

**WEBER PUBLIC DEFENDER GROUP  
AGREEMENT FOR INDIGENT DEFENSE ATTORNEY  
DISTRICT COURT**

This agreement is made effective the 1<sup>st</sup> day of January 2025, by and between Weber County, a body politic and political subdivision of the State of Utah (“County”) and Colton McKay (“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 qualified 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**, Attorney is willing to represent indigent persons in the Second District Court when appointed by the Court and/or assigned by the Director of the Weber Public Defender Group (WPDG);

**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 and effective 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/or Director of WPDG, and who are found to be indigent pursuant to Utah Code §78B-22-202(“Clients”). Attorney will represent Clients in all criminal matters before the court including scheduling conferences, hearings, trials, probation violation hearings, restitution hearings, Notices of Appeals and all other substantive matters to ensure effective and competent representation.
2. Attorney agrees 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 Attorney is not Rule 8 qualified, Attorney shall make reasonable efforts to become Rule 8 qualified.

4. Attorney agrees 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. Attorney agrees to provide Director with caseload information on a monthly basis in a format approved by the Director. Attorney will use defenderData™ (dD), or other software that may be required by Director, as a means of tracking and reporting various information about Attorney's assigned cases.
  - a. Attorney 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. Attorney will also ensure that all cases are closed after original sentencing and after sentencing on probation violations. This may be accomplished by Attorney updating dD or emailing [pd@webercountyutah.gov](mailto: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 Attorney's cases.
6. Attorney 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, Attorney 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. Attorney 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. Attorney will also be responsible for the secure destruction of any transferred files retained in Attorney's 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 Attorney. Said amount may be withheld from Attorney's paycheck.
8. Attorney shall notify Director whenever attorney receives written notice from the Utah State Bar Association regarding a bar complaint or investigation involving Attorney, regardless of whether the complaint and/or investigation involved an assigned Client.
9. Attorney will seek to identify potential conflicts or complaints that persons may have against Attorney and report the same to Director and/or his/her assignee. Attorney agrees to work diligently to avoid any complaints being lodged against Attorney and perform remedial steps as may be agreed upon with Director and/or his/her assignee.
10. Attorney 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, Attorney shall submit to Director an electronic copy of any motion, memoranda, appellate brief, court report, or any other such report pertaining to Attorney's Clients under this Agreement.
12. County acknowledges that Attorney's 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. Attorney agrees to make reasonable efforts to attend all the periodic public defender training/coordination meetings and to attend performance evaluations as requested by Director.
14. Attorney agrees to use his/her best efforts to avoid any conflicts of interest, which would divide the duty of loyalty of Attorney to his/her assigned indigent Clients and Attorney's private practice. The Parties recognize that certain cases may arise where conflicts are of sufficient magnitude that Attorney 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. Attorney 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.

## SECTION TWO CONDUCT

16. If Attorney's caseload becomes sufficiently burdensome to create a potential ineffective assistance claim or may cause Attorney to be in violation of the Rules of Professional Conduct, Attorney 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.
17. 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).
18. Attorney agrees 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. Attorney shall report to Director the status of CLE credits earned on or before June 1<sup>st</sup> each year. If Attorney needs CLE by June 1<sup>st</sup>, Attorney will provide Director the plan to complete all required CLEs by June 30<sup>th</sup>.
19. Throughout the term of this Agreement, Attorney agrees to maintain access to an office within Weber County where Attorney can meet with Clients. This requirement may be accomplished by utilizing the meeting rooms and conference room at the WPDG Office upon proper scheduling with the office. 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

20. Attorney will be part of a team of contract and/or full-time attorneys assigned to a particular court or courts. The attorneys in the team shall work together to provide coverage for each other when necessary. If the caseload dictates additional coverage may be needed, Attorney shall notify Director and seek that coverage from other full-time and/or contract attorneys within the WPDG. ***On rare occasions and with the express prior permission of Director***, a competent attorney from outside the WPDG shall be allowed to cover Attorney's court calendar. Any agreement regarding compensation of the outside attorney shall be between Attorney and outside attorney and shall in no way obligate County to provide compensation. Director and Office Manager shall be notified of any coverage arrangements, including who will be providing coverage.
21. 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**

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

<b>Basis for Amount</b>	<b>Amount</b>
One District Court Calendar	\$82,680.00
1.5% Cost of Living Increase	\$1,240.20
<b>Total:</b>	<b>\$83,920.20</b>

Payment shall be made to the Attorney in equal monthly installments of \$6,993.35 per month. The first installment is due on or before the last day of January 2025 and a like sum on or before 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 compensation paid under this Agreement each year in accordance with any cost-of-living allowance (COLA) received by County employees for the same time period.

**SECTION FIVE  
INSURANCE**

25. 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.

26. 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**

27. Attorney shall consult with and receive prior approval from Director prior to incurring any defense related expenses Attorney believes should be reimbursed by the WPDG. If Director agrees that the expense is necessary to provide an effective and competent defense Attorney 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, Attorney 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.

28. Any expense incurred by Attorney 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 Attorney.
29. While ensuring that Attorney's Clients receive an effective and competent defense, Attorney hereby agrees to use his/her best efforts to minimize the cost and expenses incurred.
30. Attorney 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 Attorney 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 Attorney.

## SECTION SEVEN TERM AND TERMINATION

31. The term of this Agreement shall be from January 1, 2025, through December 31, 2028.
32. **If Attorney has not previously held a contract with the County**, the first six 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 June 1, 2025, Attorney or County may only terminate this Agreement without cause upon 60-days written notice to the other Party.
33. 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 the WPDG, other contract attorneys, or to the County.
34. 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.
35. 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**

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

<b>COUNTY</b>	<b>ATTORNEY</b>
Weber Public Defender Group 2380 Washington Blvd., Ste 100 Ogden, Utah 84401	Colton McKay 2650 Washington Blvd., Ste 101 Ogden, UT 84401 colton@mckaylawgroup.com

37. Appeal. If 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.

38. Modification. This Agreement can be changed, modified, or amended only by written agreement of the Parties.

39. 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.

40. 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.

41. 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.

42. 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 \_\_\_\_\_  
Jim Harvey, Chair

Date \_\_\_\_\_

Commissioner Harvey voted \_\_\_\_\_  
Commissioner Bolos voted \_\_\_\_\_  
Commissioner Froerer voted \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ricky Hatch, CPA  
Weber County

ATTORNEY

By Colton McKay  
Colton McKay

Date 1-2-25

PUBLIC DEFENDER DIRECTOR

By James M. Retallick  
James M. Retallick

Date 01/03/2025