

**2010-2012  
INDIGENT COUNSEL AGREEMENT  
BEADLE COUNTY**

This Indigent Counsel Agreement is made between Beadle County, by and through its authorized representative, and **Contract Attorneys** subject to the approval of a judge of the Third Judicial Circuit. The following attorneys will provide services under this Indigent Counsel Agreement.

The following firms are available to provide representation (hereinafter referred to as “Contract Attorneys”):

- \*
- \*
- \*
- \*
- \*

In consideration of the terms and covenants hereinafter provided, it is hereby mutually agreed and understood as follows:

1. **CONTRACT PURPOSES.** The purposes of this Agreement is to provide legal services when it is necessary for the court to appoint an attorney to represent an indigent party before the court, following a determination of indigence, in all cases for which Beadle County is obligated to provide legal services for indigents including the representation of the petitioner as well as the individual committed on an alcohol commitment, except those excluded below:

Excluded from this contract would be any and all; appeals to the United States Supreme Court, Habeas Corpus proceedings in United States District Court and U.S. Court of Appeals; parole hearings held out of county; mental illness hearings held out of county; and cases where the penalty imposed for underlying crimes without enhancement is a Class A Felony.

All Mental Illness matters conducted outside of Beadle County will be considered as being “outside of the Contract” and any attorneys involved in those matters will be paid by Beadle County.

**Contract Attorneys** agree to provide legal services for all other cases arising within Beadle County when assigned by the reporting attorney. By entering into this agreement, **Contract Attorneys** shall be automatically appointed to handle said matters and consent to such appointment.

2. **ATTORNEY QUALIFICATION.** **Contract Attorneys** shall at all times during the term of this agreement hold a license to practice law within the State of South Dakota and shall comply with all of the requirements of such license.

3. **EXTENT OF REPRESENTATION.** Representation of the indigent by **Contract Attorneys** in each case assigned under this Agreement shall be made at all stages of the proceeding until completed. **Contract Attorneys** shall provide necessary representation of each indigent client in matters of investigation, trial preparation, preparation and filing of motions, arguments of motions, personal counseling when appropriate, referral to appropriate agencies, trial, post-trial motions, motions, briefing and argument in the South Dakota Supreme Court, and any retrials following an appeal (unless appeal to be started after December 31, 2009). This includes preparation of all briefs, documents, letters, research and any and all things regarded as adequate representation of the indigent party.

4. **INDIGENT PERSONS.** An indigent person includes any person, who during an appearance before a judge is found by the judge to be unable to employ an attorney without undue financial hardship.

5. **CONFLICT OF INTEREST.** Except in cases involving more than \* co-defendants attorneys contract bid includes all conflicts of interest. Conflicts should be kept at a minimum because of the number of attorneys involved, but if there are conflicts, reporting counsel will hire a third party licensed attorney to conduct the defense of that case and that third party attorney will be paid by lead counsel from the funds provided above. The above attorneys agree, therefore, to relieve the county of the burden of resolving any conflicts of interest that may arise during the contract period. The above attorneys reserve the right, however, to hire other third party attorneys to handle conflicts of interest who are otherwise eligible.

In multi-party adult defendant and multi-party juvenile proceedings, **Contract Attorneys** may represent more than one party with the consent of all parties after consultation pursuant to Rule 1.7 of the South Dakota Rules of Professional Conduct. A conflict of interest will occur if the parties do not consent or if there are additional parties in a proceeding to be provided legal services by Beadle County because of indigency.

6. **REPORTING ATTORNEY OBLIGATION RESPONSIBILITY.** One attorney shall be designated as reporting attorney. The responsibility of the reporting attorney is to receive the initial contact from the presiding judge or other judge presiding in the case as to the need for indigent counsel. The reporting attorney is then to select among the **Contracting Attorneys** as to which counsel will be appointed to represent THE INDIGENT PERSON. The reporting attorney shall insure that work is evenly divided among all **Contracting Attorneys** considering the type

of case, complexity of the case, and time involved. **Contracting Attorneys** will attempt to resolve any disputes over work load.

The reporting attorney shall provide all **Contract Attorneys**, the Court Administrator, the Beadle County Auditor and State's Attorney with a monthly report of case assignments, including statistics on year-to-date assignments. The types of statistics and forms to be provided shall be approved by the Beadle County Auditor.

The reporting attorney shall be designated by mutual consent of all **Contract Attorneys** and Beadle County.

7. **CONTRACT PERIOD.** This agreement shall commence on January 1, 2010 and terminate on December 31, 2012.

8. **COMPENSATION.** The contracting parties shall receive annual payments in a total amount of \$\_\_\_\_\_ to be paid in equal monthly installments within the first five days of the month following the month in which the services were provided. Each monthly payment is to be divided among the contracting parties as determined among themselves. Unless specified otherwise, \*\_\_\_\_\_, \*\_\_\_\_\_, and \*\_\_\_\_\_ shall receive a monthly payment of \$\_\_\_\_\_. \*\_\_\_\_\_ and \*\_\_\_\_\_ shall receive a monthly payment of \$\_\_\_\_\_. The first payment is due in February 2010, with a final payment due in January 2013.

No money will be held in reserve to fund the potential payment of court appointed counsel in those cases where a conflict of interest has arisen between the indigent defendant and the **Contract Attorneys**. **Contract Attorneys** shall be responsible for payment of court appointed counsel where a conflict of interest has arisen and wherein attorneys outside of the **Contract Attorneys** need to be retained as a result of a conflict. Should any funds be expended to pay for counsel services who are hired where a conflict of interest did not exist, the county will be authorized to deduct from the contract amount sufficient sums to meet any obligation to pay non-contracting attorneys who provide indigent counsel services.

9. **COSTS AND EXPENSE REIMBURSEMENTS.** **Contract Attorneys** shall provide office space, clerical and support personnel, law library, telephone, postage, photocopying, and all other expenses incurred while providing contract services except the following which shall be paid by Beadle County.

- A. Service of process fees;
- B. Witness fees and expenses;

and the following expenditures with Court approval only:

- C. Expert witness fees and expenses;
- D. Investigative Services;
- E. Depositions;
- F. Transcripts;
- G. Costs of medical and psychiatric evaluations;
- H. Any additional expenses other than statutory limits regarding fees and mileage which are anticipated to exceed \$100.00.

For large copying projects **Contract Attorneys** shall be entitled to use copy machines available in the Beadle County Courthouse complex at the County's expense.

**Contract Attorneys** shall be reimbursed by Beadle County for necessary travel and lodging expenses incurred while investigating or trying cases or proceedings outside Beadle County.

10. **RECORD-KEEPING AND REPORTING REQUIREMENTS.** At the conclusion of each case or at sentencing during the term of this Agreement **Contract Attorneys** shall submit to the circuit court administrator and the county auditor a written report in the forms specified by those respective agencies indicating the time spent and expenses incurred in each case assigned. **Contract Attorneys** should also provide any documents and/or claim forms as required by Beadle County.

11. **ADVISE TO CLIENT AS TO NON-PRIVILEGED INFORMATION.** **Contract Attorneys** agrees to advise all clients assigned under this Agreement that financial information relating to indigent status eligibility is not privileged information, unless the information is probative of the guilt or innocence of the client in which case the information shall be protected by the lawyer-client privilege. **Contract Attorneys** further agrees to a continuing duty to bring information regarding a client's financial status which relates to indigent status eligibility promptly to the attention of the judge assigned to the case.

12. **EARLY DISPOSITION OF CASES.** **Contract Attorneys** agree to seek an early final disposition of all assigned cases, without any compromise or sacrifice of the quality of legal services or the zealous representation owed to the client.

13. **INDEPENDENT CONTRACTOR.** **Contract Attorneys** and all attorneys providing services under this Agreement are independent contractors and are not employees of Beadle County. Beadle County shall have no liability and shall be indemnified for malpractice claims which may be made by persons represented by **Contract Attorneys** pursuant to this Agreement. Each attorney furnishing services under this Agreement shall furnish evidence of primary professional liability insurance coverage of \$100,000 per claim / \$300,000 aggregate, at

the attorney's expense, during the entire contract period and provide proof of such insurance to Beadle County within 15 days of the effective date of this Agreement. Certification shall be provided by **Contract Attorneys** that each attorney shall retain such insurance coverage for any liability arising out of the services provided.

14. **SUPERVISORY AUTHORITY AND CONTRACT DISPUTES.** The County Commissioners and County Auditor shall have final supervisory authority over the administration of this Agreement.

15. **MODIFICATION AND TERMINATION.** No modification of this Agreement shall be binding upon either party unless the same shall be in writing signed by the parties. Beadle County may terminate this Agreement without cause upon 30 days written notice thereof to the other party.

16. **ASSIGNMENT PROHIBITED.** No Assignment of this Agreement or any interest herein shall be permitted without the prior written consent of Beadle County.

17. **TERMINATION OF CONTRACT.** The **Contract Attorneys** agree to finish up any cases that have been assigned to them at the end of the contract. Attorneys will not be required to begin appeals or habeas actions after January 1, 2013; however, any appeals in progress will be completed. **Contract Attorneys** will not be required to complete extraordinary cases which continue after the termination of the contract.

18. **NOTICES.** All notices regarding this Agreement shall be made by contact with:

- \*
- \*
- \*
- \*
- \*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

COUNTY OF BROWN

CONTRACT ATTORNEYS

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

CERTIFICATION OF COUNSEL

I, \* \_\_\_\_\_, certify that I have primary professional liability insurance coverage of \$100,000 per claim / \$300,000 aggregate, I certify that such insurance coverage shall be retained for myself for any liability arising out of the services provided under this contract. Evidence of my insurance coverage referred to herein will be provided to the Auditor of Beadle County.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

\*

I, \* \_\_\_\_\_, certify that I have primary professional liability insurance coverage of \$100,000 per claim / \$300,000 aggregate, I certify that such insurance coverage shall be retained for myself for any liability arising out of the services provided under this contract. Evidence of my insurance coverage referred to herein will be provided to the Auditor of Beadle County.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

\*

I, \* \_\_\_\_\_, certify that I have primary professional liability insurance coverage of \$100,000 per claim / \$300,000 aggregate, I certify that such insurance coverage shall be retained for myself for any liability arising out of the services provided under this contract. Evidence of my insurance coverage referred to herein will be provided to the Auditor of Beadle County.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

\*

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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

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