

**AGREEMENT FOR INDIGENT DEFENSE ATTORNEY
APPEALS**

This agreement is made effective the 1st day of January, 2020, by and between Weber County, a body politic and political subdivision of the State of Utah (“County”) and Emily Adams, Cherise Bacalski, and Freyja Johnson (“Attorneys”). 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”). Attorney 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.

2. Attorneys agree 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. Attorneys agree to be supervised by an attorney who has been hired by County to act as the coordinating attorney (“Coordinating Attorney”) and to accept all appellate assignments from said Coordinating Attorney.
4. Attorneys will provide the Coordinating Attorney with various caseload information on a monthly basis in a format approved by the Coordinating Attorney. Attorneys may be required to use Defender Data, or other software that may be required by the County, as a means of tracking and reporting data about Attorneys’ assigned cases.
5. Attorneys will seek to identify potential conflicts or complaints that persons may have against Attorneys and work diligently to avoid any complaints being lodged against Attorneys. Attorneys will immediately communicate to the Coordinating Attorney any complaints that are lodged by anyone against Attorneys and work diligently to resolve any such complaints.
6. Attorneys will assist the 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 Attorneys feel it necessary to utilize an expert witness who is not on the approved list, Attorneys agree to consult with the Coordinating Attorney before making any such request.
7. Attorneys will provide a digital copy of each file to the Coordinating Attorney once a decision has been rendered by the court or at the time the file is otherwise considered closed.
8. County agrees that if Attorneys are 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.
9. Attorneys agree to make reasonable efforts to attend the periodic public defender training/coordination meetings if requested by the Coordinating Attorney and to attend performance evaluations as requested by the Coordinating Attorney.
10. Attorneys agree to use best efforts to avoid any conflicts of interest, which would divide loyalty of Attorneys to Clients. The Parties, however, recognize that certain cases may arise where conflicts are of sufficient magnitude that the Attorneys cannot represent the

person charged. In such a situation, Attorneys will notify the Coordinating Attorney and the County immediately to arrange for conflict counsel.

11. Attorneys shall provide a list to the Coordinating Attorney of all appeals filed on behalf of the County at the end of each year for that calendar year.
12. Attorneys shall make reasonable efforts to be included on the Utah Appellate Roster for Child Welfare, Criminal, and Juvenile Delinquency appeals.

SECTION TWO CONDUCT

13. If at any time Attorneys' 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, Attorneys shall immediately notify the Coordinating Attorney and determine a proper course of action to remedy the situation.
14. 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).
15. Attorneys agree 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.
16. Attorneys agree 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. Attorneys shall keep Clients updated on a regular basis as to the status of the Client's appeal.
17. Nothing in this agreement shall prohibit Attorneys 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 THREE COMPENSATION

18. 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 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 \$8,000 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 attorney deems 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.
 - e. Because the parties are moving from a flat fee contract (“2018 contract”) to an hourly rate contract (“2020 contract”), the following cases will be billed as specified below:
 - i. *State v. Joseph Moore* – this case will be billed under the 2018 contract.
 - ii. *State v. Dalton Aiken* – this case will be billed under the 2020 contract with County receiving credit for the \$3,000 payment that has already been made.
 - iii. *State v. Phillips* – this case will be billed under the 2020 contract with County receiving credit for the \$3,000 payment that has already been made.
 - iv. *State v. Gallegos* – this case will be billed under the 2020 contract if the case is remanded for a 23B hearing.
19. 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.
 20. 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.
 21. 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

22. Attorney 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.
23. 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.
24. 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.
25. Invoices should be submitted to the Civil Division in the Weber County Attorney's Office ("Civil Division"). County shall make payment to the Attorneys within 30 days.

SECTION FIVE INSURANCE

26. 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.
27. 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

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. Attorneys will bear all other expenses in providing the services contemplated herein, including transportation, office costs, telephone, postage, copying, scanning, and secretarial costs.
29. Before Attorneys 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, Attorneys 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 Attorneys 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 Attorneys.
31. While ensuring that Attorneys' Clients receive an effective and reasonable defense, Attorneys hereby agrees to use 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 Attorneys 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, Attorneys 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 January 1, 2020 through December 31, 2024.
35. Attorneys or County may terminate this agreement without cause upon 60-days written notice to the other Party.
36. 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 other contract attorneys or to the County.
37. 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.

38. In the event this agreement is terminated or is not renewed, Attorneys agree to cooperate with any 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 ATTORNEYS:

The Appellate Group _____
PO Box 1564 _____
Bountiful, UT 84011 _____
appeals@theappellategroup.com

40. Reassignment. Attorneys will avoid the need for any appeal to be reassigned to another attorney prior to its conclusion, and Attorney may be required to refund portions of prior payments to the County if reassignment becomes necessary.
41. Modification. This agreement can be changed, modified, or amended only by written agreement of the Parties.
42. 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.
43. 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.
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 _____

Gage Froerer, Chair

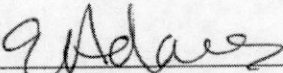
Date _____

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

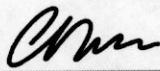
ATTEST:

Ricky Hatch, CPA
Weber County

ATTORNEYS

By 
Emily Adams

Date 12/30/2019

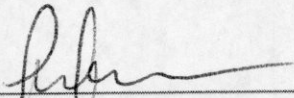
By 
Cherise Bacalski

Date 12/30/2019

INDIGENT DEFENSE COORDINATOR

By _____
Michael D. Bouwhuis

Date _____

By 
Freyja Johnson

Date 12/30/19