

AGREEMENT WITH BUTLER SNOW LLP

I. PARTIES

This Agreement, including all exhibits and any written amendments, and the Engagement Letter, attached hereto as Exhibit A and incorporated herein by reference, is by and between the Harris County District Attorney's Office ("HCDAO") and Butler Snow LLP, for representation in the matter of *Dwight Russell et al. v. Harris County, Texas et al.*, Civil Action No. 4:19-CV-00226, in the United States District Court for the Southern District of Texas, Houston Division.

II. DUTIES OF FIRM

A. Scope of Services

We expect matters to be leanly staffed and economically handled. The Managing Attorney will be contacting you to discuss the specific work assignments, possible sharing of work between our in-house staff and your firm, and how to work together most efficiently to fulfill the engagement and to constrain costs. All decisions will be made jointly by you and the Managing Attorney.

Examples of such decisions include whether to:

- engage in extensive research on an issue and who will do the research;
- file a motion;
- hire an expert;
- take a particular deposition; and
- engage in settlement negotiations and the scope of those negotiations.

The potential outcome of a case in litigation should be evaluated early and if early settlement is appropriate, it should be pursued at every stage of the case. If necessary and appropriate, use of a neutral third party is encouraged. Some cases, of course, must be fully litigated.

Any decision to appeal a case must be made by the District Attorney.

In litigation matters, all briefs and any affidavits of HCDAO employees done by your firm must be forwarded to the Managing Attorney for review, in draft, at least three business days before filing. No brief or affidavit may be filed until it has been approved by the Managing Attorney.

In non-litigation matters, discuss with the Managing Attorney the precise services requested and whether a formal opinion is desired, or informal oral or written assistance.

Copies of all legal research or memoranda which you create, whether intended for internal or external use, must be timely furnished to the Managing Attorney. All documents intended for external release must be approved by the Managing Attorney prior to release.

B. Representation

The Firm shall coordinate all aspects of its services with the Managing Attorney assigned to this matter. Contemporaneous copies of all pleadings, legal memoranda, and correspondence shall be submitted to the Managing Attorney. All policy decisions, including but not limited to all settlement actions shall be made by the District Attorney. All contact with Harris County Officials must be coordinated through the Managing Attorney.

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I. PARTIES

This Agreement, including all exhibits and any written amendments, and the Engagement Letter, attached hereto as Exhibit A and incorporated herein by reference, is by and between the Harris County District Attorney's Office ("HCD AO") and Butler Snow LLP, for representation of the HCD AO and Harris County District Attorney Kim Ogg in the matter of *State ex. rel. Noe Santana v. Kimbra Kathryn Ogg*, Cause No. 2024-28957, In the 295th Judicial District Court of Harris County, Texas.

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C. Interested Parties Disclosure

If this Agreement requires approval by the Harris County Commissioner's Court, the Firm must complete a copy of Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission prior to the execution of a contract. The Certificate of Interested Parties must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The HCDAO will submit the Certificate of Interested Parties to the Texas Ethics Commission within 30 days of receipt from the Firm. A link to Texas Ethics Commission Form 1295 processes and procedures is [https://www.ethics.state.tx.us/whatsnew/elf info form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf%20form1295.htm).

D. Conflict of Interest

Before commencing work on this assignment, you must verify whether your firm has a conflict of interest with respect to the parties involved. If any conflicts are present, please advise the General Counsel immediately in writing.

Your Firm may be asked to represent various clients whose interests are adverse to those of the HCDAO. By signing the Engagement Letter, you affirm that no such conflict exists. Further, during the course of this representation, your firm shall refrain from representing clients whose interests may conflict with those of the HCDAO. Should such a conflict arise, you shall contact the District Attorney immediately to discuss the situation.

E. Assignment

The Firm may not assign this Agreement in whole or in part, or subcontract any legal services without the prior written consent of the District Attorney.

F. Limit of Appropriation

The Firm understands and agrees that the laws governing the letting of contracts for counties and its departments require that funds must be appropriated and if required, approved by the Harris County Auditor, prior to a contract becoming effective. The HCDAO will appropriate a maximum amount of One Hundred Thousand and No/Dollars (\$100,000.00) ("LOA") from its discretionary funds. However, the Firm understands and agrees that the District Attorney may ask the Harris County Commissioners Court to provide the HCDAO outside counsel using the Harris County litigation expenses funds. If the request is approved, an amendment to this Agreement will be required at that time. The total cost of fees and expenses to the HCDAO for representation in this matter shall not exceed the LOA above. If the HCDAO requires additional services, a new or amended Agreement is required before fees or expenses exceeding the LOA are incurred.

If required by the General Counsel for this engagement, the Firm's budget for this matter is **attached**. The budget may include an agreement that work on this matter will be billed on an hourly basis with **total fees to complete work on the matter capped at the budget limit**. The budget shall include a list of specific legal services, including a detailed estimate of all fees, expenses, and costs for each legal service to be performed. If it becomes apparent to the Firm that it may exceed the LOA because of unforeseeable, exceptional circumstances, the Firm shall notify the General Counsel in writing describing in detail the reason why the Firm seeks to increase the LOA.

G. Ethics

In providing legal services to the HCDAO, the Firm and each attorney providing services

to the HCDAO shall fully comply with the Texas Disciplinary Rules of Professional Conduct. The law firm shall promptly notify the HCDAO if any disciplinary action or malpractice action is instituted against the law firm or an attorney providing services to the HCDAO.

H. Media Inquiries

All inquiries from the media must be referred to the General Counsel for response. No public comment on litigation matters may be made without prior approval from the District Attorney.

I. Expenses

The Firm shall exercise prudence in incurring expenses. The Firm agrees to timely pay for all prior approved expenses incurred during representation of the HCDAO in this matter, including litigation expenses, if applicable. Such payments shall be made as they become due and payable subject to reimbursement as provided in this Agreement. You will be reimbursed the actual cost of expenses incurred in this matter and in accordance with the Harris County expense and per diem policies and as provided in the Billing Requirements section of this Agreement.

J. No Increase in Billing Rates

The HCDAO will not increase billing rates for any matter which is in progress without a written amendment to this Agreement and the Rate Schedule, attached hereto as Exhibit B and incorporated herein by reference.

K. Indemnity

The Firm shall indemnify and hold the HCDAO harmless from any claims, liability, damages, suits, causes of action, and judgments arising out of or caused by the negligence, gross negligence, malpractice, or willful misconduct of the Firm, or any attorney associated with the Firm, in the rendering of legal services.

L. Insurance

The Firm shall carry professional liability insurance with minimum limits of one million dollars (\$1,000,000.00) per occurrence and shall not permit such insurance to be canceled or lapse during this engagement. The Firm shall provide an insurance certificate or other proof of insurance to the General Counsel with the return of the signed Engagement Letter.

M. Work Products

It is agreed that all files, reports, exhibits, pleadings, data compilations, memoranda, and other work products produced under this Agreement, collectively, the "Documents," are the property of the HCDAO. Upon termination, the Firm may retain a copy of the Documents, but the Firm shall deliver the original Documents to the General Counsel on request, at no expense to the HCDAO.

III. BILLING INSTRUCTIONS

Failure to follow these policies may result in no payment for part or all of the fees associated with work that does not comport with these policies.

The HCDAO will not pay for work outside the scope of work and assignments approved by the General Counsel.

All invoices must be submitted with a remittance page. Your firm's name and remittance address must be listed on the remittance page.

If your firm has a change of address, you must notify the General Counsel immediately. If you move to a different firm, you must indicate in writing your final date with the firm, submit a final invoice from the firm, and indicate your start date with your new firm. The continuation of this engagement and any staffing changes at your new firm must be approved in writing by the District Attorney.

A. Billing Requirements

1. Itemized bills must be submitted on Firm letterhead on a monthly basis.
2. Itemized bills must include a remittance page.
3. The Firm shall bill time in 1/10th of an hour increments.
4. The negotiated hourly rates on the attached Rate Schedule include all overhead and internal charges associated with your firm's practice. The HCDAO expects that work for the HCDAO will be done at a substantial discount from the firm's general billing rates. You will not be paid separately for overhead or law firm costs associated with services of secretaries, word processors, librarians, investigators, or other support staff.
5. You will not be paid for time spent preparing, discussing, or correcting a billing statement.
6. You will not be paid for opening routine correspondence which does not require a response or impact the merits of the case.
7. The HCDAO expects inefficiently spent time to be shown on the bill and written off in the sound exercise of billing judgment.
8. Any attorney work product for which the HCDAO is billed shall be provided upon request to the General Counsel.
9. If the Firm requests attorney fees in a contested motion and fees are awarded, the draft should be made payable to the HCDAO, or the amount of the award must be specifically credited on the next billing statement.
10. A copy of all invoices, bills, and receipts for expenses shall be attached to the monthly bill.
11. Expenses over and above the limits set forth herein shall be borne solely by the Firm and shall not be reimbursed under this Agreement.

B. Billing Statement Requirements

All billing statements must contain the following information:

1. IRS taxpayer identification number of the firm or attorney.
2. The vendor's name and address.
3. Style of case or Matter description.
4. A remittance page with the monthly statement.
5. Dates of service and a detailed description of service. Vague descriptions, such as "review," "update," "attention to file," "research," and "trial preparation" without more specifics are not acceptable.
6. Name, classification (e.g., "partner," "associate," "legal assistant"), billing rate for the person doing the task, and specific time for service to a tenth of an hour.
7. Detailed listing of all expenses with supporting documentation for all third party

and travel expenses. All travel expenses must include an original receipt.

The HCDAO is exempt from payment of Federal Excise and Transportation Tax and Texas Sales and Use Tax. The Firm's invoices must not contain assessments of any of these taxes.

*** Please note that billing statements, with appropriate redactions for privileged matters, are subject to release under the Public Information Act.**

C. Consultations

1. You will not be paid for inefficient conferences among outside attorneys or support staff. Harris County expects the matter to be leanly staffed.
2. You will not be paid for time involved educating an outside attorney on a particular matter when it has previously been handled by another attorney in the Firm.

D. Court Proceedings Attendance

1. Attendance of more than one attorney at depositions or court proceedings, including trials, is not reimbursable without prior approval by the General Counsel. Generally, one attorney is expected to handle matters.
2. Time involved for clerks, junior associates, or paralegals to accompany counsel to depositions, hearings, or trials for training purposes is not reimbursable.

E. Inefficient or Duplicate Work

- You will not be paid for inefficient work, including the following:
1. More than one attorney performing any one task on a matter.
 2. An attorney to re-do the work of a paralegal or another attorney.
 3. Multiple entries for reviewing correspondence, documentation, trial, and/or deposition transcripts, indicative of inefficient work.
 4. Repeat and inefficient research on an issue.
 5. Research for matters which should be within the knowledge of an experienced practitioner.
 6. Time spent training junior or other lawyers.

F. Expenses

- You will not be paid for the following expenses:
1. General operating expenses other than long-distance phone bills, postage, and copying (not to exceed 10 cents per page).
 2. Unnecessary use of express mail, facsimile transmissions, or couriers.
 3. Any computerized legal research over \$200.00 without prior General Counsel approval.

The Firm must evaluate the need to engage experts, investigators, visual aid companies, etc. on a case by case basis, and must obtain approval of the General Counsel before retaining any such services.

G. Travel

- You will not be paid:
1. For time spent traveling unless productive work is done during that time or a specific arrangement is agreed to with the General Counsel.

2. For air travel expenses in excess of standard coach or economy fares. Counsel is expected to take advantage of special fares or discounts whenever possible and will check with the General Counsel for information on applicable vendor discounts.

3. For lodging and meals that exceed the per diem rates established by Harris County.

4. For alcoholic beverages.

5. For charges from in-room hotel "honor" bars.

You will be paid for automobile mileage not to exceed the amount permitted as a business expense under the Harris County rate.

IV. DUTIES OF HCDAO

A. Payment Terms

1. You will be paid on the basis of monthly invoices submitted by the Firm and approved by the HCDAO.

2. You will be paid the undisputed amounts of each invoice received meeting contract and billing requirements, in accordance with the Texas Prompt Pay Act.

B. Disputed Payments

1. If the HCDAO disputes any item in an invoice the Firm submits for any reason, the General Counsel shall advise the Firm of the issue and request that the Firm submit a new invoice of current date that does not include the disputed amount. You will not be paid for time spent discussing or correcting an invoice.

2. If the dispute is later resolved in the Firm's favor, the Firm may include the disputed amount on a separate invoice or on a subsequent monthly invoice.

C. Written Amendment

Unless otherwise specified, this Agreement may be amended only by written instrument executed by the Harris County District Attorney.

V. GENERAL PROVISIONS

A. Compliance with Laws

This Agreement and all disputes concerning this Agreement shall be governed by the laws of the State of Texas. Venue of any civil action between the parties regarding this Agreement shall lie exclusively in Harris County, Texas. All obligations of the parties shall be deemed performable in Harris County, Texas.

B. Right to Audit

The HCDAO has the right to inspect and audit all books, records, and documents of the Firm pertaining to this engagement at any reasonable time, to the extent necessary to verify the accuracy of any statement, charge, or computation.

C. Audit Expenses

If the Firm is asked to provide information to the HCDAO, including, but not limited to auditors or the Harris County finance department, the Firm shall provide such information at no additional cost.

D. Entireties

This Agreement, together with the engagement letter, shall constitute the entire Agreement and understanding of the parties concerning the engagement of the law firm. There shall be no amendment or modification to this Agreement, except in writing signed by all parties.

E. Severability

If any provision of this Agreement is declared invalid, illegal, or unenforceable by a court or an agency of competent jurisdiction, such declaration shall not affect the remainder of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

VI. EFFECTIVE DATE; TERMINATION OF AGREEMENT


This Agreement is effective as of the date the Agreement is signed by the last party and upon receipt of a completed Certificate of Interested Parties from the Firm.

The HCDAO may terminate this Agreement with or without cause at any time. Upon receipt of a written request by the HCDAO, the Firm shall immediately discontinue work under the Agreement and transmit all files or written materials to the HCDAO. Thereafter, only those legal services necessary to effectuate termination of representation or transfer to another attorney may be performed. All such services must be expressly authorized in advance and in writing by the General Counsel.

VII. EXECUTION

Multiple Counterparts: This Agreement may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

Butler Snow LLP

By: 
Eric J.R. Nichols
Title: Partner
Date: 8/2/2024

Harris County District Attorney's Office

By: 
KIM OGG
DISTRICT ATTORNEY
Date: 8/5/24

Approved as to form:

By: Barbara Smith Armstrong
Barbara Smith Armstrong
General Counsel
DAO File # 24AGMT-13

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A. Compliance with Laws

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C. Audit Expenses

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VI. EFFECTIVE DATE; TERMINATION OF AGREEMENT

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VII. EXECUTION

Multiple Counterparts: This Agreement may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

Butler Snow LLP

By: _____

Eric J.R. Nichols

Title: _____

Date: _____

2/11/2021

Harris County District Attorney's Office

By: _____

KIM OGG

DISTRICT ATTORNEY

Date: _____

2/10/2021

Approved as to form:

By: _____

Barbara Smith Armstrong

Barbara Smith Armstrong

Deputy Chief of Staff

DAO File # 21AGMT0007

Exhibit A

ENGAGEMENT LETTER

(follows behind)

David Mitcham
First Assistant

Vivian King
Chief of Staff



500 Jefferson Street, Suite 600
Houston, Texas 77002

HARRIS COUNTY DISTRICT ATTORNEY
KIM OGG

February 10, 2021

Re: Representation of Harris County District Attorney's Office in the matter of *Dwight Russell et al. v. Harris County, Texas et al.*, Civil Action No. 4:19-CV-00226, In the United States District Court for the Southern District of Texas, Houston Division

Eric J.R. Nichols
Butler Snow LLP
1400 Lavaca Street, Suite 1000
Austin, TX 78701

Dear Mr. Nichols:

This Engagement Letter confirms that you will represent the Harris County District Attorney's Office and Harris County District Attorney Kim Ogg, in her official capacity (collectively, the "HCDAO"), to provide legal services concerning the above-referenced matter. The HCDAO requires you to follow certain policies outlined in the attached Terms of Engagement. Please sign and return this Engagement Letter to armstrong_barbara@dao.hctx.net, confirming that you agree to the following conditions:

1. The firm must provide Disclosure of Interested Parties, per "Section II C" of the Agreement.
2. The firm must include proof of professional liability insurance with minimum limits of one million dollars (\$1,000,000) per occurrence, per "Section II M" of attached Terms of Engagement.

Scott Durfee is the in-house attorney responsible for managing this matter (the "Managing Attorney"). Absent an amendment to the Agreement, the legal services you provide will not exceed \$300,000.00 for all fees and expenses billed under this agreement.

We have agreed that your billing rate for this matter is \$350.00 per hour. The agreed billing rates for any other named attorney(s) and paralegal(s) authorized to work on this matter are shown on the attached Rate Schedule. You will not be paid for work by any person not listed on the Rate Schedule unless the District Attorney preauthorizes the

change in writing in an amendment to the Agreement. Unless later agreed to in writing, these hourly rates are set for the duration of this engagement.

If you require consultant or subcontractor services, you must receive prior written approval from the Managing Attorney. You must bill on your letterhead for services rendered by other firms, i.e., court reporters, record companies, and consultants.

If you have any questions, please do not hesitate to call me or the Managing Attorney.

Sincerely,



Kim Ogg
Harris County District Attorney

AGREED:



Eric J.R. Nichols
Butler Snow LLP

Attachments: Terms of Engagement
Rate Schedule

Exhibit B

RATE SCHEDULE

Outside Counsel Hourly Rate Schedule and Authorized Staff

You will be paid for work done by the staff named and at the hourly rates listed below.

The HCDAO expects that this matter will be leanly staffed and economically handled.

Work is to be done by the person with the appropriate qualifications and an appropriate hourly rate for the services performed.

The HCDAO understands that your work on this matter will be done at hourly rates that are a substantial discount from the firm's general billing rates.

These hourly rates are set for the duration of the engagement.

Only the following people are authorized to work on this matter:

Eric Nichols	Partner	\$350/hr
Karson Thompson	Associate	\$295/hr
Jessica Veiga	Legal Assistant	\$85/hr
Name	Classification (e.g., "partner," "associate," "paralegal")	Hourly Rate