

# County of Nueces



ALISSA A. ADKINS  
Chief of Litigation

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**BELINDA HINOJOSA-PERSOHN**  
Chief of Administrative Services

## AGENDA ITEM/REGULAR SESSION AGENDA ITEM SUMMARY Wednesday, September 5, 2012

**RECOMMENDATION:** Authorize the County Judge to sign the attorney-client contract to hire Kendal B. Reed and the law firm of Anderson | Tobin, P.L.L.C., to act as local counsel in Bankruptcy Case No. 3:12-BK-34639-7 (sgj), *In re Coastal Bend Professional Baseball Club, LLC*, in the United States Bankruptcy Court for the Northern District of Texas (Dallas Division). Hourly rates are \$300.00 (partner Aaron Z. Tobin), \$250.00 (seven-year associate Kendal B. Reed), and \$130.00 (paralegals and law clerks).

**BACKGROUND:** Nueces County, Texas, filed suit in the district court of Nueces County, Texas, against the Coastal Bend Professional Baseball Club, LLC, for breach of its licensing agreement, and for negligence. On July 18, 2012, hours before a duly noticed hearing on the County's summary judgment motion, CBPBC filed a voluntary bankruptcy petition (chapter 7) in the Northern District of Texas (Dallas Division).

The County Attorney's Office will represent Nueces County in the bankruptcy proceeding. However, both the United States District Court and the Bankruptcy Court in the Northern District of Texas require parties to retain local counsel (meaning an attorney who offices in the Dallas Division or within a certain mileage distance).

**FISCAL IMPACT:** Local counsel in Dallas must be hired in this case to comply with the U.S. Bankruptcy Court's local rules. Once local counsel is hired, the assistant County Attorney assigned to the case will apply for *pro hac vice* admission. The firm has agreed to dispense with its usual retainer requirement, and will bill at an hourly rate in accordance with local practice.

# ANDERSON | TOBIN PLLC

Aaron Z. Tobin

Attorney at Law

972.788.3430

[atobin@anderson-tobin.com](mailto:atobin@anderson-tobin.com)

August 28, 2012

VIA EMAIL: ALISSA.ADKINS@CO.NUECES.TX.US

Nueces County  
c/o Alissa Anne Adkins  
Assistant Nueces County Attorney  
Chief of Litigation  
901 Leopard, Rm. 207  
Corpus Christi, TX 78401

RE: Representation of Nueces County by Anderson Tobin, PLLC, a Texas professional limited liability company (referred to herein as “we,” “us,” or “our”).

Dear Ms. Adkins:

This letter is intended to memorialize our agreement with respect to Nueces County’s engagement of our firm. Please review and, if approved, sign and return this letter to me. If we represent you on any other matters, the terms of this agreement will control, unless we specifically agree otherwise.

1. Scope of Representation. Effective upon receipt of this executed letter and the retainer, if any, set forth in this letter, we will undertake to provide Nueces County legal representation as local counsel only in the bankruptcy case filed by Coastal Bend Professional Baseball Club, LLC, Case No. 12-34639-SGJ7, styled *In Re: Coastal Bend Professional Baseball Club, LLC, Debtor*, filed in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division. We will take our direction from you in this case.

2. Our Obligation to You. We will provide our time, effort, skill and professional judgment. Often, the services we will perform on your behalf will be performed while you are not here to see them. Services performed in your presence, such as office conferences and telephone conferences, consume time, but most of the time expended by our attorneys on your behalf is spent outside your presence, in legal research, review of your existing and proposed paperwork, telephone calls, preparation and drafting documents and correspondence. You understand that we will designate who will be the responsible attorney for your matter, and whether or not your matter requires more than one attorney to be handled professionally. It is expected Aaron Z. Tobin and Kendal B. Reed will be primarily responsible for the matters described herein. Mr. Reed will perform most of the legal work, under Mr. Tobin’s supervision.

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office 972.789.1160 | fax 972.789.1606 | [www.anderson-tobin.com](http://www.anderson-tobin.com)

3. Your Obligation to Us. You have an obligation to cooperate with us, including providing us timely, accurate, complete information, and to honor the provisions of this agreement, including those provisions relating to payment.

4. Fees. You will be responsible for payment of all agreed upon out-of-pocket expenses and fees for legal representation rendered by us on your behalf. Our invoices for legal fees and costs are due upon receipt of the invoice. Our billing cycle closes on approximately the 23<sup>rd</sup> of each month, and fees and costs will be billed to you on a monthly basis on or about the first day of the following month. You understand and agree that the balance due will be considered to be past due if unpaid within sixty (60) days after the invoice date. You understand that you will be expected to pay a reasonable fee for professional services rendered on your behalf by us. You are entitled to know how the fee is determined. Our legal consultation fees, billed for all time spent, will be billed by the hour. Currently, our rates range from \$300 - \$350/hour for partners, \$175 - \$250/hour for associates and \$110 - \$130/hour for paralegals, law clerks and support staff. Our current hourly rates are set forth as Addendum "A" attached hereto. The respective hourly rates may be revised in the future. We typically evaluate rates at the first of each calendar year. You will be notified of our billing rates on the invoices provided to you. All bills for legal fees and expenses will be submitted to the County Attorney's Office, 901 Leopard, Rm. 207, Corpus Christi, Texas 78401 for review and approval. Bills/statements/invoices/requests for payment are placed on the Commissioners Court agenda for payment, and they will be public records.

We will bill our fees and costs to you on a monthly basis. Any "retainer" is held as a deposit to be applied against the bill for the last month in which services are provided.

5. Costs. You understand that you are required to pay all "costs" incurred by us on your behalf. Costs include telephone long distance charges, travel expenses, photocopying charges at \$.25 per page, postage, and all other pre-approved fees or costs paid on your behalf or incurred by us. You understand that costs are in addition to your attorneys' fees and will be itemized on your monthly statement. You understand that we have the right to require payment in advance from you for costs and we are not obligated to advance any costs on your behalf.

6. Retainer. As a condition to our acceptance of representation, we require an executed copy of this letter and may require a retainer. The retainer is your prepayment of the last fees incurred in this matter. The retainer is held in our trust account and interest, if any, is paid in an IOLTA account (paid to state bar for representation of indigent persons). The retainer is held and applied to amounts unpaid by you. For representation to commence, the retainer must be paid as if it was an amount due. **Your retainer is not an estimate of the fees expected**

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**to be incurred.** Any retainer remaining, following payment of all fees and costs, is to be refunded by us to you. **We have agreed that, initially, there will be no retainer required at this time.** We may modify the amount we deem appropriate retainer to continue our relationship at any time and from time to time.

7. Termination or Withdrawal. You may terminate our representation at any time. You understand that we have the right to withdraw from representing you if you: (a) misrepresent or fail to disclose to us material facts; (b) engage in any conduct or behavior which makes it unreasonably difficult to represent you; (c) fail to make any timely payments required pursuant to this agreement; (d) violate any of the terms of this agreement or our instructions to you, in such a fashion as to impair, in our professional judgment, our ability to represent you competently or independently; (e) if a conflict of interest develops; or (f) with or without cause at any time.

8. Miscellaneous. If you cannot, or will not, pay the "balance due" on any invoice when received, we will continue to represent you only if you make arrangements satisfactory with one of the managers. You understand that in the event a "balance due" remains unpaid by you for sixty (60) days after the date of the invoice, we have the right to: (a) require you to sign a Promissory Note, fully secured, or demand a retainer; (b) assert (and we hereby do assert) a lien on all documents, property of whatever nature, and money in our possession, and have the right to retain them to secure payment; and (c) assert (and we hereby do assert) a charging lien on any property of whatever nature acquired through our efforts. You understand we will charge you, and you agree to pay, for any time and expenses we expend in collecting a "balance due" which remains unpaid for sixty (60) days after the date of our invoice. If you disagree with or have any question regarding any item(s) on our invoice, you will notify us immediately.

If this letter conforms with your understanding of our agreement, please evidence your approval by your signature below, retain one copy for your file, and return an executed copy to me. Please read this agreement carefully. Ask any questions you have before you sign. Your signature acknowledges that you have read and understand the basis for the fees and costs to be paid by you to us for professional services, and that you are, by your signature, agreeing to pay said fees and costs as they are charged to you, in accordance with the terms and conditions hereof. Your signature also acknowledges receipt of the attached copy of the Texas Lawyers' Creed.

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We certainly appreciate the opportunity to be of service to you.

Sincerely,  
**ANDERSON TOBIN, PLLC**

By:   
AARON Z. TOBIN

**AGREED AND ACCEPTED THIS**

\_\_\_\_\_ day of \_\_\_\_\_, 2012.

**NUECES COUNTY**

By: \_\_\_\_\_  
Samuel L. Neal, Jr.,

In His Capacity as Nueces County Judge  
Printed Name and Title

**ADDENDUM "A"**

**ATTORNEYS**

R. Scott Anderson	\$350.00
Aaron Z. Tobin	\$300.00
Rider Scott	\$350.00
Keith W. Harvey	\$300.00
Kendal B. Reed	\$250.00
Allison Grossman	\$220.00
S. Cortney Sedighi	\$175.00

**PARALEGALS, LEGAL ASSISTANTS and CLERKS**

Laquetta Graves	\$130.00
Kim Psencik	\$130.00
Cynthia Navarro	\$130.00
Sharla M. Toigo	\$130.00
Susan Piland	\$130.00
Law Clerks	\$130.00

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DATE

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CLIENT REPRESENTATIVE  
Samuel L. Neal, Jr.  
In His Capacity as  
Nueces County Judge

**THE TEXAS LAWYER'S CREED--A MANDATE FOR PROFESSIONALISM**  
Current with amendments received through 2-1-96

**ORDER OF ADOPTION**

The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession's broader duty to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals are committed to eliminating a practice in our State by a minority of lawyers of abusive tactics which have surfaced in many parts of our country. We believe such tactics are a disservice to our citizens, harmful to clients, and demeaning to our profession.

The abusive tactics range from lack of civility to outright hostility and obstructionism. Such behavior does not serve justice but tends to delay and often deny justice. The lawyers who use abusive tactics instead of being part of the solution have become part of the problem.

The desire for respect and confidence by lawyers from the public should provide the members of our profession with the necessary incentive to attain the highest degree of ethical and professional conduct. These rules are primarily aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon re-enforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

These standards are not a set of rules that lawyers can use and abuse to incite ancillary litigation or arguments over whether or not they have been observed.

We must always be mindful that the practice of law is a profession. As members of a learned art we pursue a common calling in the spirit of public service. We have a proud tradition. Throughout the history of our nation, the members of our citizenry have looked to the ranks of our profession for leadership and guidance. Let us now as a profession each rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals hereby promulgate and adopt 'The Texas Lawyer's Creed--A Mandate for Professionalism' as attached hereto and made a part hereof.

In Chambers, this 7th day of November, 1989.

**THE TEXAS LAWYER'S CREED--A MANDATE FOR PROFESSIONALISM**

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

**I. OUR LEGAL SYSTEM**

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, 'My word is my bond.'
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

## II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.
5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

## III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are canceled.
6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.
7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.
8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.
10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.
11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.
12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.
13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.
14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.
15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.
16. I will refrain from excessive and abusive discovery.
17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.
18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.
19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

#### \*2057 IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.
2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.
3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.
4. I will be punctual.
5. I will not engage in any conduct which offends the dignity and decorum of proceedings.
6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.
7. I will respect the rulings of the Court.
8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.
9. I will be considerate of the time constraints and pressures imposed upon the Court.