

What Advice to Give?

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- Should we Talk to the police?
- Should I bail out my child?
- Should I turn myself in?
- Should I hire a lawyer?
- Should I confess to my Religious leader?



What are the Pitfalls

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- DUI and License Request—Pilots
- Child abuse and DCFS wants and interview
- Booking Photos on line
- Prepare them for the Attorney letters



Basics of Criminal System

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- Charge/arrest/Citation
- Bail/warrants
- Entry of Appearance
- Discovery Requests



Misdemeanor Process

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- Justice Court
- Arraignment
- Pretrial Hearing
- Motion Hearings (Rule 12)
- Trial
- Sentence
- Appeal/De Novo



Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rule 10. Arraignment.

(a) Upon the return of an indictment or upon receipt of the records from the magistrate following a bind-over, the defendant shall forthwith be arraigned in the district court. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.

(b) If upon arraignment the defendant requests additional time in which to plead or otherwise respond, a reasonable time may be granted.

(c) Any defect or irregularity in or want or absence of any proceeding provided for by statute or these rules prior to arraignment shall be specifically and expressly objected to before a plea of guilty is entered or the same is waived.

(d) If a defendant has been released on bail, or on his own recognizance, prior to arraignment and thereafter fails to appear for arraignment or trial when required to do so, a warrant of arrest may issue and bail may be forfeited.

Rule 12. Motions.

(a) Motions. An application to the court for an order shall be by motion, which, unless made during a trial or hearing, shall be in writing and in accordance with this rule. A motion shall state succinctly and with particularity the grounds upon which it is made and the relief sought. A motion need not be accompanied by a memorandum unless required by the court.

(b) Request to Submit for Decision. If neither party has advised the court of the filing nor requested a hearing, when the time for filing a response to a motion and the reply has passed, either party may file a request to submit the motion for decision. If a written Request to Submit is filed it shall be a separate pleading so captioned. The Request to Submit for Decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. The notification shall contain a certificate of mailing to all parties. If no party files a written Request to Submit, or the motion has not otherwise been brought to the attention of the court, the motion will not be considered submitted for decision.

(c) Time for filing specified motions. Any defense, objection or request, including request for rulings on the admissibility of evidence, which is capable of determination without the trial of the general issue may be raised prior to trial by written motion.

(c)(1) The following shall be raised at least five days prior to the trial:

(c)(1)(A) defenses and objections based on defects in the indictment or information ;

(c)(1)(B) motions to suppress evidence;

(c)(1)(C) requests for discovery where allowed;

(c)(1)(D) requests for severance of charges or defendants;

(c)(1)(E) motions to dismiss on the ground of double jeopardy ; or

(c)(1)(F) motions challenging jurisdiction, unless good cause is shown why the issue could not have been raised at least five days prior to trial.

(c)(2) Motions for a reduction of criminal offense at sentencing pursuant to Utah Code Section 76-3-402(1) shall be in writing and filed at least ten days prior to the date of sentencing unless the court sets the date for sentencing within ten days of the entry of conviction. Motions for a reduction of criminal offense pursuant to Utah Code Section 76-3-402(2) may be raised at any time after sentencing upon proper service of the motion on the appropriate prosecuting entity.

(d) Motions to Suppress. A motion to suppress evidence shall:

(d)(1) describe the evidence sought to be suppressed;

(d)(2) set forth the standing of the movant to make the application; and

(d)(3) specify sufficient legal and factual grounds for the motion to give the opposing party reasonable notice of the issues and to enable the court to determine what proceedings are appropriate to address them.

If an evidentiary hearing is requested, no written response to the motion by the non-moving party is required, unless the court orders otherwise. At the conclusion of the evidentiary hearing, the court may provide a reasonable time for all parties to respond to the issues of fact and law raised in the motion and at the hearing.

(e) A motion made before trial shall be determined before trial unless the court for good cause orders that the ruling be deferred for later determination. Where factual issues are involved in determining a motion, the court shall state its findings on the record.

(f) Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial or at the time set by the court shall constitute waiver thereof, but the court for cause shown may grant relief from such waiver.

(g) Except in justices' courts, a verbatim record shall be made of all proceedings at the hearing on motions, including such findings of fact and conclusions of law as are made orally.

(h) If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that bail be continued for a reasonable and specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect provisions of law relating to a statute of limitations.

Rule 13. Pretrial conference.

(a) The trial court, in its discretion, may hold a pretrial conference, with trial counsel present, to consider such matters as will promote a fair and expeditious trial. The accused shall be present unless he waives his right to appear.

(b) At the conclusion of the conference, a pretrial order shall set out the matters ruled upon. Any stipulations made shall be signed by counsel, approved by the court and filed, and shall be binding upon the parties at trial, on appeal, and in postconviction proceedings unless set aside or modified by the court.

Rule 16. Discovery.

(a) Except as otherwise provided, the prosecutor shall disclose to the defense upon request the following material or information of which he has knowledge:

- (1) relevant written or recorded statements of the defendant or codefendants;
- (2) the criminal record of the defendant;
- (3) physical evidence seized from the defendant or codefendant;
- (4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and
- (5) any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare his defense.

(b) The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. The prosecutor has a continuing duty to make disclosure.

(c) Except as otherwise provided or as privileged, the defense shall disclose to the prosecutor such information as required by statute relating to alibi or insanity and any other item of evidence which the court determines on good cause shown should be made available to the prosecutor in order for the prosecutor to adequately prepare his case.

(d) Unless otherwise provided, the defense attorney shall make all disclosures at least ten days before trial or as soon as practicable. He has a continuing duty to make disclosure.

(e) When convenience reasonably requires, the prosecutor or defense may make disclosure by notifying the opposing party that material and information may be inspected, tested or copied at specified reasonable times and places. The prosecutor or defense may impose reasonable limitations on the further dissemination of sensitive information otherwise subject to discovery to prevent improper use of the information or to protect victims and witnesses from harassment, abuse, or undue invasion of privacy, including limitations on the further dissemination of videotaped interviews, photographs, or psychological or medical reports.

(f) Upon a sufficient showing the court may at any time order that discovery or inspection be denied, restricted, or deferred, that limitations on the further dissemination of discovery be modified or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(g) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

(h) Subject to constitutional limitations, the accused may be required to:

- (1) appear in a lineup;
- (2) speak for identification;
- (3) submit to fingerprinting or the making of other bodily impressions;
- (4) pose for photographs not involving reenactment of the crime;
- (5) try on articles of clothing or other items of disguise;

(6) permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion;

(7) provide specimens of handwriting;

(8) submit to reasonable physical or medical inspection of his body; and

(9) cut hair or allow hair to grow to approximate appearance at the time of the alleged offense. Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given to the accused and his counsel. Failure of the accused to appear or to comply with the requirements of this rule, unless relieved by order of the court, without reasonable excuse shall be grounds for revocation of pre-trial release, may be offered as evidence in the prosecutor's case in chief for consideration along with other evidence concerning the guilt of the accused and shall be subject to such further sanctions as the court should deem appropriate.

Rule 17. The trial.

(a) In all cases the defendant shall have the right to appear and defend in person and by counsel. The defendant shall be personally present at the trial with the following exceptions:

- (1) In prosecutions of misdemeanors and infractions, defendant may consent in writing to trial in his absence;
- (2) In prosecutions for offenses not punishable by death, the defendant's voluntary absence from the trial after notice to defendant of the time for trial shall not prevent the case from being tried and a verdict or judgment entered therein shall have the same effect as if defendant had been present; and
- (3) The court may exclude or excuse a defendant from trial for good cause shown which may include tumultuous, riotous, or obstreperous conduct.

Upon application of the prosecution, the court may require the personal attendance of the defendant at the trial.

(b) Cases shall be set on the trial calendar to be tried in the following order:

- (1) misdemeanor cases when defendant is in custody;
- (2) felony cases when defendant is in custody;
- (3) felony cases when defendant is on bail or recognizance; and
- (4) misdemeanor cases when defendant is on bail or recognizance.

(c) All felony cases shall be tried by jury unless the defendant waives a jury in open court with the approval of the court and the consent of the prosecution.

(d) All other cases shall be tried without a jury unless the defendant makes written demand at least ten days prior to trial, or the court orders otherwise. No jury shall be allowed in the trial of an infraction.

(e) In all cases, the number of members of a trial jury shall be as specified in Section 78-46-5, U.C.A. 1953.

(f) In all cases the prosecution and defense may, with the consent of the accused and the approval of the court, by stipulation in writing or made orally in open court, proceed to trial or complete a trial then in progress with any number of jurors less than otherwise required.

(g) After the jury has been impaneled and sworn, the trial shall proceed in the following order:

- (1) The charge shall be read and the plea of the defendant stated;
- (2) The prosecuting attorney may make an opening statement and the defense may make an opening statement or reserve it until the prosecution has rested;
- (3) The prosecution shall offer evidence in support of the charge;
- (4) When the prosecution has rested, the defense may present its case;
- (5) Thereafter, the parties may offer only rebutting evidence unless the court, for good cause, otherwise permits;
- (6) When the evidence is concluded and at any other appropriate time, the court shall instruct the jury; and
- (7) Unless the cause is submitted to the jury on either side or on both sides without argument, the prosecution shall open the argument, the defense shall follow and the prosecution may close by responding to the defense argument. The court may set reasonable limits upon the argument of counsel for each party and the time to be allowed for argument.

(h) If a juror becomes ill, disabled or disqualified during trial and an alternate juror has been selected, the case shall proceed using the alternate juror. If no alternate has been selected, the parties may stipulate to proceed with the number of jurors remaining. Otherwise, the jury shall be discharged and a new trial ordered.

(i) Questions by jurors. A judge may invite jurors to submit written questions to a witness as provided in this section.

- (1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.
- (2) If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.
- (3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be

rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.

(j) When in the opinion of the court it is proper for the jury to view the place in which the offense is alleged to have been committed, or in which any other material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. The officer shall be sworn that while the jury are thus conducted, he will suffer no person other than the person so appointed to speak to them nor to do so himself on any subject connected with the trial and to return them into court without unnecessary delay or at a specified time.

(k) At each recess of the court, whether the jurors are permitted to separate or are sequestered, they shall be admonished by the court that it is their duty not to converse among themselves or to converse with, or suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

(l) Upon retiring for deliberation, the jury may take with them the instructions of the court and all exhibits which have been received as evidence, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

(m) When the case is finally submitted to the jury, they shall be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Except by order of the court, the officer having them under his charge shall not allow any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

(n) After the jury has retired for deliberation, if they desire to be informed on any point of law arising in the cause, they shall inform the officer in charge of them, who shall communicate such request to the court. The court may then direct that the jury be brought before the court where, in the presence of the defendant and both counsel, the court shall respond to the inquiry or advise the jury that no further instructions shall be given. Such response shall be recorded. The court may in its discretion respond to the inquiry in writing without having the jury brought before the court, in which case the inquiry and the response thereto shall be entered in the record.

(o) If the verdict rendered by a jury is incorrect on its face, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

(p) At the conclusion of the evidence by the prosecution, or at the conclusion of all the evidence, the court may issue an order dismissing any information or indictment, or any count thereof, upon the ground that the evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

[Advisory Committee Notes](#)

Glen W. Neeley (8042)
Attorney for Defendant
863 25th Street
Ogden, Utah 84401
Phone: (801) 612-1511
Facsimile: (866) 384-4882

IN THE <\$form.Court\$> COURT OF AND FOR
<\$form.County\$> COUNTY, STATE OF UTAH

<p><\$form.Plaintiff\$>, Plaintiff, vs. <\$form.Defendant\$>, Defendant.</p>	<p>FORMAL REQUEST FOR DISCOVERY</p> <p>Case No. <\$form.case no.\$></p> <p>Judge <\$form.Judge\$></p>
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TO: Prosecuting Attorney, State of Utah.

The Defendant, by his counsel, pursuant to Rule 16 of the Utah Rules of Criminal Procedure, hereby requests the above-described prosecuting attorney, and any and all law enforcement and other agencies and employees thereof for whom the prosecuting attorney is accountable in this proceeding, to disclose, turn over, produce, or make available to the defendant and his counsel for examination and copying, within 7 Days of the date of this request, the documents, objects, matters, evidence, and information listed below, whether now possessed or later acquired:

1. The following statements and confessions:
 - A. All written statements or confessions, signed or unsigned, allegedly made by the Defendant.

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- B. All recorded, videotaped, or filmed statements or confessions allegedly made by the Defendant.
2. The following field evidence and information:
- A. All written reports, memoranda, notes or other documents, including audio or video tapes or recordings, made by or at the direction of a law enforcement officer that are in any way related to this case, including, but not limited to:
 - 1. Police reports
 - 2. Police activity logs,
 - 3. Alcohol influence reports,
 - 4. Accident reports,
 - 5. Chemical test refusal reports or notices,
 - 6. Notes of law enforcement officers,
 - 7. Police Officer's certification cards indicating current certification on any equipment used in connection with this incident.
 - B. All photographs, tape recordings or videotape recordings made or taken of the defendant by the police, the jailer, or anyone on their behalf.
3. The following chemical test evidence and information:
- A. All written or recorded data or information in any way related to any chemical or scientific test administered to the defendant for the purpose of determining the alcohol content of the Defendant's blood, breath, or urine, including all test results and records of analysis.
 - B. If this is a breath test case, all Intoxilyzer affidavits and memorandums directly

prior to and after the arrest showing that the Intoxilyzer machine was checked by a qualified technician and it was working correctly at the time the chemical test was administered.

- C. If this case involves blood evidence, please preserve all blood samples for retesting by the defense. Please provide all chain of custody documentation and any foundational documents for the result to be introduced into evidence.

DATED February 21, 2014.


GLEN W. NEELEY
Attorney for the Defendant

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the forgoing Formal Request for Discovery, via mail, postage prepaid, on February 21, 2014, to the following:



Glen W. Neeley (8042)
Attorney for Defendant
863 25th Street
Ogden, Utah 84401
Phone: (801) 612-1511
Facsimile: (866) 384-4882

IN THE <\$form.Court\$> COURT OF AND FOR
<\$form.County\$> COUNTY, STATE OF UTAH

<p><\$form.Plaintiff\$>, Plaintiff, vs. <\$form.Defendant\$>, Defendant.</p>	<p>ENTRY OF APPEARANCE, ENTRY OF PLEA OF NOT GUILTY, REQUEST FOR PRE-TRIAL HEARING, AND DEMAND FOR JURY TRIAL</p> <p>Case No. <\$form.case no.\$></p> <p>Judge <\$form.Judge\$></p>
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GLEN W. NEELEY, Attorney at Law, hereby enters his appearance of counsel of record for the above-named Defendant, <\$form.Defendant\$>, in the above-entitled matter.

Further, the Defendant hereby enters a plea of "Not Guilty".

Further, the Defendant requests a Pretrial Hearing be set in this matter.

The Defendant respectfully demands a speedy and public jury trial.

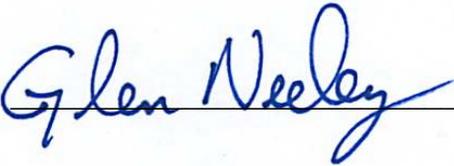
DATED February 21, 2014.



GLEN W. NEELEY
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Entry of Appearance, Entry of plea and Request for pre-trial, postage prepaid, to the following on Friday, February 21, 2014

A handwritten signature in blue ink that reads "Glen Neeley". The signature is written in a cursive style and is positioned above a solid horizontal line.

Glen W. Neeley (8042)
Attorney for Defendant
863 25th Street
Ogden, Utah 84401
Phone: (801) 612-1511
Facsimile: (866) 384-4882

IN THE <\$form.Court\$> COURT OF AND FOR
<\$form.County\$> COUNTY, STATE OF UTAH

<p><\$form.Plaintiff\$>, Plaintiff, vs. <\$form.Defendant\$>, Defendant.</p>	<p>REQUEST FOR DISCOVERY</p> <p>Case No. <\$form.case no.\$></p> <p>Judge <\$form.Judge\$></p>
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Pursuant to the provisions of Rule 16, U.R.Cr.P., and State v. Knight, 734 P.2d 913 (1987), the Defendant, by and through his attorney, requests the prosecution to produce "all of the material requested or must identify explicitly those portions of the request with respect to which no responsive material will be provided." Id. at 916-17. In addition, of the material requested and produced by the State, the State "must continue to disclose such material on an ongoing basis to the defense." Id. at 917. The Defendant requests the following:

1. All written or recorded statements of the defendant or co-defendants. The substance of any oral statement which the prosecution intends to offer in evidence which was made before or after arrest to any person then known to the defendant to be a government agent.
2. The criminal record of the defendant.
3. All physical evidence seized in the investigation of the alleged offense herein,

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including the results of any scientific analysis of any and all evidence seized for the purpose of the prosecution of this case.

4. Evidence known to the prosecution that tends to negate the guilt of the defendant, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment.

5. All written reports, statements, and any other matters relating to the investigation of the allegations herein, including copies of search warrants, affidavits for search warrants and any other police reports or prosecution reports in the possession of the police or prosecution.

6. The names, addresses, and telephone numbers of all witnesses the prosecution intends to call in the trial of this matter.

7. The identity of each person whom the prosecution expects to call as an expert witness at trial, along with the subject matter on which the expert is expected to testify, and the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

8. A list of exhibits the prosecution intends to offer in the trial of this matter.

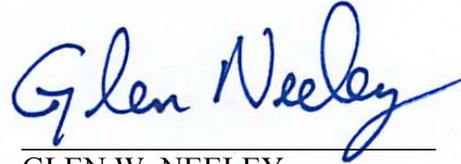
9. Any books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are in the possession, custody or control of the prosecution which are material to the preparation of a defense or are intended for use by the prosecution as evidence in its case in chief or were obtained from or belonged to the defendant.

10. Any physical or mental examinations, or scientific tests, experiments or reports, or copies thereof, which are in the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the prosecution and are material to the preparation of the defense or are intended for use by the prosecution in its case in chief.

Request for Discovery

11. Any offers of leniency or plea bargain agreements or any other form of remuneration provided to any of the witnesses listed in number 6 above.

Dated: February 21, 2014.

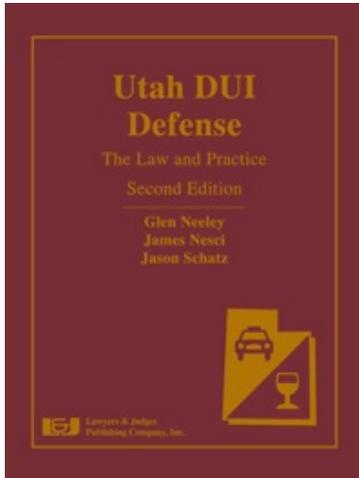


GLEN W. NEELEY
Attorney for the Defendant

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the forgoing Request for Discovery, via mail, postage prepaid, on February 21, 2014, to the following:





ORDER FORM

NAME: _____

ADDRESS: _____

CITY/STATE/ZIP _____

EMAIL: _____

PHONE: _____

VISA/MC NO. _____

EXP: _____ **CV CODE (3 digit code)** _____ **Billing Zip Code** _____

Quantity _____

Cost: \$135

***Plus Tax 6.85% (shipping included)**

I authorize Glen Neeley to charge my Credit Card for the above selected amount plus Tax.

Dated: _____ **Signature** _____

Fax back to: 866-384-4882

Email to: glen@utah-dui.com