



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

## MEMORANDUM OF UNDERSTANDING INVESTIGATOR

**PROFESSIONAL’S NAME:** \_\_\_\_\_

This Memorandum of Understanding, Investigator (hereinafter referred to as “MOU”), is made between the State of Montana, Office of the State Public Defender (hereinafter referred to as “OPD”), and the undersigned Investigator (hereinafter referred to as “You/Your”).

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

**PURPOSE.** The Office of the State Public Defender intends to contract with Investigators to assist in cases where an attorney determines professional investigative services are necessary to effectively defend his/her clients. The purpose for this MOU is for the Investigator to provide effective assistance to both full-time employees of OPD and contract attorneys who may be assigned to OPD cases.

1. **AGREEMENT.** You acknowledge that you have read the ethical and practice standards of your profession and that you will abide by said standards.<sup>1</sup> You agree to comply with all OPD policies and procedures which may be periodically updated. In the event of an update, you will be notified of any changes by email. You additionally agree to complete required continuing educational units (CEU’s) in courses relating to your profession. You further agree to comply with all other training requirements established by OPD’s Training Coordinator.
2. **CREDENTIALS.** You shall submit a completed copy of the “Investigator’s Summary of Education and Experience” that may be found on the OPD website, as well as a copy of your resume or Vita to OPD so that the case elements may be matched with an appropriate Investigator. These documents must be attached to this Memorandum of Understanding.
3. **CASE ASSIGNMENT.** The parties agree that OPD is not obligated to assign any cases to you and that you are not obligated to accept any case offered by OPD for assignment.

<sup>1</sup> The standards may be found at the following link:  
<http://www.mtrules.org/gateway/ChapterHome.asp?Chapter=24%2E182>

Cases will be referred to you by an OPD attorney in accordance with your qualifications and experience. It is understood and agreed that you will provide professional services according to the fee schedule established by the Montana Public Defender Commission, which is subject to change. Similarly, OPD will timely process and pay for services at the established rate upon receipt of a properly executed claim form.

4. **INDEPENDENT CONTRACTOR STATUS.** You are, for all purposes arising out of this Memorandum of Understanding, an Independent Contractor. You shall not be deemed or considered an employee of the Office of the State Public Defender or the State of Montana. You shall complete the requirements of the Memorandum of Understanding according to your own means and methods of work, except as specified herein.
5. **LIASION.** The referring attorney, the Contract Manager, the Conflict Coordinator, or the Investigator Supervisor are the designated contract Liaisons to whom you shall report. You will respond in a timely fashion when questions or concerns arise relevant to the services you are providing to OPD.
6. **PRE-APPROVAL PROCESS.** It is understood and agreed that all costs **must** be pre-approved. As such, you agree not to undertake any investigation without a written request for investigation from the OPD case attorney specifying what investigative actions are being requested and the total amount of funds that were approved. It is further understood and agreed that **you will not exceed the referring attorney's pre-approved investigator request for funds.** If you determine that additional time is necessary and that the costs are anticipated to exceed the pre-approved amount, you must immediately contact the referring attorney and do the following:
  - a. Submit a written statement to the referring attorney explaining the necessity of the additional funds. You agree to communicate with the referring attorney in a timely fashion when questions or concerns arise relevant to the referral.
  - b. You must receive pre-approval of any additional amount for payment over and above the initial pre-approved amount, **prior** to providing the additional service.

**Post-approval of costs will not be granted except in extraordinary circumstances.**

7. **COMPENSATION SCHEDULE.** It is understood and agreed that you will provide professional services at the reimbursement rate indicated in the Fee Schedule, and that by signing this MOU you are agreeing to abide by said policies. It is understood and agreed that you will submit an itemized invoice and the appropriate claim form provided by OPD, posted on OPD's website at [www.publicdefender.mt.gov](http://www.publicdefender.mt.gov), on a monthly basis.
  - a. **Claims submitted more than 45 days from the last day of the month of service will be denied.** Conflict and non-conflict matters are to be billed separately on the appropriate Miscellaneous Claim form, **with original signatures** on each claim. Conflict claims are to be submitted directly to the Conflict Coordinator. Non-

Conflict claims are to be submitted to the appropriate Regional Deputy Public Defender. Attach a copy of the pre-approval form to your claim. The claim will then be processed for payment in accordance with the Contractor Payment Process.

- b. OPD will review, approve and pay properly executed claims within thirty (30) days of receipt by the Regional Deputy Public Defender or the OPD Conflict Coordinator. It is understood that payment may be delayed if the claims are returned to you by OPD for correction or clarification or if the claim exceeds the pre-approved amount.
8. **EMAIL ACCESS.** You agree 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 you via email message as may be necessary. You agree to regularly check that email account for messages.
9. **TERMINATION.** This Memorandum of Understanding is for a term of two (2) years effective when signed by both parties. Either OPD or you, the Investigator, may terminate this MOU at any time upon written notice by registered mail, or personal delivery of notice by either party. In the event of termination you shall provide OPD with a written summary of any and all findings prepared by you in open cases.
10. **CLIENT CONFIDENTIALITY.** It is your responsibility to uphold the highest level of confidentiality with any and all cases referred to you by OPD. You shall protect client confidences, attorney-client information, and work product related to assigned cases, 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.** You 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 your 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 you or any of your employees, agents, consultants, or subcontractors. You have and shall maintain in force for all times and work done, pursuant to this Memorandum of Understanding, a Professional Liability Insurance policy, occurrence coverage, with minimum coverage at \$500,000 per year. You shall provide proof of insurance on request.
12. **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.
13. **ASSIGNMENT.** No assignment, transfer or subcontracting of this agreement may be made unless agreed to by both parties in writing.

**14. TOTAL CONTRACT.** This MOU incorporates by reference the Montana Public Defender Commission’s Standards pursuant to the Montana Public Defender Act, as updated and published at <http://publicdefender.mt.gov>. Links to various policies and procedures are provided at the end of this MOU. You acknowledge that you have read said policies and procedures by placing your initials next to each link. It is your responsibility to maintain your Montana license, meet continuing education requirements, maintain liability insurance, and comply with your professional association’s ethical codes. Failure to do any of the preceding may result in termination of this agreement until such time as you have rectified the deficiency.

**15. DISCRIMINATION.** Any hiring of employees for support services under this Memorandum of Understanding by you 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:*

Investigator Policy: <http://www.publicdefender.mt.gov/forms/pdf/132-ContractInvestigators.pdf> \_\_\_\_\_

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

OPD Standards: <http://www.publicdefender.mt.gov/forms/pdf/Standards.pdf>. \_\_\_\_\_

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

Investigator Forms: <http://www.publicdefender.mt.gov/investigators.asp> \_\_\_\_\_

**Your signature below indicates your acceptance of the above stated terms and conditions. Your signature also indicates that you have received, read, understand and agree to adhere to the appropriate *OPD Procedures*.**

\_\_\_\_\_  
*Investigator's Name (Please Print)*

\_\_\_\_\_  
*Company Name*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Telephone Number*

\_\_\_\_\_  
*Email Address*

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

\_\_\_\_\_  
*Date*

***Approved by:***

\_\_\_\_\_  
*OPD Contract Manager*

\_\_\_\_\_  
*Date*

Return to:    Central Office  
                  Office of the State Public Defender  
                  44 W. Park  
                  Butte, MT 59701

**OPD Use:**

Updated Summary of Education and Experience Received in Central Office (*Date*): \_\_\_\_\_

MOU-I Received (*Date*): \_\_\_\_\_

Reviewed by Criminal Investigator Supervisor (*Date*): \_\_\_\_\_