



Judy Melinek, M.D.  
 PathologyExpert.com  
 3739 Balboa Street #102  
 San Francisco, CA 94121  
 (415) 850-7056

## **CONSULTING AGREEMENT**

This agreement is entered into as of the dates set forth at the end of this agreement by and between Dr. Judy Melinek doing business as PathologyExpert.com (hereinafter "Consultant") and \_\_\_\_\_ (hereinafter "Client").

Case: \_\_\_\_\_  
 Jurisdiction/Court Filed In: \_\_\_\_\_

### **1. RETENTION**

1.1 Consultant will be available to commence work for Client upon receipt of a retainer.

1.2 Consultant agrees not to work for any other person or party involved in this case on matters relating to this case for two weeks after being verbally retained, or upon acceptance of the retainer set forth below. Should the two weeks lapse without receipt of a retainer, Consultant is free to accept work from any other party.

1.3 Retention and testimony are subject to approval by the City & County of San Francisco following review by the Chief Medical Examiner, City Attorneys or Ethics Commission following submission of a Advance Written Determination form disclosing case number, name and jurisdiction, and pertinent facts necessary for a determination of conflict-of-interest, in compliance with the Office of the Chief Medical Examiner's Statement of Incompatible Activities (see <http://www.sfgsa.org/index.aspx?page=4>) and a semi-annual approval for outside work. If denied, Consultant agrees to promptly reimburse retainer and return all materials.

### **2. SERVICES TO BE PERFORMED**

2.1 Consultant agrees to perform consulting and/or expert witness services as requested by Client and in connection with such services agrees to perform such investigation, document review, studies and research so as to be able to consult with Client and/or advise Client as an expert witness with respect to Consultant's findings. Consultant agrees to verbally report facts, conclusions and findings to Client and, if desired by Client, Consultant will prepare a written report and cause it to be sent or delivered to client. Consultant also agrees to assist in trial preparation and to testify as an expert witness in those areas in which she is qualified.

2.2 The full scope of Consultant's work will be determined as the matter proceeds, and will be subject to the needs and requests of Client. Consultant and Client agree that Consultant will be performing services to this Agreement as an Independent Contractor.

2.3 Upon request, Consultant will provide an estimate of the time and costs it will take to perform the work outlined by the Client. If it becomes apparent to Consultant that she will need to exceed the estimates provided to complete this work, she will provide Client with a revised estimate and shall proceed only after being granted permission by Client.

### **3. CONFIDENTIALITY**

3.1 Consultant agrees to retain all non-public information obtained from Client as confidential and agrees not to release or discuss any of such information unless Consultant has obtained

the prior consent of Client or is otherwise forced, compelled, or required to disclose this information by operation of law or applicable government authority.

#### 4. COMPENSATION

4.1 Fees are billed to the Client by the quarter of an hour with a minimum charge of .25 of an hour as follows:

4.1.1 Review of materials, research and report preparation, travel time and testimony at trial or deposition at FIVE HUNDRED dollars (\$500.00) per hour. This rate applies to office or courtroom waiting time as well as actual time testifying.

4.1.2 Notwithstanding the Agreement of Consultant to bill Client at an hourly rate in one quarter of an hour increments for services performed, the following minimum fees will be due, whether or not Consultant is required to spend the amount of time necessary to result in these minimum fees if time was charged on an hourly basis. The minimum fees and types of services exclusive of travel to which they apply to attendance at a deposition either to assist client or to testify as an expert witness and attendance at court to assist Client, testify as an expert witness, or while waiting at court for an opportunity to testify or assist Client in court - FIVE HUNDRED dollars (\$500.00) per hour. The above are minimum billings and if actual time spent results in an amount due which exceeds these minimums, then the actual amount will be due.

4.1.3 Time required for short (less than 10 minutes) telephone calls and e mails without attachments are not billed.

4.1.4 Last minute (defined as within 48 hours or 2 business days) cancellations or postponements of deposition or trial testimony will be subject to a fee of FIVE HUNDRED dollars (\$500.00).

4.2 When in the local area away from the Consultant's office, time is billed from the time of departure from Consultant's office until the time of return.

4.3 Each full day outside the limits of the city of San Francisco, California on assignment is billed on the basis of an eight hour day at FIVE HUNDRED dollars (\$500.00) an hour. Where more than eight hours work or travel is performed in one day, the actual time is billed. Day of departure and day of return are prorated.

4.4 A retainer of \$1,000 is charged for each case. This amount is a non-refundable minimum fee charged. Billings for services performed or expenses incurred will be charged against the retainer until such time as it is exhausted.

4.5 Permission to use Consultant's name or in any way indicate that she is an expert witness or Consultant for Client's, either informally or formally with other parties, is not granted until the retainer has been paid.

4.6 Fees and rates, once established for a case, will not be increased for that case for a period of one year. Twelve months after being retained, fees may be raised to those currently charged other new Clients at that time but shall not exceed 10% per year.

#### 5. EXPENSES

5.1 Travel and lodging expenses are charged at cost plus ten percent. Other miscellaneous expenses, including parking fees and long distance calls, are charged at cost. Travel by car is at current IRS rates. No travel expense is charged within the confines of the City and County of San Francisco.

5.2 Travel will be performed by the most economical means compatible with the Client's time constraints except that business class air travel accommodations will be used for all flights of

more than four hours duration including cumulative time where connecting flights are required.

5.3 Client may avoid the 10% surcharge on travel expenses by furnishing travel and lodging which is billed directly to Client by the carrier or hotel.

## 6. BILLINGS

6.1 Invoices will be tendered after the end of each month. A detailed breakdown is furnished itemizing each charge for the month. Billings from the previous month not paid will be noted as, "Previous Balance".

6.1.1 Payments made out to Dr. Judy Melinek are due 28 days after the invoice date. Late charges at the rate of 2.5% per month will be added to bills not paid within 30 days.

6.2 The payment of all fees and expenses is the responsibility of the Client notwithstanding Client's relationship with third parties, contingency arrangements, subrogation, etc. As a convenience, Consultant may agree to prepare separate billing for an attorney taking Consultant's discovery deposition, but the responsibility for payment remains that of the Client. Failure to include a chargeable item in one billing shall not constitute a waiver of the right to assess the charges in a subsequent billing.

6.3 Questions concerning specific billings are welcomed and requests for corrections must be submitted within 30 days after date of billing in question.

## 7. TERMINATION

7.1 This Agreement may be terminated by Client upon 15 days written notice for any reason. Upon termination of Consultant's services by Client, Client shall immediately pay all fees and expenses incurred by Consultant, subject to receipt of an appropriate bill.

7.2 Consultant may terminate this Agreement upon fifteen(15) days written notice if payments are not made within 60 days of the date billing is mailed. This does not relieve Client in any way from payment for services rendered or expenses incurred.

## 8. DISPUTE RESOLUTION

8.1 The parties agree that any action which is required to be filed to enforce the terms of this Agreement may be filed in San Francisco, California.

8.2 In the event that either party is required to retain the services of an attorney to enforce the provisions of this Agreement, then in such case the Client agrees to pay reasonable attorney's fees and all costs and expenses incurred by Consultant including collection costs, provided that Consultant is the prevailing party in said matter either by settlement, litigation or otherwise.

## 9. GOVERNING LAW

9.1 All actions arising out of the performance of this Agreement shall be governed by the laws of the State of California. The parties do hereby execute this Agreement at the places set forth below on the date set forth below.

## 10. SCHEDULING, FURNISHING OF MATERIALS AND LIABILITY

10.1 Consultant is an Independent Contractor who is also employed full-time at the Office of Chief Medical Examiner for San Francisco, CA. As such, all appearances of Consultant need to be scheduled with a 14 day advance notice, to allow Consultant time to request an approved leave of absence.

10.2 Rarely, unexpected emergencies and/or disasters will require Consultant to return to San Francisco despite a scheduled appearance. In the event of such an occurrence, Consultant and the City and County of San Francisco are not liable for any costs incurred on the part of Client. Consultant will not charge for travel expenses or time if appearance is cancelled by an

unexpected emergency. Consultant will contact Client as soon as possible to re-schedule another appearance.

10.3 The City and County of San Francisco, and the Office of Chief Medical Examiner of the City and County of San Francisco are not a party to this contract and therefore are not liable for any opinions, acts or omissions of Consultant. However, Consultant cannot consult on any cases that would be a conflict-of-interest to the City and County of San Francisco.

Determination of conflict-of-interest shall be assessed prior to entering into contract, based on information obtained from Client regarding the nature and parties involved in the case at hand, but if a conflict arises at a later point in time, the contract shall be dissolved. Determination of what constitutes a conflict-of-interest lies with the Chief Medical Examiner, City Attorneys or Ethics Commission of the City & County of San Francisco. Consultant will provide written proof of revocation of the Advance Written Determination if such conflict arises. Client may appeal the revocation to the Ethics Commission of the City & County of San Francisco. If the appeal is successful, the contract shall be re-instated.

10.4 Client is responsible for furnishing all materials that are relevant to the complete assessment of a medico-legal case. These usually include all medical records, autopsy reports, investigative reports and witness interviews, coroner's reports, laboratory reports including toxicology, microscopic slide sections (recuts), depositions and other sworn testimony transcripts, or other expert's written opinions. Transcripts will be furnished in lieu of recorded statements.

10.4.1 Client will hold Consultant harmless if any errors or omissions are the result of an incomplete furnishing of the above-mentioned materials.

10.4.2 Client will advise Consultant immediately of any Kelly/Frye, Daubert motions or other challenges and furnish the related briefs. If Consultant determines that another attorney is necessary to defend the professional interests of Consultant in these motions, then Client agrees to furnish all materials pertaining to the case with Consultant's attorney.

Date: \_\_\_\_\_

Location: \_\_\_\_\_

\_\_\_\_\_  
Judy Melinek, M.D., Consultant

Date: \_\_\_\_\_

Location: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Client