

# UTAH COUNTY PUBLIC DEFENDER ASSOCIATION ASSURANCE ENGAGEMENT

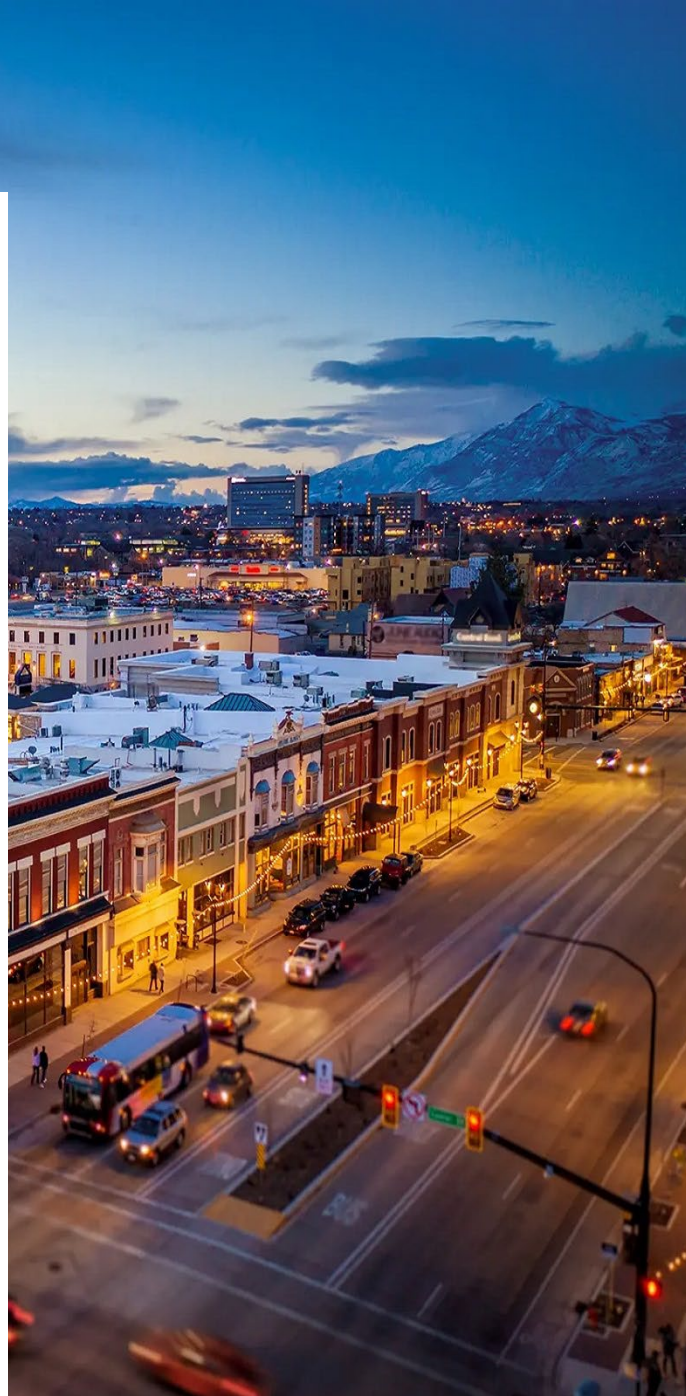
Report No. AE-2024-1

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MAY 1, 2024

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Utah County Auditor Internal Audit Division  
Internal Audit Manager: Calvin Bergmann, CIA, MPA  
Senior Internal Auditor: Mont Wade, CIA



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# AUDITOR'S LETTER



## Office of the County Auditor Internal Audit Division

May 1, 2024

Thomas Means, Executive Director  
Utah County Public Defender Association  
180 North University Avenue, Suite 140  
Provo, Utah 84601

Dear Mr. Means:

At the request of the Utah County Audit Committee, the Internal Audit Division (“Division”) performed an assurance engagement of Utah County Public Defender Association (“UCPDA”) attorney qualifications, case management databases, and contracts. During this limited review, for calendar year 2023, we performed the following procedures:

1. Tested Utah County Agreement No. 2020-1089, Section 2, Subsection A compliance regarding:
  - a. Number of licensed attorneys.
  - b. Number of attorneys with two years of felony experience.
  - c. Number of attorneys who are capital qualified, per Utah Rules of Criminal Procedure Rule 8.
  - d. Number of attorneys who handle Juvenile Court matters.
  - e. Contracts with attorneys or groups of attorneys to handle conflict of interest cases.
2. Tested managed assigned counsel (“MAC”) system:
  - a. Existence and usage, per Utah Indigent Defense Commission Core System Principles for Indigent Defense Services, Principle 1.
  - b. Capabilities and usage of tracking case jurisdiction, case type, and case assigned attorney.
  - c. Record accuracy as compared to Utah State Courts Xchange system regarding the following data points: client name, court case number, assigned attorney name, judge name, jurisdiction, appointment date, conflict attorney name, and case type.

3. Tested the nonexistence of fixed or flat fee pricing structure contracts for subcontracted attorneys or groups of attorneys, per Utah County Agreement No. 2020-1089, Section 4, Subsection C.

The Division discovered two findings and one other matter during the engagement. For both findings and other matters, we provide recommendations to improve UCPDA's compliance environment. Finding and other matter numbering is correlated with the procedures listed above.

Note that our report, by nature, disproportionately focuses on weaknesses. This does not mean there were not strengths within the areas reviewed and other areas not reviewed.

The Division appreciates the courtesy and assistance extended to us by UCPDA personnel during the engagement process. We look forward to a continuing professional relationship.

Sincerely,

Utah County Internal Audit Division

CC: Benjamin Young, Financial Manager, Utah County Public Defender Association  
Rodney Mann, Utah County Auditor, Utah County Audit Committee Chair  
Amelia Powers Gardner, Utah County Commissioner, Utah County Audit Committee Vice-Chair  
Kim Jackson, Utah County Treasurer, Utah County Audit Committee Member  
Ezra Nair, Utah County Administrator  
Mike Peterson, Chair, Board of Trustees, Utah County Public Defender Association  
Chris Cannon, Member, Board of Trustees, Utah County Public Defender Association  
Lorie Fowlke, Member, Board of Trustees, Utah County Public Defender Association  
Michael Petro, Member, Board of Trustees, Utah County Public Defender Association  
Stacy Lyon, Member, Board of Trustees, Utah County Public Defender Association  
Brent Bullock, Member, Board of Trustees, Utah County Public Defender Association

## **FINDING(S) & OTHER MATTER(S)**

### **Finding 1.1: Nonexistent Written Contracts for Subcontracting Counsel Providing Defense Services for Fourth District Judicial Court Conflict of Interest Cases**

#### **Condition**

UCPDA regularly pays subcontracting counsel but does not have established written contracts with subcontracting counsel, to provide defense services in Fourth District Judicial Court criminal cases involving a conflict of interest with UCPDA.

#### **Criteria**

Per Utah County Agreement No. 2020-1089, Section 2, Subsection A: "The ASSOCIATION further agrees to provide...contracts with attorneys or groups of attorneys ("Subcontracting Counsel") to handle conflict of interest cases as hereinafter provided in Section 4."

Per Utah County Agreement No. 2020-1089, Section 4, Subsection C(1): "For cases in the Fourth Judicial District Courts in Utah County, the ASSOCIATION will enter into at least ten (10) separate subcontracts with Subcontracting Counsel experienced in handling criminal matters...to provide defense services in all criminal cases involving a conflict of interest with the ASSOCIATION."

#### **Cause**

Business arrangements for subcontracting counsel were established via verbal agreements approximately fifteen years ago and current management has not been compelled to formalize these agreements.

#### **Effect**

Noncompliance with Utah County Agreement No. 2020-1089 may result in indigent defendants receiving lesser quality legal counsel or UCPDA paying less or more than is necessary to ensure adequate defense services are provided to indigent defendants.

#### **Recommendation**

We recommend management establish written contracts for all subcontracting counsel that provide defense services in all Fourth District Judicial Court criminal cases involving a conflict of interest with UCPDA.

## **Finding 1.2: Nonexistent Written Contracts for Subcontracting Counsel Providing Defense Services for Fourth District Juvenile Court Conflict of Interest Cases**

### **Condition**

UCPDA regularly pays subcontracting counsel but does not have established written contracts with subcontracting counsel, to provide defense services in Fourth District Juvenile Court criminal cases involving a conflict of interest with UCPDA.

### **Criteria**

Per Utah County Agreement No. 2020-1089, Section 2, Subsection A: “The ASSOCIATION further agrees to provide...contracts with attorneys or groups of attorneys ("Subcontracting Counsel") to handle conflict of interest cases as hereinafter provided in Section 4.”

Per Utah County Agreement No. 2020-1089, Section 4, Subsection C(2): “In the Fourth District Juvenile Court, the ASSOCIATION will enter into at least four (4) separate subcontracts with Subcontracting Counsel to provide representation in that Court and who shall be mutually responsible to provide conflict of interest representation for each other.”

### **Cause**

Business arrangements for subcontracting counsel were established via verbal agreements approximately fifteen years ago and current management has not been compelled to formalize these agreements.

### **Effect**

Noncompliance with Utah County Agreement No. 2020-1089 may result in indigent defendants receiving lesser quality legal counsel or UCPDA paying less or more than is necessary to ensure adequate defense services are provided to indigent defendants.

### **Recommendation**

We recommend management establish written contracts for all subcontracting counsel that provide defense services in all Fourth District Juvenile Court criminal cases involving a conflict of interest with UCPDA.

## **Other Matter 3.1: Fixed Fees Paid to Subcontracting Counsel**

### **Condition**

Because UCPDA does not have established written contracts with subcontracted counsel, our ability to test if contracts contain fixed or flat fees was restricted. However, we note that UCPDA makes regular fixed fee payments to subcontracting counsel.

### **Recommendation**

We recommend management establish written contracts for all subcontracting counsel and ensure these contracts do not include a fixed or flat fee pricing structure.

# MANAGEMENT RESPONSE(S)

## Finding 1.1: Nonexistent Written Contracts for Subcontracting Counsel Providing Defense Services for Fourth District Judicial Court Conflict of Interest Cases

### Management Response

Recommendation	Agree/Disagree	Corrective Action Plan	Name and Title of Employee Responsible for Implementation	Target Date*
We recommend management establish written contracts for all subcontracting counsel that provide defense services in all Fourth District Judicial Court criminal cases involving a conflict of interest with UCPDA.	Agree	UCPDA will establish contracts with conflict attorneys for Quarter 3, 2024.	Thomas Means, Executive Director	July 1, 2024

\*Entered in MM/DD/YYYY format. Generally, the date should be within 90 days (but no longer than 180 days) of report issuance. If the recommendation has already been implemented, enter the date it was implemented.



## Finding 1.2: Nonexistent Written Contracts for Subcontracting Counsel Providing Defense Services for Fourth District Juvenile Court Conflict of Interest Cases

### Management Response

Recommendation	Agree/Disagree	Corrective Action Plan	Name and Title of Employee Responsible for Implementation	Target Date*
We recommend management establish written contracts for all subcontracting counsel that provide defense services in all Fourth District Juvenile Court criminal cases involving a conflict of interest with UCPDA.	Agree	UCPDA will establish contracts with conflict attorneys for Quarter 3, 2024.	Margaret Lindsay, Juvenile Managing Defender	July 1, 2024

\*Entered in MM/DD/YYYY format. Generally, the date should be within 90 days (but no longer than 180 days) of report issuance. If the recommendation has already been implemented, enter the date it was implemented.

### Other Matter 3.1: Fixed Fees Paid to Subcontracting Counsel

#### Management Response

Recommendation	Agree/Disagree	Corrective Action Plan	Name and Title of Employee Responsible for Implementation	Target Date*
We recommend management establish written contracts for all subcontracting counsel and ensure these contracts do not include a fixed or flat fee pricing structure.	Agree	The contracts mentioned in Findings 1.1 and 1.2 already have provisions for subcontracting counsel to address the needs for additional extraordinary costs, however, we will ensure that these are documented in the agreements.	Thomas Means, Executive Director	July 1, 2024

\*Entered in MM/DD/YYYY format. Generally, the date should be within 90 days (but no longer than 180 days) of report issuance. If the recommendation has already been implemented, enter the date it was implemented.