



Steve Bullock
Governor

OFFICE OF THE STATE PUBLIC DEFENDER

STATE OF MONTANA

44 West Park Street Butte, Montana 59701
406.496.6080 (fax) 406.496.6098

William F. Hooks
Chief Public Defender

NAME: _____

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made between the State of Montana, Office of the State Public Defender (OPD), and the undersigned Contract Attorney, hereinafter called "Counsel."

In consideration of the mutual promises contained herein and other valuable consideration, the parties agree as follows:

PURPOSE. The purpose of this Memorandum of Understanding is for Counsel to provide legal representation of persons assigned by OPD in the following areas in which Counsel signifies s/he is qualified to provide effective assistance of counsel:

a. Types of cases (**Please initial to signify qualification as per the Montana Public Defender Commission's Standards for Counsel**)

- Adult Criminal
 - Felony _____
 - Misdemeanor _____
- Juvenile Delinquency
 - Felony _____
 - Misdemeanor _____
- Post-conviction Relief _____
- Sentence Review _____
- Youth In Need of Care (DN) _____
- Involuntary Commitment _____
- Guardianship _____
- Appellate _____

b. Courts

Specify County or Counties: _____

1. **AGREEMENT.** Counsel agrees s/he is an active member in good standing of the State Bar of Montana. Counsel agrees to provide the full and complete legal defense of cases assigned by OPD and accepted by Counsel. Counsel agrees to comply with the Montana Public Defender Commission's Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act (Title 47 of Montana Code Annotated), hereinafter called "Standards" as updated, which includes requirements for professional development. It is understood and agreed that Counsel will contact client within 48 hours of appointment and personally meet client within 7

days. Counsel further agrees to comply with OPD'S Administrative Policies and to participate in a periodic evaluation of services undertaken by OPD.

2. **CASE ASSIGNMENT.** The parties agree that OPD is not obligated to assign any cases to Counsel and that Counsel is not obligated to accept any case offered by OPD for assignment. Counsel agrees to consider his/her *entire case load* prior to accepting a case assignment by OPD. Only after ascertaining that Counsel has both the time and expertise to provide effective assistance of counsel may Counsel accept a case from OPD. Counsel agrees to perform all work necessary to complete each assigned case, unless OPD agrees to re-assign the case to another attorney upon the written request of Counsel. Counsel is prohibited from substituting counsel on an assigned case without the written prior approval of OPD. Counsel agrees to accurately report the status of assigned cases to OPD on a monthly basis. (See OPD Policy 106 for guidelines on closing cases.) **Counsel understands that a Petition to Revoke (PTR) a sentence of a prior client is a new case which must be reassigned by the Regional Office. Counsel is not authorized to service a PTR client on behalf of OPD without first obtaining approval and assignment from the Regional Office.**
3. **COMPENSATION SCHEDULE.** It is understood and agreed that the undersigned shall provide public defender services according to the fee schedule established by the Montana Public Defender Commission (Attachment A). It is understood and agreed that the undersigned shall submit an itemized claim for legal work on the appropriate claim form provided by OPD, posted on OPD's web site at www.publicdefender.mt.gov. The monthly claim is to be submitted by the tenth of the month following the month in which services were provided. It is agreed that any claims submitted more than 45 days from the last day of the month of services **will be denied**. It is further understood and agreed that Counsel **will not be reimbursed** for any third party costs paid directly by Counsel. Hourly rates shall be broken down into units of one-tenth of an hour (0.1 hour or six minutes). Each form **must** contain the case number as **assigned by OPD** and shall be supported with daily case logs. It is understood and agreed that the undersigned will follow all procedures in the Contractor Payment Process. <http://www.publicdefender.mt.gov/forms/pdf/ContractorPaymentProcess.pdf> If the Contract Payment Process or the fee schedule is changed or updated in the future, Counsel will be notified of said change by email.
4. **PRE-APPROVAL PROCESS.** It is further understood and agreed that **all** costs exceeding \$200, i.e., experts, witnesses, transcripts, etc., **must** be pre-approved per OPD Policy 125, Pre-Approval of Client Costs. **Post-Approval of costs will not be granted except in extraordinary circumstances for good cause shown.** All pre-approved contracted professional services must be invoiced by said professional directly to OPD.
5. **LIAISON.** The Contract Manager, the Regional Deputy Public Defender, the Chief Appellate Defender, or the Conflict Coordinator are the designated contract Liaisons to whom Counsel shall report. Counsel will consult with the appropriate contract Liaison on a monthly basis and keep the contract Liaison apprised of the status of the case. Counsel will provide the contract Liaison with copies of all significant case filings and correspondence, will provide responses to written client complaints, and will provide general updates on the cases for which they are providing services pursuant to this contract, upon request.
6. **SUPPORT SERVICES.** OPD agrees that Counsel is entitled to sufficient support services and reasonable expenses, including investigative services, mental health services or evaluations, expert witnesses, and other litigation costs. OPD has mental health professionals and

investigators on staff, and/or the ability to contract with same. OPD also has a list of previously used expert witnesses that is available to Counsel upon their request. OPD agrees to make support personnel available to Counsel, upon request of Counsel in accordance with the Pre-Approval Process and the Mental Health Protocol as appropriate.

7. **INDEPENDENT CONTRACTOR STATUS OF COUNSEL.** Counsel is for all purposes arising out of this Memorandum of Understanding, an Independent Contractor. Counsel, and his/her agents and employees, shall not be deemed or considered employees of the Office of the State Public Defender or the State of Montana. Counsel shall complete the requirements of this Memorandum of Understanding according to Counsel's own means and methods of work, which shall be in the exclusive charge and control of Counsel except as specified herein and in accordance with the Standards established by the Montana Public Defender Commission.
8. **AUDIT AND PROFICIENCY DETERMINATION.** Counsel agrees that the OPD, Legislative Auditor and Legislative Fiscal Analyst may audit all time receipts, billing records, and other documents which Counsel maintains under or in the course of this Memorandum of Understanding to insure compliance with the requirements of the Memorandum of Understanding. Such time receipts, billing records, reports and other documents may be audited at any reasonable time. Counsel understands that if a specific claim is audited for any reason this will stop the 30-day payment clock. Counsel understands claims submitted will be audited on a random basis regarding the length of time cases remain open. Counsel understands that OPD will require an explanation if misdemeanor cases remain open longer than 180 days or felony cases remain open longer than 250 days.

During the 2 year term of this Memorandum of Understanding, OPD will evaluate Counsel's proficiency in all of the areas in which Counsel practices. Counsel agrees to cooperate with OPD to facilitate said process in accordance with OPD Policy 135, Proficiency Determination, Contract Counsel.

9. **RECORD RETENTION.** Counsel shall maintain complete case files and billing records for cases assigned under this Memorandum of Understanding. Counsel shall provide for retention of client files in a manner that affords protection of the client's confidentiality interest and in accordance with OPD's file retention policy. It is understood that OPD may be able to assist with file destruction in accordance with this policy. All records and information in the client case files shall be the property of the OPD, but Counsel may retain an office copy. <http://publicdefender.mt.gov/forms/pdf/107-FileDestruction.pdf>.
10. **CLIENT CONFIDENTIALITY.** Counsel shall protect client confidences, attorney-client information, and work product related to assigned cases, subject to OPD's Audit Review, except under a legal court order to divulge, or after receiving a voluntary, knowing, and intelligent waiver from the client in the case, or to provide information to a subsequent attorney in the case.
11. **INDEMNITY AND LIABILITY.** Counsel shall indemnify and hold harmless the OPD from and against any and all claims, demands, or actions from damages to property or injury to third parties or other damage to third parties or entities arising out of, or resulting from the Counsel's performance of services under this Memorandum of Understanding, including but not limited to damages, costs and attorney fees, provided such damage to property or injury to third parties is caused in whole or in part by the negligent act, error, or omission of Counsel or any of his/her employees, agents, or consultants.

- 12. TERMINATION.** This Memorandum of Understanding is for a term of two (2) years effective when signed by both parties. Either OPD or Counsel may terminate this Memorandum of Understanding at any time upon written notice by registered mail, or personal delivery of notice by either party. In the event of termination by either party, Counsel shall be paid for work performed or services rendered, subject to the performance guidelines established in Sections 2 and 3 of this Memorandum of Understanding, through the date of termination. Upon termination, Counsel will deliver to OPD within a reasonable time the original copies of all pleadings, exhibits, notices, attorney's memoranda, forms, photographs, expert's reports and other file materials prepared by or at the direction of Counsel prior to termination for each assigned case. Counsel further agrees that in the event this Memorandum of Understanding is terminated, Counsel shall promptly prepare and file with all Courts where assigned cases are pending, properly drafted and signed "substitution of counsel" pleadings.
- 13. EMAIL ACCESS.** Counsel agrees to maintain an active and functioning business email account during the term of this Memorandum of Understanding and will provide the address of that email account to OPD so that OPD may use it to communicate with Counsel via email message as may be necessary. Counsel agrees to regularly check that email account for messages.
- 14. NOTICE OF DISCIPLINE OR CRIMINAL CHARGES.** Counsel agrees to notify the Contract Manager or the Conflict Coordinator within 10 days of the following events:
- a. Actual notice from the State Bar of Montana, or the disciplinary agency regulating attorneys in any state, that a complaint has been filed against Counsel;
 - b. Being arrested or charged with a crime; or
 - c. Any sanctions imposed on Counsel by any Court.
- 15. VENUE.** In the event of litigation arising out of this Memorandum of Understanding, venue shall be in the Second Judicial District for Butte-Silver Bow County.
- 16. ASSIGNMENT.** No assignment, transfer or subcontracting of this agreement may be made unless agreed to by both parties in writing.
- 17. TOTAL CONTRACT.** This Memorandum of Understanding incorporates by reference the Standards, as updated and published at <http://publicdefender.mt.gov>. The Standards require that contract counsel complete Continuing Legal Education training annually, as determined by the Public Defender Commission, and that Counsel annually provide an updated CLE Transcript to OPD. Please attach your most recent CLE Transcript if you have not already provided it to OPD. Links to various policies and procedures are provided at the end of this Contract. The undersigned counsel acknowledges that s/he has read said policies and procedures by placing their initials next to each link.
- 18. DISCRIMINATION.** Any hiring of employees for support services under this Memorandum of Understanding by Counsel shall be on the basis of merit and qualifications, and there shall be no discrimination in such hiring or contracting on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry. As used herein, "qualifications" mean qualifications as are generally related to competent performance of the particular occupational task.

By initialing below you are acknowledging you have read each Policy and agree to abide by the same:

Contract Counsel: <http://www.publicdefender.mt.gov/forms/pdf/130-PolicyContractCounsel.pdf> _____

Contractor Payment Process: <http://www.publicdefender.mt.gov/forms/pdf/ContractorPaymentProcess.pdf> _____

OPD Standards: <http://publicdefender.mt.gov/Standards/StandardsTOC.asp> _____

Closing Cases Policy: <http://www.publicdefender.mt.gov/forms/pdf/106-ClosingCases.pdf> _____

Pre-Approval Policy: <http://www.publicdefender.mt.gov/forms/pdf/125-Pre-ApprovalofCosts.pdf> _____

My signature below indicates my acceptance of the above stated terms and conditions.

Name (Please Print)

Address *City/Zip*

Telephone No.

Email Address

Signature
*(Note: Stamps, photocopies and faxes are **not** accepted)*

Date: _____

Approved by:

Wendy A. Johnson
Contract Manager

Date: _____

OPD Use:

Summary of Education and Experience Received (Date): _____

MOU Received (Date): _____

Region(s) _____

Notified: _____

MOU ATTACHMENT A

FEE SCHEDULE

(Subject to Change by the Montana Public Defender Commission)

Attorney time \$62.00 per hour

Mileage To be paid at the current state rate

Office Stipend \$25 per month

(OPD will not be responsible for payment of any office costs, i.e., telephone, copying, fax or postage expenses over the aforementioned stipend unless pre-approved.)