



Staff Report

Agenda Item: LEGAL SERVICES AGREEMENT FOR COURT-APPOINTED ATTORNEY SERVICES - Discussion and consideration of a Legal Services Agreement between the Town and Michael Shaw, attorney at law, for Clarkdale Magistrate Court appointed attorney services.

Staff Contact: Harry Cipriano, Town Magistrate

Meeting Date: May 13, 2008

Background: Discussion of possibly entering into a contract for the services of a court-appointed attorney for the Town of Clarkdale Magistrate Court. The contract contains requirements needed by the court so it can provide services to indigent criminal defendants.

The Magistrate Court has to provide attorney services to indigent defendants and has been doing so without the benefit of a contract. Judicial court good practice recommends that contracts be written for the services of a court-appointed attorney. This protects the Town by setting what the Town will and will not provide. An agreement also provides an expectation of services to be provided.

Recommendation: Staff recommends that the Town enter into an agreement for legal services with a Court-appointed attorney.

LEGAL SERVICES AGREEMENT

Court-Appointed Attorney Services

This Legal Services Agreement is made and entered into on the 15th day of May, 2008 between the Town of Clarkdale ("the Town"), and Michael Shaw, attorney at law ("Attorney").

WHEREAS the Town desires to enter into an independent contractor agreement with private legal council to provide competent representation to and advocate for the position of indigent criminal defendants in the Magistrate Court of the Town of Clarkdale ("the Court"); and

WHEREAS the Attorney, who is licensed to practice law in the State of Arizona, is willing to provide such representation upon the terms and conditions set forth below:

NOW, THEREFORE, the Town and Attorney hereby agree as follows:

- I. TERM; TERMINATION. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until terminated as set forth herein. Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party. In the event Attorney fails to provide representation consistent with the standards set forth in this Agreement, Attorney shall be deemed to be in breach of this Agreement and the Town may, at its sole discretion, immediately terminate this Agreement.
- II. ATTORNEY'S OBLIGATIONS.
 - a. Attorney shall provide court-appointed attorney services to indigent criminal defendants in cases assigned by the Court. This language shall not be construed as a guarantee that cases will be assigned by the Court to the Attorney.
 - b. Attorney shall be fully responsible for all aspects of the representation without any further involvement by the Town. Attorney shall appear at all proceedings on behalf of those clients, and maintain contact with his clients during the representation.
 - c. Attorney shall provide personal consultation with clients prior to pretrial disposition conferences whenever practicable. Attorney shall use reasonable diligence to maintain communication with each defendant until the defendant's case is completed and shall use reasonable diligence in notifying defendants of official Court action resulting from defendant's failure to appear at scheduled Court sessions.
 - d. Attorney's caseload under this contract shall not exceed one hundred (100) cases, without the express agreement of both parties. The Town does not require the Attorney to perform work exclusively for the Town. However, the Attorney agrees that his total caseload including private clients shall not exceed the guidelines set forth in *State v. Joe U. Smith*, 140 Ariz. 355 (1984).
 - e. Attorney shall conduct the defense of his or her clients in a professional, skilled manner consistent with standards set forth in the Arizona Rules of Professional Conduct and case law defining the duties of defense counsel in criminal cases. These standards include minimum

compliance with the caseload requirements as set forth by the Arizona Supreme Court in *State v. (Joe U.) Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984). Attorney agrees to maintain a private and contractual caseload consistent with the stated ethical duties and contractual requirement of providing adequate and competent representation set forth in this Agreement.

f. If Attorney becomes aware of a material change in financial circumstances for any assigned client, Attorney may request a redetermination of indigence. In the event the Court makes a determination of nonindigency of such defendant and allows Attorney to withdraw, Attorney agrees that he or she will not represent that defendant in that case for a fee. Attorney agrees not to accept an appointment to a case where he or she privately represented the same client in the same case.

g. Attorney shall immediately notify the Court in writing if the attorney believes that the representation of an indigent defendant represents a conflict of interest. The Court will then appoint alternate counsel to represent that defendant.

h. Attorney shall provide to the Court in writing the names, addresses and telephone numbers of any attorneys that he/she intends to use in the event the Attorney is unavailable or has a scheduling conflict. The Court reserves the right to refuse to allow the appearance of an attorney in such case.

i. The Attorney shall not accept any payment for services direct from indigent clients assigned by the Court.

j. Except as provided for in Section VI below, Attorney shall be responsible for all costs and expenses incurred in the representation of indigent defendants assigned by the Court pursuant to this Agreement, including but not limited to transportation, postage, telephone, copies, photographs, transcriptions, office overhead, and secretarial services.

k. Attorney shall maintain current case logs and disposition records, and shall provide monthly billing statements containing sufficient information as requested by the Court for the purpose of audit and evaluation of the Attorney's performance under this Agreement. The Court reserves the right to request additional information regarding the Attorneys' representation.

l. Attorney shall submit billing statements to the Court at the conclusion of the case.

m. Attorney must at all times remain an active member in good standing of the State Bar of Arizona. Attorney must immediately inform the Court of any changes in Attorney's membership status. Failure to maintain membership status and/or failure to promptly apprise the Court of changes in status may result in immediate termination of this Agreement.

n. Attorney further agrees that this Agreement contemplates personal services, that this agreement is not assignable and that Attorney will not enter into subcontracts, job-consultant

agreements or subleases of this Agreement.

o. Attorney will maintain continuous professional liability insurance in minimum amounts of \$500,000 per individual claim and \$500,000 per aggregate claim. A Certificate of Insurance evidencing proof of this coverage shall be provided to the Court within thirty (30) days of the effective date of this Agreement. It is the responsibility of the Attorney to provide evidence of continued coverage in the event of an expiration/renewal date or lapse in coverage.

- III. COMPENSATION. Attorney shall be compensated for the reasonable time the Attorney spends representing indigent clients at the rate of seventy-five dollars (\$75.00) per hour. In the event there is a dispute regarding the reasonable amount of time the Attorney spends representing indigent clients pursuant to this Agreement, the parties will seek to resolve the dispute in good faith. If a resolution cannot be achieved, then the parties agree to submit the dispute to arbitration as provided for in Section XI below.
- IV. INDEPENDENT CONTRACTOR. The Attorney is being retained pursuant to this Agreement as an independent contractor and not as an employee. Once a matter has been referred to the Attorney for representation of the indigent person, the Town shall not have the authority to supervise or control the actual work of the Attorney, nor shall the Town have any involvement whatsoever regarding the Attorney's work on behalf of the indigent client. The Town's only involvement and responsibility shall be for the Town to pay the Attorney's reasonable fees as approved by the Town pursuant to this Agreement.
- V. INCOME TAX DESIGNATION AND INDEMNIFICATION. The Town shall not withhold from sums becoming payable to the Attorney under this Agreement any amounts for federal, state, or local taxes, including federal or state income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. The Town shall report all payments to the Attorney on Internal Revenue Service Form 1099. The Attorney agrees that any tax obligation of the Attorney or its employees or agents arising from the payments made under this Agreement will be the Attorney's sole responsibility. The Attorney assumes full responsibility for filing any applicable tax forms. The Attorney will indemnify the Town for any tax liability, interest, and/or penalties imposed upon the Town by any taxing authority based upon the Town's failure to withhold any amount from the payments for tax purposes.
- VI. INTERPRETER FEES. The Court shall provide and pay for interpreters for non-English speaking defendants for all in-court proceedings. The Attorney shall provide and pay for interpreters for non-English speaking defendants for all out-of-court proceedings, unless the Court gives prior written approval for such an expense.
- VII. EXTRAORDINARY EXPENSES. Any extraordinary expense, including but not limited to, expert witness fees, deposition costs and service of process fees shall be paid by the Court only if a specific request for prior approval of the service was submitted in writing to the Court prior to incursion, and the Court expressed approval of the expense.

VIII. GENERAL PROVISIONS.

a. This Agreement is not intended to, and will not, constitute, create, give rise to, or otherwise recognize a joint venture, or relationship, partnership or formal business organization of any kind, and the rights, obligations, and relationship of the parties shall be that of Town and Attorney. The parties agree that neither Attorney nor any person supplied by Attorney in the performance of its obligations under this Agreement are Town employees, and that no rights of personnel rules or employee benefits apply or accrue to such persons.

b. This contract shall be automatically modified to conform to and comply with any subsequent changes regarding indigent representation imposed by case law or Arizona Supreme Court rule. Any other amendments shall be made in writing, and approved by both the Town and the Attorney.

c. The provisions of this contract are severable. If any section, subsection, sentence, clause or phrase of this Agreement is for any reason held illegal, invalid or void by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

- IX. NON-DISCRIMINATION. The Attorney shall comply with Arizona Executive Order No. 99-4 to the extent applicable to this Agreement, and all other federal or state laws, rules and regulations, including the Americans with Disabilities Act.
- X. INDEMNIFICATION. The Attorney agrees to defend and hold the Town, its elected officials, employees and agents, harmless from any claims arising out of the acts or omissions of the Attorney while performing under this contract. This indemnification provision shall survive the termination of the Agreement.
- XI. ARBITRATION. Any controversy, claim or dispute arising out of or relating to this Agreement shall be settled by binding arbitration. Arbitration shall be conducted in accordance with the then-prevailing commercial arbitration rules of the American Arbitration Association. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity.
- XII. TERMINATION BY TOWN. The Town may terminate this Agreement pursuant to the provisions of A.R.S. § 38-511.
- XIII. COMPLIANCE WITH ARIZONA'S WORKERS' COMPENSATION STATUTES. In compliance with A.R.S. § 23-902(D), the parties agree as follows:

- (a) The Town does not have the authority to supervise or control the actual work of the

Attorney or the Attorney's employees or agents.

- (b) Neither the Attorney nor any of its employees or agents are entitled to workers' compensation benefits from the Town.
- (c) The Attorney and its employees or agents are not required to perform work exclusively for the Town. The Town recognizes that the Attorney can and does make the same services available to the general public and that nothing in this Agreement shall preclude the Attorney or any of its employees and agents from performing services for any other person or entity.
- (d) The Town does not provide the Attorney or any of its employees or agents with any business registrations or licenses required to perform the specific services set forth in this Agreement, including but not limited to any legal licenses or continuing legal education requirements.
- (e) The Town does not pay the Attorney a salary or hourly rate instead of an amount fixed by contract.
- (f) Except as provided for herein, the Town will not terminate this Agreement prior to the expiration of the term of this Agreement, unless the Attorney or any of its employees or agents breach this Agreement or violate any laws of the State of Arizona.
- (g) The Town does not provide tools to the Attorney or any of its employees or agents and the Attorney shall provide at its own expense, all materials, equipment or other items necessary to carry out the terms of this Agreement.
- (h) The Town does not dictate the time for performance of any of the services under this Agreement.
- (i) The Town shall pay the Attorney in the name appearing on this Agreement.
- (j) The Town will not combine business operations with the person performing the services rather than maintaining these operations separately.

By signing below, the parties confirm that they have read this Agreement and agree to its terms.

Date

Michael A. Shaw, Esq.

Date

Presiding Magistrate of the Clarkdale Court

Approved as to form and content by:

Date

Boyle, Pecharich, Cline & Whittington, PLLC

Date

Doug Von Gausig, Mayor

ATTEST:

Date

Kathy Bainbridge, Town Clerk