

**AGREEMENT FOR INDIGENT DEFENSE ATTORNEY
DISTRICT COURT**

This agreement is made effective the 1st day of February, 2021, by and between Weber County, a body politic and political subdivision of the State of Utah (“County”) and Shawn Smith (“Attorney”). County and Attorney 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, Attorney is an active 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, County has received funding from the State’s Indigent Defense Commission (“IDC”) to pay an attorney to take one law and motion calendar from the Coordinating Attorney so that the Coordinating Attorney can focus more time and effort administering the County’s indigent defense program;

WHEREAS, Attorney has taken responsibility for that calendar since August 2020 and now desires to take an additional law and motion calendar that has come available;

WHEREAS, Attorney agrees to represent indigent persons in the Second District Court when appointed by the Court pursuant to the terms of this agreement;

WHEREAS, Attorney acknowledges that funding for one of his calendars is contingent on ongoing funding from the IDC and that if the IDC fails to fund the calendar at any time, that portion of this agreement may be terminated;

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

**SECTION ONE
SERVICES**

1. Attorney shall fulfill the following specific assignments:
 - a. **District Court:** Attorney agrees to provide competent legal counsel to any person who is charged with a felony or a misdemeanor, who is appointed Attorney as counsel by the Second District Court, and who is deemed by the court

to be indigent (“Clients”). Attorney will represent Clients in all criminal matters before the court including scheduling conferences, hearings, trials, probation violation hearings, restitution hearings, and all other matters to ensure adequate representation.

- b. **Immigration Consulting:** Attorney agrees to provide the following immigration-related services in order to facilitate compliance with *Padilla v. Kentucky*, regarding the Sixth Amendment obligations of defense counsel to non-citizen, indigent defendants:

(1) Attorney agrees to assist and advise, and to engage in individualized legal research when necessary, other Weber County indigent defense contracting attorneys (“Contracting Attorneys”) with providing their non-citizen clients with specific individualized advice about the actual immigration consequences of a plea, admission of guilt, or conviction at trial;

(2) In order to ensure effective criminal representation of non-citizen, indigent defendants, Attorney will provide Contracting Attorneys with legal education resources, including CLE type presentations, in order to encourage a working knowledge of basic immigration law and how it relates to the representation of non-citizen, defendants.

2. Attorney agrees to promptly notify the court of any changes with regard to the indigent status of any Clients which would affect the qualifying of the Clients for court-appointed counsel.
3. If Attorney is not Rule 8 qualified, Attorney shall make reasonable efforts to become Rule 8 qualified.
4. Attorney agrees to be supervised by an attorney who has been hired by County to act as the coordinating attorney (“Coordinating Attorney”) and to accept assignments from said Coordinating Attorney to cover specific court calendars and other hearings as necessary.
5. Attorney agrees to provide the Coordinating Attorney with various caseload information on a monthly basis in a format approved by the Coordinating Attorney. Attorney will use Defender Data, or other software that may be required by the County, as a means of tracking and reporting various information about Attorney’s assigned cases. In the event Attorney fails to provide the caseload information timely, County may impose a financial penalty on Attorney that will be deducted from Attorney’s paycheck. The financial penalty shall be \$75 for a first offense, \$100 for a second offense, and \$250 for a third and subsequent offenses.
6. Attorney will seek to identify potential conflicts or complaints that persons may have against Attorney and work diligently to avoid any complaints being lodged against

Attorney. Attorney will immediately communicate to the Coordinating Attorney any complaints that are lodged by anyone against Attorney and work diligently to resolve any such complaints.

7. Attorney will be responsible for scanning any paper files once they are closed and destroying the hard copy of the file. In the event that Attorney fails to scan closed paper files and destroy the hard copies, County may withhold the costs for doing so from Attorney's paycheck. Attorney agrees to cooperate with Coordinating Attorney in transferring the digital copies of closed files to the Coordinating Attorney.
8. Attorney will assist Coordinating Attorney in the development of a list of court-approved expert witnesses and make diligent efforts to utilize only those expert witnesses found on such list. If Attorney feels it necessary to utilize an expert witness who is not on the approved list, Attorney agrees to consult with the Coordinating Attorney before making any such request.
9. Upon request, Attorney shall submit to the Coordinating Attorney an electronic copy of any motion, memoranda, appellate brief, court report, or any other such report pertaining to Attorney's Clients under this Agreement.
10. County agrees that if Attorney is asked to represent an indigent defendant in a capital defense case where the County Attorney is seeking the death penalty, a separate contract will be crafted to handle compensation.
11. Attorney agrees to make reasonable efforts to attend all of the periodic public defender training/coordination meetings and to attend performance evaluations as requested by the Coordinating Attorney.
12. Attorney agrees to use his/her best efforts to avoid any conflicts of interest, which would divide loyalty of Attorney to Clients. The Parties recognize that certain cases may arise where conflicts are of sufficient magnitude that the Attorney cannot represent a particular Client. Conflicts of interest shall only be deemed to exist after a determination of the appointing Court.
13. Unless the fee is waived by the court based upon the Client's financial condition, Attorney agrees to assist County in the continued implementation of a fee recovery program whereby Defendants receiving assistance of appointed counsel shall repay to County a portion of the expense thereof as a matter of restitution, based upon a schedule approved by the Weber County Commission.

SECTION TWO CONDUCT

14. If at any time Attorney's caseload 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 Coordinating Attorney and determine a proper course of action to remedy the situation. Resolution may include but not be limited too, reassigning a case or cases; assigning an additional attorney for complex cases; reducing or eliminating private practice matters, or other solutions.

15. 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).
16. Attorney agrees to keep abreast of all current legal trends in the area of criminal defense and to maintain sufficient continuing professional education credits during the period of this Agreement.
17. Throughout the term of this Agreement, Attorney agrees to maintain access to an office within Weber County where Attorney can meet with Clients. Attorney agrees to be reasonably available and accessible to all Clients, to make reasonable efforts to visit clients who are incarcerated, and to return telephone calls as soon as reasonably possible.

SECTION THREE COVERAGE

18. 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.
19. 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 was unwilling or unable to provide coverage within six months of the original coverage having been provided, the covering attorney shall be compensated \$250 by the attorney who was covered. The County may deduct this amount from the paycheck of the attorney whose calendar was covered and added to the paycheck of the covering attorney.
20. When Attorney will miss his/her regular court assignment due to trial, vacation, seminar, etc., Attorney shall arrange with another contract attorney to cover Attorney's court. If Attorney fails to procure coverage and does not appear at Attorney's court assignment, the sum of \$600 shall be deducted from Attorney's pay and paid to the attorney[s] who provided coverage for Attorney (if any is provided). The arrangement for court coverage shall be coordinated with the Coordinating Attorney.

- 21. Attorney shall represent indigent defendants that would typically be assigned to other contract attorneys when the court deems there is a conflict of interest preventing the other contract attorney from representing the indigent defendant. Any such representation shall be at no additional cost to County, with such assignments being made under the direction of the Coordinating Attorney.
- 22. Nothing in this Agreement shall prohibit Attorney from representing private clients so long as the representation of private clients does not interfere with or create a conflict of interest in the representation of Clients appointed under this Agreement.

**SECTION FOUR
COMPENSATION**

23. County agrees to pay Attorney the following amounts annually:

Basis for Amount	Amount
District Court Calendar funded by IDC Grant	\$32,467
District court Calendar funded by Weber County	\$33,360
Immigration Consulting	\$100 per hour
Total	\$65,827

Payment shall be made to the Attorney in equal monthly installments of \$5,485.58 per month. The first installment is due before the end of February 2021 and a like sum on the last day of each month thereafter until this agreement expires or is terminated.

- 24. Attorney's compensation is based on the number of years Attorney has practiced. County agrees to increase the compensation paid under this Agreement each year. Increases shall be in an amount determined by County and shall be based on the amount of the increase that County employees receive for that same year.
- 25. County agrees to pay Attorney at the rate of \$100 per hour for immigration services provided pursuant to paragraph 1.b. Attorney agrees to submit invoices for payment to the Civil Division of the Weber County Attorney's Office no more than three months after the work detailed in the invoice was completed. County reserves the right to refuse payment for any work that was performed more than three months prior to the submission of the invoice.

**SECTION FIVE
INSURANCE**

- 26. Attorney agrees 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.

27. Attorney 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 Attorney.

SECTION SIX REIMBURSEMENT OF EXPENSES

28. County has established an indigent expense fund (“Expense Fund”) which may be used by all attorneys representing indigent defendants in the County. The Expense Fund may only be used for those expenses that are *necessary to provide an effective defense*. Appropriate expenses include laboratory costs, fees to obtain transcripts, defense witness fees, and interpreter fees. Attorney will bear all other expenses in providing the services contemplated herein, including transportation, office costs, telephone, postage, copying, scanning, and secretarial costs.
29. Before Attorney may access any of the funds from the Expense Fund, Attorney shall first consult with the Coordinating Attorney. If the Coordinating Attorney agrees that the expense is necessary to provide an effective defense, Attorney shall notify the Civil Division of the County Attorney’s Office (“Civil Division”) of the intent to expend funds. If the Civil Division does not agree that the expense is necessary to provide an effective defense, Attorney shall make application for approval of the funds from the court in the form of a written motion and shall specify the reasons for the expense. A copy of the motion shall be provided to the Civil Division at the time said motion is submitted to the court.
30. Any expense incurred by Attorney that is not previously approved by the County or the court, or in excess of that approved by the County or the court, shall be the sole responsibility of the Attorney.
31. While ensuring that Attorney’s Clients receive an effective and reasonable defense, Attorney hereby agrees to use his/her best efforts to minimize the cost and expenses to be deducted from the Expense Fund. In the event the total 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.
32. For expenses that are approved in advance by the County or ordered by the court, Attorney shall submit the invoices or statements for expense reimbursements, together with supporting documentation, to the Civil Division.
33. The County has investigators under contract to provide investigative services for indigent defense attorneys. Any requests for investigative services shall be submitted to those contracting investigators unless otherwise approved in advance by the Coordinating Attorney and the County.

**SECTION SEVEN
TERM AND TERMINATION**

34. The term of this Agreement shall be from February 1, 2021 through December 31, 2024.
35. Attorney or County may terminate this Agreement without cause upon 60-days written notice to the other Party. County may terminate or modify this contract at any time if the IDC does not provide sufficient funding for the contract.
36. This Agreement may 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 that brings disrepute to other contract attorneys or to the County.
37. In the case of a breach or violation of a term of this Agreement, Attorney shall be given seven calendar days to cure the breach or violation. Failure of the Attorney 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.
38. In the event this Agreement is terminated or is not renewed, Attorney agrees 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**

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

FOR THE COUNTY:

Weber County Attorney
Civil Division
2380 Washington Blvd., Suite 230
Ogden, UT 84401

FOR THE ATTORNEY:

Shawn Smith
1357 N 125 E
Layton, UT 84041
shawnsmith1983@gmail.com

40. Appeal. In the event that Attorney files a Notice of Appeal to the Utah Court of Appeals and/or the Utah Supreme Court, Attorney shall immediately contact the Coordinating Attorney to transition and turn over all relevant records within Attorney's possession or control to Appellate Counsel.
41. Modification. This Agreement can be changed, modified, or amended only by written agreement of the Parties.

- 42. Assignment. Attorney may not assign this Agreement or his performance under it, in whole or in part, without the prior written approval of the County.
- 43. Independent Contractor. Attorney is an independent contractor providing professional legal services to the County and is not an employee of the State of Utah or the County. Attorney is not entitled to any of the benefits of employment such as, but not limited to, retirement, health, or Workers Compensation coverage. Attorney is responsible to pay all taxes and fees that result from the compensation paid to Attorney under this Agreement.
- 44. 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.
- 45. Laws. 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

By _____
James "Jim" Harvey, Chair
Date _____

Commissioner Harvey voted _____
Commissioner Jenkins voted _____
Commissioner Froerer voted _____

ATTEST:

Ricky Hatch, CPA
Weber County

ATTORNEY

By Shawn M. Smith
Shawn Smith

Date 1/16/2021

INDIGENT DEFENSE COORDINATOR

By Michael D. Bouwhuis
Michael D. Bouwhuis

Date 1/22/21