

**COLLECTIVE BARGAINING AGREEMENT**

NEW HAMPSHIRE PUBLIC DEFENDER

&

STATE EMPLOYEES' ASSOCIATION OF NEW  
HAMPSHIRE, INC. LOCAL 1984, SERVICE  
EMPLOYEES' INTERNATIONAL UNION

ENDING JUNE 30, 2009

## STATEMENT OF AGREEMENT AND EFFECTIVE DATE

This Agreement entered into and effective on July 31, 2007 is made between New Hampshire Public Defender, hereinafter referred to as NHPD, and Local 1984 of the Service Employees International Union, hereinafter referred to as the Union. "Investigators" as used in this document refers to the permanent employees of NHPD covered by this Agreement. The parties hereby agree as follows:

### PURPOSE AND SCOPE OF AGREEMENT

It is the purpose of this Agreement to set out the respective rights and responsibilities of NHPD and the investigators working for NHPD, as represented by the Union. The parties enter into this agreement in the spirit of cooperation. The parties intend to foster a positive working environment that supports effective and efficient services to NHPD clients.

The Personnel Policies of NHPD, in effect at the time of the signing of this contract and as they may from time to time be modified, will apply to investigators. However, if a provision of this contract would dictate a different result than a provision of such policies, then the provision of this contract will control.

### ARTICLE I RECOGNITION

NHPD hereby recognizes the Union for purposes of this Agreement as the exclusive bargaining agent for NHPD's employees in job classifications of investigators with regard to rates of pay, hours of work, and working conditions.

### ARTICLE II UNION BUSINESS

1. The decision to join the Union is to be made freely by individual employees belonging to the bargaining unit, without interference by NHPD or the Union. Each individual employee covered by the bargaining unit may determine whether or not to become a Union member.
2. The Union shall be responsible for collection of dues from its members.
3. NHPD will participate in payroll deduction for union dues according to the following conditions:
  - a) The Union may not require its members to have dues automatically deducted by NHPD from their paychecks as a condition of union membership.

- b) If an investigator wishes to have his or her union dues automatically deducted each pay period, he or she needs to sign a form that indicates the amount to be deducted. NHPD will provide the union Chapter President with notice of any change in salary for any investigator. The union is responsible for notifying NHPD of any change in Chapter President.
  - c) Such form shall include an affirmation that the choice to pay dues through deduction is being made voluntarily and that the employee is permitted by the union to pay dues other than through dues deduction. The form shall be substantially similar to the attached form, labeled "Appendix I".
  - d) NHPD will automatically deduct union dues from these participating members' paychecks each pay period and will send the dues to the union on a quarterly basis.
  - e) An investigator may withdraw the request at any time and the deduction will no longer be made.
4. The Union may place reasonable amounts of written information regarding union activities in the mailboxes of investigators. It is understood that such distribution will be infrequent, and that when information is distributed it will not be voluminous, normally not exceeding 5 pages in length. NHPD may limit the frequency and volume of such distribution if it determines that such limitation is necessary.
  5. Union representatives may contact investigators at the workplace provided that such contact does not interfere with employees in the performance of their duties. Such contact shall be infrequent and of brief duration. The determination of whether such contact is interfering with employees in the performance of their duties shall be made solely by NHPD. When a union representative who is not an NHPD employee intends to visit an investigator on NHPD premises, (s)he will contact the Managing Attorney of the office to arrange such a visit so that there is no risk of disclosure of confidential information.
  6. Use of NHPD resources for union purposes is not considered to be work related. Accordingly, union use of NHPD resources shall be regulated on the same basis as non-union, non-work related use of resources. If NHPD determines that use of NHPD equipment for Union business is interfering with the discharge of NHPD's responsibilities or is contrary to its interests, it may terminate such use.
  7. It is understood that the Union will appoint stewards to act as the primary representatives of members of the bargaining unit in such matters as discipline and grievance. NHPD will recognize such representatives upon notification and request of the union so that the stewards may fulfill their role. However, an investigator's involvement in union business as a steward or otherwise does not relieve the

investigator of her responsibilities to perform her job responsibilities and to respond to the direction of superiors.

8. Any member of the bargaining unit will have equal access to representation during the discipline and grievance process by the union without regard to union membership.
9. The union shall indemnify and hold NHPD harmless against any and all claims, demands, or suits that arise out of or by reason of action taken or not taken by NHPD for the purpose of complying with any of the provisions of this article, (Article II, Union Business).

### ARTICLE III NON-DISCRIMINATION

The parties recognize that NHPD has a history of non-discrimination in its employment practices. NHPD will continue this practice of non-discrimination according to NHPD's personnel policies and practices and applicable law. The parties understand that this includes not discriminating against any applicant or employee on the basis of race, creed, color, religion, gender, marital status, national origin, age, disability that does not affect ability to perform job functions, sexual orientation or union activity. The Union agrees not to discriminate on any such basis in matters such as union membership, advancement within the union, assistance with the grievance process or other benefit inuring to the benefit of members of the bargaining unit. Nothing in this article is intended to limit NHPD's right to discipline an employee or to prohibit any conduct that is detrimental to clients, employees or NHPD, or to otherwise make employment-related decisions based on legitimate, non-discriminatory reasons.

### ARTICLE IV MANAGEMENT RIGHTS

1. Subject to the terms of this Agreement, NHPD retains the exclusive right to manage the operations of NHPD including, but not limited to, scope and nature of work to be performed by NHPD or any of its employees, scheduling of work, establishment of shifts and hours, the evaluation of employees, promotion or demotion of employees, fixing and adjusting performance standards for employees, methods of operation, the right to hire, promote, demote, transfer, discipline, layoff or discharge an employee, contracting and subcontracting for services and work, size, layout, and location of its offices, and staffing levels. Management has the right to set all terms of employment of NHPD investigators, except as modified by the terms of this contract.
2. The management of NHPD and the direction of the work force are vested exclusively in NHPD. All matters not specifically and expressly covered or treated by the language of this Agreement will be administered by NHPD as NHPD may determine.

3. It is agreed and understood between the parties that any directive, order, or instruction given by NHPD's management or supervisors will be followed and adhered to notwithstanding any submission to the grievance procedure in the Agreement until such time as the matter has been finally resolved pursuant to the grievance procedure.
4. It is further agreed that relations with the State of New Hampshire and its judicial, legislative, and executive subdivisions, as well as the Judicial Council and any other inter-branch agencies or bodies, which concern the nature and scope of NHPD operations and its level of

funding, are the exclusive province of NHPD. Unless expressly authorized by NHPD, neither the Union nor its employees nor members of the bargaining unit will participate in lobbying or other similar contacts with governmental agencies with regard to funding of NHPD or other government decisions which will effect NHPD's work.

#### ARTICLE V LABOR MANAGEMENT COMMUNICATION

It is understood by the parties that NHPD management personnel are available to the Union and/or members of the bargaining unit to meet for the purpose of communicating about issues of concern to the union and/or members of the bargaining unit and NHPD during the term of this Agreement. NHPD management and the union agree to meet at reasonable times and places upon prior notice by the other party or member(s) of the bargaining unit. It is understood that such meetings are outside the grievance procedure and collective bargaining process. Nothing in this agreement shall be construed to prevent an individual member of the bargaining unit from communicating with NHPD about any matter on an informal or formal basis. Members of the bargaining unit may be consulted formally or informally by NHPD regarding their views on Program issues and matters for decision.

#### ARTICLE VI DISCIPLINE

1. For purposes of this Article, "supervisor" means a Managing Attorney, Assistant Managing Attorney, Office Administrator or Investigations Director, or their designees or superiors. "Discipline", for purposes of this section, means oral reprimand, written reprimand, suspension, or discharge imposed by a supervisor.
2. Although any of the above-described persons may impose discipline, NHPD recognizes that the principal oversight of investigator performance is normally undertaken by Managing Attorneys, Assistant Managing Attorneys, and the Investigations Director.

3. Supervisors may counsel investigators for the purposes of case development and the professional development of the Investigator. To “counsel” means to conduct an informal discussion regarding job performance, actions to be taken or behavior to be improved or corrected. Counseling is a necessary part of discipline and is meant to advise employees of areas where improvement is needed in their performance. Counseling and oral reprimands are not subject to the grievance procedure as set out in Article VII below.
4. Nothing herein shall be interpreted to prevent coworkers within and without the bargaining unit from discussing job performance, approaches to the work of NHPD, or otherwise engaging in such exchanges as may occur regarding the work of NHPD and improvements to it.
5. Any bargaining unit representative referred to in this provision shall be an NHPD investigator.
6. Any disciplinary action may be processed as a grievance through the grievance procedure set forth in Article VII. However, inconsistencies in the application of disciplinary action or failure to take disciplinary action for the same or similar conduct shall not be the subject of a grievance.
7. The decision to take disciplinary action and what level of discipline to impose will, when possible and reasonable under the circumstances, take into account:
  - a) the nature of the behavior,
  - b) its effects on NHPD operations, clients, and coworkers
  - c) the performance history of the investigator involved,
  - d) relevant mitigating and aggravating circumstances,
  - e) the history of disciplinary actions taken against the investigator,
  - f) the nature of responses taken to similar behavior by other investigators if it has come to the attention of NHPD. NHPD is not required to take into account other investigator behavior that has not previously been brought to the attention of a supervisor.

NHPD is required to take these factors into account, but it shall not be the subject of a grievance that a particular discipline decision resulted in unequal treatment of a particular investigator. A grievance may, however, be based on the failure of NHPD to consider the factors described in this Article.

8. Disciplinary action may be taken for the following reasons:
  - a) Failure to act in conformity with the job criteria for positions held by members of the bargaining unit.
  - b) Violation of any state or federal law when NHPD finds that such violation reflects adversely on the investigator’s ability to fulfill the requirements of his or her job, credibility or ability to testify effectively on behalf of NHPD’s clients.

- c) Violation of any of the New Hampshire Rules of Professional Conduct.
- d) Violation of any NHPD policy or procedure.
- e) Inappropriate behavior with or towards a client or co-worker.
- f) Failure to work cooperatively with other program staff and/or managers and supervisors.
- g) Failure to act in conformity with the lawful instructions of a supervisor.
- h) Unsatisfactory performance as determined by a manager or supervisor.

The absence of any of the items that were contained in the prior contract's disciplinary list is with the agreement that these items were redundant, rather than that they were no longer reasons for disciplinary action. The above revised list does not reflect the elimination of any reasons for discipline; rather it is a streamlining of the list as the parties agree that all of the now absent items are covered within the above listed items. The above list is not exhaustive of the bases for which disciplinary action may be taken and is not set out in order of importance of the reason for which disciplinary action may be taken.

9. If a Supervisor believes disciplinary action is appropriate s/he may take disciplinary action in one or all of the following ways and in no particular or graduated order:
  - a) Counseling
  - b) Oral Reprimand
  - c) Written Reprimand
  - d) Involuntary Demotion
  - e) Suspension, with or without pay
  - f) Dismissal
  
10. When a supervisor takes disciplinary action other than oral reprimand or counseling, the supervisor shall notify the employee of the disciplinary action and the reasons for the action.
  
11. The supervisor shall notify the employee if there will be a meeting to investigate whether disciplinary action should be taken.
  
12. In any meeting to discuss possible disciplinary action or investigation, the employee may request the presence of a union representative. If the employee requests the presence of a union representative, the meeting will be postponed for a reasonable period of time so that the representative can be present. However, if a situation requires immediate discussion with an investigator and could result in disciplinary action, and if the employee requests the presence of a union representative, NHPD shall if practicable permit the employee time to telephone the Union or an employee representative. However, NHPD may conduct the meeting with the employee in the absence of a union representative if the representative is not able to attend the meeting in time to permit the manager or supervisor to take necessary action.

ARTICLE VII  
GRIEVANCE PROCEDURE

For the purpose of this agreement, "grievance" shall mean a formal complaint involving the application of any provision of this agreement. The grievance procedure under this agreement shall not apply to disputes or disagreements involving case-related decisions made by an attorney and any other disputes and/or disagreements specifically excluded from the grievance procedure in this Agreement. The parties recognize that inconsistencies in approaches to work are common throughout NHPD, and such disputes or disagreements may not form the basis of a claim of violation of this agreement. It is the intent of the parties to resolve all grievances at the earliest stage in the grievance procedure.

1. There shall be a grievance procedure as follows:
  - A. Representation A bargaining unit representative may be involved in all steps in the grievance procedure as the representative of the aggrieved party, at the request of the aggrieved party. The bargaining unit representative shall be an investigator employed by NHPD and subject to the terms of this contract, unless the grievance involves a termination and has been taken to outside arbitration, in which case the aggrieved party may be represented by counsel provided by the Union.
  - B. First Level A grievance shall be presented to the Investigations Director by the aggrieved party within 15 working days of the employee's knowledge of the incident which forms the basis for such grievance. The Investigations Director shall discuss the incident with the aggrieved party and, if applicable, the bargaining unit representative, and shall attempt to resolve the grievance within 15 working days.
  - C. Second Level If the grievance is not resolved at the first level, the aggrieved party may present the grievance to the Executive Director in writing within 10 working days after completion of the first level grievance. The written grievance shall include a description of the behavior, action or practice in question, reference to the provision(s) of this agreement involved, a description of how the agreement is alleged to have been violated, and a statement of the relief sought by the employee. The written grievance shall also include a description of the proposed resolution of the Investigations Director and the reason(s) why it was unsatisfactory to the Investigator. The Executive Director or her/his designee shall provide render a written decision to the employee within 10 working days from the day s/he received the complete written grievance.
  - D. Third Level If the grievance is not resolved at the second level, the aggrieved party may proceed by notifying the Executive Director that the second level result was not satisfactory within 5 working days. The grievance may then be submitted to the NHPD Board of Directors for binding arbitration as follows:

- a) The Executive Director shall forward the grievance, as submitted to him/her in writing by the aggrieved party, to the President of the Board of Directors within 5 working days of its receipt.
  - b) The President of the Board of Directors shall appoint a Board Member to meet with the parties to attempt to reach a mediated solution.
  - c) The Board Member may hold one or more meetings with the parties to attempt to mediate a resolution of the grievance. The mediation phase of the third level of the grievance procedure shall be completed no later than 30 days following receipt of the grievance by the President of the Board of Directors, unless the parties agree otherwise.
  - d) If resolution cannot be reached, the President of the Board of Directors shall assign another Board member to hear the grievance. The parties may submit written materials and offer testimony from persons who have information relevant to the issues. The Board Member hearing the grievance may limit the extent of written material and testimony. The proceedings shall be informal, without the need for testimony under oath or application of strict procedural rules. The Board Member will have broad discretion regarding procedure.
  - e) The Board Member shall present the information received to the remaining members of the Board of Directors, with or without recommendation, who shall make a decision on the grievance. Such decision shall be final and binding on the parties.
  - f) In the event that a termination is the subject of the grievance procedure that has not been resolved to the satisfaction of the aggrieved party in the third level, the grievance may be submitted to arbitration as set forth in Article VIII.
2. An investigator and the bargaining unit representative may take reasonable amounts of time during working hours to take any of the steps outlined above. However, interviews and other contact with NHPD staff, including staff who are members of the bargaining unit, for any purpose relating to carrying out this grievance procedure may not be conducted or made during work hours. The use of work time by an investigator, whether the aggrieved party or the representative of the bargaining unit, for pursuing this grievance procedure, is not a proper basis for a grant of compensatory time under Article XI, and shall not interfere with the work assignments of anyone involved in the process. If the grievance procedure is interfering with work in the judgement of a supervisor, s/he may direct that it take place at certain times and places to minimize or eliminate such interference.
  3. Failure to comply with any of the time limits herein by an aggrieved party will be considered a waiver of further consideration of the grievance. Failure to comply with the time limits by NHPD may be treated as denial of the grievance by the aggrieved party, allowing the party to proceed to the next grievance level. Time limits are tolled for either party during periods when either the aggrieved party or the NHPD representative addressing the grievance is on vacation or is absent from work on an approved leave of absence. The time limits may not be tolled during a leave of absence for longer than 30 days.

4. NHPD reserves the right to expand any time periods contained in this grievance procedure with written notification to the aggrieved party within five (5) days of the receipt of the grievance in writing and all attendant materials, when the needs of NHPD require such an extension to adequately respond to the grievance.
5. Grievance decisions shall not be construed to modify or change the terms of this agreement.
6. Notice in writing of a decision on the grievance is final and binding on the parties, except in the case of terminations as outlined below.

ARTICLE VIII  
ARBITRATION IN TERMINATION CASES

1. In the event that a grievance concerns an involuntary termination, an investigator may present the grievance to outside arbitration.
2. The investigator shall notify NHPD in writing of their intent to submit a termination decision to arbitration within ten (10) working days from the decision rendered by the Board of Directors pursuant to the third level of the grievance procedure.
3. The arbitrator shall be chosen by agreement of the parties. If the parties cannot agree, then they will request a list of 7 members of the New Hampshire Bar Association from the Chief Justice of the New Hampshire Superior Court and the parties will then alternately strike names until only one name remains.
4. The procedures followed during the arbitration shall be as agreed to by the parties. In the event that the parties are unable to agree, then the arbitrator will determine the procedure that will be followed, consistent with the intent and specific provisions of this agreement.
5. Disclosures made during the arbitration process which concern the internal operations of NHPD will not be disclosed to persons not involved directly in the arbitration. Accordingly, any arbitrator chosen will be treated as counsel for NHPD and will be bound by the attorney-client privilege with regard to disclosures made during the arbitration procedure.
6. The decision of the arbitrator shall be final and binding on the parties.
7. The expense of arbitration shall be shared equally by the parties.

## ARTICLE IX CONFIDENTIALITY

In recognition of NHPD's legal and ethical responsibility to maintain client confidentiality and to provide vigorous representation to clients, all case-related information shall be kept confidential and not be revealed to persons outside NHPD for any purpose, except as permitted herein.

1. For purposes of this Agreement, case-related information includes, but is not limited to, case names, all information received from a client, all information received from a witness, information related to the handling of a case, trial tactics, investigative tactics and information regarding NHPD's policies, procedures, and practices.
2. Only union representatives who are employees of NHPD may be involved in a disciplinary action.
3. NHPD and the members of the bargaining unit shall take all steps necessary to maintain confidentiality, as set out in this provision, when a termination grievance proceeds to outside arbitration, including, but not limited to such measures as exclusion of all case-related information and redaction of all case-related information from information provided to the arbitrator.
4. Information referred to in this provision may be revealed to parties outside NHPD by NHPD at its discretion.
5. Breach of this confidentiality provision by any member of the bargaining unit for any purpose constitutes ground for immediate discharge. Discharge under this provision shall not be subject to the outside arbitration portion of the grievance procedure contained in this Agreement.

## ARTICLE X JOB DESCRIPTIONS

The Parties agree that NHPD has established job descriptions for Level I, II and III investigators. Those job descriptions are attached as "Appendix II" and incorporated by reference. The job descriptions for Levels I, II and III may be modified according to the following procedure:

1. NHPD will notify the union in the event that changes to the job descriptions for Level I, II or III investigators are seriously contemplated.
2. The union will then have 14 days from the date of notification to voice an objection to the proposed changes.

3. If there is no objection, NHPD may proceed with the changes as stated to the union.
4. If the union objects, the proposed changes will be subject to immediate negotiations.
5. If there is no agreement between the parties 30 days after starting negotiations regarding the proposed changes, NHPD can implement the proposed changes.
6. If there is agreement, the changes will be instituted as agreed to.

## ARTICLE XI HOURS OF WORK AND RATES OF PAY

1. Investigators are non-exempt employees.
2. Investigators will track their time and be paid according to the “fluctuating work week” model. (Attached and labeled as “Appendix III”) Investigators will be paid a bi-weekly salary based on the annualized salary schedule contained in ARTICLE XVI on the understanding that this salary constitutes straight time compensation for whatever hours they are called to work in the two workweeks. If an investigator works over 40 hours in one workweek, he or she will be paid an overtime premium for any work over 40 hours. The overtime rate will fluctuate depending on the total number of hours worked in a particular workweek. The formula that will be used for figuring out the overtime rate divides the investigator’s weekly salary into the total hours worked (during that specific workweek where overtime was worked) and then takes ½ that rate as the overtime compensation rate.
3. Investigators’ salaries will not be affected if they work less than 40 hours in a workweek. Investigators will not be allowed to exceed 40 hours in a workweek without advance permission from the Investigations Director (or the Executive Director if the Investigations Director is not available and it is an emergency situation).
4. The workweek for purposes of calculating overtime will be from Saturday 12:01AM to Friday midnight. However, the standard Monday-Friday workweek will be the norm. Work on the weekends shall be the exception for investigators and shall be limited to those situations where it is necessary for the case and unavoidable by the investigator.
5. Investigators will keep track of their time on the non-exempt employee time sheets provided by NHPD. These logs will only reflect hours worked on behalf of NHPD. While investigators may do non-NHPD tasks during regular business hours (including union activities, personal business, lunch, etc.), the recorded hours should only reflect activities that are part of an investigator’s job at NHPD. There is no need to work additional hours just to make up time spent on non-NHPD business as long as investigators fulfill their obligations in the cases assigned to them.

6. The workload of investigators is intended to be such that the work can be accomplished during a standard business week. However, it is recognized that the investigators' job, at times, requires individual investigators to work evening and weekend hours in order to meet the objectives of representation. Investigators, therefore, may exercise their discretion and adjust their schedule as is convenient and necessary to manage their caseload and control their hours while still remaining accessible to their office.
7. It is not the intent of this fluctuating workweek schedule to allow investigators the independent discretion to change or shorten the standard workweek. Investigators must still record and report annual, sick or personal time and any other paid time off taken in order that NHPD may keep an accurate account of those leave balances. Paid time off must be taken and reported in half-day increments, rounded to the nearest half day.  
*Example #1:* If you take 3½ hours to run a personal errand, you should report ½ day personal or annual leave time. On the other hand, if you have a 2-hour doctor's appointment in the middle of the day, you will not have to report sick time even though you may have only 6 reported hours of work for that day; you should simply use your timesheet to sign out when you leave and then back in when you return.  
*Example #2:* If you didn't work any hours on Monday and worked 40 hours during the rest of the week, you should report Monday as a personal or annual day. However, if your cases dictated that you reached your 40 hours halfway through the day Friday and you received approval from the Investigations Director, you would not have to record a ½ day of leave even though you may only have 4 reported hours of work for that day.
8. Investigators are expected to notify the Investigations Director when their workload is particularly high or low so that she can work with the MA to shift assignments or take other measures to balance the investigators' workload.

## ARTICLE XII PART-TIME EMPLOYMENT

It is solely within the discretion of NHPD as to whether to allow any investigator to work part-time. NHPD can withdraw the permission for any investigator to work part-time at any time within NHPD's sole discretion. If an investigator is allowed to work part-time, the following conditions will apply during the time that he or she is allowed to work part-time:

### 1. Working Hours

Part-time investigators will be scheduled to work a set number of full or half days. The number of days will be agreed to by the investigator and NHPD, with NHPD

having the final word in the event of a disagreement. Part-time investigators' scheduled days shall be the same each week. The days shall be scheduled in advance with the Managing Attorney and Investigation Director's approval. In general, part-time investigators are required to be present during normal business hours on the scheduled workdays, meaning that they will be in the office, in court, meeting with clients or witnesses, or conducting investigations. Occasionally, it may become necessary for an investigator to work on a regularly scheduled day off because of an immovable event such as a court hearing, deposition or NHPD related training that requires the investigator's presence. When that happens, the investigator can obtain approval from the Managing Attorney or Investigations Director to take a different day (or half day) off during that week or the following week. In these cases, the investigator is responsible for notifying their office of the change in schedule. If part-time investigators work more than their scheduled days in a week for any reason not fitting into the above category of exceptions or without approval from their Managing Attorney or the Investigations Director, they will not reduce their scheduled number of workdays during that or any other week to compensate.

## 2. Salary and Caseload

Part-time investigators shall receive a proportion of the salary they would have received if working full-time, equal to the proportion of a work week that they are now scheduled to work. For example, if an investigator is scheduled to work four out of five work days, he or she will receive 4/5 of his or her full-time salary.

While working part-time, investigators' step increases take effect on a delayed schedule commensurate with the relative reduction in work schedule and estimated caseload.

**Example:** A part-time investigator working on an 80% schedule would not receive a step increase at 12 months, but would instead receive an increase every 14.4 months. Proportionate adjustments will be made in years when an investigator works part-time for only part of a year.

The Managing Attorney will make efforts to keep a part-time investigator's caseload roughly equal, over time, to the proportion of a full-time investigator's salary that the part-time investigator is receiving. However, the caseload may fluctuate, as it does for full-time investigators, and so the part-time investigator will need to remain flexible. A part-time investigator will need to communicate with his or her Managing Attorney and the Investigations Director about any concerns regarding caseload issues. In order to adjust the caseload for the part-time investigator, there may be some change to attorney assignments or some investigation duties may be distributed to other investigators.

## 3. Benefits

A. Sick, Annual and Personal Leave: Sick, annual, and personal leave will be **calculated on a pro-rated basis**. They will accrue at 100% for any part of a year

that an investigator is employed as a full-time investigator, and on a pro-rated basis equal to the proportion of a full-time salary that the investigator is receiving for any part of a year that he or she is a part-time investigator.

- B. Holidays: Part-time investigators will be paid only for those holidays that fall on their actual scheduled workdays.
- C. Health Insurance Coverage: Health insurance will be available to any part-time investigator as part of NHPD's group insurance plan so long as the investigator is receiving at least 50% of their full-time salary. NHPD's contribution towards the premium will be calculated on a pro-rated basis equal to the proportion of a full-time salary that the investigator is receiving.
- D. Disability Coverage: NHPD will contribute to any part-time investigator's disability benefits so long as the investigator has a normal work schedule of at least 22.5 hours per week.
- E. Eligibility for Retirement Plan: This will be handled in the same manner as for full time investigators.
- F. Life Insurance: NHPD's life insurance plan is only available to investigators with a normal work schedule of at least 22.5 hours per week.

#### 4. NHPD Training and Meetings

Part-time investigators are required to attend all office and statewide staff meetings and training sessions. This includes such events as the annual Retreat and May Training, as well as outside continuing education as applicable.

#### 5. Outside Employment

Part-time investigators shall not investigate other than on behalf of their public defender clients on the cases to which they have been assigned. If a part-time investigator is employed outside the Program in any capacity, he or she will notify the Investigations Director so that an analysis can be made regarding potential conflicts.

### ARTICLE XIII VACATION OR ANNUAL LEAVE

- 1. Annual leave must be scheduled and approved in advance. If more than two consecutive work weeks are requested, approval from the Executive Director or Investigations Director must be obtained. When more than 3 days of annual leave are sought, they should be requested at least four weeks in advance. The work demands of the Program may require disapproval of some annual leave requests.

2. Investigators will accrue annual leave on a monthly, rather than annual, basis according to the following conditions:
  - a. Investigators will receive 1/12 of their current accrual at the start of each month of the calendar year. The accrual rate will be determined by years of service at the beginning of the month of accrual.
  - b. Up to two weeks of annual leave may be carried over from year to year.
  - c. The accrual rate for full time investigators' annual leave is based on years of service with the program according to the following scale:
 

0-3 years	15 days
4-6 years	18 days
6 or more years	20 days
  - d. Effective January 1, 2004 , terminating investigators will receive payment for earned, unused annual leave if they give four weeks written notice.
  - e. Exceptional circumstances may arise where an employee may want to schedule more annual leave time than they have accrued. In these limited circumstances, NHPD will address such requests with the objective of granting the investigator flexibility. To achieve this flexibility, NHPD may, at its sole discretion, approve an investigator "borrowing" against future accrued time. These borrowings, or negative balances, cannot exceed 10 days (except by special permission of the Executive Director). If an employee leaves the program and has a negative annual leave accrual balance, this balance must be repaid as an overpayment of wages and deducted from the employee's final paycheck.

ARTICLE XIV  
SICK LEAVE

1. NHPD provides sick leave for investigators. Full-time employees receive 15 days paid leave for their own illness or that of their spouse, significant partner, parent, child, or other dependent. Such leave may be accrued, if unused, from year to year up to a total of 40 days.
2. Sick time is credited at the beginning of each calendar year. In an employee's first year with the Program, he or she will be credited with a pro-rated amount of sick time, calculated on a quarterly basis.
3. If an investigator takes a sick day(s), he or she must notify the office that he or she will not be coming in. The investigator should give advance notice of any such absence in the time and manner required by his or her supervisor so that appropriate arrangements can be made in the office to adjust to the change in

work schedule. If the investigator is unable to provide such notice, the investigator shall notify the office as soon as he or she is able to do so.

4. Investigators must record any absence due to illness in one-half day increments, rounded to the nearest half day.
5. An investigator may not be absent for more than ten consecutive NHPD work days due to illness without providing medical certification. An employee may not receive sick leave for more than ten consecutive days unless he or she presents the Administrator with evidence that disability benefits are unavailable. Also, at any time, NHPD may require medical certification from an investigator who has used sick leave. NHPD will notify the investigator of the need to provide medical certification either before or during the sick leave for which it is required.
6. Sick Leave cannot be used once available Family and Medical Leave or maternity leave has been exhausted without the written permission of the Executive Director.

#### ARTICLE XV OTHER LEAVE AND BENEFITS

1. Personal Days: In addition to annual leave, investigators will receive two personal days per year, beginning in the first full calendar year of employment. (Part-time employees will receive the pro-rata percentage of two personal days.) Such days can be used for any purpose and do not accumulate from year to year.
2. Bereavement Leave: An investigator may receive up to three working days of paid leave when there is a death of a member of his or her immediate family. Such an absence does not reduce the investigator's otherwise available leave. Immediate family includes grandparents, parents, spouse or significant partner, siblings, children or other dependents, grandchildren, or persons the investigator is related to by marriage to the same degree.
3. Jury Duty: Investigators will be given time off at full pay without loss of accrued leave when performing jury duty. Investigators must disclose any remuneration received for such service and will have their pay reduced by that amount. When not required to be present in court, investigators must report to work. NHPD cannot pay investigators for more than thirty days of any one period of jury duty.
4. Health Insurance: NHPD agrees to notify the union as soon as reasonably possible when changes in the health insurance policy are being contemplated. NHPD will then consider any union concerns and/or alternate proposals before making a final determination.

ARTICLE XVI  
JOB CLASSIFICATION AND SALARY SCHEDULE

1. NHPD agrees to pay wages in accordance with the job levels and salary scale structure as provided as follows in paragraph #3 below. Except in the case where an entire job classification has been eliminated, Investigators shall be placed on the same level and step on the scale below as they were on the previous scale prior to this agreement.
2. NIIPD agrees that in the event it eliminates a job classification but retains the affected Investigator positions, it will reclassify those positions within the classification schedule below. NHPD further agrees that, if in its sole judgment it is financially feasible to do so, it will effect such reclassifications without imposing a wage cut on the affected Investigator(s). Likewise, it is agreed that this "grandfather provision" shall not be applied to create a disparate compensation structure outside of the agreed upon salary scale.
3. Changes in salary will be effective and retroactive to July 1, 2007, but shall not apply to investigators who are no longer employed by NHPD at the time that this agreement is executed and ratified.

Step	Level I	Level II	Level III
1	29,959	30,952	34,306
2	31,578	32,889	36,364
3	32,508	34,684	38,114
4		36,501	39,692
5		38,081	41,065
6		39,350	42,162
7		40,138	42,882
8		40,927	43,569

4. Investigators hired into a Level I position shall not move up to higher steps within Level I. Instead, Level I investigators remain at the step where they were initially placed until they are promoted to Level II.
5. NHPD determines the criteria upon which decisions for entry into higher job classifications will be based. These criteria and the weight they are afforded are within the discretion of NHPD and may be changed from time to time.
6. Movement to a higher level in the structure is based on performance. In addition, seniority will play a part in promotion decisions as set forth in Article XX. Newly hired

commensurate with their education, experience and demonstrated skills at the sole discretion of NHPD.

7. Promotion to higher levels in the salary structure will be made either by application of an investigator or upon the initiative of NHPD.

8. The application for promotion to Level III shall be in accordance with that in place at the signing of this contract. (Attached and labeled as "Appendix IV".) Upon agreement of the parties, the application may be modified by NHPD during the duration of this contract. NHPD will notify the union in the event that changes to the application are seriously contemplated. The union will then have 14 days from the date of notification to voice an objection to the proposed changes. If there is no objection, NHPD may proceed with the changes as stated to the union. If the union objects, the proposed changes will be subject to immediate negotiations. If there is no agreement between the parties 45 days after NHPD's notice to the union regarding the proposed changes, NHPD may implement the proposed changes. If there is agreement, the changes will be instituted as agreed.

9. Promotions to higher levels will be to a salary step that gives the employee at least a \$500.00 pay increase over his or her pre-promotion salary. If the promotion results in a salary increase of \$1,000.00 or more, the employee's anniversary date (for salary step increases) will be changed to the date of the promotion.

10. It shall not be a violation of this agreement for investigators to be required to perform duties which do not fall within their job description.

11. NHPD may hire persons not currently employed by NHPD to fill vacant or newly created positions within all job classifications.

## ARTICLE XVII PROBATIONARY PERIOD

1. The probationary period for newly employed or re-employed investigators shall be ninety (90) days.
2. The probationary period may be extended for one additional period of ninety (90) days at the sole discretion of NHPD, and for such additional periods as may be agreed to by NHPD and the investigator.
3. At any time during the probationary period, whether or not it has been extended, NHPD may end the probationary period before it is scheduled to end.
4. Probationary employees may be dismissed at any time at the discretion of a supervisor with or without cause. Termination of probationary employees is not subject to the grievance procedure contained in this agreement.

5. Probationary employees may not bring a grievance during the probationary period.

## ARTICLE XVIII STEP INCREASES

1. For the purpose of this article, the term “step increase” is only applicable to Levels II and III and refers to an increase in salary within an investigator’s Level that is triggered by an investigator’s anniversary date.
2. NHPD has the authority to hold back step increases in salary for an investigator who NHPD determines is not performing his or her job satisfactorily.
3. If there is a performance problem that would hold an investigator back from receiving a step increase, NHPD will notify the investigator in writing at least three months prior to the scheduled increase or as soon as possible after a performance problem is brought to the attention of the Investigations Director or Executive Director.
4. It shall be the investigator’s responsibility to demonstrate that he or she has made the required improvement to NHPD’s satisfaction. If an investigator is notified of deficiencies in his or her performance and the investigator believes that he or she can demonstrate satisfactory performance which merits eligibility for a step increase, the investigator may contact the Investigations Director to identify the improvement made. Such demonstration is at the initiative of the investigator.
5. If the investigator does not demonstrate the required improvement to NHPD’s satisfaction, the step increase will be denied. NHPD will inform the investigator of the basis for the decision.
6. After denial of a step increase, the investigator may contact the Investigations Director to demonstrate that improvements have been made. As in paragraph 4 above, demonstration of improvement is at the initiative of the investigator. NHPD will grant the step increase upon the investigator’s demonstrated and consistent performance at a satisfactory level as determined by NHPD. The salary increase will not be retroactive and the increase date will become the new anniversary date for the investigator.
7. If an investigator does not receive his or her step increase on the scheduled anniversary date, he or she may file a grievance (in accordance with the terms and conditions of this contract) to the First Level and the Second Level, but not to the Board of Directors or to outside arbitration. The Second Level decision shall be final.
8. If NHPD fails to notify the investigator of any deficiencies in his or her performance pursuant to paragraph 3 above, the investigator will automatically receive the scheduled step increase.

## ARTICLE XIX SAFETY ISSUES

NHPD and the union agree that work place safety is important. NHPD will consider all union proposals regarding the possible improvement of safety, or concerns regarding safety. As NHPD has done in the past, NHPD agrees to continue to provide periodic training and information regarding safety issues as it deems appropriate.

## ARTICLE XX SENIORITY

1. An employee's seniority in the bargaining unit is determined by the employee's original hire date as an employee of NHPD. Seniority is not lost when transferring from one position to another within the bargaining unit. Employees shall not accrue seniority while on a leave of absence.
2. Seniority is retained for investigators who leave NHPD employment for one year or less, unless otherwise agreed as part of a planned leave of absence.
3. Seniority is a factor to be considered for decisions concerning layoff, recall, transfer and promotion to a higher job classification.
4. When all other factors are substantially equal, seniority will be the primary factor to be considered for decisions concerning layoff, recall, transfer and promotion to a higher job classification.
5. Notwithstanding this Article, promotion decisions may take into account experience gained outside NHPD employment.

## ARTICLE XXI CONTINGENCY CLAUSE

1. In recognition that NHPD's financial support is based in large measure on funding sources not within the control of NHPD, it is agreed that in the event that NHPD's funding is reduced, provisions of this Agreement shall remain in full force and effect, however, either party may request immediate negotiation of those terms and conditions of this Agreement which may be affected by such funding changes.
2. Notwithstanding this provision, if legislative action or executive order reduces the appropriation level for NHPD and NHPD proposes to reduce compensation for investigators as a result, NHPD will notify the union. The parties agree to negotiate in good faith for not less than thirty (30) days from the date of such notice. If such negotiations are unsuccessful after thirty days from the date of notice, NHPD may act unilaterally and can direct that the compensation agreed to in the current contract be

reduced. However, if NHPD reduces compensation for investigators, such reduction can not result in compensation lower than the pre-contract level and such reductions may only be implemented as part of a change in compensation that affects at least 50% of NHPD employees.

## ARTICLE XXII NO STRIKES OR LOCKOUTS

The Union, its members, and members of the bargaining unit, individually and collectively, agree not to cause, condone, or participate, directly or through inaction, in any strike, picketing, slow down, boycott, or any other action which will interrupt or interfere in any way with the operations of NHPD during the term of this agreement. NHPD retains the right to discipline or discharge any employee who violates this provision. NHPD agrees that during the term of this agreement it will not lock out any employee covered by the Agreement. It is agreed that employment at NHPD requires that all job responsibilities be carried out regardless of the existence of picket lines or other job actions at NHPD, any of its clients or vendors, or at any court or government facilities or any other place.

## ARTICLE XXIII SEVERABILITY

In the event that any provision of this Agreement is finally held or determined to be illegal or void as being in contravention of any law, ruling or regulation of any governmental authority or agency having jurisdiction of the subject matter of this Agreement, the remainder of the Agreement shall remain in full force and effect, except as otherwise stated in this Agreement in Article XI regarding hours of work and rates or pay.

## ARTICLE XXIV TERM OF AGREEMENT

This Agreement shall be effective as **of its** execution, and shall remain in full force and effect until midnight on June 30, 2009. Actions taken before the commencement of the term of this agreement cannot form the basis of a grievance under this agreement nor otherwise be construed to violate the agreement. The parties agree to notify each other in writing of their readiness to commence negotiations for a successor Agreement no earlier than nine months nor later than 60 days before the scheduled termination of the agreement. If no notice is given, the agreement will automatically be renewed for one year.

Christopher Keating, Executive Director  
New Hampshire Public Defender

Mary B. Hawkes, Investigations Director  
New Hampshire Public Defender

Karen Anderson, Administrator  
New Hampshire Public Defender

Anna-Marie Welch, Negotiator, SEA/SEIU Local 1984

Trina Alexknovich, Investigator  
Union Representative

Cheryl-Stafford Rogers, Investigator  
Union Representative

Mark Paine, Investigator  
Union Representative

Witness

DATED: July 31/07

# APPENDIX I

Name \_\_\_\_\_ Dept. \_\_\_\_\_  
Street (home) \_\_\_\_\_ Division \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Job Site \_\_\_\_\_  
Phone (H) \_\_\_\_\_ (W) \_\_\_\_\_ Job Title \_\_\_\_\_  
E-mail \_\_\_\_\_ Social Security # \_\_\_\_\_  
Date of Birth \_\_\_\_\_ Town in which you vote (if other than above) \_\_\_\_\_

I hereby make application for membership in the State Employees' Association of NH, SEIU Local 1984, and Understand that dues payment is a condition of membership.

I elect to pay dues by:

- Voluntary payroll deduction through my employer of dues in the amount of \_\_\_\_\_ per pay period. I understand that by signing below, I am authorizing such deductions and such authorization shall remain in effect until I notify the employer and the SEA that I am revoking that authorization.
- Direct payment to the SEA treasurer on a monthly basis.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Recruiter \_\_\_\_\_ Chapter No. \_\_\_\_\_

# APPENDIX II

## New Hampshire Public Defender Investigator Job Descriptions

All NHPD investigators, regardless of Level, shall satisfactorily perform the Basic Investigator Requirements set out below. Following the Basic Investigator Requirements is a listing of specific descriptions, duties, and qualifications pertaining to each separate investigator level. Because we must give the best possible representation to all clients and cases, investigators at any level may be required to perform duties associated with any other level or not specifically listed in any category. Acceptable performance at any level requires demonstrated consistent competence in the specific requirements of that level, the Basic Investigator Requirements, and any other tasks assigned. Promotion requires satisfactory performance at the investigator's current level as well as the demonstrated ability to perform the specific duties and satisfy any other qualifications of the level sought.

### Basic Investigator Requirements

Each NHPD Investigator:

#### **1. Manages Workload:**

- Manages the cases assigned in a manner that promotes and maximizes the thorough and effective completion of tasks in all cases within the time limits established.
- Practices good organization skills in managing files and workload.
- Prioritizes tasks appropriately.
- Promptly starts an investigation and meets deadlines.
- Effectively responds to last minute requests and does not let them interfere with the progress of other investigations.

#### **2. Maintains Availability and Accounts for Time:**

- Maintains availability to other members of NHPD by keeping the appropriate office staff (secretaries and attorneys) apprised of where he or she can be reached during office hours, keeping in touch with the office if unreachable, and maintaining daily "core hours" in consultation with the Managing Attorney.
- Keeps accurate records of work done on any case so as to properly establish, at a later date, what has been done, when it was done, and in what fashion.
- Keeps accurate and timely activity logs as requested.
- Keeps appropriate and consistent office hours when not actively working on an assignment requiring activities outside the office.

#### **3. Locates Witnesses and Supporting Evidence:**

- Demonstrates the knowledge necessary to locate witnesses and clients in and out of the state of New Hampshire.
- Regularly utilizes witness location techniques effectively to advance the objectives of the investigation.
- Demonstrates the knowledge necessary to locate and obtain various documents and/or records, in and out of the State of New Hampshire, including medical, mental health, social services, corrections, utilities, transcripts, motor vehicle, etc.

**4. Interviews Witnesses:**

- Identifies potential witnesses.
- Effectively interviews witnesses of all types.
- Within the bounds of legal and ethical constraints, uses appropriate methods to influence witnesses to cooperate, even when their interests are hostile to the defense or they are otherwise reluctant to cooperate with the investigation.
- Interviews thoroughly to cover all areas and issues appropriate to the case and to the theory and strategy of the defense.
- Recognizes information helpful to any defense that could be developed through a witness.
- Follows up leads with appropriate questions.
- Uses interviewing skills to control the interview and develop the defense case.
- Makes proper decisions about the collection of physical and other evidence which consider applicable legal consequences and ethical considerations, as well as the interests of clients.
- Takes written statements effectively and under appropriate circumstances.

**5. Coordinates and Prepares Witnesses:**

- Assists attorneys in the location and coordination of expert witnesses.
- Contacts and provides information to expert witnesses.
- Serves subpoenas for the attendance of witnesses and for the production of other evidence properly and in a timely fashion.
- Arranges travel for witnesses when necessary.
- Assists in preparation of clients and other witnesses for testimony in court, contributing with suggestions and other input to advance the defense presentation.
- Responds appropriately to communication from witnesses and maintains contact with witnesses as necessary.
- Effectively coordinates the appearance of witnesses in court when necessary.

**6. Writes Reports:**

- Writes reports and other communications in a complete and accurate manner. Reports are clear, concise, and support the defense theory in scope and tone. They are appropriate for examination by persons outside NHPD if provided through the discovery process.
- Has a working understanding of reciprocal discovery and evidentiary issues and applies that knowledge when reporting information to attorneys.
- Drafts reports such that there is no unnecessary delay between time of the interview and drafting of the report.

**7. Prepares Exhibits:**

- Locates and/or prepares effective exhibits for use in court.
- Uses basic photographic techniques.
- Creates useful demonstrative evidence to use in case preparation and presentation.

**8. Contributes to Case Theory and Strategy:**

- Contributes to the development and improvement of the defense case with suggestions and constructive criticism about ideas, strategies, and theories.

- In support of effective representation, pursues new and/or unanticipated information during interviews even when not part of the original investigation plan.
- Maintains an awareness of the facts of a case.
- Maintains a working knowledge of the facts of cases being investigated, of applicable criminal law and rules of evidence, and of procedural rules and practices which apply to criminal cases handled by NHPD.
- Regularly attends and contributes to office case conferences.
- When reading police reports and other discovery materials, identifies important facts, areas for defense investigation, and inconsistencies and other weaknesses in the prosecution case. Effectively utilizes discovery to locate witnesses, prepare for investigation and conduct interviews.
- Consults with attorneys on a regular and ongoing basis about the applicable law and theories of cases.

**9. Testifies:**

- Testifies clearly, confidently, and persuasively in a manner that ethically advances the defense case.
- Prepares for testimony by developing and maintaining familiarity with the subject matter of the testimony, and by consulting with counsel.
- Effectively responds to examination and cross-examination about investigation practices in criminal defense cases.

**10. Assists Clients in Non-trial Aspects of Case:**

- Utilizes social service and treatment programs for clients and as part of sentencing advocacy.
- Assists the attorney in preparing for PSIs; may prepare the client for a PSI, attend the PSI, and interact appropriately to client's benefit.

**11. Participates in Training and Development of Program Resources:**

- Attends all mandatory training unless excused.
- Suggests and takes advantage of other training opportunities that may be available for improving job-related skills.
- Provides appropriate mentoring, oversight and training to interns and new investigators as requested.
- Over time, develops, maintains and improves familiarity with human service and treatment resources in New Hampshire and regionally.
- Updates any available database regarding available treatment and sentencing options.
- Responds constructively to supervision and guidance.

**12. Demonstrates Commitment to Clients and Establishes Good Client Relations:**

- In all areas of job performance, demonstrates a strong commitment to assisting people who are unable to provide for their own legal defense.
- Interacts in a professional manner on phone and in person.
- Communicates effectively with clients without giving legal advice.
- Establishes a good working relationship with clients and is able to obtain information directly from clients.

- Demonstrates sensitivity to the many and unique problems suffered by our clients and their families.
- Treats clients and their families and others with respect and dignity.

**13. Positively Represents NHPD:**

- Interacts with judicial officers, prosecutors, courtroom personnel, law enforcement personnel and other members of the criminal justice system in a matter conducive to effective representation of the client.
- Dresses appropriately at all times.
- Wears professional attire when meeting with clients, families, witnesses, police officers or court personnel.

**14. Promotes a Positive Work Environment:**

- Develops effective working relationships with attorneys.
- Maintains communication with attorneys concerning the progress of the investigation, any problems that are causing delay, and concerning the anticipated completion date.
- Interacts with attorneys, legal secretaries and other investigators with a spirit of mutual cooperation and respect, recognizing all as part of the defense team.
- Assists less experienced investigators and interns.
- Accepts assignments for unavailable investigators and willingly takes on unusual or complex assignments.

**15. Adheres to Ethical Obligations:**

- Maintains familiarity with the Rules of Professional Conduct.
- Performs his or her job vigorously and zealously, but always within the bounds of these professional standards.
- Complies with particular care to confidentiality requirements.
- Exercises good judgment when ethical issues are presented.

**16. Appropriately Responds to All Other Requests.**

**17. Possesses and Maintains a Valid NH Driver's License, Reliable Automobile and Motor Vehicle Insurance.**

The following describes each separate level. Each level still requires satisfactory compliance with all of the above provisions well as any additional requirements stated or implied. An investigator may apply for promotion to a higher level at any time. Advancement will be determined based upon satisfactory performance in all areas of the Basic Investigator Requirements as well as the demonstrated ability to perform the requirements of the desired level.

### Level I Investigator

#### Description

A Level I Investigator is an entry-level position for the novice investigator. The Level I Investigator is expected to adequately perform all Basic Investigator Requirements and respond appropriately to any other reasonable requests including duties associated with any other level or not specifically listed in any category. Level I is not a long-term placement and an investigator may not move up the steps within Level I. Rather, the Level I Investigator is expected to quickly master the job basics and be prepared to move into Level II or above within one year.

#### Duties

- Basic Investigator Requirements
- Any other reasonable request, including, but not limited to, duties normally associated with other levels.

#### Qualifications

- Holds a BA or BS in a related field or significant related experience.
- Demonstrates a potential to perform the job requirements well and progress to a higher level.

### Level II Investigator

#### Description

A Level II Investigator is an experienced and effective investigator who consistently performs the Basic Investigator Requirements to the satisfaction of NHPD and responds appropriately to any other reasonable requests including duties associated with any other level or not specifically listed in any category. Level II is an acceptable level for both newer and the most seasoned or experienced investigators. The Level II Investigator is motivated and self-sufficient, yet he or she also functions well as part of a team with staff attorneys and other NHPD employees. The Level II Investigator is capable, requires little direction for standard tasks, and is able to effectively handle a wide variety of cases.

#### Duties

- Basic Investigator Requirements
- Any other reasonable request, including, but not limited to, duties normally associated with other levels.

#### Qualifications

- Holds a BA or BS in a related field or significant related experience.
- Demonstrates the ability to perform the job requirements well.
- Has at least one full year of investigation or comparable experience. If the investigator's Managing Attorney and the Investigations Director agree that he or she has demonstrated

consistent superior performance during at least eight months of employment at NHPD, this requirement may be waived.

### Level III Investigator

#### Description

The Level III Investigator is an investigator who has mastered the Basic Investigator Requirements, consistently delivers performance above the standard or acceptable level, and has demonstrated an ability to work effectively in areas of sentencing and social services as applied in client representation. The Level III investigator also responds appropriately to any other reasonable requests including duties associated with any other level or not specifically listed in any category. The Level III Investigator assists attorneys and clients in both traditional and nontraditional litigation-related investigation and non-trial aspects of the case. The Level III investigator effectively utilizes social services and treatment programs for the benefit of clients and as part of sentencing or bail advocacy. The Level III investigator is a creative and highly motivated investigator who requires little direction and is an integral and important part of the defense team.

#### Duties

- Effectively performs all of the same duties as the Level II Investigator.
- Researches, locates, coordinates, prepares and works closely with expert witnesses.
- Maintains correspondence with expert witnesses and provides them with necessary information and tracking deadlines.
- Researches and prepares information to challenge the State's expert witnesses.
- Performs social history and sentencing related interviews of the client, researches and suggests social service and treatment options, assists clients in accessing social services, and prepares sentencing memoranda and social history packages for the court's review.
- Participates in the Pre-Sentence Investigation process to the benefit of the client.
- Updates and tracks human service and treatment resources.
- Develops an expertise in a Level III related area and provides information and/or training to other NHPD staff regarding that issue.
- 

#### Qualifications

- Possesses all of the qualifications of the Level II Investigator.
- Has a Human Service, Psychology, or related degree or related experience, either at NHPD as an investigator, or elsewhere in the sentencing advocacy or human services fields.
- Is highly dedicated to NHPD clients and is committed to meeting their needs for effective criminal defense, including comprehensive factual investigation, persuasive sentencing advocacy and meaningful access to social services.
- Demonstrates superior knowledge of human service and treatment resources in NH.
- Has a thorough understanding of the roles of experts and demonstrates an ability to support, prepare, coordinate and work closely with expert witnesses.
- Demonstrates excellent interviewing and communication skills.
- Is a team player who demonstrates an ability to work closely with NHPD attorneys and professionals outside NHPD.

# APPENDIX III

## FLUCTUATING WORKWEEK GUIDELINES FOR NON-EXEMPT PROFESSIONAL STAFF

New Hampshire Public Defender has adopted a fluctuating workweek payroll schedule for non-exempt employees whose hours fluctuate from week to week. These employees generally hold positions with supervisory responsibilities or others which regularly require the exercise of independent, professional judgment. Employees covered by these guidelines include Investigators, Information Specialists and certain Office Administrators.

In accordance with the Fair Labor Standards Act and governing labor regulations, NHPD and the undersigned Employee agree to the following conditions:

1. Employee will receive a fixed amount as straight time pay for whatever hours you are called to work within a workweek, whether many or few. The weekly salary will be based on the employee's annualized salary as agreed at the time of hire and as may be modified from time to time by regular salary adjustments. This fixed weekly salary constitutes compensation (apart from overtime premiums) for the hours worked each workweek, whatever the number. Any employee approved to work more than 40 hours within a workweek will receive an overtime premium for each additional hour worked over 40 hours.
2. This means that NHPD will not reduce Employee's salary if you work fewer than 40 hours in a workweek nor will it increase straight time compensation for any hours worked over 40 within a workweek
3. The overtime premium will be based on an overtime rate of not less than one-half of your regular rate of pay. Since the Employee's fixed salary compensates you at straight time rates for whatever hours you worked in a particular workweek, your regular hourly rate will vary from week to week, depending on the number of hours worked. The overtime rate, therefore, will also fluctuate depending on the total number of hours worked in a particular workweek.
4. The formula for calculating your overtime rate in a particular workweek is as follows:  
$$\text{fixed weekly salary} \div \text{total hours worked during that workweek period} \times 0.5 = \text{overtime rate}$$
5. NHPD will set Employee's fixed salary at a level sufficient to compensate Employee at a rate not less than the minimum wage rate for every hour worked, including workweeks in which overtime hours are worked.

Employee will not be allowed to exceed 40 hours in any workweek without advance permission from your supervisor according to the schedule below:

Investigator:	Investigations Director (or Executive Director in an emergency)
Information Support:	IT/IS Manager (or Program Administrator in an emergency)
Office Administrator:	Program Administrator (or Director of Legal Services in an emergency)

6. The workweek for purposes of calculating overtime will be from Saturday 12:01 AM to Friday midnight. However, the standard Monday-Friday workweek will be the norm. Work on the weekends shall be the exception and will be limited to those situations where it is necessary for client representation or business operations and unavoidable by the Employee.
7. Employee will record your time on the *Non-Exempt Professional Employee Time Logs* provided by NHPD. These logs will only reflect hours worked on behalf of NHPD. While Employee may do non-NHPD tasks during regular business hours (e.g., union activities, personal business, or lunch), the recorded hours should only reflect time spent fulfilling Employee's job responsibilities at NHPD. Rather than asking an employee to work a set number of hours each week, NHPD asks that each Employee fulfill your obligations in a timely manner on the work assigned to you.
8. NHPD reserves the right to change employees' work schedules or to reclassify positions as it deems warranted by business necessities or legal compliance obligations.

*By signing below NHPD and Employee agree that the foregoing represents their mutual understanding of the guidelines regarding fixed pay for fluctuating hours and agree further to abide by these guidelines.*

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
NHPD by

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

8/5/02

