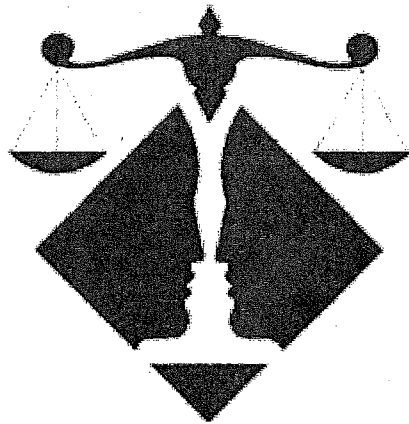


ACCS Bad Check Restitution Program

**Kaua'i
County
HI**



CONTRACT

**American Corrective
Counseling Services**

180 Avenida La Pata, Suite 200

San Clemente, CA 92673

Ph (800) 325-3910 Fax (800) 325-3873

**CONSULTING
AND
ADMINISTRATIVE SUPPORT SERVICES
AGREEMENT**

This Consulting and Administrative Support Services Agreement (the "Agreement") between American Corrective Counseling Services, Inc., a California corporation ("ACCS") and the Prosecuting Attorney of Kaua'i County, State of Hawai'i ("Prosecuting Attorney"):

Recitals

- (i) The principal business activity of ACCS is the provision of educational seminars, consulting, and administrative support services to State and Judicial District prosecutors' offices that have adopted a pre-trial misdemeanor bad check diversion program ("Diversion Program"). These programs typically allow first time offenders (the "Participant") to avoid the prospect of criminal prosecution, provided the Participant attends an educational seminar ("Seminar") mandated by the prosecutorial authority addressing the causes and the prevention of bad check writing, pays a fee for the Seminar, and pays restitution to the victim of the bad check.
- (ii) ACCS has extensive experience providing consulting, administrative support, and Seminars for Diversion Programs. More specifically, ACCS has developed proprietary Seminar materials for the conduct of the Seminars, has extensive experience in staffing Diversion Program Seminars, and has acquired substantial know-how with respect to the administrative and record management procedures necessary to operate an effective Diversion Program.
- (iii) The Prosecuting Attorney desires to retain ACCS to provide consulting services, to staff and to operate its Diversion Program Seminars, and to provide administrative support services as reasonably required by the Prosecuting Attorney in the conduct of the Diversion Program. ACCS desires to perform these services for the Prosecuting Attorney as specified herein.
- (iv) The Prosecuting Attorney and ACCS acknowledge that the Diversion Program will be operated under the Prosecuting Attorney's name, authority and control. It is specifically understood that:
 - (a) the Prosecuting Attorney retains full prosecutorial discretion and does not delegate to ACCS any aspect of the exercise of prosecutorial discretion;
 - (b) the content and frequency of the Seminars are to be approved by the Prosecuting Attorney prior to the conduct of Seminars;
 - (c) prerequisites for participation in the Diversion Program, including any requirement of payment of restitution to the victim, shall be established by the Prosecuting Attorney and not by ACCS;
 - (d) the Prosecuting Attorney retains the authority to contractually set or modify the Seminar fees and terms of payment from Participants;

- (e) the format, content, and frequency of any oral or written communication with Participants concerning the payment of restitution or Diversion Seminar Fees is to be approved in advance by the Prosecuting Attorney;
- (f) the mailing of all written communications to Participants concerning the payment of restitution or Diversion Seminar Fees is to be approved by the Prosecuting Attorney prior to the mailing, and any such written communication will be either generated or mailed by Prosecuting Attorney personnel, or by a mailing service or similar clerical service; and
- (g) the mailing address to which Participants are directed to respond will either be the Prosecuting Attorney's mailing address, or a post office box held in the Prosecuting Attorney's name.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Retention of Services.** The Prosecuting Attorney retains the services of ACCS as described herein, and ACCS agrees to perform in accordance with this Agreement.

2. **Term.** The term of this Agreement is three years, commencing upon execution of this agreement by both parties, and unless sooner terminated as provided herein, shall renew in successive one-year increments at the end of the initial three-year term.

3. **Services to Be Provided by ACCS.**

(a) **Seminars.** ACCS will conduct all Diversion Program Seminars. In that regard, ACCS will provide qualified instructors to conduct the Seminars, provide its proprietary Seminar materials to class Participants, lease the required facilities to conduct the Seminars, monitor the attendance at the Seminars, and communicate directly with Seminar Participants regarding scheduling, attendance, and related administrative details. Classes shall be scheduled in convenient locations within or near Kaua'i County and will be held as determined convenient and effective in serving Participants. Instructors will typically hold advanced degrees in a counseling related field (e.g., psychology or social work). ACCS will continue to develop and refine its class curriculum and educational materials, and will conduct ongoing training and evaluation of all ACCS instructors. The Seminar is designed to remove many of the behavioral rationalizations surrounding the writing of bad checks, as well as focus on deficiencies in the areas of personal finance, communication, and stress management. Class sizes will average from 15 to 30 Participants, based on Participant and instructor scheduling needs. An ACCS "Checks and Balances" Personal Study Program (or equivalent future program) may also, as appropriate, be utilized in lieu of a live class under certain circumstances, (e.g., if the Participant lives outside a reasonable distance from the class site, etc.)

(b) **Consulting Services.** ACCS will provide the Prosecuting Attorney with *pro forma* administrative forms and proposed procedural guidelines for the operation of the Diversion Program, which are to be reviewed, modified and approved by the Prosecuting Attorney. ACCS will make its administrative personnel available to assist the Prosecuting Attorney in the development of administrative procedures to be followed for the clerical and accounting functions of the Diversion Program. These procedures include the Prosecuting Attorney's written communications to Participants, the mechanics of sorting the mail, depositing and accounting for Diversion Seminar Fees and restitution payments from Participants, disbursement of restitution payments to victims, and financial reporting.

(c) Administrative Support. ACCS shall provide clerical personnel for administrative, accounting, and reporting aspects of the Diversion Program, subject at all times to the managerial authority of the Prosecuting Attorney. More specifically, ACCS shall:

- (i) maintain thorough records to enable the generation of reports detailing the compliance and the disposition status on each Participant's case,
- (ii) maintain a detailed current accounting record of all receipts and disbursements of the Diversion Program,
- (iii) open and sort correspondence related to the Diversion Program and deposit Diversion Seminar Fees and restitution payments in a trust account to be held by the Prosecuting Attorney with ACCS as a signatory,
- (iv) prepare monthly reports which shall provide a summary of transactions and Diversion Program activity for the period, and
- (v) maintain the physical files, computer files, and facilities required for performance under this Agreement, and provide the necessary computers, printers, software, communication systems, and office supplies to enable the Prosecuting Attorney to operate the Diversion Program.

4. Responsibilities of the Prosecuting Attorney. The Prosecuting Attorney shall establish the policies and procedures of the Diversion Program and instruct ACCS regarding the administrative requirements necessary for effective Diversion Program operation. The Prosecuting Attorney shall establish eligibility criteria for all Participants in the Diversion Program, including specific Diversion Program completion criteria, and procedures regarding the management of cases for those individuals who fail to comply with Diversion Program requirements, including the payment of restitution and Diversion Seminar Fees.

5. Designation of Prosecuting Attorney's "Communications Liaison Officer." The Prosecuting Attorney's office shall designate one of its properly authorized employees as the Communications Liaison Officer (the "Communications Officer"). The Communications Officer shall be charged with final approval, signature, and coordination of all written communications to Participants concerning the Diversion Program, except for those communications relating exclusively to the conduct and scheduling of Seminars, which is the primary responsibility of ACCS. Furthermore, the Communications Officer shall authorize and supervise all communications with Participants concerning the terms and conditions of the Diversion Program. ACCS shall be responsible for all communications with Participants regarding the conduct of the Seminars, attendance, location, rescheduling of Seminars, or other Seminar related matters. ACCS personnel shall direct any questions within the responsibility of the Communications Officer to the Communications Officer, and not discuss these issues with Participants.

6. Compensation to ACCS. ACCS is to be compensated solely from the proceeds of the Diversion Seminar Fees charged to the Participants, plus the Incidental Expenses charged to Participants for rescheduling the Seminars, monitoring restitution and seminar payment arrangements, and any other incidental costs authorized by law and the Prosecuting Attorney. The authorized Diversion Seminar Fees and Incidental Expenses are set forth on Schedule 1 attached hereto.

7. Funds and Disbursements. Participants in the Diversion Program shall be instructed to remit payments: i) to a post office box maintained by the Prosecuting Attorney, ii) over the phone, e.g., via credit/debit card, iii) via Western Union (or equivalent service provider), or iv) other payment methods that may be available in the future. Monies shall be deposited in a Prosecuting Attorney maintained trust account held in a federally insured financial institution within the state. Disbursements from the trust account shall be made on a regular monthly cycle with the assistance of ACCS. A summary of trust accounting transactions shall be reported on a monthly basis, with supporting documentation made available for inspection upon request.

8. Records Subject to Audit. The Diversion Program books of accounts, records, and source documents shall be kept and made available at the request of the Prosecuting Attorney with the cost of such presentation borne by ACCS. The Prosecuting Attorney shall have the right to examine and audit the Diversion Program books and records and supporting source documents at any and all times. The cost of the audit shall be borne by ACCS if the audit shows an understatement of annual gross income of more than five (5) percent of the annual gross income determined on audit, or the audit demonstrates a material failure of ACCS to maintain accurate and complete books, records, accounts, and supporting documentation. All Diversion Program physical and electronic records shall be retained for a period of not less than three (3) years, with records relating to any litigation, or settlement of claims arising out of performance of this contract being retained for a period of not less than four (4) years.

9. Termination. ACCS may terminate this Agreement for cause upon thirty days prior written notice. Proper cause shall be any material breach of the contract that is not cured by the breaching party within thirty (30) days of written notice of the breach. Proper cause shall also include any reduction in the amount of the Diversion Seminar Fee and related minimum charges for Diversion Program operation set forth on Schedule 1 attached hereto and incorporated by reference. The Prosecuting Attorney may terminate this agreement for any reason the Prosecuting Attorney deems appropriate by providing thirty (30) days written notice. Either party may terminate this Agreement without cause upon ninety (90) days written notice given to the other party. In the event of a termination, the Prosecuting Attorney shall give ACCS written "wind down" instructions. ACCS shall comply with the termination instructions in a manner that is consistent with recognized standards of prudent business practice. Compensation to both parties will continue throughout the process of closing operations.

10. Confidentiality. ACCS acknowledges and agrees to implement reasonable safeguards to protect the confidentiality of information obtained in the course of the Diversion Program, including the identity and personal information of Participants, the identity of persons who file bad check crime reports with the Prosecuting Attorney, and the operations of the Prosecuting Attorney. The Prosecuting Attorney agrees to protect all proprietary information ACCS provides in connection with the performance of this Agreement, including ACCS teaching materials, instructional guidelines, financial condition, business plans, customer identities and technical information. The parties agree on termination of this Agreement to refrain from using any proprietary or confidential information or materials unless such materials or information may become evidence in any criminal prosecution or civil action that affects Kaua'i County of the State of Hawai'i.

11. Insurance. ACCS will maintain Comprehensive General Liability Insurance including premises liability, bodily injury, and product/completed operations coverage with a combined single limit of \$1,000,000.00 per occurrence, with a \$2,000,000.00 aggregate, and non-owned/hired automobile liability in the amount of \$1,000,000.00 in aggregate. In reference to insurance coverage maintained by ACCS, such policies shall not be canceled, limited in scope, or non-renewed until after thirty (30) days written notice has been given to the office of the Prosecuting Attorney. Certificates of Insurance evidencing the above coverages and clauses shall

be made available to the Prosecuting Attorney's office upon request. All insurance required herewith shall be with companies rated "A", Class XIII, or better in Best's Insurance Guide. Acceptance or approval of insurance shall in no way modify or change the indemnity or hold harmless clauses in this agreement which shall continue in full force and effect.

12. Status of ACCS Personnel. ACCS employees are and shall remain the employees of ACCS, not the Prosecuting Attorney. ACCS shall maintain all necessary licenses, permits, certificates, and approvals required by the laws of the United States, Hawai'i, and all other appropriate governmental agencies. Evidence of such licenses, permits, and approvals shall be made available to the Prosecuting Attorney's office upon request. ACCS certifies that all policies regarding employment and participation in the Program are in writing and shall be made available to the Prosecuting Attorney and members of the public upon request. The foregoing notwithstanding, ACCS employees, when performing the administrative support requirements of this Agreement, shall be subject to the managerial control of the Prosecuting Attorney at all times with respect to any communications ACCS employees may have with Participants. To the extent that ACCS employees have any interaction with Participants other than with respect to Seminar-related activities, ACCS employees shall exercise only ministerial, non-discretionary duties, at all times subject to the management and control of the Prosecuting Attorney.

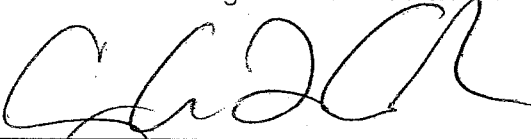
13. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter hereof, and contains all of the agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party which are not embodied herein, and that no other agreements, statements, or promises not contained within this Agreement shall be valid or binding. The laws of the State of Hawai'i and the United States of America shall govern all provisions contained within this Agreement.

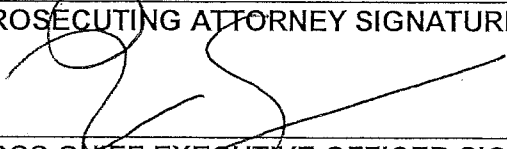
14. Notice. Any notice to be given hereunder by any party to the other, shall be in writing and may be effected by personal delivery, or by registered mail, return receipt requested, addressed to the proper party, at the following addresses:

Michael Schreck
ACCS Chief Executive Officer
180 Avenida La Pata, Suite 200
San Clemente, CA 92673

The Honorable Craig A. De Costa
Kaua'i County Prosecuting Attorney
3990 Kaana Street, Suite 210
Lihue, Kaua'i, HI 96766

IN WITNESS THEREOF, the parties hereunto, acting by and through their duly authorized officers, have caused this Agreement to be executed on the dates below.



PROSECUTING ATTORNEY SIGNATURE


ACCS CHIEF EXECUTIVE OFFICER SIGNATURE

1/27/05

DATE
3/23/05

DATE

SCHEDULE 1

- A. **RESTITUTION:** The victim's total loss associated with the face value of all bad checks.
- B. **DIVERION SEMINAR FEE:** The Diversion Program shall require eligible Participants to pay a \$150 Diversion Seminar Fee for the first contract year of the program, with \$5 price increases annually thereafter. This fee includes the opportunity to attend the Seminar or to complete a Personal Study Program where appropriate.
- C. **INCIDENTAL EXPENSES:**
1. **RESCHEDULING FEE:** Participants who fail to appear at their scheduled Seminar will be required to pay a \$25 rescheduling fee.
2. **LATE PAYMENT/CONVENIENCE FEE:** The Diversion Program shall require all Participants who have enrolled in a payment plan and miss their scheduled payment date (payment is postmarked more than five (5) days from the scheduled date) to pay a \$10 late fee to cover the additional administrative expense resulting from the failure to comply with the initial scheduled payment. Participants who choose to utilize credit cards as their method of payment will be assessed a fee of \$10 to offset the convenience fees charged by the credit card processing company to the Prosecuting Attorney Program.
- D. **PROGRAM COSTS:** All direct costs to the Prosecuting Attorney resulting from mail services, banking fees, postal box rental and related mail costs, shall be charged against and paid from Diversion Seminar Fees. ACCS shall bear all costs related to its personnel, supplies and expenses.
- E. **COMPENSATION:** During the first contract year, ACCS shall receive 96% of the balance of the Diversion Seminar Fees and the Prosecuting Attorney 4%. The second contract year, ACCS shall receive 94% of the balance of the Diversion Seminar Fees and the Prosecuting Attorney 6%. The third contract year, and any subsequent years thereafter, ACCS shall receive 92% of the balance of the Diversion Seminar Fees and the Prosecuting Attorney 8%. ACCS shall also receive 100% of the class rescheduling, convenience, and late payment fees.
- F. **PAYMENT DISBURSEMENT SCHEDULE:** Victim restitution shall be disbursed by check to the victim no later than the 20th day of each month for the prior month's receipts. ACCS fees shall be disbursed weekly to ACCS. Bills for mail costs and postal box rentals shall be paid according to vendor terms. The balance of the fees owed to the Prosecuting Attorney shall also be disbursed by the 20th day of each month for the prior month's receipts.
- G. **RECOVERY AND PAYMENT DISTRIBUTION:** Lump sum payments shall be distributed in their entirety according to the payment disbursement schedule. When partial payments are received, the following distribution priority shall be used: 50% of the partial payment is applied to the victim restitution balance (until satisfied). The remaining portion of the payment is applied first to the Diversion Seminar Fee and secondly to the Incidental Expenses (if any). In cases where there are multiple victims, payments will be applied on a first-in first-out (FIFO) basis with respect to the crime report filing date.

INITIAL HERE

