

AGREEMENT FOR INDIGENT DEFENSE CONFLICT ATTORNEY

This agreement is made effective the 1st day of September, 2022, by and between Weber County, a body politic and political subdivision of the State of Utah (“County”) and Randall Marshall (“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 individual who faces the possibility of incarceration regardless of whether actually imposed; and

WHEREAS, Attorney verifies by signing this Agreement that he is duly licensed to practice law in the State of Utah, is qualified to be assigned as counsel for indigent defendants, is able and willing to undertake the assignment as indigent defense counsel; and

WHEREAS, in contemplation of the assignment of Attorney to represent indigent defendants in these cases, Attorney and the County have negotiated reasonable compensation for the services of Attorney as indigent defense counsel, and it is the intent of the Parties that the terms of those services and that compensation be set forth in this Agreement;

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

SECTION ONE SERVICES

1. County has hired an Attorney to act as the public defender director (“Director”).
2. Attorney shall act as an independent conflict counsel for the Weber Public Defender Group and shall accept assignments from the Director and/or his designee as requested.
3. Attorney agrees to provide competent legal counsel to any person who is assigned to Attorney by the Director (“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.
4. 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.
5. Attorney agrees to provide the Director with various caseload information on a monthly basis in a format approved by the Director. 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 shall notify the Director whenever attorney receives written notice from the Utah State Bar Association regarding a bar complaint or investigation involving Attorney.
7. 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 Director any complaints that are lodged by anyone against Attorney and work diligently to resolve any such complaints.
8. Attorney will be responsible for scanning any paper files once they are closed and destroying the hard copy of the file.
9. 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.
10. 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

11. 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 Director and determine a proper course of action to remedy the situation.
12. 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).

13. 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.
14. 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 TWO COMPENSATION

15. The County hereby authorizes payment of attorney fees at a rate of \$125 per hour which shall be the sole consideration provided to Attorney by the County for services provided under this Agreement.
16. Attorney shall be responsible for Attorney's general office expenses, paralegal expenses, copying, scanning, postage, telephone, and other similar operating expenses, except as specifically provided otherwise in this Agreement.
17. 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.
18. The Parties have agreed that the fee amount set forth in this Agreement is reasonable and there shall be no additional compensation for the Attorney without the prior written approval of the County.

SECTION THREE REIMBURSEMENT OF EXPENSES

19. Subject to the provisions of this Section, the County shall reimburse the Attorney for the reasonable and necessary costs of defense, including expenses for:
 - (1) Transcription fees;
 - (2) Witness fees;
 - (3) Expert witness fees;
 - (4) Fees for mental and physical examinations;
 - (5) Travel costs at state rates;
 - (6) Costs for voluminous copying of documents by an outside provider; and
 - (7) Any other expense not otherwise addressed herein that Attorney considers necessary for an effective defense.

20. County has established an indigent expense fund (“Expense Fund”) which shall be used to reimburse Attorney for costs incurred under paragraph 19 above. Before Attorney may incur costs for which he expects to be reimbursed, Attorney shall first notify the Civil Division of the County Attorney’s Office (“Civil Division”) of the intent to expend funds. In the event the County 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.
21. 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.
22. While ensuring that Attorney’s clients receive an effective and reasonable defense, Attorney hereby agrees to use his 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, Attorney shall apply in writing to the Weber County Clerk/Auditor for approval of additional funds.
23. For expenses that are approved in advance by the County or ordered by the court, Attorney shall submit statements for expense reimbursements, together with supporting documentation, to the Civil Division.

SECTION FOUR STATEMENTS

24. Attorney shall submit invoices on a monthly basis that sufficiently describe the services performed for which compensation is claimed and such other information as may be reasonably required by the County in order to properly review, evaluate, and process the invoice.
25. Invoices shall detail the hours worked in 1/10th increments and provide a description of the work that was performed. The monthly invoices shall clearly indicate the total amount due.
26. Invoices shall be submitted to the Civil Division via email or in a sealed envelope, and County shall process invoices and statements for reimbursement of expenses with reasonable diligence.

SECTION SEVEN TERM AND TERMINATION

27. The term of this Agreement shall be from September 1, 2022 through June 30, 2023.

28. This contract shall automatically renew unless written notice is provided 30 days prior to the expiration date by either party indicating an intent to terminate this contract.
29. The first three months of this contract shall be considered a probationary period during which County may terminate this Agreement without cause upon providing written notice to Attorney. Beginning December 1, 2022 Attorney or County may only terminate this Agreement without cause upon 30-days written notice to the other Party.
30. 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, the Weber Public Defender Group or Weber County.
31. 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.
32. 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**

33. 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:

Randy Marshall
2650 Washington Blvd., Suite 202
Ogden, UT 84401
marshalawpc@yahoo.com

34. 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 Director to transition and turn over all relevant records within Attorney's possession or control to Appellate Counsel.
35. Modification. This Agreement can be changed, modified, or amended only by written agreement of the Parties.

36. 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.
37. 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.
38. 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.
39. 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 _____

Scott K. Jenkins, Chair

Date _____

Commissioner Harvey voted _____

Commissioner Jenkins voted _____

Commissioner Froerer voted _____

ATTEST:

Ricky Hatch, CPA
Weber County

ATTORNEY

By  _____
Randall Marshall

Date 8-29-2022

INDIGENT DEFENSE DIRECTOR

By  _____
James M. Retallick

Date 8/30/2022