

GENERAL PUBLIC DEFENDER AGREEMENT

JAY WINWARD

THIS AGREEMENT is made effective this 1st day of January, 2013, by and between WASHINGTON COUNTY, a political subdivision of the State of Utah, hereinafter referred to as COUNTY, and JAY WINWARD, an attorney licensed by the Utah State Bar Association, hereinafter referred to as DEFENDER.

WITNESSETH

WHEREAS, Utah Code Ann. § 77-32-301(1) requires counties “[t]o provide counsel for each indigent who faces the substantial probability of the deprivation of the indigent’s liberty” thus obligating the COUNTY to provide for the competent defense of indigent adults or juveniles in criminal cases in the courts; and

WHEREAS, the COUNTY may fulfill its statutory obligation through the appointment of qualified legal counsel, who may provide the indigent services required by Utah Code Ann. § 77-32-301 and § 77-32-304; and

WHEREAS, DEFENDER is a qualified, trained and competent attorney, licensed and in good standing to practice law in the State of Utah and is willing to enter into this agreement with the COUNTY to perform the necessary legal services for indigent defendants;

NOW THEREFORE, for and in consideration of the mutual agreements contained herein, the parties agree as follows:

SECTION 1: CONSIDERATION

1.1 COUNTY does hereby engage DEFENDER to perform services as legal counsel for indigent defendants as set forth herein and shall pay DEFENDER Four Thousand Dollars (\$4,000.00) per month during the period of January 1, 2013 through December 31, 2013. This contract may be renewed from year to year as provided by law upon written agreement of both parties.

1.2. In addition to the compensation set forth in paragraph 1.1, the COUNTY will pay for expenses incurred for (1) witness fees, (2) costs of transcripts or depositions on any first appeal as of right, (3) costs of printing or typing briefs on any first appeal of right, (4) investigatory costs, and (5) other extraordinary expenses as defined by Utah Code Ann. § 77-32-303.5 (1953, as amended).

1.3 Upon approval by the lead public defender, the County will reimburse DEFENDER up to \$500.00 for continuing legal education expenses related to the performance of DEFENDER’s duties under this agreement.

1.4 DEFENDER shall be responsible for paying all other expenses necessary to perform the required services, including but not limited to travel costs, research, additional copies, word processing expenses, paralegal assistance, and legal clerks, etc., such costs being expressly included in the contract price.

1.5 Upon a showing of critical need, DEFENDER may request additional funding for extraordinary unforeseen expenses which may arise during the term of this agreement.

1.6 It is specifically understood that DEFENDER will accept no other payment for work provided

under this agreement, other than that compensation provided in the agreement under this section. In the event a court orders restitution from any defendant for attorney fees and costs, all such restitution shall belong to the COUNTY.

SECTION 2: SERVICES

2.1 DEFENDER agrees to perform the duties set forth in Utah Code Annotated § 77-32-301 (1953, as amended) for any indigent criminal defendants assigned to DEFENDER by any applicable court within Washington County during the twelve (12) month period commencing January 1, 2013 and ending on December 31, 2013. The duties specifically include:

- a. providing timely and competent legal representation;
- b. providing the investigatory resources necessary for a complete defense;
- c. assuring undivided loyalty to the client;
- d. prosecuting other remedies before or after a conviction, considered by DEFENDER to be in the interest of justice.

2.2 DEFENDER agrees that the duties encompassed by this agreement require DEFENDER to represent approximately one-sixth of all adult indigent criminal cases assigned to a public defender by the applicable courts within Washington County during the year 2013. DEFENDER agrees to cooperate with other public defenders and the courts in Washington County in determining the method and means for allocating indigent cases and to abide by the method implemented.

2.3 DEFENDER shall devote the necessary time and resources to perform legal services required under guidelines and standards as set forth in the Utah Rules of Professional Responsibility, and other such regulations and statutes as shall govern the practice of law in the State of Utah together with such other regulations or statutory provisions to which DEFENDER may be subject as a result of state or federal law. DEFENDER agrees to maintain adequate and proper records of the representation for each indigent defendant.

2.4 DEFENDER understands and agrees that accessibility to indigent defendants is an integral consideration in making this agreement. Therefore, DEFENDER agrees to communicate with and be available and accessible to indigent clients as necessary for a competent defense. DEFENDER agrees to make reasonable efforts to visit indigent clients who are incarcerated in jail, admitted to a hospital or otherwise confined at the earliest possible moment. DEFENDER agrees to return telephone calls as soon as reasonably possible and to otherwise be reasonably accessible to all indigent defendants.

2.5 DEFENDER agrees not to carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interests in any respect, or may lead to the breach of professional obligations. Workload includes not only the number of cases, but also includes the seriousness of the cases, the number of charges involved in individual cases, and the time required to adequately represent each client.

2.6 If DEFENDER engages in the private practice of law or has entered into more than one public defender contract with any entity, including the COUNTY, DEFENDER agrees to associate with a sufficient number of qualified attorneys to meet the obligations of this agreement with respect to each public defender client.

DEFENDER agrees to actively supervise and monitor the performance of any associate attorneys to assure compliance with the terms of this agreement. DEFENDER will provide to Washington County and any applicable court the names of each associate attorney engaged by DEFENDER to provide services under this agreement.

2.7 Upon assignment by the Lead Public Defender and with approval of the applicable court, DEFENDER agrees to accept representation of any indigent case arising as a result of a conflict of interest with any other public defender under contract with the COUNTY, including if necessary representation in the appellate courts, district court, justice court, or juvenile court.

2.8 Upon appointment by an applicable court, DEFENDER agrees to represent indigent persons who are being held in custody in Washington County and who are seeking an extraordinary writ under the Rules of Civil Procedure in the nature of a Writ of Habeas Corpus.

2.9 Upon appointment by an applicable court, DEFENDER shall provide legal assistance in representation of those persons subject to involuntary commitment proceedings in Washington County pursuant to Utah Code Ann. § 62A-15-631(9) (a) (1953, as amended).

2.10 DEFENDER agrees not to act on a case as a public defender until an applicable court has made an order of appointment and a determination of indigency.

2.11 Except for those cases with which there is a conflict of interest, DEFENDER agrees to assume all pending public defender cases previously assigned to a predecessor public defender and to immediately file appropriate notices of entry of appearance in those cases.

2.12 Upon the termination of this agreement, DEFENDER agrees to cooperate in the transfer of all cases to an incoming public defender and to continue representation, at no additional cost to the COUNTY, of all pending cases until such time that the cases can practically be transferred to an incoming public defender.

SECTION 3: QUALIFICATIONS

3.1 By signing below, DEFENDER certifies that DEFENDER and any associates engaged to provide services under this agreement are members in good standing with the Utah Bar and are competent in the practice of criminal law. DEFENDER further certifies that DEFENDER and any associates will maintain good standing with the Utah Bar at all times during the period of this agreement.

3.2 DEFENDER will maintain a bona fide office at which to conduct business in Washington County, Utah and will notify clients served under this agreement of the location and telephone number of the office.

3.3 DEFENDER certifies that DEFENDER and any associate attorneys engaged to provide services under this agreement are citizens of the United States or permanent resident aliens

3.4 DEFENDER agrees that DEFENDER and any associate providing services pursuant to this agreement will abide by all federal, state and local laws, and acknowledges that any violation (except for minor traffic offenses) constitutes cause to terminate this agreement.

3.5 DEFENDER and any associate providing services pursuant to this agreement will abide by the Canons of Ethics, including the Utah Supreme Court Rules of Professional Practice, the Rules of Professional

Conduct and the Rules of Lawyer Discipline and Disability. DEFENDER and any associates will follow the Rules of Civility adopted by the Utah Supreme Court.

3.6 DEFENDER and any associates providing services pursuant to this agreement will endeavor to keep abreast of all current legal trends and to maintain sufficient continuing professional education credits. In complying with the Rules of Professional Conduct's continuing legal education requirements, the DEFENDER and any associates will obtain continuing legal education relevant to the practice of criminal defense. To that end, the County shall subsidize DEFENDER's continuing legal education costs as provided in this agreement.

3.7 DEFENDER agrees that neither DEFENDER nor any associate providing services pursuant to this agreement is currently, nor shall be, party to any litigation which will place DEFENDER's or any associate's licensing or standing with the Utah Bar in jeopardy.

3.8. DEFENDER agrees to file a Certificate of Insurance with the Washington County Clerk, showing that a valid worker's compensation policy exists and provides coverage for DEFENDER and any employees or subcontractors of DEFENDER.

SECTION 4: CONFLICTS OF INTEREST

4.1 DEFENDER agrees to provide services herein with respect to each indigent person entitled thereto except in those cases as defined wherein a legal conflict of interest exists such as would prevent DEFENDER from providing undivided loyalty to the client as provided in Utah Code Ann. § 77-32-301(4). DEFENDER further agrees to use DEFENDER's best efforts to avoid any conflicts of interest which would divide loyalty of defense counsel to client. The parties recognize, however, that conflicts may arise of sufficient magnitude that DEFENDER cannot properly represent the indigent defendant. A conflict of interest, such as would allow the DEFENDER to withdraw pursuant to this agreement, must be of such a nature as to be proscribed by case law, State statute, Rules of Criminal Procedure, or the Utah Rules of Professional Responsibility. DEFENDER shall disclose to the client any possible conflicts of interest at the earliest possible moment and in sufficient detail to allow the client to appreciate the significance of the conflict. DEFENDER agrees that a conflict of interest does not include withdrawals occasioned by defendant's request for counsel of choice or disagreements with or personal dislike of DEFENDER.

4.2 DEFENDER shall not represent more than one defendant in the same criminal case unless there is full disclosure to the client, the client has an opportunity to consult with outside counsel, and a written waiver is executed by the client.

4.3 DEFENDER shall not use information against the indigent client that was obtained during a prior representation of the client.

4.4 In the event DEFENDER is disqualified from representing an indigent defendant as a result of DEFENDER's private representation of an individual, for any reason involving a known or knowable pre-existing conflict of interest, the misconduct of the Attorney, or the filing of litigation in which DEFENDER is a party by any or all of the courts in which services are provided under this agreement or by the Utah State Bar, the DEFENDER shall be responsible for costs incurred by the COUNTY in providing substitute counsel. Otherwise, the County will provide replacement counsel.

SECTION 5: ASSIGNMENT

5.1 DEFENDER may not assign or transfer DEFENDER's interest in this agreement without the prior written consent of the COUNTY.

SECTION 6: INDEPENDENT CONTRACTOR

6.1 DEFENDER is an independent contractor and neither DEFENDER nor any agent, employee, or servant of DEFENDER shall be deemed an agent, employee or servant of the COUNTY. This AGREEMENT is for professional services and DEFENDER is not an employee of COUNTY and is not entitled to the benefits provided by the COUNTY to its employees. The DEFENDER solely controls the method and manner of delivering the services required by this agreement.

SECTION 7: TERMINATION

This agreement may be terminated upon any of the following events:

7.1 *Termination for Cause.* This agreement may be terminated for cause by either party upon providing seven (7) calendar days written notice. The parties agree that failure to comply with any term of this agreement constitutes cause and is grounds to terminate the agreement. The parties agree that a previous failure to enforce any provision of this agreement does not constitute a waiver of the right to subsequently enforce that provision or any other provision.

7.3 *Voluntary Termination without Cause.* Either party may terminate this agreement without cause by giving the other party ninety (90) calendar days written notice. If notice is so given, this agreement shall terminate upon the expiration of the 90 calendars days and the liability of the parties hereunder for the further performance of the terms of this agreement shall thereupon cease.

7.4 *Misconduct.* In the event disciplinary action is taken by the Utah State Bar against DEFENDER, this contract may be immediately terminated without notice.

7.5 *Transition.* In the event of termination, DEFENDER agrees to cooperate with DEFENDER's successors including the filing of all necessary pleadings for withdrawal and to deliver all applicable files, information, and materials to the successor.

SECTION 8: NOTICE.

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

FOR THE COUNTY:

Washington County Clerk
197 East Tabernacle
St. George, UT 84770

With a copy to:

Washington County Attorney
33 North 100 West, Ste. 200
St. George, UT 84770

SECTION 16: ENTIRE AGREEMENT

16.1 The parties agree that this agreement constitutes their entire agreement and any changes or modifications must be agreed do in writing by both parties and approved by the County Legislative Body in a public meeting.

DATED this ____ day of _____, 20__.

ATTEST:

WASHINGTON COUNTY

WASHINGTON COUNTY CLERK

ALAN D. GARDNER, CHAIR
BOARD OF COUNTY COMMISSIONERS

DEFENDER

Attorney at Law

APPROVED AS TO FORM:

DEPUTY WASHINGTON COUNTY ATTORNEY