



Brian Schweitzer  
Governor

# OFFICE OF THE STATE PUBLIC DEFENDER

## STATE OF MONTANA

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

Randi Hood  
Chief Public Defender

NAME: \_\_\_\_\_

### MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made between the State of Montana, Office of the State Public Defender (OPD), and the undersigned 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)

- Felony \_\_\_\_\_
- Misdemeanor \_\_\_\_\_
- Post-conviction proceeding \_\_\_\_\_
- Child Abuse and Neglect \_\_\_\_\_
- Involuntary Commitment \_\_\_\_\_
- Mental Health \_\_\_\_\_
- Adult \_\_\_\_\_
- Minor \_\_\_\_\_
- DD \_\_\_\_\_
- Alcohol \_\_\_\_\_
- Youth Court \_\_\_\_\_

b. County Courts

District Court \_\_\_\_\_ Justice Court \_\_\_\_\_  
 Specify County or Counties: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

c. City Courts

Municipal Court \_\_\_\_\_ City Court \_\_\_\_\_  
 Specify City or Cities: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

1. **AGREEMENT.** 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), 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 an annual evaluation of services undertaken by OPD each year that this Memorandum of Understanding is in effect.
2. **CASE ASSIGNMENT.** The parties agree that OPD is not obligated to assign any specific number of 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 cases status.) 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. **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 without first obtaining approval and assignment from the Regional Office.**
3. **PRE-APPROVAL PROCESS.** 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, which is subject to change (Attachment A). It is further understood and agreed that **all** costs exceeding \$200, i.e., experts, witnesses, transcripts, etc., **must** be pre-approved per the OPD Pre-Approval of Client Costs Policy. **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. Counsel will **not** be reimbursed for payments made directly to professionals.
4. **COMPENSATION SCHEDULE.** It is understood and agreed that the undersigned shall submit an itemized claim on the appropriate claim form provided by OPD, posted on OPD's web site at [www.publicdefender.mt.gov](http://www.publicdefender.mt.gov). Claimant must submit a monthly claim by the tenth of the month following the month in which costs were incurred. It is agreed that claims submitted more than 45 days from the last day of the month of services **will be denied**. 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>
5. **LIAISON.** The Regional Deputy Public Defender, Chief Appellate Defender, or Eric Olson, Conflict Coordinator is the designated contract Liaison to whom Counsel shall report. Counsel will consult with the appropriate contract Liaison on a monthly basis and keep the contract

Liaison appraised of the status of the case. Counsel will provide the contract Liaison with copies of all significant case filings and correspondence, when requested.

6. **CONFLICTS OF INTEREST**. Counsel agrees to provide complete and updated information to the contract Liaison during the term of this Memorandum of Understanding concerning all claims, actions and matters in which Counsel's law firm represents persons or entities who present a conflict for Counsel's continued representation of persons or cases assigned by the OPD. Prior to Counsel's acceptance of a case assignment by OPD, Counsel will determine whether a conflict exists.
7. **SUPPORT SERVICES**. OPD agrees that Counsel is entitled to sufficient support services and reasonable expenses, including paralegal and investigative services, expert witnesses, and other litigation costs. OPD has full time paralegals, mental health professionals and investigators on staff. OPD agrees to make support personnel available to Counsel, upon request of Counsel.
8. **INDEPENDENT CONTRACTOR STATUS OF COUNSEL AND CERTIFICATION OF COMPLIANCE WITH SECTION 39-71-401, MCA**. Counsel is an independent contractor under this Memorandum of Understanding. Upon request, Counsel will furnish to OPD certification establishing either that Counsel has elected workers' compensation coverage for him/herself or has an approved exemption from coverage, as required by applicable state law.
9. **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 agrees to cooperate with OPD's Proficiency Determination as outlined in Article IV Administration of Defender Services, #5 Proficiency Determination for Contract Attorneys as stated in the Montana Public Defender Commission's Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act (Title 47 of Montana Code Annotated). Counsel understands claims submitted will be audited on a random basis regarding the length of time cases remain open.

10. **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.
11. **CLIENT CONFIDENTIALITY**. Counsel 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.
12. **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. Counsel has and shall maintain in force for all times and work done, pursuant to this Memorandum of Understanding, a Lawyers' Professional Liability Insurance policy, occurrence coverage, with minimum coverage at \$1,000,000 per occurrence and \$2,000,000 aggregate per year. Counsel shall provide proof of insurance on request.

- 13. TERMINATION.** This Memorandum of Understanding becomes effective as of July 1, 2010 when signed by both parties and shall remain in force for a term of two (2) years from July 1, 2010, unless terminated for good cause by OPD due to the failure of Counsel to comply with its terms, which impairs the delivery of services to clients, or Counsel's willful disregard of the rights and best interests of clients. Counsel may terminate this Memorandum of Understanding at any time upon written notice by registered mail, or personal delivery of notice, to OPD. In the event of termination, 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.
- 14. 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.
- 15. ASSIGNMENT.** No assignment, transfer or subcontracting of this agreement may be made unless agreed to by both parties in writing.
- 16. TOTAL CONTRACT.** This Memorandum of Understanding incorporates by reference the Montana Public Defender Commission's Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act, as updated and published at <http://publicdefender.mt.gov>. The MOU also requires that contract counsel complete Continuing Legal Education training annually, as determined by the Public Defender Commission. 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.
- 17. 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://www.publicdefender.mt.gov/forms/pdf/Standards.pdf>. \_\_\_\_\_

Closing Cases: <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:**

\_\_\_\_\_  
Lawrence A. Murphy  
*Contract Manager*

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

**OPD Use:**

*Completed 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           \$60.00 per hour

Mileage                    To be paid at the current state rate  
*(For services rendered outside a fifteen (15) mile radius of the principal place of business.)*

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.)*