

AGREEMENT FOR INDIGENT DEFENSE ATTORNEY

THIS AGREEMENT is made effective the 1st day of January, 2016, by and between WEBER COUNTY, a body politic and the State of Utah, hereinafter referred to as “County,” and _____, hereinafter referred to as “Attorney.”

WITNESSETH:

WHEREAS, pursuant to Chapter 32 of Title 77, *Utah Code Ann.* (1953) as amended, Weber County has the responsibility to provide legal counsel to every indigent person who faces the substantial probability of deprivation of his or her liberty; and

WHEREAS, Attorney is a member of the Utah State Bar Association in good standing and admitted to practice law before the courts of the State of Utah; and

WHEREAS, Attorney is willing to represent indigent persons in the Second District Court when appointed by the Court;

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

1. Attorney agrees to provide competent legal counsel to any person charged with a felony or a misdemeanor who appears at the arraignment calendar sessions in the court Attorney is assigned to and who is deemed by the court to be indigent, as well as those indigent persons assigned to Attorney at video arraignments. Attorney will also represent indigent defendants in probation violations hearings and restitution hearings.
2. Attorney will represent various indigent defendants when the court deems there is a conflict of interest preventing other Contract attorneys from representing the indigent defendant. Any such representation shall be at no additional cost to Weber County, with such assignments being made by the Coordinating Attorney.
3. Attorney will cooperate in providing the Coordinating Attorney caseload information to enable the proper assembly of case statistics.
4. Attorney will work diligently to avoid any complaints being lodged against Attorney, and will immediately communicate to the Coordinating Attorney any complaints that may be lodged by anyone against Attorney, and work diligently to resolve any such complaint, as well as seek to identify potential conflicts or complaints that persons may have against Attorney.
5. Attorney will cooperate in the implementation of a system for the collection from Attorney of files that are closed and the storage of such files in a location deemed appropriate.
6. Attorney will assist in the development of a list of court approved investigators

and expert witnesses and make diligent efforts to utilize only those investigators and expert witnesses found on such list. If Attorney feels it necessary to utilize an expert witness or investigator who is not on the approved list, Attorney agrees to first consult with the Coordinating Attorney before making any such request of the Court.

7. Attorney shall submit to the Coordinating Attorney an electronic copy of each and every motion, memoranda and appellate brief Attorney files. Attorney is not required to submit said copies prior to the respective due dates, but shall submit copies to the Coordinating Attorney as soon thereafter as is practicable.
8. Attorney shall submit to the Coordinating Attorney a copy of each request for transcripts, appointment of expert witness, or any other motion or request that will require payment by the County, and shall submit such copies simultaneously with the filing of the original documents with the Court. Attorney shall determine that such requests are necessary for a reasonable and adequate defense.
9. If at any time Attorney's case load becomes sufficiently burdensome to create an ineffective assistance of counsel issue or could cause the attorney to be in violation of the Rules of Professional Conduct, Attorney shall immediately notify the Coordinator and determine a proper course of action to remedy the situation.
10. County agrees that if a particular case is deemed to be extraordinary in complexity or requires extraordinary resources for a reasonable defense, Attorney may apply to Weber County for additional funding upon the recommendation of Coordinator.
11. Attorney is expected to provide coverage for other contract attorneys when necessary and when Attorney is available to provide coverage. When possible, the attorneys should attempt to trade coverage at the time coverage is procured. When a simultaneous trade is not possible, the attorney whose calendar was covered should make reasonable efforts to reciprocate coverage for the attorney who covered for him/her upon request. If the Coordinating Attorney determines that the attorney who provided coverage made reasonable efforts to procure coverage from the attorney for whom he/she provided coverage and the other attorney is unwilling or unable to provide coverage within six months of the original coverage having been provided, the covering attorney shall be compensated by the attorney who was covered the sum of \$250 for having provided coverage. This amount shall be deducted from the paycheck of the attorney whose calendar was covered and added to the paycheck of the covering attorney.

12. When attorney will miss his regular court assignment due to trial, seminar, vacation, etc., he shall arrange with another contract attorney to cover Attorney's court. If Attorney fails to procure coverage and does not appear at his court assignment, the sum of \$600 shall be deducted from his pay and paid to the attorney[s] who provide coverage for Attorney (if, indeed, any is provided). The arrangement for court coverage shall be coordinated with the Coordinating Attorney.
13. The term of this Agreement shall be from October 1, 2015 through December 31, 2018.
14. Weber County agrees to pay Attorney the sum of \$_____ on an annualized basis for service provided between January 1, 2016 and December 31, 2018, plus an additional \$150 annually to cover expenses associated with discovery. Payment shall be made to the Attorney in equal monthly installments of \$_____ per month which includes the \$150 with expenses associated with discovery. The first installment is due before the end of January 2016, and a like sum on the last day of each month thereafter through December 31, 2018.
15. Attorney agrees to maintain professional malpractice insurance with limits of \$100,000 per person and an aggregate of \$300,000 and provide to Weber County evidence of the insurance. In addition, Attorney agrees to hold Weber County harmless from all damage, loss or injury it may suffer or be held liable for as a result of the conduct of Attorney.
16. Attorney agrees to abide by the rules of Professional Conduct of the American Bar Association, the Utah State Bar Association and the laws of the State of Utah, including but not necessarily limited to the provisions of Chapter 32 of Title 77, *Utah Code Ann.* (1953) as amended.
17. Throughout the term of this Agreement, Attorney agrees to maintain a bona fide office in Weber County, made available to the clients which he/she serves under the terms of this Agreement.
18. Attorney agrees to use his best efforts to avoid any conflicts of interest which would divide loyalty of defense counsel to the client. The Parties, however, recognize that certain cases may arise where conflicts are of sufficient magnitude that the Attorney cannot represent the person charged. Conflicts of interest shall only be deemed to exist after a determination of the appointing Court.
19. Attorney agrees to assist Weber County in the continued implementation of a fee recovery program whereby Defendants receiving assistance of appointed counsel shall repay to Weber County a portion of the expense thereof as a matter of restitution, based upon a schedule approved by the Weber County Commission.

20. This Agreement may not be assigned by Attorney. Attorney is an independent contractor and shall not act as an agent for Weber County.
21. Weber County has established a separate indigent expense fund and will continue to fund the expense fund for the term of this Agreement. The expense fund may be used by all attorneys representing indigent defendants in Weber County. Appropriate expenses shall include, but shall not be limited to, laboratory costs, transcripts, defense witness fees, and extraordinary investigator fees. While ensuring that Attorney's client receives an adequate and reasonable defense, Attorney hereby agrees to use his best efforts to minimize the cost and expenses to be deducted from the fund. Before any funds are expended, Attorney shall first consult with the Coordinating Attorney, and then shall make application for approval of expenses in the form of a written motion to the trial judge and shall specify the reasons for the expense. Payment for any expense incurred by the Attorney and not previously approved by the Court shall be the sole responsibility of the Attorney. In the event the total court approved expenses exhaust the expense fund for the year, the Attorney shall apply in writing to the Weber County Clerk/Auditor for approval of additional funds.
22. Attorney or County may be terminate this Agreement without cause upon sixty (60) days written notice to the other party. This Agreement may also be terminated at any time for cause. Cause shall include but not be limited to a suspension or revocation of Attorney's license to practice law in the State of Utah, a breach of this Agreement or behavior which brings disrepute to other contract attorneys or to County. In the case of a breach or violation of a term of this Agreement, Attorney shall be given seven (7) calendar days to cure the breach or violation. Failure of the Attorney to cure breach or violation within the specified period shall result in termination of this Agreement and the parties hereto agree that Weber County may retain other legal counsel to represent indigent defendants within Weber County and deduct the costs from the compensation identified in Paragraph 6 of this Agreement.
23. This Agreement can be changed, modified or amended only by written agreement of the parties hereto.
24. Attorney is an independent contractor and is responsible to pay any and of all taxes and fees which may result from the compensation paid to Attorney pursuant to this Agreement.
25. This Agreement shall constitute the entire agreement between the parties and by prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
26. This Agreement shall be governed by the laws of the State of Utah.

IN WITNESS WHEREOF the undersigned have affixed their respective signatures hereto the dates indicated below.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

Date _____

By _____
Kerry W. Gibson, Chair

Commissioner Bell voted _____
Commissioner Gibson voted _____
Commissioner Zogmaister voted _____

ATTEST:

Ricky Hatch, CPA
Weber County

ATTORNEY

INDIGENT DEFENSE COORDINATOR

By _____

By _____
Michael D. Bouwhuis

Date _____

Date _____