Gagliano managed mental health services for the Coroner's Office. She was assigned a laptop computer and a car. On the Coroner's Office website under Coroner's Notes, Mental Health & Suicide, Rachael Gagliano's title was listed as Mental Health Director. According to employees, it was well known in the Coroner's Office that Rachael Gagliano worked weekend duty calls at the request of contract psychiatrists. It was revealed that on the weekends, when the contract psychiatrists were supposed to be on call, Rachael Gagliano would sometimes answer their duty calls. Rachael Gagliano talked about it with other employees. Mrs. Gagliano bragged that, "They just love me so much." She told other employees that she received \$100 for working a duty call. On the day she was terminated, she allegedly told one employee that although she had just been fired, she had already been paid \$100 to work a shift for one of the psychiatrists. None of the employees interviewed knew the identity of the psychiatrist Rachael Gagliano was talking about nor did they ever see any money change hands.

The employees who were interviewed stated that they were unaware of any standard operating procedure or regulation for the office to follow as it pertains to after-hours and weekend mental health commitment protocols.

Dr. Garrick L. Klaybor, a licensed physician, entered into a Cooperative Endeavor Agreement with the Coroner's Office for Professional Forensic Psychiatry Services on September 3, 2018. Dr. Klaybor did not renew his contract with the Coroner's Office and is no longer employed by the Coroner's Office.

On October 30, 2019, Dr. Sarah DeLand, Chief Forensic Psychiatrist, Orleans Parish Coroner's Office, was interviewed at the City of New Orleans Office of Inspector General, 525 St Charles Avenue, New Orleans, LA 70130 concerning Coroner's Office employees who were designated to respond to after-hour and weekend duty calls from persons seeking an OPC.

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<sup>2</sup> Pursuant to City of New Orleans Code of Ordinances Chapter 2, Article XIII, Section 2-1120(21), The Office of Inspector General may receive and investigate allegations or information from any public employee concerning the possible existence of any activity constituting fraud, waste, abuse, and illegal acts. The Office of Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the written consent of said employee, unless the Inspector General determines such disclosure is necessary and unavoidable during the course of the investigation. In such event the employee shall be notified in writing at least seven days prior to such disclosure.

Dr. DeLand recalled that Rachel Gagliano began to approach forensic psychiatrists and offer to work their weekend duty calls in either late 2017 or early 2018.

She advised that Mrs. Gagliano started out by just trading weekends but eventually it evolved into her soliciting the psychiatrists to pay her \$200 to work their weekend duty calls. Dr. DeLand explained that just about every forensic psychiatrist at the Coroner's Office, including herself, was accepting Mrs. Gagliano's offer to work for them because none of the psychiatrists wanted to work the weekend duty calls.

Dr. DeLand recalled that she became uncomfortable when in late 2018 Rachel Gagliano told her, "I hope you're not telling anyone about this." Dr. DeLand stated that up to that point, she did not think they were doing anything wrong. She stated that she became concerned and contacted Brian Lapeyrolerie, Chief Investigator and explained everything to him. Dr. DeLand advised that neither she nor the other forensic psychiatrists have taken any ethics training while working for the Coroner's Office.

## **CONCLUSIONS**

Based upon the information obtained from employee interviews and a review of the Cooperative Endeavor Agreement for Professional Forensic Psychiatry Services with Dr. Garrick L. Klaybor and Dr. Sarah DeLand, the OIG has determined that the forensic psychiatrist(s) who failed to respond to after-hour and weekend telephone calls for mental health evaluations related to OPCs were not fulfilling their contractual agreement with the Coroner's Office.

In particular, page one (1) of the Cooperative Endeavor Agreement for Professional Forensic Psychiatry Services with Dr. Garrick L. Klaybor, **attached as Exhibit 1**, contains the following terms and stipulations:

1. As the Coroner's representative, the psychiatrist will administer examinations and issue Orders for Protective Custody and Coroner's Emergency Certificates in accordance with Louisiana law.
2. The psychiatrist agrees to answer in a timely manner ALL pages and telephone calls from the personnel of the Coroner's Office and agrees to advise staff with decisions regarding individuals in question.

In addition, the Nonassignability clause on page two (2) contains the following restriction:

No contractor shall assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the Coroner.

The above-described terms and stipulations also appear in the Cooperative Endeavor Agreement for Professional Forensic Psychiatry Services with Dr. Sarah Deland, attached as **Exhibit 2**.

The OIG also found that the Coroner's Office "Policies and Procedures Manual" does not contain policies pertaining to after-hours and weekend duty calls for involuntary mental health commitments, or OPCs.

The OIG has also determined that forensic psychiatrists employed by the Coroner's Office on contract must complete a one-hour mandatory training in the Louisiana Code of Governmental Ethics each year because they are public employees under the provisions of R.S. 42:1102(18):

(18)(a) Public employee means anyone, whether compensated or not who is:

(iii) Engaged in the performance of a governmental function.

(iv) Under the supervision or authority of an elected official or another employee of the governmental entity.

A recent Louisiana State Board of Ethics advisory opinion, Ethics Board Docket No. 2018-1417, concerning who is a "public employee" is attached as **Exhibit 3**.

The OIG has also determined that former employee Rachael C. Gagliano may have violated La. R.S. 42: 1111C(1)(a), Receipt of a thing of economic value for the performance of a service substantially related to public duties by accepting monetary compensation from one or more forensic psychiatrists employed by the Coroner's Office. According La. R.S. 1111C(1)(a) - Payments for nonpublic service,

(1) No public servant shall receive any thing of economic value for any service, the subject matter of which:

(a) Is devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated

## **RECOMMENDATIONS**

The OIG recommends that the Coroner’s Office establish written procedures and protocols to be used by full time Coroner’s Office employees and forensic psychiatrists on contract in responding to all after-hours, and weekend mental health related duty calls.

It is also recommended that the Coroner’s Office review the wording of any Cooperative Endeavor Agreement for Professional Forensic Psychiatry Services and consider amending the Scope of Services to require a written explanation from the psychiatrists for those occasions in which they failed to “answer in a timely manner ALL pages and telephone calls from the personnel of the Coroner’s Office.”

The OIG also recommends that the Coroner’s Office instruct all contract employees to fulfill the yearly requirement that they complete a one-hour mandatory training in the Louisiana Code of Governmental Ethics. The training consists of three parts: definitions, prohibitions and exceptions and general rules of the Code of Ethics. Employees must complete all three parts. The training can be accessed at <https://eap.ethics.la.gov/EthicsTraining/login.aspx>. New users must create a username and password. Should employees have questions relative to their username, password or other website concerns they may contact the Board of Ethics Administration IT Department at (800) 842-6630.

This information is being provided to you for any action you deem necessary. Please respond within 30 days as to what action you decide to take concerning these matters. Please contact Investigator Terence Barrett at (504) 681-3204 or via email at [tbarrett@nolaoig.gov](mailto:tbarrett@nolaoig.gov) if you have any question regarding this matter. I can be contacted at (504) 681-3212 or via email at [dharper@nolaoig.gov](mailto:dharper@nolaoig.gov). Thank you for your assistance in this matter

## **EXHIBITS ATTACHED**

Exhibit No.	Description
Exhibit 1	Cooperative Endeavor Agreement for Professional Forensic Psychiatry Services with Dr. Garrick L. Klaybor (3 pages)
Exhibit 2	Cooperative Endeavor Agreement for Professional Forensic Psychiatry Services with Dr. Sarah Deland (3 pages)
Exhibit 3	Louisiana State Board of Ethics advisory opinion, Ethics Board Docket No. 2018-1417 (2 pages)

**STATE OF LOUISIANA**

**PARISH OF ORLEANS**

**ORLEANS PARISH CORONER'S OFFICE**

**COOPERATIVE ENDEAVOR AGREEMENT-PROFESSIONAL SERVICES**

THIS COOPERATIVE ENDEAVOR, made and entered into this 3rd day of September 2018 by and between Orleans Parish Coroner's Office, hereinafter referred to as "Coroner," and Dr. Garrick Klaybor hereinafter referred to as the "Contractor."

WITNESSETH:

WHEREAS, Article VII, Section 14(c) of the Constitution of the State of Louisiana provides that "for a public purpose, the state and its political subdivisions ... may engage in cooperative endeavors with each other ...; "and

WHEREAS, the agency desires to cooperate with the Contracting Party in the implementation of the Project as hereinafter provided;

WHEREAS, the public purpose is described as:

Professional Forensic Psychiatry Services

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Scope of Services**

Contractor hereby agrees to furnish the following services:

1. As the Coroner's representative, the psychiatrist will administer examinations and issue Orders for Protective Custody and Coroner's Emergency Certificates in accordance with Louisiana law.
2. The psychiatrist agrees to answer in a timely manner ALL pages and telephone calls from the personnel of the Coroner's Office and agrees to advise staff with decisions regarding individuals in question.
3. The psychiatrist will also visit assigned hospitals for evaluations and administer aforementioned certificates in compliance with LA RS 28:53, checking with the office daily to obtain updated information on recent committals.
4. The psychiatrist will at all times act in the most professional interests of the Coroner and the New Orleans Forensic Center.
5. The psychiatrist's professional services may also include court testimony when dictated on a case by case basis.
6. All requests for vacation leave will submitted to the office 30 days prior to sought leave, with the exception of emergencies.

### **Payment Terms**

In consideration of the services described above, Coroner hereby agrees to pay the Contractor a maximum fee of \$35,000 per year.

Payment will be made only on approval of Coroner or his designee and upon the submission of a satisfactory invoice.

If progress and/or completion to the reasonable satisfaction of the agency is obtained, payments are scheduled as follows:

Payment to be provided monthly in the sum of \$2,916.00 with checks made payable to Dr. Garrick Klaybor

### **Taxes**

Contractor hereby agrees that the responsibility for payment of taxes from the funds thus received under this Contract and/or legislative appropriation shall be contractor's obligation as an independent contractor.

### **Termination Clause**

The Coroner may terminate this Contract for cause based upon the failure of the Contractor to comply with the terms and/or conditions of the Contract; provided that the Coroner shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor will not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith and thereafter proceeded diligently to complete such correction, then the Coroner may, at his option, place the Contractor in default and the Contract shall terminate on the date specified in such notice. The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the Coroner to comply with the terms and conditions of this contract; provided that the Contractor shall give the Coroner written notice specifying the Coroner's failure and a reasonable opportunity for the Coroner to cure the defect.

### **Termination for Convenience**

The Coroner may terminate the Contract at any time by giving thirty (30) days written notice to the Contractor. The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

### **Ownership**

All records, reports, documents and other material delivered or transmitted to Contractor by Coroner shall remain the property of Coroner, and shall be returned by Contractor to Coroner, at Contractor's expense, at termination or expiration of this contract. All records, reports, documents, or other material related to this contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of Coroner, and shall, upon request, be returned by Contractor to State, at Contractors expense, at termination or expiration of this contract.

### **Nonassignability**

No contractor shall assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the Coroner. This provision shall not be construed to prohibit the contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent.

**Auditors Clause**

It is hereby agreed that the Legislative Auditor of the State of Louisiana, New Orleans Inspector General, Coroner, or Coroner's designated auditors shall have the option of auditing all accounts of contractor which relate to this contract.

**Term of Contract**

This contract shall begin on September 3, 2018 and shall terminate on December 31, 2018.

**Fiscal Funding**

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the City of New Orleans. If the City of New Orleans fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the City of New Orleans or by any means to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first month for which funds are not appropriated.

**Discrimination Clause**

The contractor agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

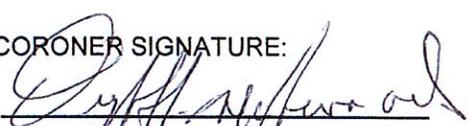
Contractor agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, disabilities.

Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

THUS DONE AND SIGNED AT New Orleans, Louisiana

IN WITNESS WHEREOF, the parties have executed this Agreement as of this day of (enter date).

WITNESSES SIGNATURES:  
  
\_\_\_\_\_

CORONER SIGNATURE:  
By:   
Title: CORONER

WITNESSES SIGNATURES:  
  
CHIEF INVESTIGATOR

CONTRACTOR SIGNATURE:  
By:   
Title: MD

**STATE OF LOUISIANA**

**PARISH OF ORLEANS**

**ORLEANS PARISH CORONER'S OFFICE**

**COOPERATIVE ENDEAVOR AGREEMENT-PROFESSIONAL SERVICES**

THIS COOPERATIVE ENDEAVOR, made and entered into this 1st day of January 2019 by and between Orleans Parish Coroner's Office, hereinafter referred to as "Coroner," and Dr. Sarah Deland hereinafter referred to as the "Contractor."

WITNESSETH:

WHEREAS, Article VII, Section 14(c) of the Constitution of the State of Louisiana provides that "for a public purpose, the state and its political subdivisions ... may engage in cooperative endeavors with each other ...; "and

WHEREAS, the agency desires to cooperate with the Contracting Party in the implementation of the Project as hereinafter provided;

WHEREAS, the public purpose is described as:

Professional Forensic Psychiatry Services

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Scope of Services**

Contractor hereby agrees to furnish the following services:

1. As the Coroner's representative, the psychiatrist will administer examinations and issue Orders for Protective Custody and Coroner's Emergency Certificates in accordance with Louisiana law.
2. The psychiatrist agrees to answer in a timely manner ALL pages and telephone calls from the personnel of the Coroner's Office and agrees to advise staff with decisions regarding individuals in question.
3. The psychiatrist will also visit assigned hospitals for evaluations and administer aforementioned certificates in compliance with LA RS 28:53, checking with the office daily to obtain updated information on recent committals.
4. The psychiatrist will at all times act in the most professional interests of the Coroner and the New Orleans Forensic Center.
5. The psychiatrist's professional services may also include court testimony when dictated on a case by case basis.
6. All requests for vacation leave will submitted to the office 30 days prior to sought leave, with the exception of emergencies.

## **Payment Terms**

In consideration of the services described above, Coroner hereby agrees to pay the Contractor a maximum fee of \$35,000 per year.

Payment will be made only on approval of Coroner or his designee and upon the submission of a satisfactory invoice.

If progress and/or completion to the reasonable satisfaction of the agency is obtained, payments are scheduled as follows:

Payment to be provided monthly in the sum of \$2,916.00 with checks made payable to Dr. Sarah Deland.

## **Taxes**

Contractor hereby agrees that the responsibility for payment of taxes from the funds thus received under this Contract and/or legislative appropriation shall be contractor's obligation as an independent contractor.

## **Termination Clause**

The Coroner may terminate this Contract for cause based upon the failure of the Contractor to comply with the terms and/or conditions of the Contract; provided that the Coroner shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor will not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith and thereafter proceeded diligently to complete such correction, then the Coroner may, at his option, place the Contractor in default and the Contract shall terminate on the date specified in such notice. The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the Coroner to comply with the terms and conditions of this contract; provided that the Contractor shall give the Coroner written notice specifying the Coroner's failure and a reasonable opportunity for the Coroner to cure the defect.

## **Termination for Convenience**

The Coroner may terminate the Contract at any time by giving thirty(30) days written notice to the Contractor. The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

## **Ownership**

All records, reports, documents and other material delivered or transmitted to Contractor by Coroner shall remain the property of Coroner, and shall be returned by Contractor to Coroner, at Contractor's expense, at termination or expiration of this contract. All records, reports, documents, or other material related to this contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of Coroner, and shall, upon request, be returned by Contractor to State, at Contractors expense, at termination or expiration of this contract.

## **Nonassignability**

No contractor shall assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the Coroner. This provision shall not be construed to prohibit the contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent.

## **Auditors Clause**

It is hereby agreed that the Legislative Auditor of the State of Louisiana, New Orleans Inspector General, Coroner, or Coroner's designated auditors shall have the option of auditing all accounts of contractor which relate to this contract.

**Term of Contract**

This contract shall begin on January 1, 2019 and shall terminate on December 31, 2019.

**Fiscal Funding**

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the City of New Orleans. If the City of New Orleans fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the City of New Orleans or by any means to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first month for which funds are not appropriated.

**Discrimination Clause**

The contractor agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Contractor agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, disabilities.

Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

THUS DONE AND SIGNED AT New Orleans, Louisiana

IN WITNESS WHEREOF, the parties have executed this Agreement as of this day of (enter date).

WITNESSES SIGNATURES:

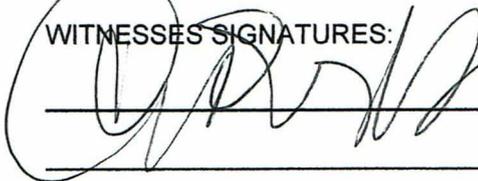
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\_\_\_\_\_

CORONER SIGNATURE:

By: \_\_\_\_\_  
Title: \_\_\_\_\_



WITNESSES SIGNATURES:



CONTRACTOR SIGNATURE:

By: \_\_\_\_\_  
Title: \_\_\_\_\_





STATE OF LOUISIANA  
DEPARTMENT OF STATE CIVIL SERVICE  
**LOUISIANA BOARD OF ETHICS**

P. O. BOX 4368  
BATON ROUGE, LA 70821  
(225) 219-5600  
FAX: (225) 381-7271  
1-800-842-6630  
www.ethics.la.gov

December 17, 2018

Barbara Baier  
301 Main Street, Suite 700  
Baton Rouge, Louisiana 70825

**Re: Ethics Board Docket No. 2018-1417**

Dear Ms. Baier:

The Louisiana Board of Ethics, at its December 14, 2018 Board meeting, considered your request for an advisory opinion regarding whether an attorney working as an independent contractor with a Public Defender's Office in any given judicial district court throughout Louisiana is required to complete a minimum of one hour of ethics training annually pursuant to R.S. 42:1170A(3)(a)(I). Each public defender's office may contract with local attorneys to represent indigent defendants on a full-time or part-time basis. These contract attorneys are independent contractors and generally have a private practice.

La. Const. Art. 1 § 13 provides that when any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self-incrimination, his right to the assistance of counsel and, **if indigent, his right to court appointed counsel**. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

La. R.S. 15:141 *et seq.* created a Public Defender Board which is authorized to regulate public defender services. It defines "public defender" or "indigent defender" as an attorney employed by or under contract with the board, the district public defender, regional director, where applicable, or nonprofit organization contracting with the board, district public defender, regional director, where applicable, or the board to provide legal counsel to an indigent person in a criminal proceeding. This right to counsel attaches under the United States and Louisiana Constitutions.

La. R.S. 15:146A(2) specifically states relative to the Public Defender Board that "the board and its agents and employees shall be subject to the Code of Governmental Ethics, the law relative to public records and open meetings, the law relative to public bid and procurement, and all other provisions of law applicable to state agencies.

La. R.S. 42:1170A(3)(a)(I) provides that commencing on January 1, 2012, each public servant who was not required to complete education and training pursuant to Paragraph (1) or (2) of this Subsection shall receive a minimum of one hour of education and training on the Code of Governmental Ethics during each year of his public employment or term of office, as the case may be.

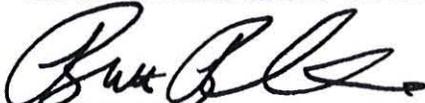
La. R.S. 42:1102(18)(a)(iii) provides that a "public employee" means anyone, whether compensated or not who is engaged in the performance of a governmental function.

The Board concluded, and instructed me to inform you, that La. R.S. 42:1170A(3)(a)(I) applies to contract attorneys, whether part-time or full-time, who serve as public defenders or indigent defenders for people considered indigent since they are providing a governmental function. However, La. R.S. 42:1170A(5) would not require a person who is a former public servant and whose public service in a calendar year lasted less than ninety days to complete the required ethics training.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts presented may result in a different application of the provisions of the Code of Ethics. The Board issues no opinion as to past conduct or laws other than Code of Governmental Ethics. If you have any questions, please contact me at (225) 219-5600 or (800) 842-6630.

Sincerely,

**LOUISIANA BOARD OF ETHICS**

A handwritten signature in black ink, appearing to read "Brett Robinson", written in a cursive style.

Brett Robinson  
For the Board