

AGREEMENT FOR INDIGENT DEFENSE ATTORNEY APPEALS

This agreement is made effective the 24th day of October, 2025, by and between Weber County, a body politic and political subdivision of the State of Utah (“County”) and Andrew Fitzgerald (“Attorney”). County and Attorneys are sometimes referred to individually as “Party” and collectively as “Parties.”

WITNESSETH:

WHEREAS, pursuant to the Indigent Defense Act, as set forth in Title 78B, Chapter 22 Utah Code Ann., 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, Attorneys are active members of the Utah State Bar Association in good standing and admitted to practice law before the courts of the State of Utah; and

WHEREAS, Attorneys are on the Utah Court’s Appellate Roster and commit to remain in active status on the roster; and

WHEREAS, Attorneys have the time, experience, training, and expertise to provide constitutionally effective legal representation and are willing to represent indigent persons on appeal from the Second District Court when appointed by the Court;

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

SECTION ONE SERVICES

1. Attorneys shall fulfill the following specific assignments:
 - a. **District Court Appeals:** Attorneys agree to provide competent legal counsel to any person whose case is on appeal, who is deemed by the court to be indigent, and who was appointed an indigent services provider (“Clients”). Attorneys shall perform all duties and responsibilities of appellate counsel as specified by law and in accordance with the rules of professional conduct governing the practice of law. Duties shall include but not be limited to reviewing transcripts from the trial court; communicating with trial counsel; communicating with the defendant; timely filing the notice of appeal (if not filed by trial counsel); timely filing brief of appellant; timely filing reply brief of appellant; participating in oral argument; drafting any other necessary and relevant documents; and any other actions

necessary to pursue appeals.

- b. **Juvenile Court Child Welfare Appeals:** The parties acknowledge that appeals from juvenile court must be done by the trial attorney; however, Attorneys agree to act as co-counsel on appeal. For the Petition on Appeal, Attorneys will draft the Petition on Appeal with assistance from the trial attorney. If the court sets the case for full briefing, Attorneys will draft and file any required appellate briefs.
 - c. **Interlocutory Appeals:** Attorneys agree to represent Clients in appeals where the Client has a statutory right to an immediate appeal from a non-final decision
- 2. Attorneys agree to promptly notify the court of any changes regarding the indigent status of any Clients which would affect Clients' qualification for court-appointed counsel.
 - 3. If Attorneys are not Rule 8 qualified, Attorneys shall make reasonable efforts to become Rule 8 qualified.
 - 4. Attorneys agree to be supervised by Director, and/or his/her designee and to accept assignments from said Director to cover specific court calendars and other hearings as necessary.
 - 5. Attorneys agree to provide Director with caseload information on a monthly basis in a format approved by the Director. Attorneys will use defenderData™ (dD), or other software that may be required by Director, as a means of tracking and reporting various information about Attorneys' assigned cases.
 - a. Attorneys will ensure that all assigned cases are properly opened in dD and will ensure the following information is recorded therein: charges, client contact information (specifically cell numbers); and, whether an investigator, expert witness or the FSW team was utilized in the case.
 - b. Attorneys will also ensure that all cases are closed after the court issues a decision on the case. This may be accomplished by Attorneys updating dD or emailing pd@webercountyutah.gov the case number, client name, date closed and result (i.e., pled, revoke/restart, etc.) Failure to do so may result in a financial penalty equal to the office staff's hourly wage times the number of hours required to review and close Attorneys' cases.
 - 6. Attorneys will maintain Client folders with pertinent discovery, documents and notes necessary to provide a basic understanding of the case to anyone who might need to cover and/or take over representation. Client folders shall be clearly labeled "LAST NAME, FIRST NAME CASE NUMBER."

- a. Client folders should be maintained in an electronic format that is secure, yet easily transferrable to subsequent counsel, investigators and/or Clients. Maintaining all discovery and notes in dD meets this requirement. In addition to dD, Client Folders may be maintained in Dropbox™ as the preferred cloud storage service.
 - b. Periodically (at least every five years or at the termination of this contract, Attorneys shall copy all public defender client files into an external hard drive and deliver the hard drive to the Office Manager. (An external hard drive can be obtained from the Office Manager to accomplish this task.) The Client folders should be properly labeled as outlined above and will be stored in a secure database at the WPDG office.
 - c. Any hard copy files and/or documents should be scanned at the close of the case and properly stored as outlined above. Attorneys will be responsible for the secure destruction of any hard files, discs, or other electronic media after the expiration of five years, or the termination of this contract and transfer to the WPDG as described in 6(b) above, whichever comes first. Attorneys will also be responsible for the secure destruction of any transferred files retained in Attorneys' possession.
7. Failure to comply with the requirements of paragraphs 5 or 6 may result in a financial penalty equal to the office staff's hourly wage multiplied by the number of hours required to accomplish the task for Attorneys. Said amount may be withheld from Attorneys' paycheck.
8. Attorneys shall notify Director whenever Attorneys receive written notice from the Utah State Bar Association regarding a bar complaint or investigation involving Attorneys, regardless of whether the complaint and/or investigation involved an assigned Client.
9. Attorneys will seek to identify potential conflicts or complaints that persons may have against Attorneys and report the same to Director and/or his/her assignee. Attorneys agree to work diligently to avoid any complaints being lodged against Attorneys and perform remedial steps as may be agreed upon with Director and/or his/her assignee.
10. Attorneys will not retain an investigator or expert witness expecting reimbursement of the costs of such services without consulting Director and receiving prior approval pursuant to the policy and procedures established within the WPDG.
11. Upon request, Attorneys shall submit to Director an electronic copy of any motion, memoranda, appellate brief, court report, or any other such report pertaining to Attorneys'

Clients under this Agreement.

12. County acknowledges that Attorneys' representation, whether as the primary attorney or assistant thereto, of an indigent defendant in a capital case exceeds the scope of this Agreement. In this event, a separate contract will be drafted regarding additional compensation.
13. Attorneys agree to make reasonable efforts to attend all the periodic public defender training/coordination meetings and to attend performance evaluations as requested by Director.
14. Attorneys agree to use his/her best efforts to avoid any conflicts of interest, which would divide the duty of loyalty of Attorneys to their assigned indigent Clients and Attorneys' private practice. The Parties recognize that certain cases may arise where conflicts are of sufficient magnitude that Attorneys cannot represent a particular Client. Conflicts of interest shall only be deemed to exist after a determination by Director or of the appointing Court.
15. UCA §77-32b-104(1)(a) authorizes the recoupment of costs incurred by the State or any political subdivision for providing counsel assigned to represent the defendant. Attorneys shall ensure the Court adheres to subparagraph (4) which requires the court to consider the financial resources of the defendant; the nature of the burden that payment of the cost will impose; and, that restitution will be prioritized over any cost.
16. Attorneys will provide a digital copy of each file to the Director once a decision has been rendered by the court or at the time the file is otherwise considered closed.
17. Attorneys shall provide a list to the Director of all appeals filed on behalf of the County at the end of each year for that calendar year.
18. Attorneys shall make reasonable efforts to be included on the Utah Appellate Roster for Child Welfare, Criminal, and Juvenile Delinquency appeals.

SECTION TWO CONDUCT

19. If Attorneys' caseload becomes sufficiently burdensome to create a potential ineffective assistance claim or may cause Attorneys to be in violation of the Rules of Professional Conduct, Attorneys shall immediately notify Director to determine a proper course of

action to remedy the situation. Resolution may include, but not be limited to, reassigning a case or cases; assigning an additional attorney for complex cases; reducing or eliminating private practice matters, or other solutions.

20. Attorneys agree 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).
21. Attorneys agree to keep abreast of all current legal trends in criminal defense and to maintain sufficient continuing professional education credits during the period of this Agreement. Attorneys shall report to Director the status of CLE credits earned on or before June 1st each year. If Attorneys need CLE by June 1st, Attorneys will provide Director the plan to complete all required CLEs by June 30th.

SECTION THREE COMPENSATION

22. County agrees to pay Attorneys the following amounts:
 - a. Attorneys shall be paid \$75 per hour for appeals involving challenges to guilty pleas or convictions, where the issues on appeal involve only a claim that the trial court abused its discretion in sentencing, and/or a challenge to a guilty plea where a timely motion to withdraw the guilty plea was not filed. In such cases, Attorneys will not bill the County more than \$3,000 per case without prior approval requested in writing. In the event *State v. Brown* is overturned so that substantive claims are permissible in these types of appeals, the hourly rate and cap will automatically change to \$150 per hour and \$8,000 per case unless prior approval is obtained in writing to exceed the cap.
 - b. Attorneys shall be paid \$150 per hour for interlocutory appeals and for direct appeals from a trial where the issues on appeal involve more than a claim that the trial court abused its discretion in sentencing, and/or a challenge to a guilty plea where a timely motion to withdraw the guilty plea was not filed. In such cases, Attorneys will not bill the County more than \$10,000 per case without prior approval requested in writing.

- c. Attorneys shall be paid \$150 per hour for services rendered in filing for writ of certiorari and representation on certiorari where Attorneys deem such a petition is warranted. In such cases, Attorneys will not bill the County more than \$3,500 for representation on certiorari without prior approval required in writing.
 - d. Attorneys shall be paid \$75 per hour for services rendered in assisting juvenile court attorneys by providing forms, examples, advice, and a final edit before filing the Petition on Appeal. Attorneys shall be paid as set forth above if the court sets the case for full briefing.
- 23. In addition to the compensation provided above, County will pay the costs of all transcripts and expenses incurred in the printing of appellate briefs covered under the provisions of this contract.
 - 24. Attorneys shall be responsible for Attorneys' general office expenses, paralegal expenses, copying, scanning, postage, telephone, and other similar operating expenses, except as specifically provided otherwise in this agreement.
 - 25. Time spent by an attorney or staff regarding the preparation, clarification, or interpretation of invoices or of this contract is considered a general office expense and shall not be billed to the County.

SECTION FOUR INVOICES

- 26. Attorneys shall submit invoices for payments following the filing of a brief, another following the filing of a reply brief, and another following the issuance of a decision or opinion. Requests for payments during certiorari should be made after certiorari is denied, or following the filing of a brief, the reply brief, and the issuance of a decision or opinion.
- 27. Attorneys shall submit invoices that sufficiently describe the services performed for which compensation is claimed and include such other information as may reasonably be required by the County in order to properly review, evaluate, and process the invoice.
- 28. Invoices shall detail the hours worked in 1/10th increments and provide a description of the work that was performed. The invoices shall clearly indicate the total amount due.
- 29. Invoices should be submitted to the Weber Public Defender Group. County shall make payment to the Attorneys within 30 days.

SECTION FIVE INSURANCE

30. Attorneys agree to maintain professional malpractice insurance with limits of \$100,000 per person and an aggregate of \$300,000 and provide to County evidence of the insurance.
31. Attorneys shall indemnify and save the County and its officers, agents, and employees harmless from and against all claims for damages or injuries resulting from any claimed malpractice, injury, death, damages, and any other causes of action arising directly or indirectly from the performance of this agreement by the Attorneys.

SECTION SIX REIMBURSEMENT OF EXPENSES

32. Attorneys shall consult with and receive prior approval from Director prior to incurring any defense related expenses Attorneys believe should be reimbursed by the WPDG. If Director agrees that the expense is necessary to provide an effective and competent defense, Attorneys shall work together with Director and Office Manager in following office invoicing procedures. If expert witness, investigative or other defense related expenses are not approved by Director after submission, Attorneys may file a motion seeking Court approval for the incurring of the expense. Any such motion must be provided to Director prior to the filing of said motion.
33. Any expense incurred by Attorneys that is not previously approved by Director or the Court, or more than that approved by Director or the Court, shall be the sole responsibility of the Attorneys.
34. While ensuring that Attorneys' Clients receive an effective and competent defense, Attorneys hereby agree to use their best efforts to minimize the cost and expenses incurred.
35. Attorneys will bear all other defense related expenses in providing the services contemplated herein, including transportation, office costs, telephone, postage, copying, scanning, and secretarial costs, except that Attorneys may provide the WPDG Office with an email containing discovery for Clients which will be printed out and made available for Client pick up. WPDG will also deliver discovery and/or defense related documents to the Weber County Correctional Facility as provided by and at the request of Attorneys.

SECTION SEVEN TERM AND TERMINATION

36. The term of this agreement shall be from January 1, 2025 through December 31, 2030. At the end of the term, the agreement may be extended for an additional five years upon mutual agreement of the parties.
37. Attorneys or County may terminate this agreement without cause upon 60-days written notice to the other Party.
38. This Agreement may be terminated at any time for cause. Cause shall include, but not be limited to, a suspension or revocation of Attorneys' license to practice law in the State of Utah, a breach of this Agreement, or behavior that brings disrepute to the WPDG, other contract attorneys, or to the County.
39. In the case of a breach or violation of a term of this Agreement, Attorneys shall be given seven calendar days to cure the breach or violation. Failure of the Attorneys to cure the breach or violation within the specified period shall result in termination of this Agreement. In the event this Agreement is terminated, the Parties agree that County may award this contract to other legal counsel and deduct the costs from the compensation identified in this Agreement.
40. In the event this Agreement is terminated or is not renewed, Attorneys agree to cooperate with his/her successor including the filing of all necessary pleadings for withdrawal and to deliver all applicable files, information, and materials to the successor.

SECTION EIGHT MISCELLANEOUS

41. Notice. Any notice required by this Agreement shall be given in writing addressed to the following unless otherwise designated in writing.

FOR THE COUNTY:

Director
Weber Public Defender Group
2380 Washington Blvd., Suite 100
Ogden, UT 84401

FOR THE ATTORNEYS:

K. Andrew Fitzgerald
Attorney at Law, LLC
P.O. Box 1088
Moab, UT 84532

42. Reassignment. Attorneys will avoid the need for any appeal to be reassigned to another attorney prior to its conclusion, and Attorneys may be required to refund portions of prior payments to the County if reassignment becomes necessary.

43. Modification. This Agreement may only be changed, modified, or amended by written agreement of the Parties.
44. Assignment. Attorneys may not assign this Agreement or his performance under it, in whole or in part, without the prior written approval of the County.
45. Independent Contractor. Attorneys are independent contractors providing professional legal services to the County and are not employees of the State of Utah or the County. Attorneys are not entitled to any of the benefits of employment such as, but not limited to, retirement, health, or Workers Compensation coverage. Attorneys are responsible to pay all taxes and fees that result from the compensation paid to Attorneys under this Agreement.
46. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties and any 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.
47. Governing Law. This Agreement shall be governed by the laws of the State of Utah.
48. Records. Attorneys shall maintain such records and accounts as may be deemed reasonable and necessary to assure a proper accounting for all compensation and reimbursements paid to the Attorneys under this Agreement. Upon request, Attorneys shall make those records available to the County for audit purposes and shall maintain those records for a period of 3 years after the expiration of this Agreement or such other longer period as may be required by law.
49. Withdrawal. In the event of a withdrawal, dismissal, or appeal, Attorneys agree to cooperate with any successor by filing all necessary pleadings for withdrawal and by delivering all applicable files, information, and materials to the successor.
50. Personal Data Protection. Utah state law requires a contractor to be subject to the requirements of Utah Code title 63A, chapter 19, to the same extent as a governmental entity, with regard to the personal data processed or accessed by the contractor. See Utah Code section 63A-19-401(4). "Personal data" is defined in Utah Code section 63A-19-101 as "information that is linked or can be reasonably linked to an identified individual or an identifiable individual." Contractor certifies that it is familiar with, and will comply with, the requirements of Utah Code title 63A, chapter 19, to the same extent as required of Weber County, with regard to the personal data processed or accessed by Contractor as a part of its duties under this agreement.

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

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____

Sharon Bolos, Chair

Date _____

Commissioner Harvey voted _____

Commissioner Bolos voted _____

Commissioner Froerer voted _____

ATTEST:

Ricky Hatch, CPA
Weber County

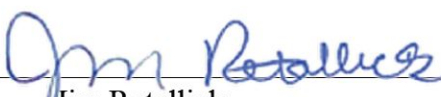
ATTORNEYS

By  _____

Andrew Fitzgerald

Date 10/28/25

DIRECTOR

By  _____
Jim Retallick

Date 10/28/2025