

PROFESSIONAL SERVICE AGREEMENT
JAMES NEWKIRK

This Professional Service Agreement (Agreement) is made and entered into by and between the Board of County Commissioners of Oklahoma County (Board) and Gary J. James, Attorney at Law, of Gary J. James & Associates, P.C., P.O. Box 2443, Oklahoma City, OK 73102 (Conflict Counsel).

I. PURPOSE OF REPRESENTATION

Board has retained Conflict Counsel to provide legal representation to/for Detention Officer James Newkirk in the case of *Stacy Willis v James Newkirk in his individual capacity et. al.*, Case number CIV-18-323-D, pending in the United States District Court for the Western District of Oklahoma.

II. CONFLICT COUNSEL REPORTS TO BOARD

Conflict Counsel agrees to keep the Board informed of the status of the matters covered by this Agreement by:

- a. Communicating orally with the Board or its' designated representative as needed and as requested by the Board;
- b. Providing timely copies of all pleadings, discovery and correspondence (unless correspondence is protected by attorney-client privilege as asserted by the Newkirk) to the Board; and
- c. Submitting to the Board a detailed monthly statement identifying by separate entries:
 1. Each date work was performed under the Agreement;
 2. The amount of time billed for the work;
 3. The attorney or paralegal billing for the entry;
 4. The hourly rate of the attorney or paralegal billing the entry;
 5. A description of the work performed; and
 6. The dollar amount billed for the entry.
- d. Monthly statements shall bill in arrears and be submitted on the 1st day of each month.
- e. Conflict Counsel bills in 1/10th of an hour increments.

III. CONFLICTS OF INTEREST

Conflict Counsel must conduct a conflicts check covering potential and actual conflicts of interest before representing Newkirk or other defendants. Conflict Counsel must promptly notify the Board in writing of all actual or potential conflicts. Conflict Counsel must disclose past or present representation of a client associated directly, indirectly, actually, or potentially with the subject of the representation. No waiver of an actual or potential conflict will be valid unless in writing and executed by Newkirk. Conflict Counsel must all obtain any necessary third party waivers in writing prior to representing Newkirk. Conflict Counsel will monitor whether any actual or potential conflicts arise in connection with Conflict Counsel's proposed representation of other defendants while representing Newkirk and shall promptly notify the Board in writing of any such conflicts.

IV. TIMELY ACTION BY CONFLICT COUNSEL

By executing this Agreement, Conflict Counsel agrees to act in a timely manner in conducting work under this Agreement.

V. FEES AND EXPENSES: OUTSIDE COUNSEL OBLIGATIONS

The Board agrees to pay Outside Counsel an hourly fee which will not exceed the following hourly rates:

Attorney (Gary J. James):	\$215.00 per hour maximum
Associate Attorneys	\$185.00 per hour maximum
Paralegals	\$90.00 per hour maximum.

The Board agrees to pay reasonable costs and expenses incurred in the defense of Newkirk as follows:

- Necessary Copying Costs,
- Out-of-Pocket Long Distance Telephone Charges,
- Out-of-Pocket Automated Research Costs,
- Out-of-Pocket Postage Charges,
- Courier and Messenger Services,
- Mileage and Parking,
- Reasonable Travel Expenses if Travel is Required,
- Other items as necessary if the Board approves prior to expenditure.

VI. CONDITION OF THE COUNTY'S PAYMENT

The firm estimates the projected fees and expenses with regard to this Lawsuit for the Fiscal Year ending June 30, 2025, shall not exceed \$50,000.00. **The Firm has asked the Board to encumber the amount of Fifty Thousand and No/100 Dollars (\$50,000.00), against which the Firm will file claims for any fees, costs or expenses as they become due and payable. This is an estimate of the expected charges on this case up until the end of the current Fiscal Year. Any projection provided will constitute a good faith estimate to assist the County in projecting future costs and, and unless otherwise specifically agreed, the projection will not constitute a guaranteed fee for the matter. If, at any time, the Firm determines that the Firms work or expenses to be advanced could exceed the estimate, the Firm agrees to immediately advise each member of the Board in writing to allow the Board to encumber additional public funds. THE FIRM ACKNOWLEDGES THAT THE BOARD CANNOT, BY LAW, PAY THE FIRM ANY AMOUNT IN EXCESS OF THE AMOUNT ENCUMBERED BY THE BOARD. FURTHER, IF THE FIRM PERFORMS WORK OR ADVANCES EXPENSES THAT CAUSE THE ENCUMBERED AMOUNT TO BE EXCEEDED, SUCH EXCESS CANNOT AND WILL NOT BE PAID BY THE BOARD, BUT WILL REMAIN THE RESPONSIBILITY AND LIABILITY OF THE FIRM.**

VII. SETTLEMENT

Settlement possibilities should be identified and considered early and at subsequent stages in the proceedings. Conflict Counsel must promptly report settlement overtures. Cases may be settled only with the prior approval of the Board and appropriate officials. Conflict Counsel understands the Board is prohibited from paying any amounts for exemplary or punitive damages on behalf of Newkirk and is further prohibited from paying any amount in excess of the limits provided in 51 O.S. §§154 and 162.

VII. MALPRACTICE INSURANCE

Conflict Counsel shall maintain professional liability insurance acceptable to the Board with appropriate and adequate coverage. Conflict Counsel shall submit a certificate from its insurance carrier that provides that written notice will be provided to the Board before cancellation of the insurance is effective. Conflict Counsel shall promptly advise the Board if the insurance is cancelled or lapses.

VIII. RIGHT TO AUDIT

The Board shall have the right by use of internal or external resources to audit Conflict Counsel's time records and billings, upon reasonable notice provided

in writing to Conflict Counsel. Conflict Counsel will cooperate with an audit request by providing reasonable access to appropriate records and personnel necessary to conduct an audit.

IX. RETENTION OF CONFLICT COUNSEL DUE TO CONFLICT OF INTEREST WITH THE REPRESENTATION WITH JAMES NEWKIRK

Conflict Counsel is being retained because of Conflict Counsel's experience and expertise in the area of civil rights litigation, as well as a potential or apparent conflict that precludes the Board's Counsel from representing Newkirk, other officers involved and/or the Board at the same time. The goal of the Board is to meet all ethical and professional standards applicable to governmental entities and to meet mandates of the Board's responsibilities to employees working within the course and scope of their employment with the County. In appropriate instances, screening measures will be created and used by the Board, allowing a representative of the Board to oversee Conflict Counsel in accordance with policies and procedures and restricting the flow of and access to information regarding the representation between the Board and other attorneys representing the Board and any other county officials/employees in this matter. The Board and Conflict Counsel will in such instances discuss appropriate procedures to accomplish ethical representation of all clients and will comply with all Oklahoma Rules of Professional Conduct. Conflict Counsel will be required in such circumstances to identify all concerns with such process immediately and prior to commencing representation.

X. ACCEPTANCE

This Agreement constitutes the entire agreement between the Board and Conflict Counsel in the representation of James Newkirk and supersedes all prior agreements, written or oral, relating to the subject matter. Any change must be made or confirmed in writing, duly executed by both parties.

XI. ASSIGNABILITY OF AGREEMENT

This Agreement is personal in nature and may not be assigned by Conflict Counsel.

XII. TERMINATION OF FUNDING FOR THE DEFENSE OF JAMES NEWKIRK

Should the Board withdraw, for whatever reason, the coverage/funding for Newkirk's legal representation, the Board agrees all legal fees and costs incurred under this Agreement by Conflict Counsel will be covered and paid and further

funding will be authorized and paid until Conflict Counsel has obtained permission by the Court to withdraw as attorney of record for James Newkirk.

XIII. SEVERABILITY

In the event that any one or more of the provisions of this Agreement executed pursuant hereto shall for any reason be held to be invalid, illegal, or unenforceable, the remaining provisions shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the intention of the parties, underlying the invalid, illegal or unenforceable provision.

XIV. LENGTH OF AGREEMENT


While this Agreement encompasses representation until the conclusion of the matter, its terms are for a fiscal year agreement. This Agreement encompasses the fiscal year beginning July 1, 2024 and ending June 30, 2025. Nothing herein shall restrict future continuing agreements for representation as conflict counsel for James Newkirk.

IN WITNESS WHEREOF, this Agreement has been executed in multiple copies on, and is effective as of, the date set forth below.

DATED this ___ day of _____, 2024.

SIGNATURES APPEAR ON NEXT PAGE

GARY J. JAMES & ASSOCIATES, P.C.

By: 
GARY J. JAMES

THE BOARD OF COUNTY
COMMISSIONERS OF OKLAHOMA
COUNTY, OKLAHOMA

By: _____
CHAIRMAN


By: _____
MEMBER

By: _____
MEMBER

ATTEST:

COUNTY CLERK

Approved as to form and legality on this 2nd day of May, 2024.


ASSISTANT DISTRICT ATTORNEY

County Request No. 245

REQUEST FOR LEGAL SERVICES

This form is used to provide legal opinions and contract approval by the District Attorney's Office. Only that advice that is related to a pending or potential claim against the County or its officers and employees is protected by the attorney-client privilege. Opinions that are privileged should not be disclosed to anyone or the privilege may be waived.

All legal opinions and approvals rendered are based only on the documentation and information stated below or attached to this form and, thus, it is important that all relevant facts and information be provided at the time of review. Please advise the District Attorney's Office of new or additional information, as it may cause the opinion to change. In all cases, the opinions of the District Attorney's Office are not binding on the County, its officers or employees and may be followed or disregarded in the discretion of the elected official.

Date of Request: 05/02/2024 Department: District 2

State the nature of the legal request: _____

Please review as to form and legality - Professional Serve Agreement with Gary J. James & Associates - James Newkirk

Requested by Jessica Clayton, Chief Deputy District 2

RECEIVED

MAY 02 2024

**CIVIL DIVISION
DISTRICT ATTORNEY**

County Officer or Department Director

Reply of District Attorney's Office: _____

Reviewed

Date of Reply: 5/2/24

Ann Ely
Assistant District Attorney

Bill To OKLAHOMA COUNTY COMMISSIONERS 320 ROBERT S KERR ROOM 101 OKLAHOMA CITY, OK 73102	Requisition 12500171-00 FY 2025 Acct No: UNDEFINED ACCOUNT. Review: Buyer: 6065bbkeltho Status: Created
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Vendor GARY J JAMES & ASSOCIATES PC PO BOX 2443 OKLAHOMA CITY, OK 73101-2443	Ship To OKLAHOMA COUNTY COMMISSIONERS 320 ROBERT S KERR ROOM 101 OKLAHOMA CITY, OK 73102
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Deliver To
 OKLAHOMA COUNTY COMMISSIONERS
 320 ROBERT S KERR
 ROOM 101
 OKLAHOMA CITY, OK 73102

Date Ordered	Vendor Number	Date Required	Ship Via	Terms	Department
05/21/24	003533				General Government

LN Description / Account	Qty	Unit Price	Net Price
001 willis vs Newkirk CIV-18-323-D 2023 - 2024 Agreement	50000.00 EACH	1.00000	50000.00

Ship To
 OKLAHOMA COUNTY COMMISSIONERS
 320 ROBERT S KERR
 ROOM 101
 OKLAHOMA CITY, OK 73102

Deliver To
 OKLAHOMA COUNTY COMMISSIONERS
 320 ROBERT S KERR
 ROOM 101
 OKLAHOMA CITY, OK 73102

[Requisition Link](#)

Requisition Total 50000.00

***** General Ledger Summary Section *****
 Account Amount Remaining Budget