

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING AGREEMENT FOR COURT APPOINTED LEGAL SERVICES

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, THE County is obliged to provide legal representation for indigent parties in the District and County Courts; and,

WHEREAS, Michael Schirber, "Counsel" has the experience in the defense of criminal and misdemeanor matters; and,

WHEREAS, Counsel is desirous of offering legal services to the County as a Court appointed counsel; and,

WHEREAS, said contract is in the best interests of the citizens of Sarpy County.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT Contract with Michael Schirber, a copy of which is attached hereto, is hereby approved.

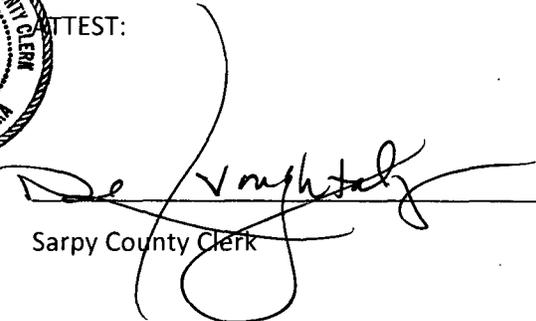
The above resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 15th day of May, 2012.



TEST:



Sarpy County Board Chairman



Sarpy County Clerk

**CONTRACT WITH MICHAEL SCHIRBER
FOR COURT APPOINTED LEGAL SERVICES**

This Contract is entered into by and between the COUNTY OF SARPY, of the State of Nebraska, a body politic and corporate, and hereinafter "County," and Michael Schirber, an attorney licensed to practice in the State of Nebraska, and hereinafter "Counsel."

WHEREAS, the County is obliged to provide legal representation for indigent parties in the District and County Courts of County; and,

WHEREAS, under such circumstances the County is obliged to provided legal representation on behalf of the aforesaid Courts through Court appointed counsels; and,

WHEREAS, Counsel holds himself/herself out as having experience in the defense of criminal and misdemeanor matters; and,

WHEREAS, the Counsel is desirous of offering legal services to the County as a Court appointed counsel;

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

I. Term of Contract:

This Contract shall be in full force and effect from July 1, 2012 through June 30, 2017, unless otherwise terminated as provided herein.

II. Counsel's Duties:

- A. Counsel declares, promises and warrants that he/she is an attorney in good standing, licensed to practice law in the State Courts of the State of Nebraska.
- B. Counsel declares, promises and warrants that he/she will faithfully perform legal services pursuant to the Nebraska Code of Professional Responsibility as a Court appointed counsel for County on behalf of any and all clients referred to him/her by the County and District Courts of County. Such representation shall include, but not be limited to, appearing at all court proceedings for his/her client.
- C. If Counsel cannot, through illness or otherwise, attend Court proceedings on behalf of his or her client, Counsel shall have the duty to secure a continuance of the proceedings, or find a fully qualified substitute counsel at no cost to the County.

- D. Counsel shall represent all such clients on any criminal and misdemeanor matters assigned by the Court. Counsel shall not, however, be required to defend indigent persons against charges of first degree murder.
- E. Counsel may, in his or her best professional judgment, employ experts and/or investigators to assist in the defense of the assigned cases, but such employment shall be at Counsel's sole cost and expense, unless such employment is previously approved by the Court. Other costs incurred by Counsel, including but not limited to expenses for depositions, transcripts, bills for exception, filing fees, travel expenses, long distance telephone calls, other court costs, and other costs of whatever type or kind shall be reimbursed by County only when previously approved by the Court. Counsel shall be solely responsible for obtaining such an order.
- F. Counsel declares, promises and warrants that he/she will not assess, bill, charge, or otherwise attempt to collect any fee, funds, or monies of whatever type or kind from clients assigned to Counsel by a Court. Counsel acknowledges that any such attempt is an unethical practice of law, that such efforts constitute a specific breach under this Contract, and will result in a form disciplinary complaint to the Counsel for Discipline of the State of Nebraska.
- G. Counsel acknowledges that he/she has an ethical duty to maintain records of clients served in order to prevent any actual or apparent conflict of interest, as required by the Nebraska Code of Professional Responsibility and case law, including *State ex. rel. FirstTier Bank v. Buckley* 244 Neb. 838 (1993), and *State ex. rel. Creighton University v. Hickman* 245 Neb. 247 (1994). Counsel shall be solely responsible for maintaining such records and notifying the Court of any conflict prior to representing a particular client. Counsel shall also be liable for any and all consequences arising out of a breach of this duty, including but not limited to the cost of hiring replacement counsel.
- H. If Counsel's license to practice law is suspended or revoked, Counsel shall notify County of such suspension or revocation within three (3) days of that disciplinary action.
- I. Appellate cases beyond those brought to the District Court are excluded from this contract. Payment for such appellate cases shall be made by Sarpy County upon separate order from the Sarpy County District Court.
- J. Counsel agrees to comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. Counsel is required and hereby agrees to use a federal

immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If Counsel is an individual or sole proprietorship, the following applies:

1. Counsel must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
2. If Counsel indicates on such attestation form that he or she is a qualified alien, Counsel agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Vendor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. Counsel understands and agrees that lawful presence in the United States is required and Counsel may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. Sect. 4-108.

III. County's Duties:

- A. In return for Counsel's performance of the duties described above, County promises to pay Counsel the sum of Five Thousand Seven Hundred Forty Dollars and Nine Cents (\$5,740.09) per month for the first year of the Contract with 2% per annum increases thereafter.
- B. Such payments and reimbursement for any Court approved expenses, shall be by Sarpy County Check.
- C. Monthly payments for services hereunder shall be made within the first ten (10) business days of each month.

IV. Confidentiality of Records:

- A. Counsel declares, promises and warrants that he/she will keep records showing the date of appointment, legal pleadings alleged, number of hours worked, record of expenses and date of final disposition for each client which Counsel shall represent under this Contract. Counsel promises to keep such records available for a period of three (3)

years after the date of final disposition, and shall make those records available to representatives of County during normal business hours. Nothing in this Contract shall be deemed to require Counsel to violate any attorney-client privilege, or otherwise disclose confidential information received from any client.

B. Counsel shall, by the fifteenth (15th) day of each month during the term of this Contract, submit to County an itemized statement which contains a recitation of each case to which Counsel had been assigned during the previous month and the number of hours spent on each of those cases. If a case had been closed, the statement shall show that fact and the disposition of that case.

V. Assignability:

Neither party to this Contract may assign any benefit, nor delegate any duty hereunder, to any person, firm, organization or corporation, without the prior written consent of the other except as provided in Section II. C.

VI. Taxes:

The Parties hereto stipulate and agree that all taxes, health, liability, or unemployment insurance, professional fees and other expenses of whatever type and kind assessed against Counsel shall be the exclusive obligation of Counsel.

VII. Severability Clause:

It is understood and agreed by the Parties hereto that if any part, term or provision of this Contract is held to be illegal or in conflict with any law of this State or of the United States, the validity of the remaining terms and conditions, provision or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular part, term or provisions held to be invalid.

VIII. Non-Discrimination Clause:

The Parties hereto promise to abide by the Americans with Disabilities Act of 1990 (42 U.S.C.A. §12101, et. seq.), the Rehabilitation Act of 1976 (U.S.C.A. §701, et. seq.), and the Drug Free Workplace Act of 1988 (41 U.S.C.A. §701). Furthermore, pursuant to Neb. Rev. Stat. §73-102 (Reissue 2003), the Parties hereto declare, promise, and warrant that they have complied and will continue to comply in all regards with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.A §1985, et. seq.) and the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §48-1101, et. seq. (Reissue 2004), in that there shall be no discrimination against any employee who is employed in the performance of this Contract,

or against any applicant for such employment, because of age, color, national origin, race, religion, creed, disability or sex.

IX. Conflict of Interest Clause:

Pursuant to Neb. Rev. Stat. §23-3113 (Reissue 2007), the Parties hereto declare and affirm that no officer, member or employee of County, and no member of its governing body, and no other public official of County who exercises any functions or responsibilities in the review or approval of the undertaking described in this Contract, or the performing of services pursuant to this Contract, shall participate in any decision relating to this Contract which affects his/her personal interest, or any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any employee of the County nor any member of its governing body have any interest, direct or indirect, in this Contract or the proceeds thereof.

X. Use of Outside Agents:

Counsel warrants that it has not employed or retained any County or person, other than a bona fide employee working for Counsel to solicit or secure this Contract, and that Counsel has not paid or agreed to pay any County or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the County shall have the right to annul this Contract without liability, or in its discretion, to deduct from the Contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

XI. Non-Raiding Clause:

Counsel shall not engage the services of any person or persons presently in the employment of the County for work covered by this Contract without the written consent of the employer of such person or persons.

XII. Nature of the Relationship:

Each Party declares, represents, warrants and acknowledges that it is not an agent for the other now, nor will it be in the future. Each Party is an independent contractor, and neither Party is or will become the employee of the other as a result of the relationship created by this Contract.

XIII. Integration Clause:

This Contract contains the entire Contract between the Parties, and there are no other written or oral promises, contracts or warrants which may affect it, except as contained herein. This Contract cannot be amended except by written Contract of both parties.

Notice to the Parties shall be given, in writing, to the agents for each Party named below:

County: Ms. Deb Houghtaling
Sarpy County Clerk
1210 Golden Gate Drive
Papillion, NE 68142

Counsel: Michael N. Schirborz
1243 Golden Gate Dr
Papillion, NE 68046
402.592.2800

XIV. Compliance with Laws:

Counsel shall comply with all Federal and State laws applicable to this Contract, including but not limited to those set forth herein.

XV. Termination:

Either Party may terminate this Contract upon thirty (30) days written notice to the other. Such termination shall not constitute a breach. However, it shall be the duty of Counsel to continue to represent any clients previously assigned by the Court. Counsel may petition the Court to be allowed to withdraw from any such representation. The Parties hereto acknowledge that the decision is entirely within the Court's discretion. If Counsel's petition to withdraw is denied, Counsel shall continue to represent the client's interests, at no charge to the County.

XVI. Hold Harmless Clause:

Counsel shall indemnify and hold harmless County, its Board of Commissioners, elected officials, officers, agents, employees and/or representatives from all claims, demands, suits, actions, payments, liability, and judgments, including attorney fees arising from the acts, actions, inaction or activities or breach of professional or ethical duty or duties, whether a result of negligence, intentional or willful misconduct of Counsel.

XVII. Consequences of Breach:

Should Counsel breach, violate or abrogate any term, condition, clause or provision of this Contract, County may, at its discretion, terminate this Contract forthwith, upon written

notice to Counsel. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law. Delay or failure of County to enforce at any time the provisions hereunder shall not constitute a waiver of the right of the County thereafter to enforce such provision(s). No remedy or election hereunder shall be deemed exclusive but shall be cumulative with and non-exclusive of all other remedies at law or in equity.

XVIII. Applicable Law:

This Contract shall be construed under the laws of the State of Nebraska.

XIX. Effects of Headings:

Section headings in this Contract are for convenience only and shall not be used to construe the provisions herein.

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Executed in duplicate this 15th day of May, 2012.

County of Sarpy,
A Body of Politic and Corporate

(SEAL)



Debra J. Houghtaling
County Clerk

Russell H. 5/15/12
Chairman, Board of Commissioners

Approved as to form and content:

Mark A. B.
Deputy County Attorney

Attest:

Assistant for Corporation

By: Mark A. B. 5/18/12
President

Deb Houghtaling

Fred Uhe
Chief Deputy

Sarpy County Clerk

Renee Lansman
Assistant Chief Deputy

1210 Golden Gate Drive • Papillion, Nebraska 68046-2895
Phone: 402-593-2105 • Fax: 402-593-4471 • Website www.Sarpy.com • Email: Clerk@sarpy.com

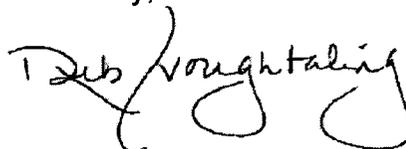
May 16, 2012

Michael N. Schirber
1243 Golden Gate Drive
Papillion, NE 68046

RE: Court Appointed Legal Services Contract

Please find enclosed one (1) original agreement which has been approved and signed by the Chairman of the Board on May 15, 2012 for your records.

Sincerely,

A handwritten signature in black ink that reads "Deb Houghtaling". The signature is written in a cursive style with a large initial "D" and "H".

Deb Houghtaling
Sarpy County Clerk

Enclosures (2)
DH/kk