

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

MEMORANDUM

TO: Nevada Supreme Court

COPY: Supreme Court Clerk's Office
Indigent Defense Commission, Rural Subcommittee

FROM: John McCormick

DATE: September 2, 2008

SUBJECT: Rural Subcommittee Progress Report

Pursuant to the Court's ADKT 411 Order of March 21, 2008, the following is a report on the progress of the Indigent Defense Commission, Rural Subcommittee's progress in reexamining and making recommendations regarding indigent defense services in rural Nevada.

Rather than provide a written update, the Subcommittee chose to provide the Court with a working draft of the Subcommittee's final report, which will be filed by December 31, 2008.

The attached report details the Subcommittee recommendations, as well as the research the Subcommittee has conducted thus far into the indigent defense system in rural Nevada.

The report also contains, in Tab 4, a "white paper" regarding the constitutionality of the current Nevada indigent defense funding system, as requested by Members of the Court.

Subcommittee Co-Chairs Judge Dan Papez and John Lambrose, and I, look forward to filing our completed report with the Court.

Please contact me at x79813 or jmccormick@nvcourts.nv.gov if I can provide additional information.

Attachment

Nevada Supreme Court Indigent Defense Commission Rural Subcommittee



Report and Recommendations

Justice Michael A. Cherry
Chairman, Indigent Defense Commission

Judge Dan L. Papez
Co-Chair, Rural Subcommittee

John Lambrose
Co-Chair, Rural Subcommittee

John McCormick
Staff, Rural Subcommittee

Indigent Defense Commission, Rural Subcommittee Report

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TAB 1

Executive Summary – To Be Inserted

DRAFT

TAB 2

Co-Chair's Commentary – To Be Inserted

DRAFT

TAB 3

Recommendations

DRAFT

Recommendations

- 1) The Rural Subcommittee recommends that the State of Nevada assume the responsibility of funding the indigent defense system in rural Nevada in total (Tab 4).
- 2) An independent board must be created to oversee the provision of indigent defense services throughout the State of Nevada. This board should be made up of individuals appointed by the three branches of government, the State Bar, and other interested parties. This board will provide an independent source of accountability for public defense (Tab 5).
- 3) The Supreme Court should adopt the proposed language herein (Tab 6) with regards to the appointment of conflict counsel and the payment of bills as an interim step. In the long term, an agency or department, possibly within the Administrative Office of the Courts at the suggestion of Justice Cherry, be created to oversee and administer the conflict counsel system for all of rural Nevada.
- 4) Each county should be free to choose its own indigent defense delivery system, provided that system conforms to the performance standards, caseload standards, and is subject to the oversight of the independent board (Tab 5).
- 5) The Nevada State Public Defender's Office must be made whole by the provision of adequate funding. The Office is currently suffering in a state of disrepair and must be repaired to provide counties with a viable option for the provision of indigent defense services, and to ensure that indigent defendants receive competent defense services on appeals and in conflict cases (Tab 7).

TAB 4

White Paper on Delegation of Indigent Defense Duties to the Counties

DRAFT

August 12, 2008

Chief Justice Mark Gibbons
Justice Michael A. Cherry
Justice Michael Douglas
Justice James W. Hardesty
Justice A. William Maupin
Justice Ron D. Parraguire
Justice Nancy M. Saitta

In Care Of:
The Nevada Supreme Court
201 South Carson Street
Carson City, Nevada 89701
(775) 684-1600

Re: Delegation of Indigent Defense Duties to Counties

Dear Justices:

The American Civil Liberties Union Foundation (ACLU), the Charles Hamilton Houston Institute for Race & Justice at Harvard University Law School, the National Association of Criminal Defense Lawyers (NACDL), the NAACP Legal Defense and Educational Fund, Inc. (LDF), and the National Legal Aid & Defender Association (NLADA) present the following white paper on the state's mandate to provide adequate indigent defense services and the permissible parameters of delegating that obligation to the counties. On behalf of our respective organizations, we are deeply concerned that Nevada's current statutory scheme, as implemented, fails to meet the state's constitutional obligations.

Sincerely,

American Civil Liberties Union

Charles Hamilton Houston Institute for Race and Justice

National Association of Criminal Defense Lawyers

NAACP Legal Defense and Educational Fund, Inc.

National Legal Aid & Defender Association

The Obligation of States in Providing Constitutionally-Mandated Right to Counsel Services

I. The Right to Counsel

The Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." In *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963), the United States Supreme Court stated that "reason and reflection, require us to recognize that, in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." The Court then held that the Sixth Amendment applied to the states - not to county or local governments - by virtue of the Fourteenth Amendment and that the State of Florida thus had an obligation to provide Mr. Gideon with counsel for his defense. National standards incorporate this aspect of the decision, emphasizing that state funding and oversight are required to ensure uniform quality.¹

II. The State Obligation to Ensure that *Gideon's* Mandate is Met

The state of Nevada, like a number of other states, has chosen to delegate its obligation to provide counsel for the poor to the counties. See *Nevada v. Second Judicial District Court*, 85 Nev. 241, 245 (1969) ("The legislature has recognized its constitutional obligation, and while not appropriating state funds for these expenses has authorized and directed the various counties of the state to pay them.") (citation omitted). Counties with a population of over 100,000 must create a county office of public defender. N.R.S. 206.010. Counties with a population of less than 100,000 may either create a county public defender system or pay for the services of the state public defender. N.R.S. 206.010; N.R.S. 180.110.

Delegation of indigent defense function to the counties, however, does not end the state's obligations. While a state may delegate obligations imposed by the constitution, "it must do so in a manner that does not abdicate the constitutional duty it owes to the people." *Claremont School Dist. v. Governor*, 147 NH 499, 513 (2002). In other words, the state has an obligation to ensure that the counties are capable of meeting the obligations and that counties actually do so. Cf. *Robertson v. Jackson*, 972 F.2d 529 (4th Cir. 1992) (holding that although administration of a food stamp program was turned over to local authorities, "ultimate responsibility . . . remains at the state level."); *Omunson v. State*, 17 P.3d 236 (Idaho 2000) (holding that where a duty has been delegated to a local agency, the state maintains "ultimate responsibility" and must step in if the local agency cannot provide the necessary services).

¹ The obligation of state government to fund 100% of indigent defense services is supported by American Bar Association and National Legal Aid & Defender Association criminal justice standards. See the American Bar Association, *Ten Principles of a Public Defense Delivery System*, Principle 2: "Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide". See also: Guidelines for Legal Defense Systems in the United States (National Study Commission on Defense Services, U.S. Department of Justice, 1976), Guideline 2.4.

If the counties cannot meet the delegated obligations, the state — as the original obligor — must step in. The state cannot be permitted to abdicate all responsibility to the counties; if a violation of constitutional rights of citizens' rights results, the state remains liable. It is for this reason that, despite statutory delegation of the right to counsel obligations to counties, courts in both Montana and Michigan have held that the state is an appropriate defendant in class actions alleging systemic right to counsel violations. *Duncan v. State of Michigan*, No. 07-242 CZ, Transcript of Hearing on Motion to Dismiss, at 35 (May 15, 2007) (“While it’s true the defendants have delegated the responsibility for funding and administering the indigent defense programs to the counties, it does not mean that defendants are off the hook.”); *White v. Martz*, No. CDV-2002-133 Memorandum and Order (Mont. Dist. Ct. July 24, 2002) (attached).

III. The National Trend toward State Funding of Indigent Defense Services

Today, a number of factors have led to the majority of states moving to state funding and oversight of the right to counsel services. Right to counsel obligations continue to expand, putting increasing burdens on counties to whom those obligations have been delegated. In 1967, the U.S. Supreme Court acknowledged that a child’s loss of liberty “is comparable in seriousness to a felony prosecution,” despite the civil nature of the delinquency proceeding, *In Re Gault*, 387 U.S. 1 (1967). Accordingly, the Court held that the due process clause of the Fourteenth Amendment guarantees the right to assistance of counsel at state expense in delinquency cases where the child or their parent cannot afford private counsel.

In *Argersinger v. Hamlin*, 407 U.S. 25, 33 (1972), the Supreme Court extended the right to counsel to misdemeanors where the defendant is facing a possible loss of liberty. More recently, in *Alabama v. Shelton*, 535 U.S. 654 (2002), the Court clarified that the potential loss of liberty included not only an immediately incarceratory sentence but also a proceeding in which the individual’s liberty was jeopardized by a violation of a condition of probation on a suspended sentence.² The Court held that if the individual was not afforded counsel at the time of the original charges the judge was foreclosed from incarcerating that individual for failing to comply with one or more of the conditions stemming from probation or a suspended sentence.

The Court has also expanded the circumstances under which the right to counsel attaches, acknowledging that long before trial there are critical phases of a criminal investigation that require the accused to be provided counsel. Indeed, this year the Court again emphasized the early attachment of the right to counsel in *Rothgery v. Gillespie County, Tex.*, ___ U.S. ___, 128 S.Ct. 2578 (2008), holding that a defendant’s right to counsel attaches at the initiation of the adversarial process regardless of when the prosecutor becomes involved.

² Examples of such conditions include attending drug treatment, observing a curfew, maintaining employment or paying court costs.

The right to counsel continues after conviction, as well. A person is constitutionally entitled to counsel in certain proceedings including sentencing,³ appeals of right,⁴ and in some probation and parole proceedings.⁵ In *Halbert v. Michigan*, 545 U.S. 605 (2005), the court ruled that indigent defendants who plead guilty at the trial level do not give up their right to counsel on appeal to challenge their sentencing.

As the number of stages at which provision of indigent counsel is required has expanded, the number of cases that require public defense services has similarly risen dramatically. Furthermore, with the introduction of sentencing guidelines, expanded use of scientific evidence, alternative drug courts, and other criminal law developments, the amount of work a public defender must do on any given case has also increased.

Counties have proven ill-equipped to respond quickly to developments in Sixth Amendment law, the resulting growth in the need for public defense services, and the attendant demand for greater resources. In particular, counties with poor economic forecasts are hard-pressed to provide adequate services. They tend to have higher crime rates, a higher percentage of people qualifying for services, and less resources to spend on competent representation than counties of more affluence.

In 1969, the Nevada Supreme Court predicted with amazing precision the problems of the county-based indigent defense system. In *Nevada v. Second Judicial District Court*, see *supra*, this Court observed, “One serious criminal case could literally bankrupt one of our small, financially insecure counties.” The Court went on to note, “No doubt the fixing of such a financial burden upon the several counties has and will cause serious problems in some cases.”⁶

In 1969, only four states had state-funded indigent defense systems.⁷ As a result of the problems and changes noted above, and those foreseen by the Nevada Supreme Court, however, many states that previously delegated responsibility have opted to take over the oversight and funding of indigent defense services directly. Today, thirty states directly administer and fund indigent defense services at the trial level.⁸ Another three states

³ *McConnell v. Rhay*, 393 U.S. 2 (1968); *Mempa v. Rhay*, 389 U.S. 128 (1967).

⁴ *Douglas v. California*, 372 U.S. 353 (1963).

⁵ *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972). *But see, Wolff v. McDonnell*, 418 U.S. 539 (1974).

⁶ It is also noteworthy that this Court foresaw the potential for the state to have responsibility for county failings despite the delegation. The Court stated “Should a county be unable to meet an obligation ordered under this rule, a more perplexing constitutional issue would be presented.”

⁷ The county’s two geographically smallest states - Rhode Island and Delaware - had established statewide public defender programs pre-*Gideon*. New Jersey and Maryland statutorily created statewide public defender programs in the years immediately after the *Gideon* decision.

⁸ Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Iowa, Louisiana, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

assume the vast majority of funding their right to counsel systems.⁹ Nevada's continued use of a county-based indigent defense system runs counter to this national trend.

IV. The Nevada Legislature's Historical Abdication of its Responsibilities under *Gideon* & Its Indifference to the Consequences

The Nevada Legislature took initial steps to move to a state funding and oversight of the various right to counsel obligations in 1971, creating a statewide commission to oversee services of the State Public Defender in the rural counties.¹⁰ National standards call for the creation of such independent oversight commissions as a means of insulating the defense function from undue political and judicial interference.¹¹ Ideally, these commissions should have full regulatory authority to promulgate, monitor and enforce binding standards over the entire indigent defense system. Over the past twenty years there has been a slow but steady trend to the creation of statewide indigent defense commissions across the United States. In 1983, only 17 states had a commission. Today, 33 states have some form of oversight commission, an increase of almost 100%.

⁹ Kansas (state funds 77.3% of total \$23.4 million expenditure); Oklahoma (state funds 61.6% of total \$28.4 million expenditure); and South Carolina (state created statewide circuit public defender system in the 2007 legislative session. State now funds 63.8% of total \$32.5 million expenditure). State expenditures and percentages are based on recent NLADA research and 2005 data collected by The Spangenberg Group under the auspices of the American Bar Association. See: *50 State and County Expenditures for Indigent Defense Services: Fiscal Year 2005*. (November 2006).

¹⁰ As originally designed, the Nevada indigent defense commission was composed of: 1) The chief justice of the supreme court or an associate justice designated by him; 2) Three members licensed to practice law in Nevada, no two of whom shall be residents of the same county, and not more than two of whom shall be members of the same political party - appointed by the board of governors of the State Bar of Nevada; 3) Three persons, not members of the legal profession, no two of whom shall be residents of the same county, and not more than two of whom shall be members of the same political party – appointed by the governor.

¹¹ See generally, ABA *Ten Principles* #1. NLADA has promulgated guidelines to assist jurisdictions in establishing independent oversight boards at either the state or local level. NLADA's *Guidelines for Legal Defense Services* (Guideline 2.10) states:

“A special Defender Commission should be established for every defender system, whether public or private. The Commission should consist of from nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented.

Commission members should be selected under the following criteria: The primary consideration in establishing the composition of the Commission should be ensuring the independence of the Defender Director.

- a. The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics.
- b. No single branch of government should have a majority of votes on the Commission.
- c. Organizations concerned with the problems of the client community should be represented on the Commission.
- d. A majority of the Commission should consist of practicing attorneys.
- e. The Commission should not include judges, prosecutors, or law enforcement officials.”

The Nevada Legislature, however, disbanded the state's commission in 1975, making the State Public Defender a direct gubernatorial appointment. The then-current State Public Defender subsequently resigned his post in 1979 stating: "The current scheme for financing the Public Defender's office renders accomplishing [the agency's] mission impossible," and that "[t]he 1975 Legislature changed the appointment scheme from that of the commission making recommendations to the governor to that of purely a political appointment."

The problems indicated in the resignation letter were confirmed by an independent assessment in 1980 by a private consulting firm, Abt Associates. The Abt report said that the State Public Defender at the time [Norm Herring] "inherited a disorganized and underfunded system" characterized by: a lack of investigators and social workers; unqualified attorneys; high turnover; a lack of money for experts and other trial-related expenses; little supervision; no training; no brief bank; late entry into cases (especially juvenile delinquency cases); inadequate record-keeping; a lack of independence from the judiciary; a lack of qualified attorneys to take eligible cases; and insufficient funding.

Though the State Public Defender was credited with making some improvements following the release of the Abt report, those changes were short-lived. A series of State Public Defenders were hired from 1981-1996, with the longest tenure being five years. In 1989, the State Public Defender was placed under the Department of Human Resources, which means: (1) to secure adequate funding the State Public Defender must first advocate amongst the various departments within Human Resources, and (2) the Human Resource budget must compete against the other executive branch funding priorities. After this re-organization, services continued to decline. With such undue political interference, the State Public Defender was ill-equipped to fight for appropriate resources.

The failure of the State Public Defender system led many rural counties to a Hobson's choice. They could continue to participate in the State Public Defender system and receive some financial assistance, but inadequate services, or they could shoulder the entire financial burden, but have greater input regarding the delivery of services. Nye and Lyon counties left in the aftermath of the re-organization of the State Public Defender system in the early 1990s. Douglas County soon followed.

In most instances, the rural counties settled on flat-fee contracting systems, in which a lawyer is paid a fixed amount to take all or a certain percentage of the county's indigent defense cases. The system sets up an inherent conflict between lawyer and client because the lawyer is motivated to maximize profit by disposing of the case quickly, while the client may wish for investigation and trial. It is for this reason that low-bid, flat-fee contracts violate national indigent defense standards¹² and increasingly are viewed as violating attorney ethical standards.

¹² ABA Ten Principles of an Indigent Defense Delivery System, Principle 8 ("Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should . . . provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative and other litigation support services."). *See also* National Legal Aid and Defender Association, Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (explicitly forbidding the use of low-bid, flat-fee contracts).

Also in the 1990s, the crisis in Nevada's indigent defense system had become a primary focus of the Nevada Supreme Court Task Force for the Study of Racial and Economic Bias in the Justice System (Task Force).¹³ In 1997, after several years of study, the Task Force issued a report¹⁴ that found, among other things, that there was inadequate financial support of public defender offices throughout the state to ensure: proper attorney, investigation and support staff; adequate training of indigent defense attorneys; and early contact with indigent defendants.

In the wake of the report, the Task Force formed an implementation committee to study and advocate the best way to institutionalize its recommendations including increased funding for public defender offices and establishment of a formal training program for new attorneys. This implementation committee merged with another Nevada Supreme Court task force studying gender issues in the justice system to form the Implementation Committee for the Elimination of Racial, Economic and Gender Bias in the Justice System (Implementation Committee). The Implementation Committee received technical assistance under a joint grant from the Department of Justice's Bureau of Justice Assistance and the American Bar Association's Bar Information Program to make recommendations for sustainable improvement to indigent defense services.¹⁵

The result was a joint report (DOJ/ABA Report) that looked at indigent defense services across the State of Nevada and concluded, among other things, that (1) indigent defendants throughout the state of Nevada are not afforded equal justice; (2) the state indigent defense system is in crisis; and (3) workload issues among public defenders have resulted in expedited procedures that jeopardize defendants' rights. By 2000, the majority of Nevada counties were not using the services of the State Public Defender and those that remained in the system were required to pay for the majority of services.¹⁶

Looking beyond the problems of the State Public Defender, the DOJ/ABA Report questioned the quality of services provided to those of insufficient means in Clark County. Chief among the concerns noted in the report were: the low trial rate; the lack of qualification standards for new attorneys handling serious indigent defense cases; poor appellate defender services; and inadequate defender services provided in District Courts

¹³ The Task Force was created in the winter of 1992-93 in response to a community movement alleging disparate treatment of people of color and/or of insufficient means. Though the Task Force mandate included study of a broad range of issues (including law enforcement and sentencing), much of the focus centered on inadequate access to justice for adults and juveniles facing criminal charges.

¹⁴ *Recommendations of the Supreme Court Task Force for the Study of Racial and Economic Bias in the Justice System* (1997).

¹⁵ The U.S. Department of Justice, Bureau of Justice Assistance (BJA) awarded the American Bar Association, Bar Information Project (BIP) a two-year grant to expand its technical assistance capacities to specifically help states with no statewide oversight of indigent defense services. BIP, a project of the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID), provides limited technical assistance at no cost to indigent defense systems across the country. (For more information, see: www.abanet.org/legalservices/sclaid/defender.html.)

¹⁶ Participating counties were required to pay 53% of the State Public Defender budget.

using video-arraignments. It was the professional opinion of the DOJ/ABA team that the issues raised throughout the state justified further study through such county-by-county public defender audits.¹⁷

Clark County retained the services of the National Legal Aid & Defender Association (NLADA) to conduct a management audit of the Clark County Public Defender Office (CCPDO). Released in March of 2003, NLADA found that the CCPDO has a longstanding institutional culture that places a priority on attorney autonomy over the collective health of the organization. This has fostered organizational isolationism that limits accountability, support and professional development of staff, and inhibits interactions between attorneys in the office, between attorneys and support staff, between the organization and its client-base, and between the organization and the national indigent defense community. All of this has hindered the organization's ability to change and evolve as circumstances dictate. The report also found that the CCPDO attorney caseloads are in serious breach of nationally recognized workload standards.

Clarke County is not the only county that has been subjected to external review as a result of concerns about the adequacy of its indigent defense system. In 1987, the National Center for State Courts (NCSC) released a study of indigent defense in Washoe County. The precipitating factor for the study was an "alarming" increase in the budget for the right to counsel of over 111%. The study noted, "The state has no income tax, property tax has been cut, and the county exists off its sales tax....Budgets have been carefully planned as non-growth, thus any increase such as the increase in expenses for court-appointed is perceived as "huge." In this instance, the Washoe County budget had been wildly affected by five "exceptional" cases, precisely as predicted by the Nevada Supreme Court in the 1969 case. These county and state reports consistently found that the provision of counsel for poor people accused of crimes failed time and again to meet national standards and ethical expectations.

Despite the obvious failures of the county indigent defense systems and the State Public Defender system, the state of Nevada has not fulfilled its obligation to intervene and ensure that the constitutional right to counsel is met. There can be no doubt, with the mounting catalog of reports and studies published on the subject, that for many years the State of Nevada has been aware of the problems with indigent defense. Nevertheless, neither the legislature nor the executive branches have taken the steps necessary to address the problems and, as a result, the state has failed to meet its constitutional obligation to provide adequate indigent defense services.

The state's disregard for its constitutional duty is most clearly evident in the inability of counties to provide the Nevada Supreme Court Task Force with even the most basic indigent defense data. Since the state does not even require data reporting, no less provide any form of oversight, counties have failed to build an infrastructure to record data. Indeed, the 2000 DOJ/ABA report stated: "[T]here is no central repository for indigent defense data in Nevada. Without uniform data, policymakers are left to make

¹⁷ *Indigent Defense Services in the State of Nevada*, pp. 83-84.

critical funding decisions on the anecdotal testimony of defense providers, district attorneys, judges and other criminal justice representatives.”

Despite the absence of considerable data, the record is replete with evidence of the system’s failings. Since the DOJ/ABA Report was issued in 2000, the Nevada Legislature has cut spending even further and counties remaining in the system now shoulder 80% of the cost of running the State Public Defender. In 2007, two additional counties, Humboldt and Pershing, joined the growing majority of jurisdictions that are not using the services of the State Public Defender.

Also in 2007, a representative of the National Association of Criminal Defense Lawyers (NACDL) continued the history of independent assessments of indigent defense in Nevada. NACDL revisited White Pine County to see how services have changed since the DOJ/ABA report and concluded that, by every objective measure, the circumstances have actually worsened.¹⁸ Years later, the office has the same number of attorneys, but caseloads have continued to increase. The bulk of this increase is comprised of felony cases, time-demanding cases from a newly-developed drug court, escalating cases out of the state’s maximum security prison, and more cases from distant counties such as Eureka and Lincoln that require attorneys to spend extensive time traveling.

At the same time, the decrease in counties participating in the State Public Defender has resulted in a decrease in the efficiencies of shared resources within the state system. Investigators, technical support, and other services are more than 300 miles away in Carson City.¹⁹ The office in White Pine County continues to be plagued by frequent turnover in staff, absolutely no attorney training, no performance standards, and negligible to no attorney oversight. Yet as the burden of representation grows, so does the county’s obligation to fund the system. At the time of the DOJ/ABA Report in 2000, the state was paying approximately 40% of the costs for counties using the State Public Defender system. Next year, the state contribution will plummet down to a mere 20%.²⁰ Nevada’s counties are further constrained in their ability to fund indigent defense due to the fact that Nevada is a “Dillon’s Rule” state. “Dillon’s Rule”, named after the Iowa Supreme Court judge that penned it in 1868, holds that counties possess and can exercise only those powers expressly granted them by the legislature and no others.²¹ As such, counties’ authority to increase or add new revenue streams to pay for indigent defense is limited by the legislature.

In 2007, representatives from the ACLU and LDF returned to Clark County in response to renewed concerns about the adequacy of representation for indigent clients. During their assessment, it became clear that caseloads for public defenders were again exceeding national standards and that the contract attorney system continues to operate in

¹⁸ See NACDL Testimony before Nevada Supreme Court (Dec. 20, 2007).

¹⁹ Id.

²⁰ Id.

²¹ *City of Clinton v. Cedar Rapids and Missouri Railroad Company*, (24 Iowa 455 (1868))

violation of well-established standards set by the ABA. As a result of the county's decision to increase dramatically the number of police officers, there has been a sharp increase in arrests and prosecutions without a corresponding increase in resources for public defenders to cover the additional caseload. As a result, Clark County public defenders currently handle an average of 370 misdemeanors and 140 felonies per year.²² This far exceeds the limits proposed by the Federal Law Enforcement Assistance Administration's National Advisory Commission on Criminal Justice Standards and Goals, endorsed by the ABA, which indicate that a public defender should handle no more than 150 felonies *or* 400 misdemeanors per year. Furthermore, these standards assume appropriate levels of support. For full-time defender offices, the Bureau of Justice Assistance has opined that there should be one paralegal, one secretary, and one investigator for every four attorneys.²³ No matter how dedicated the public defender, adequate representation is impossible faced with such overwhelming caseloads, especially where coupled with inadequate support services.

Finally, a troubling lack of oversight and management of the contract system of indigent defense representation continues. In fact, until the recent Supreme Court order of January 4, 2008, Nevada had no formal, standing oversight mechanisms for ensuring that counties provided adequate indigent defense services in their courts. There were no indigency standards, no attorney performance standards, no oversight or supervision. The Order has begun to fill these gaps, but the Order alone is not sufficient. Standards cannot work without an active and vigorous enforcement body. There must be sufficient funding to actually create an administration to monitor the provision of services and ensure compliance.

V. Nevada's Failure to Provide Adequate Indigent Defense Disproportionately Affects African Americans²⁴

A state's failure to provide adequate indigent defense has a particularly significant impact upon the African-American community. A vastly disproportionate number of defendants who are arraigned - and particularly those in custody - are African American. Although African Americans comprise only 12% of the U.S. population, they make up over 40% of those persons going through the criminal justice system. African Americans are incarcerated at nearly six (5.6) times the rate of whites.²⁵ Furthermore, as compared to other groups, African Americans are more likely to require indigent defense services because they are more likely to live in poverty. A 2006 study by the United States Census Bureau found that the poverty rate amongst African Americans was 24.9%, compared to an only 8.3% poverty rate amongst whites. In Nevada, 10.3% of residents

²² The authors of this white paper recognize that the Nevada Supreme Court has ordered a case-weighting study to help the Court, state and local policy-makers, defense attorneys, and others, understand the appropriateness of current caseload levels.

²³ *Id.* (citing Bureau of Justice Assistance Keeping Defender Workloads Manageable (January 2001), at 10.

²⁴ Although this section addresses the impact of indigent defense failures on African Americans, Latinos, both in Nevada and nationwide, are also disproportionately affected by inadequate indigent defense systems.

²⁵ Sentencing Project, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*. (July 2007).

were living in poverty. Whereas 7.7% of those identifying themselves as white live in poverty, 15% of black Nevadans live in poverty. A 2005 study by the Sentencing Project confirmed the role of poverty, race, and access to counsel: the study found that whites were much more likely to retain counsel than blacks, and that the hiring of a private attorney tended to result in less severe sentences.

These national disparities are reflected in Nevada's criminal justice system, where the state's African American community will suffer most acutely from the failure to meet *Gideon's* promise. Nevada's prison population has been among the fastest growing in the nation and was projected to grow significantly over the next five years.²⁶ Between 2006 and 2007 alone, Nevada saw a 5% increase in its prison population.²⁷ This is largely a result of the exponential growth in the resident population. In 2005, Nevada was the state with the fastest growing resident population for the 19th consecutive year, with an overall 56% increase in resident population between 1996 and 2006.²⁸ During this same time period, the Nevada prison population increased 58%.²⁹ The increase in incarceration has not been borne equally by all members of the Nevada community. For example, the African American population of Nevada is concentrated in Clark County. Even though the jurisdiction is less than 10% black, 30% of cases opened in the last calendar year by the public defender's office involved African American clients. Statewide, 627 of every 100,000 white people are incarcerated whereas 2916 of every 100,000 African Americans are incarcerated.³⁰ Nationally, Nevada has the 14th highest incarceration rate of African Americans.³¹ Nevada incarcerates African Americans at nearly five (4.7) times the rates of whites.³²

The consequences of an inadequate indigent defense system are well-documented and dramatic. A 2004 study identified 328 exonerations nationwide between 1989 and 2004. Of these persons, 55% were African American. The disproportionate consequences also extend beyond the jailhouse walls: in Nevada, 2.63% of whites are disfranchised as a result of felony convictions whereas 12.39% of African Americans have been similarly disfranchised. Without fail, African Americans - who are, on average, poorer than whites, and who are disproportionately represented in the criminal justice system and represented by state-provided counsel - will bear a disproportionate burden of any failures of indigent defense.

VI. Conclusion

²⁶ Pew Center on the States, Public Safety Performance Project, *Work in the States: Nevada* at 1.

²⁷ Pew Center on the States, *One in 100: Behind Bars in America 2008* (February 2008), at 9.

²⁸ Pew Center on the States, *Nevada State Profile*.

²⁹ *Id.*

³⁰ Sentencing Project, see note 25, at 6.

³¹ *Id.*

³² *Id.* at 11.

Under the Sixth Amendment, the state has an obligation to provide counsel to all those facing criminal charges which could result in a deprivation of liberty who cannot afford to hire an attorney. While the state may delegate this obligation to the counties, it retains an obligation to monitor the counties and ensure that the obligation is met in a constitutionally sufficient manner. When it is not, the state is responsible for stepping in and rectifying the deprivation.

There is no doubt, from the many reports published on the subject, and the testimony of both public defenders and county officials before this Court, that the counties, and by extension the state, are not meeting the constitutional obligation. Despite the State of Nevada's failure to collect data and monitor the county systems, it has had more than sufficient notice of their failings. Therefore, unless the state of Nevada actively steps forward to rectify the situation, it is in violation of its Sixth Amendment obligations. There are urgent resource, training and monitoring issues that must be addressed, and the failure to do so erodes the integrity of Nevada's criminal justice system in a way that affects everyone in the State of Nevada, but has an especially pronounced effect on African-American residents who disproportionately bear the costs of the wholly inadequate status quo.

Embargoed DRAFT

TAB 5

Independent Oversight Commission

DRAFT

**EXECUTIVE BRANCH BILL DRAFT REQUEST
FOR THE
2009 LEGISLATIVE SESSION**

Required Information

Agency Name:

NEVADA STATE PUBLIC DEFENDER

Person to be consulted if more information is needed:

Name:

Diane R. Crow

Title:

Chief Deputy

Mailing Address:

511 E. Robinson St., Suite 1

Phone Number:

775-687-4880 x 229

E-mail Address:

drcrow@govmail.state.nv.us

Person to whom a copy of the completed draft should be mailed for review:

Name:

same

Title:

Mailing Address:

Phone Number:

E-mail Address:

Person to be contacted to provide testimony regarding the measure during the legislative session:

Name:

Hon. Justice Michael Cherry

Title:

Justice Nevada Supreme Court

Mailing Address:

201 S. Carson St., Carson City, NV 89701

Phone Number:

684-1540

E-mail Address:

mcherry@nvcourts.nv.gov

EXECUTIVE BRANCH BILL DRAFT REQUEST FOR THE 2009 LEGISLATIVE SESSION

Request:

Describe the problem to be solved or the goal(s) of the proposed measure, or both:

The Office of Internal Audit Report of 2004 recommended the creation of an Indigent Defense Commission Task force be created, with the Office of the Nevada Public Defender and in cooperation with the Governor's office, to study the condition of indigent defense in Nevada. The Office of Internal Audits recommended that the commission be created within the Executive Branch. This recommendation was not fulfilled.

On April 26, 2007, the Nevada Supreme Court commissioned its own interim commission for the same purpose of studying the condition of indigent defense in the state. In January 2008, the Supreme Court issued Order ADTK 411, creating an oversight Indigent Defense Commission, based upon the recommendations of its interim commission. The Commission created by the Supreme Court could be within the judicial branch of government.

The Indigent Defense Commission should be created to provide oversight of indigent defense in Nevada to insure that the citizens of Nevada receive Constitutionally mandated defense when charged with a crime.

Nevada's various methods of providing public defense creates potential for inadequate and inconsistent representation. For example, attorneys providing public defense may have high caseloads which do not permit individualized and competent representation. Rural Counties, which contract for public defense service experience a limited pool of qualified attorneys with skills in criminal law or trial experience. Without statewide oversight of defense services, there is no guarantee defendants receive a consistent minimum level of public defense services.

This BDR only recommends that the funding source for the commission should be separate from the Attorney General, the Office of the Public Defender, and the courts. This restriction will negate the possibility for conflict of interest or the appearance of it.

**EXECUTIVE BRANCH BILL DRAFT REQUEST
FOR THE
2009 LEGISLATIVE SESSION**

Effective Date:

The proposed measure, if enacted, will become effective on October 1, 2009, unless one of the following dates is specified:

Passage and Approval

July 1, 2009

January 1, 2010

Other

Fiscal Notes:

State:

Would this measure, if enacted, create or increase any fiscal liability of state government or decrease any revenue of state government which appears to be in excess of \$2,000?

Yes No Unknown

Would this measure, if enacted, increase or newly provide for a term of imprisonment in the state prison or make release on parole or probation from the state prison less likely?

Yes No Unknown

Local:

Would this measure, if enacted, reduce revenues or increase expenditures of a local government?

Yes No Unknown

Would this measure, if enacted, increase or newly provide for a term of imprisonment in county or city jail or detention facility or make release on probation therefrom less likely?

Yes No Unknown

Unfunded Mandate:

Would this measure, if enacted, have the effect of requiring one or more local governments to establish, provide or increase a program or service which is estimated to cost more than \$5,000 per local government and a specified source for the additional revenue to pay the expense is not authorized by this measure or another specific statute?

Yes No Unknown

Signature of Person Submitting Request: _____

Signature of Budget Director: _____

**EXECUTIVE BRANCH BILL DRAFT REQUEST
FOR THE
2009 LEGISLATIVE SESSION**

Optional Information
(Use continuation sheet if necessary.)

Suggested Language or Proposed Solution to Problem:

Creation of a permanent statewide oversight Commission of indigent Defense be established.
The Commission membership will exclude sitting judges and prosecutors.
(continuation on page 1a)

Special Instructions (e.g., disfavored wording):

NRS Title, Chapter and Sections, Nevada Constitutional Provisions, Administrative Regulations (NAC) Affected:

Chapter 180 - The Nevada State Public Defender
Chapter 260 - County Public Defender

Federal Law/Court Cases/Attorney General Opinions Involved:

Nevada Supreme Court ADKT No. 411. (attached for convenience)
Recommendation of the Internal Audit Report, September 2004 (attached for convenience)
Original enabling statute for the Office of the State Public Defender (attached for convenience)

Similar Measures from Current or Previous Sessions:

Previously proposed 2005 based on the Internal Audit Report of 2004.

EXECUTIVE BRANCH BILL DRAFT REQUEST FOR THE 2009 LEGISLATIVE SESSION

Similar Statutes in Other States:

Alabama: Code of Alabama § 15-12-40; 15-12-41; 15-12-43; 15-12-44; 15-12-45
S. Carolina Code Ann. § 1-5-40
Virginia Code Ann § 19.2-163.01; 19.2-163.02 (2008)

Related Newspaper or Periodical Articles:

Copies of supporting information may be attached.

Please Note: Pursuant to Senate Bill No. 490 (2007), subsection 4 of NRS 218.2455 now provides that all legislative measures requested by the Governor on behalf of state agencies, boards and departments must be prefiled on or before December 15 preceding the regular legislative session. A measure that is not prefiled on or before that date is deemed by statute to be withdrawn. There is no authority for anyone to waive this provision.

CONTINUATION OF PERSONS TO TESTIFY:

2. Franny Forsman
Federal Public Defender, Nevada
411 E. Bonneville
Suite200
Las Vegas, NV 89101
702-388-5100
franny_forsman@fd.org
3. John Lambrose
Chief Deputy
Federal Public Defender
411 E. Bonneville
Suite 200
Las Vegas, NV 89101
702- 388-6577
John_Lambrose@fd.org
4. John McCormick
AOC
201 S. Carson St.
Carson City, NV 89701
775-687-9813
jmccormick@nvcourts.nv.gov

This Commission will have primary oversight, standard setting, and rule making authority for indigent defense throughout Nevada, as well as advising the Governor in appointing the State Public Defender.

The Indigent Defense Oversight Commission shall set specific standards for contracting practices in order to ensure adequate conflict counsel is provided. The Commission shall be charged with studying and exploring the possibility of developing a unified statewide public defender system. (However, counties that have created their own County Public Defender Office would be allowed to create a county indigent defense commission to make appointment recommendations or set standards for the selection process.)

All county public defenders and the State Public Defender shall provide a yearly report to the Commission regarding caseload and time keeping for each category of crime and each juvenile delinquency matter.

The Commission shall have the authority to audit public defender offices for compliance with performance and caseload standards.

The Commission shall report annually to the Supreme Court and the Governor on the status of indigent defense in the state.

The funding source for the Indigent Defense Commission should be separate from the courts, the Attorney General, and the Office of the Public Defender. This will negate the possibility of conflict of interest or the appearance of it.

TAB 6

Appointment of Conflict Counsel/Billing

DRAFT

**PROPOSED RULE CHANGE FOR INDIGENT DEFENSE COMMISSION,
RURAL SUBCOMMITTEE**

PREAMBLE, the practical realities of rural Nevada prohibit the immediate exclusion of the judiciary from the appointment of defense counsel and the approval of expert witness fees, investigation fees, and attorney fees as order by the Supreme Court in ADKT No. 411. Thusly, the following compromise language should be temporarily adopted by the Court to allow for the continued administration of justice in rural Nevada until such time as provisions are made by the Court or Legislature for the creation of a flexible statewide approach to indigent defense service delivery that balances the need for state oversight with the need for local autonomy, while maintaining and expanding the availability of defense counsel in rural counties. It is through this practical step, and future improvement efforts, that indigent defense services in rural Nevada can more fully meet the State's 6th Amendment obligation under *Gideon*.

WHEREAS, there is an appearance of impropriety when a Judge at any level makes appointment of counsel for indigent defendants based upon any relationship or circumstances prohibited under the Judicial Cannons of Ethics; and whereas, in order to provide direction for Judges in rural jurisdictions to avoid such appearance of impropriety, the following guidelines should be followed:

In jurisdictions where there are three or less District Court Judges or three or less Limited Court Judges within a single township, the following guidelines should be followed:

1. Any appointment of an attorney, investigator, or expert witness which could result in the appearance of impropriety under the Nevada Code of Judicial Conduct must be carried out by another Judge as follows:

A. District Courts: Another District Judge within the District shall make such appointments; and, if such Judge is not available or ethically disqualified, such appointments shall be made by another District Court Judge from another District who is assigned by Court order of the disqualified Judge.

B. Limited Jurisdiction Courts: Another Limited Court Jurisdiction Judge within the Judicial District shall make such appointments which may include wither a Justice of the Peace or a Municipal Judge making such appointments at the request of the disqualified Judge. If no other Limited Court Jurisdiction Judge is available, the District Judge having the longest years of service in the District shall make such appointments.

2. In making appointments of counsel, the Judge should consider the following:

A. A list of licensed, Nevada attorneys who are available in the general area or others who request to be put on such list should be used on a generally rotating basis in order to provide some fairness in distribution of such cases.

B. Deviations from such list may be made in order to use attorneys who are best qualified for particular kinds of cases. Attorneys who routinely employ unethical practices, who do poor quality of work on behalf of indigent defendants, or who abuse billing practices may be passed over for appointments, but such lack of appointment should not be used to punish such attorneys in any way which could violate the Nevada Code of Judicial Conduct. Such appointments should not be made in a way which would give the appearance of impropriety by giving large, lucrative appointments to one attorney or law firm.

C. The seriousness of the offense should be considered, appointing the best qualified attorney available in the area as determined in the discretion of the Judge. For the most serious cases, the Judge should look to attorneys anywhere within the State to best carry out the defense of the indigent defendant in order to provide quality defense of the defendant.

D. In determining compensation for such legal counsel, the Judge shall follow the statutory requirements requiring detailed billings and be sure such compensation does not create a financial hardship on such attorney.

E. Investigative fees. The Judge shall allow investigative fees in advance based upon ex parte motion of defense counsel upon good cause shown, but shall not require results of such investigations be show to the Court, however, the Judge may require accountability, for the expenditure of such funds through detailed time billings.

F. Judges should follow the statutory requirements of NRS 7.125 through NRS 7.175 in approving such billings. Attorney fees should be compensated only for court appearances and time reasonably spent on the matter to which the appointment is made.

TAB 7

Report and Comments on the Performance Standards

DRAFT

Report of the Nevada Supreme Court’s Indigent Defense Commission, Rural Subcommittee Regarding the Revised Performance Standards from ADKT 411

Pursuant to the Nevada Supreme Court’s (Court) Administrative Docket 411 (ADKT 411) entered on July 8, 2008, the Indigent Defense Commission (Commission), Rural Subcommittee (Subcommittee) met, via teleconference, on July 23, 2008 to discuss and consider the revisions to the ADKT 411 Performance Standards presented to, and filed with the Court, by Franny Forsman and Nancy Becker. The following summarizes the position of the Subcommittee developed on the conference call, and after careful review of the Revised Performance Standards (Standards).

- 1) It is the consensus of the Subcommittee that the Proposed Resolution on page 6 of the Indigent Defense Commission Majority/Minority Reconciled Report dated July 14, 2008 (Report) is the appropriate manner in which to settle the unresolved dispute regarding the use of the terms “quality and high quality” in the Standards.
- 2) The Subcommittee offers no consensus opinion on the un-reconciled points in Standard 2-3(a) Training in Capital Cases, however wishes to comment that, while Subcommittee is in philosophical agreement that sufficient training must be made available to members of a capital case defense team, rural counties are unable to shoulder the burden of an unfunded mandate to provide that training at county expense in the case of non-employee, appointed counsel. The Subcommittee suggests that funding for such training be made available by the State, the Court, the State Bar, or through some other mechanism that does not place the burden on cash-strapped counties.
- 3) The subcommittee offers no consensus opinion regarding Section VII of the Report regarding Collateral Consequences
- 4) The Subcommittee offers no consensus opinion regarding Section IX of the Report regarding Standard 3-1 – Appellate Counsel, and the duty to advise clients of their right to appeal.

In both cases where the Subcommittee offers no consensus opinion regarding the major areas of unresolved dispute between the Majority and the Minority of the Commission, as identified by Franny Forsman and Nancy Becker, and the remaining Standards still unresolved, the Subcommittee offers the attached opinions of individual members, and relies on the judgment of the Court.

Rural Subcommittee Comments Regarding the Performance Standards

John Lambrose, Assistant Federal Public Defender and Co-Chair:

I support the Majority position across the board.

Judge Dan Papez, Seventh Judicial District Court and Co-Chair:

1. I concur with the recommendation that defense counsel should advise the client of the right to appeal. In line with what Federal Courts do, I always advise a criminal defendant of his/her right to appeal during a plea canvass, even if that right has been severely curtailed upon a guilty plea. I believe this practice will assist in reducing post-conviction litigation.

2. I disagree with the recommendation that counsel be required to advise clients of collateral consequences of a guilty plea/criminal conviction. Nevada law and a majority of states do not require this practice presently as this area, (e.g. immigration issues), appears to be outside of the expertise of most criminal defense practitioners. Moreover, determining what constitutes a collateral consequence could be unduly subjective and be a part of an ever-expanding list.

3. Regarding the Standard for Initial Client Interview, It should be noted that it may be difficult for out of the area counsel to travel to a rural jurisdiction for an initial interview within 48 hours after appointment to the case. Regarding the recommendation that counsel/client meetings be conducted in a confidential setting, due to security issues or a lack of such a setting, it is sometimes difficult if not impossible to conduct such meetings in a confidential settings, e.g. within Ely State Prison or some rural courthouses where holding facilities do not allow for such settings. I agree with the suggested language that such meetings occur in a confidential setting "whenever possible."

Judge Andrew Puccinelli, Fourth Judicial District Court:

I have read the unresolved differences. I agree with Nancy Becker's position. I am not sure that Ms. Forsman understands the problems encountered in the rural counties. Thanks for your work John and keeping us informed.

Jim Shirley, Pershing County District Attorney:

See attached letter.

Office of
District Attorney
Pershing County
P.O. Box 299/400 Main Street
Lovelock, Nevada 89419

JIM C. SHIRLEY
District Attorney

Telephone (775)273-2613
Fax (775)273-7058

Friday, August 01, 2008

John R. McCormick
Rural Courts Coordinator
Administrative Office of the Courts
INDIGENT DEFENSE COMMISSION
VIA E-MAIL

RE: RURAL SUBCOMMITTEE PERFORMANCE STANDARDS COMMENTS

Dear John:

I would like to communicate my appreciation to Nancy and Franny for their hard work in making changes and compromises. The Standards are much better than they were when we started this process a few months ago. On behalf of Pershing County, there is still a desire to not have imposed standards, but to use the Standards as objectives for training. The County understands and recognizes that there is a wish by members of the Supreme Court to have standards in place. However, the County believes that funding for training would improve indigent defense services more significantly than any written set of detailed rules.

Many of the issues that were addressed in the initial pleadings that were filed on behalf of Pershing and Humboldt Counties have been addressed. As I have stated in previous meetings and in my correspondence, the unfunded mandate issue needs to be addressed. Language similar to that arrived at for training of individuals in Capital cases should be included the pre-ambule as it relates to whether the standards are an unfounded mandate (i.e. that the standards are not designed to create an unfunded mandate upon the counties and that funding to implement the changes reflected in the standards should be provided by at the State level). The voters of this state have been clear that unfunded mandates on local government are not appropriate.

During our meetings, it was mentioned that the counties have added more law enforcement personnel to their offices. Pershing County has certainly not benefited from any additional law enforcement personnel (in fact this year, one position is being cut). The rural counties are truly facing severe problems with revenue. In a time where the local governments may be facing layoffs and other cutbacks, forcing the counties to spend more money where it is not constitutionally required seems out of line. If the Standards do in deed place an unfunded mandate on local government as the preamble indicates that they do, the County has to lodge its current objection to any unfunded mandate. If the Standards are not placing unfunded mandates upon the counties, there certainly is no basis for that objection.

The County has placed its objections on the record in previous pleadings and discussions. I leave it to the Court to decide the best way to deal with those issues and the unfunded mandate issue. Thank you for the opportunity to participate in this process.

Sincerely,

Jim C. Shirley
Pershing County District Attorney

TAB 8

Report on the State Public Defender's Office

DRAFT

NEVADA STATE PUBLIC DEFENDER – AN OVERVIEW

The Nevada State Public Defender was created in 1971 as a Governor appointee for a four-year term. A commission was established to provide the Governor with the names of three candidates. The State Public Defender was to provide indigent defense services to all counties, except Washoe, Clark, and Douglas. Fees paid for the service by the counties was to be returned to the counties and paid from a State fund for indigent defense.

July 1, 1971 – November 1973 --- Gary Sheerin

The office entered into 5 contracts with private attorneys and 1 contract with the Clark County Public Defender to provide services.

The NSPD office handled cases in Nye, Elmeralda counties, and felonies and gross misdemeanors in Carson City, Storey, and Lyon counties. Further, the NSPD office handled appeals to the Supreme Court.

(Information from the Administrative Status Report of Horace Goff 1973-1975.)

1973 the 57th Session of the Legislature passed AB 912 amending Chapter 180 by adding a new section allowing the state public defender to collect specified amounts from the services counties for fiscal years ending June 30, 1974 and 1975.

Nov 1973 – July 1, 1979 --- Horace Goff

Horace Goff resigned in 1979 citing the same issues the office has today.

“The current scheme for financing the Public Defender’s office renders accomplishing that mission impossible.”

“The Public Defender must currently answer to the fiscal interests of 15 counties and the State.”

“Totally divorced from any fiscal considerations, the Public Defender and his attorneys must render competent assistance of counsel to his client or face sanctions by the Courts, including entertainment of civil suits filed by clients.”

“I submitted to the Department of Administration a budget of \$501,930 for the 1979-80 fiscal year, and \$546,781 for the 1980-81 fiscal year, I have not included in these amounts the \$20,000 for compensation of other appointed counsel in post-conviction habeas corpus relief cases, because it is not an integral part of the Public Defender’s mission.”

“The 1975 Legislature changed the appointment scheme from that of the commission making recommendations to the governor to that of purely a political appointment.”

(Quoted from Goff’s letter of resignation.)

Excerpts from the Administrative Status Report 1973-1975 – Horace Goff, NSPD Douglas County (originally excluded by statute from the NSPD system by original statute) joined the system in April 1975.

NSPD Office is responsible for representing indigent defendants in 15 counties. Also presents appeals from denial of post conviction relief from all 17 counties to the Supreme Court.

“Primary, the advantage in contracting with private attorneys lies mainly in providing an attorney in close geographic proximity to the client.”

“The disadvantages of contracting are loss of case control, supervision, and the potential for conflicts of interest.”

March 1979 – July 31, 1981 --- Norm Herring

Letter of resignation from Norm Herring:

Indicated that he felt the office had recovered from a time when its ability to do its assigned job was in question. **Reasons cited for resignation: task of revamping the agency, providing administrative direction, budget oversight and planning, personnel replacement, trial strategy planning for 14 counties, and carrying a heavy caseload.**

Additionally, he cited considerations of resignation as “the current anti-defense climate of the courts and law enforcement and the attitude of the Nevada Legislature to embarrass the Nevada State Public Defender despite the fact that the budget is balanced, the job is done in an exemplary fashion with the mandatory nature defense services for indigents.

The August 1980 management study report indicated that the NSPD was a model public defender agency. He opened offices in Winnemucca and Ely and Tonopah.

Aug 1 1981- July 1, 1983 ---Gregg Damm --- resigned Jan 3, 1983 to accept Deputy AG position

Gregg Damm contracted with Tom Perkins for the Winnemucca office from 7/1/82 – 9/30/82; 11/8/82-12/31/82; and 1/1/83 to 6/30/83 citing reasons:

**Insufficient time to properly recruit for the position,
The current attorney staff is unable to cover the area served by the Winnemucca Regional Office due to current caseloads.**

Jan 3, 1983 – Aug 2, 1985 --- Tom Perkins – to private practice

1986-1987 --- Robert Bork – resigned to take position at US Attorney Office

Feb 1987 – Oct 1991 --- Teri Steik Roeser – resigned to enter private practice and contracted with Douglas County to provide indigent defense services;

During her tenure in office Nye and Lyon counties left the NSPD system by contracting with private attorneys.

In 1990, an additional attorney position was added to the Ely office.

In 1991, an additional investigator was added to the Ely office.

With the loss of Lyon County, the attorney was transferred to the appellate division.

Nov 25, 1991 – April 12, 1996 --- James J. Jackson – entered private practice

With the loss of Douglas County, the staff down-sized one investigator (Ely position) and one attorney (Carson office)

A third attorney position was added to the Ely office.

April 12, 1996 – August 19, 2008 --- Steven G. McGuire

Humboldt and Pershing counties opened a County Public Defender Office. This closed the Winnemucca Regional Office of the NSPD.

August 20, 2008 – Present – the Governor has not appointed a Public Defender.

Current staffing

Nevada State Public Defender serves Carson City and Storey counties from the main office in Carson City. Staffing consists of 5 trial attorneys (one of which is the State Public Defender), 2 appellate attorneys, 3 secretaries (one of which is also the office manager) and 2 investigators.

The Ely regional office consists of 3 attorney positions and 1 secretary.

Currently, the office has a vacant position in each office.

The appellate staff handles all cases to the Supreme Court from all NSPD counties. The investigators cover cases in all 5 counties. (Previously, the same investigator staff covered 7 counties, Humboldt and Pershing). The investigators may travel 1-2 weeks per month to the Ely office. The goal is to investigate as many cases as possible within one travel period that is usually one week.

Difficulties in recruiting for the rural office.

Currently, there is one vacant attorney position in the Ely office and we may consider contracting with a private attorney if the position is not filled. Further, with Mr. McGuire's retirement, there is a vacant attorney position in the Carson office. In recruiting for the Ely position, the office received several resumes from young "soon to graduate" law students. All but two were from schools in the mid – west. There were two from McGeorge, but only one followed up with an interview. The office selected one applicant from Thomas Cooley Law School who was raised in Lamoile, Nevada. She was hired as a "certified student" while waiting for the Nevada Bar results. Unfortunately, she did not pass the Bar and sat for it again in July. Therefore, we terminated her employment. I do not anticipate having a large number of applicants for the position. Those that do apply, make it clear that they would anticipate a transfer to the Carson office within a few years. I have interviewed two other law school graduates who took the Nevada Bar in July. One is anticipated for a possible vacant position in the Carson office and the other for the Ely office. However, this plan is pending the Bar results in October.

Judges are concerned with young, inexperienced attorneys providing services in the rural counties. The plan for the future is to have a training period in the Carson office prior to relocating to a rural office. All parties would prefer to hire experienced trial attorneys, however, the available salary schedule makes it difficult to give such a candidate incentive to leave a lucrative private practice, especially if it would require relocating to a very rural location. Hiring an experienced trial attorney who is merely trying to vest in PERS has not proved to be beneficial to the office or the judicial system.

BUDGET ISSUES

The budget percentages changed by the 2005 Legislature, requiring the counties to pay according to caseload. Prior to this, the funding was approximately 54% county and 46% general fund. This biennium the funding has been 75% county and 25% general fund. And I have been advised that the same percentages should apply to the next biennium.

BUDGET

Fiscal year '07..... \$ 668,688 general fund
688,063-post conviction general fund
1,395,504 counties
Total.. \$2,752,255

Fiscal year '08..... 421,617 general fund
800,000-post conviction general fund
1,362,853 counties
Total 2,584,470

In FY 08, the NSPD returned over \$91,000 to the counties and general fund based on the respective percentage of the overall budget.

The total maximum of general fund money for the '10/11 biennium will be \$1,122,380 (each fiscal year).

CASE LOAD (OPENED)

	Cases	Hours (attorneys and investigators)
FY '07	3314	20,599
FY '06	3275	19,747
FY '05	3593	19,869
FY '04	3348	24,785

WEIGHTED CASE LOAD STUDY (The maximum number of cases an attorney should handle by category. *Other includes involuntary commitments for adults and 432B Child in Need of Protection under Juvenile.)

CARSON CITY

	Adult					Juvenile				
	Felony	GM	M	PV	*Other	Felony	GM	M	PV	*Other
FY05	163	29	411	33	2	6	2	12	11	4
FY06	154	23	328	29	1	5	1	6	8	2
FY07	116	17	264	25	1	10	2	5	3	3
FY08	95	20	235	19	1	6	1	5	3	2

STOREY

FY05	40	7	81	2	0	2	5	5	0	1
FY06	119	23	168	0	0	0	0	0	5	0
FY07	73	17	121	0	0	3	0	6	1	1
FY08	134	33	333	9	0	0	0	2	7	0

EUREKA

FY05	49	16	75	9	0	2	0	7	7	2
FY06	60	11	0	0	0	0	0	0	3	0
FY07	71	10	127	0	2	2	0	8	0	0
FY08	46	9	123	9	0	0	3	6	3	3

WHITE PINE

FY 05	60	14	66	13	0	5	3	17	1	7
FY06	37	13	54	10	0	4	1	9	3	2
FY07	57	9	55	14	1	7	1	13	5	1
FY08	71	14	94	13	1	1	1	8	4	9

LINCOLN

FY05	66	15	59	12	0	8	3	6	3	3
FY06	68	8	64	35	0	0	0	2	2	8
FY07	74	18	52	18	0	5	1	0	0	5
FY08	88	23	105	54	0	0	0	0	0	0

STATE/AG (CARSON AND ELY)

FY05	57	11
FY06	26	12
FY07	24	4
FY08	22	3

APPELLATE/POSTCONVICTION

	Appeal to S Ct	Post Conv/Habeas	Parole/Pardons
FY05	10	5	53
FY06	12	3	40
FY07	13	1	39
FY08	14	1	21

TRAVEL IN THE RURAL COUNTIES

Travel continues to be a time issue in the rural counties. NSPD has 3 motor pool vehicles. There are two vehicles in Ely (one is a four wheel drive this was approved in the 2005 budget) and one in Carson City (shared by the 2 investigators and 7 trial attorneys). Generally, the investigators have preferential use of the Carson office state vehicle, and the attorneys may request compensation for use of their personal vehicle.

TRAVEL PER COUNTY BY YEAR (HOURS)

	<u>FY 2007</u>	<u>FY 2006</u>	<u>FY 2005</u>	<u>FY 2004</u>
Carson City	155	57	0	39
Eureka	179	114	129	146
Lincoln	94	140	194	373
Storey	68	75	10	18
White Pine	145	60	22	102
*State/Appellate	121	153	80	335
**Humboldt/Pershing 24		194	343	567

*The office continues to represent state cases including prison cases, insurance fraud, and worker's comp fraud prosecuted by the Attorney General. The office handles 432B, Children in Need of Protection cases and Involuntary Civil Commitment matters. These matters usually require several court appearances and many hours of preparation and meetings with the clients.

** Humboldt and Pershing Counties left the NSPD system and created a Regional County Public Defender in July 2007.

COMPENSATION

Until the 1995 Legislature, the attorneys at the Nevada State Public Defender were paid approximately 12% less than their counterparts at the Attorney General's Office.

Currently, attorneys are compensated as follows:

	<u>Attorney General Office</u>	<u>NSPD</u>
State Public Defender		\$118,156
Chief Deputy	\$118,156	*position was redefined in 2005
Sr. Deputy	106,904	position does not exist
*Supervising Office (was Chief Deputy position)		\$106,904
Supervising Appellate (was Chief Appellate)		106,904
Supervising Trial (was Chief Trial)		106,904
Deputy	95,650	95,650

(From the State Personnel website, salaries effective July 1, 2008 on the Employee paid PERS)

CONCLUSION

The Nevada State Public Defender Office created in 1971 to provide indigent defense services to 14 (and later 15) of the 17 counties, has been diminished over the years to 5 counties.

It appears that the office still suffers from the same issues that existed in the early years, specifically funding and inability to entice experienced lawyers to relocate to rural Nevada. All but five counties have opted out of the State system either to open a county public defender office (Elko, Humboldt, and Pershing) or to contract with private attorneys (Douglas, Lyon, Nye, Esmeralda, Lander, Mineral, and Churchill). Carson City evaluated the option of opening a county public defender in 2006, however, decided that it was not preferable based on the economics.

DRAFT

TAB 9

Indigent Defense Data and Surveys

DRAFT

Indigent Defense Surveys/Data

Indigent Defense System Costs

Based upon the numbers reported in the following surveys, the counties budgets as reported to the State of Nevada, and the State Public Defender's Office budget, the current total cost of indigent defense in the State of Nevada is approximately \$44,600,000.00. This estimate does not take into account the need to increase the number of attorneys providing indigent defense, or the costs necessary to ensure a competent defense pursuant to ADKT 411.

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FY08 Estimated State of Nevada Indigent Defense Costs

County	Public Defender	Contract/Conflict	Case Expenses	Total
Carson City	\$562,458	\$352,353	\$16,830	\$931,641
Clark	\$25,544,434	\$10,765,334	\$0	\$36,309,768
Churchill	\$188,000	\$0	\$0	\$188,000
Douglas	\$383,683	\$46,661	\$23,036	\$453,380
Elko	\$735,913	\$0	\$0	\$735,913
Esmeralda	\$38,000	\$0	\$0	\$38,000
Eureka	\$75,985	\$12,176	\$7,783	\$95,944
Humboldt	\$279,986	\$196,154	\$0	\$476,140
Lander	\$60,765	\$0	\$0	\$60,765
Lincoln	\$106,858	\$10,557	\$0	\$117,415
Lyon	\$289,406	\$0	\$0	\$289,406
Mineral	\$59,875	\$60,243	\$0	\$120,118
Nye	\$489,950	\$403,648	\$0	\$893,598
Pershing	\$125,309	\$0	\$0	\$125,309
Storey	\$50,000	\$0	\$0	\$50,000
Washoe	\$1,807,203	\$1,404,098	\$36,074	\$3,247,375
White Pine	\$365,959	\$70,000	\$20,000	\$455,959
Total	\$31,163,784	\$13,321,224	\$103,723	\$44,588,731

DRAFT

County: _____

A. Indigent Defense Delivery Model

1. What is the primary type of indigent defense delivery model employed in your county?

- State Public Defender Office
- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

2. What is type of indigent defense delivery model is employed for conflict cases in your county? (Check all that apply)

- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

B. Indigent Defense Funding

1. Indicate the total amount of county funding spent on indigent defense services in 2007 by type of service provider. Please include all monies expended for indigent defense investigations and experts if included as a separate budget item of the courts.

Direct Services	
Public Defender Office:	\$ <u>562,458</u>
Contract Public Defender:	\$ <u>-</u>
Conflict Counsel:	\$ <u>352,353</u>
Attorneys paid for appointments	<u>16,830</u>
Case Related Expenses (if separate):	\$ <u> </u>
Percentage of County Budget on Defense:	<u>17.</u>
Percent of County Budget on Justice System:	<u>37.</u>

* Need to obtain information from Finance Dept.

3 accts: State PD, Conflict Counsel & Atty Fees

C. Caseload

1. Definition of a case

The Conference of State Court Administrators and the National Center for State Courts publication *State Court Model Statistical Dictionary*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case.” Please indicate how cases are defined in your jurisdiction:

- The uniform definition set forth above (a charge or set of charges against a single client arising from a single incident)
- A “case” = All charges against a single defendant
- A “case” = A charge
- A “case” = A prosecution charging instrument (indictment, information, etc.)

2. New Assignments

Please use the table below to indicate the total number of new assignments by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

Please see the attached reports as submitted by the Courts to the AOC to comply with the Uniform System of Judicial Reporting (USJR) requirements. Currently, the First Judicial District & Justice/Municipal Courts do not identify counsel as assigned by case type in order to extrapolate the requested information. The Courts utilize the State sponsored case management system "CourtView" and suggest that the AOC Technology Staff be consulted in creating automated reports to obtain the above requested information.

3. Disposition

Please use the table below to indicate the total number of dispositions by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

4. Pending Cases

Please use the table below to indicate the total number of pending cases by case type by delivery model provider at the start of calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

Question #3 - Please see attached report & response to question #2.

Question #4 - The Courts do not have a "pending case" report to provide answers to these questions.

5. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

If a defendant fails to appear the Court's practice is to issue a bench warrant for the defendant's arrest. This practice is performed irregardless if the defendant is represented by a public defender

6. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

Same question as #5. See answer in question #5.

7. Trials

Please use the table below to indicate the total number of trials by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

Please see USJR as attached and response to question #2.

D. Contracts

For those jurisdictions employing indigent defense contract counsel only -- Please forward a copy of all contracts related to the representation of indigent defendants for calendar year 2007.

1. Please describe the process for awarding contracts, including bid review team members and criteria for selection:

See attached copy of contract.

E. Assigned Counsel

For those jurisdictions employing private assigned counsel paid at hourly rates only --

1. What hourly rate do you pay private counsel? Is there a different rate for in-court and out-of-court activities? Is there a different rate dependent on seriousness of the case type? Please explain:

Counsel are paid pursuant to applicable NRS.

2. Is there a cap that cannot be exceeded for different case types? Please explain:

Requests for extraordinary fees are submitted to the assigned judge for review and approval.

F. Public Defender Offices *N/A*

For those jurisdictions employing staffed public defender offices only --

1. Please list the number of employees in each job classification:

	Primary Office	Other Office
a. Managing Attorneys	_____	_____
b. Staff Attorneys	_____	_____
c. Investigators	_____	_____
d. Social Workers	_____	_____
e. Paralegals	_____	_____
f. Admin. Assistants	_____	_____
g. Other (Describe: _____)	_____	_____

G. State Public Defender's Office

1. If your county no longer utilizes the State Public Defender's Office, what year did it stop utilizing the Office? N/A

2. What motivated your county to stop utilizing the Office?

3. Please provide any additional comments regarding the State Public Defender's Office that may be useful to the Commission or Supreme Court.

Casson City receives very good representation from the State Public Defender's Office.

Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or jmccormick@nvcourts.nv.gov with questions, comments, or to discuss timelines.

Thank You

CLARK COUNTY

A. Indigent Defense Delivery Model

What is the primary type of indigent defense delivery model employed in your county?

Clark County Public Defender, Clark County Special Public Defender, and Appointed Counsel

What type of indigent defense delivery model is employed for conflict cases in your county?

Clark County Special Public Defender
Conflict murder cases

Office Of Appointed Counsel
Track Attorneys – Monthly flat fee

Assigned Counsel Paid on an Hourly Rate

B. Indigent Defense Funding

Indicate the total amount of county funding spent on indigent defense services in 2007 by type of service provider. Please include all monies expended for indigent defense investigations and experts if included as a separate budget item of the courts.

Clark County Public Defender's Office	\$ 22,544,434.00
Clark County Special Public Defender's Office	\$ 2,991,655.00
Office of Appointed Counsel	\$ 7,773,679.14
Total of PD, SPD, and OAC	\$ 33,309,768.14

C. Caseload

Definition of a case

The Conference of State Court Administrators and the National Center of State Courts publication State Court Model Statistical Dictionary, instructs administrators to "[c]ount each defendant and all charges involved in a single incident as a single case." Please indicate how cases are defined in your jurisdiction:

A "case" is a charge or set of charges against a single client arising from a single incident.

New Assignments

Please use the table below to indicate the total number of new assignments by case type by delivery model provider for calendar year 2007.

Clark County Public Defender:

Murder	61
Felony	18279
Misdemeanor	4515
Juv Delinquency	5540
Adult Prob Revo	447
Juv Prob Revo	565
Adult Direct Appeal	90
Juv Direct Appeal	7

Clark County Special Public Defender:

Murder	35
Felony	3
TPR	136
A&N	337

Appointed Counsel:

Stats are not available

Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

These types of cases are currently left on the books

Trials

Please use the table below to indicate the total number of trials by case type by delivery model provider for calendar year 2007.

Clark County Public Defender:

Murder	9
Felony	149
Misdemeanor	1347
Juv Delinquency	579

Clark County Special Public Defender:

Murder 6

Appointed Counsel:

Stats are currently unavailable

D. Contracts

For those jurisdictions employing indigent defense contract counsel only – Please forward a copy of all contracts related to the representation of indigent defendants for calendar year 2007.

Contract attached is for fiscal year 2008-2009

Please describe the process for awarding contracts, including bid review team members and criteria for selection:

Consistent with the Clark County Model Plan filed May 1, 2008 – the Office of Appointed Counsel created the Indigent Defense Selection and Appointment Committee to select members to become part of the Indigent Defense Panel. Said committee, included members from a variety of organizations concerned with the integrity of criminal defense (i.e. Public Defender’s Office, Special Public Defender’s Office, Federal Public Defender’s Office, Nevada Legal Aid, State Bar, NACJ, Latino Bar, National Bar, etc) – no prosecutors or judges were members of the committee. Each organization nominated a member to become part of the committee. Attached is the application that all attorneys who sought admission to the Indigent Defense Panel filled out.

E. Assigned Counsel

For those jurisdictions employing private assigned counsel paid at hourly rates only –

Clark County employs a combination of flat fee contracts and hourly contracts.

F. Public Defender Offices

For those jurisdictions employing staffed public defender offices only –

Clark County employs a combination of Public Defenders, Special Public Defenders, and appointed counsel.

Please list the number of employees in each job classification:

Clark County Public Defender

Managing Attorneys	15
Staff Attorneys	89

Investigators	16
Social Workers	8
Paralegals	1
Admin. Assistants	22
Other (Describe: File Clerks)	20

Clark County Special Public Defender

Criminal Attorneys	9
Family Attorneys	5
Investigators	4
Social Workers	1
Admin. Assistants	4

Office of Appointed Counsel

Adult Flat Fee Contracts	37
Juvenile Flat Fee Contracts	8
Adult/Juvenile Hourly Contracts	Numerous
Abuse & Neglect/TPR Hourly Contracts	Numerous

G. State Public Defender's Office

Clark County does not utilize the State Public Defender's Office.



OFFICE OF THE DISTRICT ATTORNEY DOUGLAS COUNTY

Mark B. Jackson
District Attorney

Mailing Address
P.O. Box 218
Minden, Nevada 89423

Carson Valley Office
1625 8th Street
Minden, Nevada 89423
775-782-9800
775-782-9807 (fax)

Lake Tahoe Office
175 U.S. Highway 50
Stateline, Nevada 89449
775-586-7215
775-586-7217 (fax)

Child Support
P.O. Box 1240
Minden, Nevada 89423
775-782-9881
775-782-9880 (fax)

Michael McCormick
Assistant District Attorney

Thomas W. Gregory
Chief Criminal Deputy

Joseph L. Ward, Jr.
Chief Civil Deputy

Steven D. Schultz
Chief Investigator

Jan Budden
Office Manager

Connie Wenner
Child Support Coordinator

August 13, 2008

Mr. John McCormick
Rural Courts Coordinator
Administrative Office of the Courts
201 S. Carson Street
Carson City, NV 89701-4702

Re: Indigent defense

Hello John,

Attached is the survey that the Court requested. Unfortunately, much of the data you requested is not readily retrievable.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McCormick".

Michael McCormick
Assistant District Attorney



We support
a drug free community

County: DOUGLAS

A. Indigent Defense Delivery Model

1. What is the primary type of indigent defense delivery model employed in your county?
- State Public Defender Office
 - County-Employed Staff Public Defenders
 - Assigned Counsel Attorneys Paid on an Hourly Rate
 - Private Defense Counsel Under Contract
2. What is type of indigent defense delivery model is employed for conflict cases in your county? (Check all that apply)
- County-Employed Staff Public Defenders
 - Assigned Counsel Attorneys Paid on an Hourly Rate
 - Private Defense Counsel Under Contract

B. Indigent Defense Funding

1. Indicate the total amount of county funding spent on indigent defense services in 2007 by type of service provider. Please include all monies expended for indigent defense investigations and experts if included as a separate budget item of the courts.

Direct Services
Public Defender Office: \$ 0

Contract Public Defender: \$ 383,683

Conflict Counsel: \$ 46,661

Case Related Expenses (if separate): \$ 23,036

Percentage of County Budget on Defense: 1.01%

Percent of County Budget on Justice System: 22%

McCormick, Mike

From: Springmeyer, Claudette [CSpringmeyer@co.douglas.nv.us]
Sent: Tuesday, July 29, 2008 3:06 PM
To: McCormick, Mike
Subject: RE: Request for information

Hi Mike- please see responses below and call if you have any questions. Thanks

-----Original Message-----

From: McCormick, Mike [mailto:mmccormick@douglas.nv.gov]
Sent: Monday, July 28, 2008 1:14 PM
To: Springmeyer, Claudette
Subject: Request for information

Hi Claudette,

I have to get some information ready for the Supreme Court by Wednesday. What I need from you is the following:

1. How much did we spend in 2007 for Tod and Derrick?
\$191,841.45 each, total=\$383,683.
2. How much did we spend in FY 2007 for other appointed attorneys including the juvenile attorneys?
The only attorney paid in addition to Tod and Derrick was Matt Ence. He was paid \$46,661 and was paid from the Public Defender budget and all 4 of the courts.
3. What other costs were allocated in FY 2007 for court costs such as defense investigators etc?
Investigative Services= \$ 21,316 (both courts)
Psychiatry/Counseling= \$ 1,720
4. What percentage of the county budget was spent on criminal defense costs?
The total amount spent (sum of #1 thru #3 above) is \$453,380. Our budgets are on a fiscal year (June 30) basis.
The amount spent is 1.01% of the General Fund budgets for each year. It is 0.36% of the total County budget.
5. What percentage of the budget is spent on the justice system? This would include those above costs, the district attorneys office, law library, courts and staff.
The Judicial function of the General Fund was budgeted at 18% of the total General Fund or 22% of the General Fund operating budget (without reserves) for both fiscal years.

Sorry about the short timeframe.

Thanks so much for your help.

Mike

Michael McCormick
Assistant District Attorney
Douglas County District Attorney's Office
P.O. Box 218
Minden, NV 89423

(775) 782-9803

C. Caseload

1. Definition of a case

The Conference of State Court Administrators and the National Center for State Courts publication *State Court Model Statistical Dictionary*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case.” Please indicate how cases are defined in your jurisdiction:

- The uniform definition set forth above (a charge or set of charges against a single client arising from a single incident)
- A “case” = All charges against a single defendant
- A “case” = A charge
- A “case” = A prosecution charging instrument (indictment, information, etc.)

2. New Assignments

Please use the table below to indicate the total number of new assignments by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract	1	201	3249	341	NA	59	NA	NA	

3. Disposition

Please use the table below to indicate the total number of dispositions by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract	1	201	3249	341	NA	59	NA	NA	

4. Pending Cases

Please use the table below to indicate the total number of pending cases by case type by delivery model provider at the start of calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

We are unable to answer this question as we do not maintain these statistics

5. Administratively Closed Cases

A certain percentage of cases are “not active” due to a defendant’s failing to show for his next court date. Nationally, many of these “dead” cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases “left on the books” or does your jurisdiction have a policy for such cases. If so, please explain.

We do not close these cases. Rather, a bench warrant is issued for the defendant.

6. Administratively Closed Cases

A certain percentage of cases are “not active” due to a defendant’s failing to show for his next court date. Nationally, many of these “dead” cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases “left on the books” or does your jurisdiction have a policy for such cases. If so, please explain.

7. Trials

Please use the table below to indicate the total number of trials by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract	1	3	NA	NA	NA	NA	NA	NA	

D. Contracts

For those jurisdictions employing indigent defense contract counsel only -- Please forward a copy of all contracts related to the representation of indigent defendants for calendar year 2007.

1. Please describe the process for awarding contracts, including bid review team members and criteria for selection:

The Indigent Defense Contract Counsel are selected by the District Court Judges

E. Assigned Counsel

For those jurisdictions employing private assigned counsel paid at hourly rates only --

1. What hourly rate do you pay private counsel? Is there a different rate for in-court and out-of-court activities? Is there a different rate dependent on seriousness of the case type? Please explain:

Statutory rate with more for complex cases.

2. Is there a cap that cannot be exceeded for different case types? Please explain:

No, but misdemeanors cases are generally around \$2000 per case.

F. Public Defender Offices

For those jurisdictions employing staffed public defender offices only --

1. Please list the number of employees in each job classification:

	Primary Office	Other Office
a. Managing Attorneys	_____	_____
b. Staff Attorneys	_____	_____
c. Investigators	_____	_____
d. Social Workers	_____	_____
e. Paralegals	_____	_____
f. Admin. Assistants	_____	_____
g. Other (Describe: _____)	_____	_____

G. State Public Defender's Office

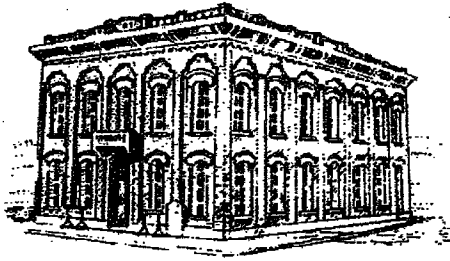
1. If your county no longer utilizes the State Public Defender's Office, what year did it stop utilizing the Office? 1992

2. What motivated your county to stop utilizing the Office?
Douglas County could receive better representation through private attorneys under contract.

3. Please provide any additional comments regarding the State Public Defender's Office that may be useful to the Commission or Supreme Court.

Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or jmccormick@nvcourts.nv.gov with questions, comments, or to discuss timelines.

Thank You



OFFICE OF
Eureka County Recorder/Auditor

EUREKA COUNTY COURTHOUSE
10 SOUTH MAIN STREET
P.O. BOX 556 - EUREKA, NEVADA 89316
PHONE: (775) 237-5263 • FAX: (775) 237-5614

MICHAEL REBALEATI
COUNTY RECORDER/AUDITOR
E-MAIL: mrebal@eureka.nv.org

August 1, 2008

John McCormick
Rural Courts Coordinator
201 South Carson St., Suite 250
Carson City, NV 89701

Dear John:

I'm faxing the Eureka County portion of the Supreme Court of Nevada survey on indigent defense. Please disregard the first survey that you will receive in the mail early next week. The data used in the first version was inaccurate. Please call if you have any questions.

Regards,


Michael Rebaleati
Eureka County Recorder/Auditor

County: Eureka County

A. Indigent Defense Delivery Model

1. What is the primary type of indigent defense delivery model employed in your county?

- State Public Defender Office
- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

2. What is type of indigent defense delivery model is employed for conflict cases in your county? (Check all that apply)

- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

B. Indigent Defense Funding

1. Indicate the total amount of county funding spent on indigent defense services in 2007 by type of service provider. Please include all monies expended for indigent defense investigations and experts if included as a separate budget item of the courts.

Direct Services
Public Defender Office: \$ FY07-\$51,173 FY08-\$75,985 FY09-\$81,484

Contract Public Defender: \$ _____

Conflict Counsel: \$ FY07=\$21,492 FY08=\$12,176 FY09=\$25,000

Case Related Expenses (if separate): \$ FY07-\$2,319 FY08-\$7,783 FY09-\$7,000

Percentage of County Budget on Defense: < 1%

Percent of County Budget on Justice System: 11%

C. Caseload

1. Definition of a case

The Conference of State Court Administrators and the National Center for State Courts publication *State Court Model Statistical Dictionary*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case.” Please indicate how cases are defined in your jurisdiction:

- The uniform definition set forth above (a charge or set of charges against a single client arising from a single incident)
- A “case” = All charges against a single defendant
- A “case” = A charge
- A “case” = A prosecution charging instrument (indictment, information, etc.)

2. New Assignments

Please use the table below to indicate the total number of new assignments by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender	0	18	26	9	5	1	0	0	2
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly		9	5		1				
Private Defense Counsel Under Contract									

3. Disposition

Please use the table below to indicate the total number of dispositions by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender	0	17	27	18	2	7	0	0	1
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly		8	8		2				
Private Defense Counsel Under Contract					2				

4. Pending Cases

Please use the table below to indicate the total number of pending cases by case type by delivery model provider at the start of calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender	0	6	0	8	0	0	0	0	1
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly					1				
Private Defense Counsel Under Contract			1						

5. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

"Left on the books"

6. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

"Left on the books"

7. Trials

Please use the table below to indicate the total number of trials by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender	0	0	10	0	0	0	0	0	0
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly			1						
Private Defense Counsel Under Contract									

D. Contracts

For those jurisdictions employing indigent defense contract counsel only -- Please forward a copy of all contracts related to the representation of indigent defendants for calendar year 2007.

- 1. Please describe the process for awarding contracts, including bid review team members and criteria for selection:

N/A

E. Assigned Counsel

For those jurisdictions employing private assigned counsel paid at hourly rates only --

- 1. What hourly rate do you pay private counsel? Is there a different rate for in-court and out-of-court activities? Is there a different rate dependent on seriousness of the case type? Please explain:

N/A

- 2. Is there a cap that cannot be exceeded for different case types? Please explain:

N/A

F. Public Defender Offices

N/A

For those jurisdictions employing staffed public defender offices only --

- 1. Please list the number of employees in each job classification:

	Primary Office	Other Office
a. Managing Attorneys	_____	_____
b. Staff Attorneys	_____	_____
c. Investigators	_____	_____
d. Social Workers	_____	_____
e. Paralegals	_____	_____
f. Admin. Assistants	_____	_____
g. Other (Describe: _____)	_____	_____

G. State Public Defender's Office

1. If your county no longer utilizes the State Public Defender's Office, what year did it stop utilizing the Office? N/A

2. What motivated your county to stop utilizing the Office?

3. Please provide any additional comments regarding the State Public Defender's Office that may be useful to the Commission or Supreme Court.

Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or jmccormick@nvcourts.nv.gov with questions, comments, or to discuss timelines.

Thank You

County: Humboldt

A. Indigent Defense Delivery Model

1. What is the primary type of indigent defense delivery model employed in your county?

- State Public Defender Office
- County-Employed Staff Public Defenders *AS of 7-2007*
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

2. What is type of indigent defense delivery model is employed for conflict cases in your county? (Check all that apply)

- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

B. Indigent Defense Funding

1. Indicate the total amount of county funding spent on indigent defense services in 2007 by type of service provider. Please include all monies expended for indigent defense investigations and experts if included as a separate budget item of the courts.

Direct Services

Public Defender Office: \$ 279,986

Contract Public Defender: \$ /

Conflict Counsel: \$ 196,154

Case Related Expenses (if separate): \$ _____

Percentage of County Budget on Defense: 1.76% of all funds

Percent of County Budget on Justice System: 15.46% of all funds

*Justice Court
with Judicial
Public Defender*

C. Caseload

1. Definition of a case

The Conference of State Court Administrators and the National Center for State Courts publication *State Court Model Statistical Dictionary*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case.” Please indicate how cases are defined in your jurisdiction:

- The uniform definition set forth above (a charge or set of charges against a single client arising from a single incident)
- A “case” = All charges against a single defendant
- A “case” = A charge
- A “case” = A prosecution charging instrument (indictment, information, etc.)

2. New Assignments

Please use the table below to indicate the total number of new assignments by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	* Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender		51		68	6	24	2	1	
Primary County Staff Public Defender		41		49	4	21	2	1	
Secondary County Staff Public Defender							1		
Assigned Counsel Paid Hourly		32		19	23	19		3	
Private Defense Counsel Under Contract		2			2				

* data for actions in District Ct does not include juvenile ct assignments

3. Disposition

Please use the table below to indicate the total number of dispositions by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender		16			1		2		
Primary County Staff Public Defender		24					1	2	
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly		21							
Private Defense Counsel Under Contract		6						3	

4. Pending Cases

Please use the table below to indicate the total number of pending cases by case type by delivery model provider at the start of calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

5. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

Left on the books

6. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

Same as above

7. Trials

Please use the table below to indicate the total number of trials by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender		2							
Primary County Staff Public Defender		3							
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly		1							
Private Defense Counsel Under Contract									

D. Contracts

For those jurisdictions employing indigent defense contract counsel only -- Please forward a copy of all contracts related to the representation of indigent defendants for calendar year 2007.

1. Please describe the process for awarding contracts, including bid review team members and criteria for selection:

E. Assigned Counsel

For those jurisdictions employing private assigned counsel paid at hourly rates only --

1. What hourly rate do you pay private counsel? Is there a different rate for in-court and out-of-court activities? Is there a different rate dependent on seriousness of the case type? Please explain:

Rate as set by statute

2. Is there a cap that cannot be exceeded for different case types? Please explain:

F. Public Defender Offices

For those jurisdictions employing staffed public defender offices only --

1. Please list the number of employees in each job classification:

	Primary Office	Other Office
a. Managing Attorneys	<u>1</u>	_____
b. Staff Attorneys	_____	_____
c. Investigators	_____	_____
d. Social Workers	_____	_____
e. Paralegals	<u>1</u>	_____
f. Admin. Assistants	_____	_____
g. Other (Describe: _____)	_____	_____

G. State Public Defender's Office

1. If your county no longer utilizes the State Public Defender's Office, what year did it stop utilizing the Office? 2007

2. What motivated your county to stop utilizing the Office?

COST AND PERFORMANCE

3. Please provide any additional comments regarding the State Public Defender's Office that may be useful to the Commission or Supreme Court.

Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or jmccormick@nvcourts.nv.gov with questions, comments, or to discuss timelines.

Thank You

County: Lincoln

A. Indigent Defense Delivery Model

1. What is the primary type of indigent defense delivery model employed in your county?

- State Public Defender Office
- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

2. What is type of indigent defense delivery model is employed for conflict cases in your county? (Check all that apply)

- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

B. Indigent Defense Funding

1. Indicate the total amount of county funding spent on indigent defense services in 2007 by type of service provider. Please include all monies expended for indigent defense investigations and experts if included as a separate budget item of the courts.

Direct Services

Public Defender Office: \$ 106,858.00

Contract Public Defender: \$ _____

Conflict Counsel: \$ 10,557.50

Case Related Expenses (if separate): \$ _____

Percentage of County Budget on Defense: _____

Percent of County Budget on Justice System: _____

C. Caseload

1. Definition of a case

The Conference of State Court Administrators and the National Center for State Courts publication *State Court Model Statistical Dictionary*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case.” Please indicate how cases are defined in your jurisdiction:

- The uniform definition set forth above (a charge or set of charges against a single client arising from a single incident)
- A “case” = All charges against a single defendant
- A “case” = A charge
- A “case” = A prosecution charging instrument (indictment, information, etc.)

2. New Assignments

Please use the table below to indicate the total number of new assignments by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender	N/A	18	7	0	0	0	2	0	0
Primary County Staff Public Defender		N/A	N/A	N/A	N/A	N/A	0		
Secondary County Staff Public Defender		N/A	N/A	N/A	N/A	N/A	N/A		
Assigned Counsel Paid Hourly		4	1	0	1	N/A 0	0		
Private Defense Counsel Under Contract		N/A	N/A	N/A	N/A	N/A	N/A		

3. Disposition

Please use the table below to indicate the total number of dispositions by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Gross Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender	0	18	7	0	0	0	2	0	0
Primary County Staff Public Defender	~			~	~	~	~	~	~
Secondary County Staff Public Defender	~			~	~	~	~	~	~
Assigned Counsel Paid Hourly	~	4	1	~	~	~	~	~	~
Private Defense Counsel Under Contract	~			~	~	~	~	~	~

4. Pending Cases

Please use the table below to indicate the total number of pending cases by case type by delivery model provider at the start of calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender	0	0	0	0	0	0	0	0	0
Primary County Staff Public Defender	~	~	~	~	~	~	~	~	~
Secondary County Staff Public Defender	~	~	~	~	~	~	~	~	~
Assigned Counsel Paid Hourly	~	~	~	~	~	~	~	~	~
Private Defense Counsel Under Contract	~	~	~	~	~	~	~	~	~

5. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

N/A

6. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

N/A

7. Trials

Please use the table below to indicate the total number of trials by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Gross Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender	0	4	1	0	0	0	0	0	0
Primary County Staff Public Defender	1			1	1	1	1	1	1
Secondary County Staff Public Defender	1			1	1	1	1	1	1
Assigned Counsel Paid Hourly		2							
Private Defense Counsel Under Contract	1			1	1	1	1	1	1

D. Contracts

For those jurisdictions employing indigent defense contract counsel only -- Please forward a copy of all contracts related to the representation of indigent defendants for calendar year 2007.

1. Please describe the process for awarding contracts, including bid review team members and criteria for selection:

N/A

E. Assigned Counsel

For those jurisdictions employing private assigned counsel paid at hourly rates only --

1. What hourly rate do you pay private counsel? Is there a different rate for in-court and out-of-court activities? Is there a different rate dependent on seriousness of the case type? Please explain:

Hourly rate paid to counsel varies by attorney. There isn't a different rate for in-court and out-of-court activities.

2. Is there a cap that cannot be exceeded for different case types? Please explain:

No.

F. Public Defender Offices

For those jurisdictions employing staffed public defender offices only --

1. Please list the number of employees in each job classification:

	Primary Office	Other Office
a. Managing Attorneys	_____	_____
b. Staff Attorneys	_____	_____
c. Investigators	_____	_____
d. Social Workers	_____	_____
e. Paralegals	_____	_____
f. Admin. Assistants	_____	_____
g. Other (Describe: _____)	_____	_____

G. State Public Defender's Office

1. If your county no longer utilizes the State Public Defender's Office, what year did it stop utilizing the Office? N/A

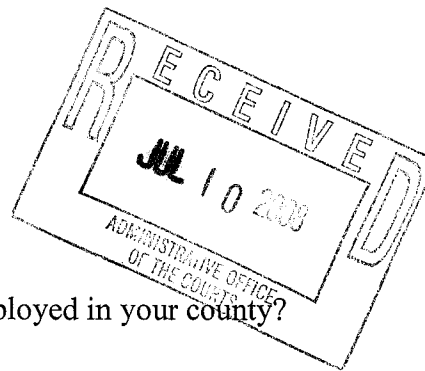
2. What motivated your county to stop utilizing the Office?

3. Please provide any additional comments regarding the State Public Defender's Office that may be useful to the Commission or Supreme Court.

Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or jmccormick@nvcourts.nv.gov with questions, comments, or to discuss timelines.

Thank You

County: Mineral (District Court)



A. Indigent Defense Delivery Model

1. What is the primary type of indigent defense delivery model employed in your county?

- State Public Defender Office
- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

2. What is type of indigent defense delivery model is employed for conflict cases in your county? (Check all that apply)

- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

B. Indigent Defense Funding

1. Indicate the total amount of county funding spent on indigent defense services in 2007 by type of service provider. Please include all monies expended for indigent defense investigations and experts if included as a separate budget item of the courts.

Direct Services

Public Defender Office: \$ _____

Contract Public Defender: \$ 59,875

Conflict Counsel: \$ _____

Other Attorney Costs
Case Related Expenses (if separate): \$ } 60,243 (Atty. fees only)

Percentage of County Budget on Defense: unable to compute

Percent of County Budget on Justice System: unable to compute

*Mineral County operates on the July to June fiscal year (not on calendar year).
Financial data not categorized in same manner as requested above.*

C. Caseload

1. Definition of a case

The Conference of State Court Administrators and the National Center for State Courts publication *State Court Model Statistical Dictionary*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case.” Please indicate how cases are defined in your jurisdiction:

- The uniform definition set forth above (a charge or set of charges against a single client arising from a single incident)
- A “case” = All charges against a single defendant
- A “case” = A charge
- A “case” = A prosecution charging instrument (indictment, information, etc.)

2. New Assignments

Please use the table below to indicate the total number of new assignments by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

Unable to obtain data. Cases are not segregated by Counsel.

3. Disposition

Please use the table below to indicate the total number of dispositions by case type by delivery model provider for calendar year 2007.

Unknown. See answer to #2.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

4. Pending Cases

Please use the table below to indicate the total number of pending cases by case type by delivery model provider at the start of calendar year 2007.

See answer to #2

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

5. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

Cases remain open until judgment filed; case remanded; or transferred

6. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

Cases remain open

7. Trials

Please use the table below to indicate the total number of trials by case type by delivery model provider for calendar year 2007.

See answer to # 2

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

D. Contracts

For those jurisdictions employing indigent defense contract counsel only -- Please forward a copy of all contracts related to the representation of indigent defendants for calendar year 2007.

1. Please describe the process for awarding contracts, including bid review team members and criteria for selection:

Unknown due to contract longevity.

E. Assigned Counsel

For those jurisdictions employing private assigned counsel paid at hourly rates only --

1. What hourly rate do you pay private counsel? Is there a different rate for in-court and out-of-court activities? Is there a different rate dependent on seriousness of the case type? Please explain:

Unknown

2. Is there a cap that cannot be exceeded for different case types? Please explain:

Unknown

F. Public Defender Offices

For those jurisdictions employing staffed public defender offices only --

1. Please list the number of employees in each job classification: *N/A*

	Primary Office	Other Office
a. Managing Attorneys	_____	_____
b. Staff Attorneys	_____	_____
c. Investigators	_____	_____
d. Social Workers	_____	_____
e. Paralegals	_____	_____
f. Admin. Assistants	_____	_____
g. Other (Describe: _____)	_____	_____

G. State Public Defender's Office

1. If your county no longer utilizes the State Public Defender's Office, what year did it stop utilizing the Office? Unknown

2. What motivated your county to stop utilizing the Office?

Unknown

3. Please provide any additional comments regarding the State Public Defender's Office that may be useful to the Commission or Supreme Court.

Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or jmccormick@nvcourts.nv.gov with questions, comments, or to discuss timelines.

Thank You

County: Nye

A. Indigent Defense Delivery Model

1. What is the primary type of indigent defense delivery model employed in your county?

- State Public Defender Office
- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

2. What is type of indigent defense delivery model is employed for conflict cases in your county? (Check all that apply)

- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

B. Indigent Defense Funding

1. Indicate the total amount of county funding spent on indigent defense services in 2007 by type of service provider. Please include all monies expended for indigent defense investigations and experts if included as a separate budget item of the courts.

Direct Services
Public Defender Office: \$ _____

Contract Public Defender: \$ 489,950

Conflict Counsel: \$ 403,648

Case Related Expenses (if separate): \$ _____

Percentage of County Budget on Defense: 2%

Percent of County Budget on Justice System: 14%

C. Caseload

1. Definition of a case

The Conference of State Court Administrators and the National Center for State Courts publication *State Court Model Statistical Dictionary*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case.” Please indicate how cases are defined in your jurisdiction:

- The uniform definition set forth above (a charge or set of charges against a single client arising from a single incident)
- A “case” = All charges against a single defendant
- A “case” = A charge
- A “case” = A prosecution charging instrument (indictment, information, etc.)

2. New Assignments

Please use the table below to indicate the total number of new assignments by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

3. Disposition

Please use the table below to indicate the total number of dispositions by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

4. Pending Cases

Please use the table below to indicate the total number of pending cases by case type by delivery model provider at the start of calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

5. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

Left on the books - DA's office obligation to pursue

6. Administratively Closed Cases

A certain percentage of cases are "not active" due to a defendant's failing to show for his next court date. Nationally, many of these "dead" cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases "left on the books" or does your jurisdiction have a policy for such cases. If so, please explain.

7. Trials

Please use the table below to indicate the total number of trials by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly		1							
Private Defense Counsel Under Contract		2							

D. Contracts

For those jurisdictions employing indigent defense contract counsel only -- Please forward a copy of all contracts related to the representation of indigent defendants for calendar year 2007.

1. Please describe the process for awarding contracts, including bid review team members and criteria for selection:

Bid review team members consisted of:
Ron Williams, County Manager, Timaree Koscik,
administrative assistant to the County Manager and
Judy Dyer, Purchasing & Contracts administrator.
Bid documents, criteria & contract attached.

E. Assigned Counsel

For those jurisdictions employing private assigned counsel paid at hourly rates only --

1. What hourly rate do you pay private counsel? Is there a different rate for in-court and out-of-court activities? Is there a different rate dependent on seriousness of the case type? Please explain:

Per NRS - conflict

2. Is there a cap that cannot be exceeded for different case types? Please explain:

PER NRS

F. Public Defender Offices

For those jurisdictions employing staffed public defender offices only --

1. Please list the number of employees in each job classification:

	Primary Office	Other Office
a. Managing Attorneys	_____	_____
b. Staff Attorneys	_____	_____
c. Investigators	_____	_____
d. Social Workers	_____	_____
e. Paralegals	_____	_____
f. Admin. Assistants	_____	_____
g. Other (Describe: _____)	_____	_____

G. State Public Defender's Office

1. If your county no longer utilizes the State Public Defender's Office, what year did it stop utilizing the Office? 1993

2. What motivated your county to stop utilizing the Office?

Contractor had lower bid

3. Please provide any additional comments regarding the State Public Defender's Office that may be useful to the Commission or Supreme Court.

Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or jmccormick@nvcourts.nv.gov with questions, comments, or to discuss timelines.

Thank You

County: Washoe County

A. Indigent Defense Delivery Model

1. What is the primary type of indigent defense delivery model employed in your county?

- State Public Defender Office
- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

2. What is type of indigent defense delivery model is employed for conflict cases in your county? (Check all that apply)

- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

B. Indigent Defense Funding

1. Indicate the total amount of county funding spent on indigent defense services in 2007 by type of service provider. Please include all monies expended for indigent defense investigations and experts if included as a separate budget item of the courts.

Direct Services

Public Defender Office:

\$ 6,685,723

Alternate Public Defender: \$ 1,807,203.00

Contract Public Defender: \$ 876,000

Conflict Counsel: \$ 528,098

Case Related Expenses (if separate): \$ 36,074

Percentage of County Budget on Defense: 2.9%

Percent of County Budget on Justice System: 54.9

C. Caseload

1. Definition of a case

The Conference of State Court Administrators and the National Center for State Courts publication *State Court Model Statistical Dictionary*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case.” Please indicate how cases are defined in your jurisdiction:

- The uniform definition set forth above (a charge or set of charges against a single client arising from a single incident)
- A “case” = All charges against a single defendant
- A “case” = A charge
- A “case” = A prosecution charging instrument (indictment, information, etc.)

2. New Assignments

Please use the table below to indicate the total number of new assignments by case type by delivery model provider for calendar year 2007.

	Murder	Felony & Gross Misdemeanors	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender (A)	15	4952	2233	1752	445	1138	68	4*	611**
Alternate County Staff Public Defender #	6	505		236	200		1	1	1101***
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract #		146		71	42				

(A) Includes conflicts

* Petitions for extraordinary relief.

** Civil Commitments

*** This number is reflection of the Specialty Court cases, which include Drug Court, Diversion Court, and Mental Health Court.

The Alternate Public Defender office and the Conflict Counsel (Private Defense Counsel Under Contract) Agreement began on July 1, 2007. Therefore, both of those offices and the numbers provided are only from July 1, 2007 through Dec. 31, 2007 ONLY (only six months tracked in 2007).

3. Disposition

Please use the table below to indicate the total number of dispositions by case type by delivery model provider for calendar year 2007.

	Murder	Felony & Gross Misdemeanors	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender	17	5686	2257	1779	434	1330	61	4	1037*
Alternate County Staff Public Defender #		192	90	167	29				189**
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract #		146		71	42 (apprx)				

* Civil Commitments

** Specialty Court

The Alternate Public Defender office and the Conflict Counsel (Private Defense Counsel Under Contract) Agreement began on July 1, 2007. Therefore, both of those offices and the numbers provided are only from July 1, 2007 through Dec. 31, 2007 ONLY (only six months tracked in 2007).

4. Pending Cases

Please use the table below to indicate the total number of pending cases by case type by delivery model provider at the start of calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender *							7		
Alternate County Staff Public Defender #		86	7	55	182				1,100**
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract *** #									

* Current case management software cannot create historical report of daily pending cases. Appeals were hand-tallied.

** These figures reflect the cases APD took over from the Alian conflict Attorneys & the Specialty Court cases.

*** These are difficult to ascertain, as each file is assigned to private attorneys and dispositions are not tracked. For the most part, felonies and juveniles are generally concluded within six months. However, family and dependency cases can continue on for some time.

The Alternate Public Defender office and the Conflict Counsel (Private Defense Counsel Under Contract) Agreement began on July 1, 2007. Therefore, both of those offices and the numbers provided are only from July 1, 2007 through Dec. 31, 2007 ONLY (only six months tracked in 2007)

5. Administratively Closed Cases

A certain percentage of cases are “not active” due to a defendant’s failing to show for his next court date. Nationally, many of these “dead” cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases “left on the books” or does your jurisdiction have a policy for such cases. If so, please explain.

PD – Current software program identifies FTA (Failure to Appear) as “not active” and is not reported in pending caseloads. This is reflected right away.

APD – When a defendant fails to appear, his case is closed. It is re-opened again (but not counted again) when the defendant is arrested on the warrant.

6. Administratively Closed Cases

A certain percentage of cases are “not active” due to a defendant’s failing to show for his next court date. Nationally, many of these “dead” cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases “left on the books” or does your jurisdiction have a policy for such cases. If so, please explain.

PD – duplicate question – see #5-

7. Trials

Please use the table below to indicate the total number of trials by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Misdemeanor	Juvenile Delinquency	Dependency & Other Family	Parole/ & Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender									
Primary County Staff Public Defender		19	*	10	*				
Alternate County Staff Public Defender		2							
Assigned Counsel Paid Hourly									
Private Defense Counsel Under Contract									

* Data not collected for 2007-case management software unable to accurately report these numbers at this time.

The Alternate Public Defender office and the Conflict Counsel (Private Defense Counsel Under Contract) Agreement began on July 1, 2007. Therefore, both of those offices and the numbers provided are only from July 1, 2007 through Dec. 31, 2007 ONLY (only six months tracked in 2007).

D. Contracts

For those jurisdictions employing indigent defense contract counsel only -- Please forward a copy of all contracts related to the representation of indigent defendants for calendar year 2007.

1. Please describe the process for awarding contracts, including bid review team members and criteria for selection:
Published Request For Proposals

E. Assigned Counsel

For those jurisdictions employing private assigned counsel paid at hourly rates only --

1. What hourly rate do you pay private counsel? Is there a different rate for in-court and out-of-court activities? Is there a different rate dependent on seriousness of the case type? Please explain: Paid pursuant to NRS 7.125
2. Is there a cap that cannot be exceeded for different case types? Please explain:

F. Public Defender Offices

For those jurisdictions employing staffed public defender offices only --

1. Please list the number of employees in each job classification:

	Primary Office	Other Office
a. Managing Attorneys	<u>7</u>	<u>1 (APD)</u>
b. Staff Attorneys	<u>26</u>	<u>8</u>
c. Investigators	<u>8</u>	<u>2</u>
d. Social Workers	<u>0</u>	<u>0</u>
e. Paralegals	<u>0</u>	<u>0</u>
f. Admin. Assistants	<u>1</u>	<u>0</u>
g. Other (Describe: mitigation sp_)	<u>1</u>	<u>4*</u>
Support Staff	<u>16</u>	

* This number for the APD's office includes two legal secretaries, one receptionist, and one records clerk.

G. State Public Defender's Office

1. If your county no longer utilizes the State Public Defender's Office, what year did it stop utilizing the Office? _____
2. What motivated your county to stop utilizing the Office?

3. Please provide any additional comments regarding the State Public Defender's Office that may be useful to the Commission or Supreme Court.

Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or jmccormick@nvcourts.nv.gov with questions, comments, or to discuss timelines.

Thank You

County: WHITE PINE COUNTY

A. Indigent Defense Delivery Model

1. What is the primary type of indigent defense delivery model employed in your county?

- State Public Defender Office
- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

2. What is type of indigent defense delivery model is employed for conflict cases in your county? (Check all that apply)

- County-Employed Staff Public Defenders
- Assigned Counsel Attorneys Paid on an Hourly Rate
- Private Defense Counsel Under Contract

B. Indigent Defense Funding

1. Indicate the total amount of county funding spent on indigent defense services in 2007 by type of service provider. Please include all monies expended for indigent defense investigations and experts if included as a separate budget item of the courts.

	FY 2007	FY 2008	PROPOSED '09
Direct Services			
Public Defender Office:	<u>\$266,951</u>	<u>\$365,959</u>	<u>\$380,982</u>
Contract Public Defender:	<u>\$</u>	<u></u>	<u></u>
Conflict Counsel:	<u>\$70,000</u>	<u>\$70,000</u>	<u>\$70,000</u>
Case Related Expenses (if separate):	<u>\$20,000</u>	<u>\$20,000</u>	<u>\$20,000</u>
Percentage of County Budget on Defense:	<u>3%</u>	<u>3%</u>	<u>(75% of Judicial Budget)</u>
Percent of County Budget on Justice System:	<u>4%</u>	<u>4%</u>	<u></u>

County Operating Budget for FY 2007: \$11,752,084
County Operating Budget for FY 2008: \$13,962,560
Judicial Budget for FY 2007: \$408,051
Judicial Budget for FY 2008: \$508,452
Proposed Budget for FY 2009: \$523,482

C. Caseload

1. Definition of a case

The Conference of State Court Administrators and the National Center for State Courts publication *State Court Model Statistical Dictionary*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case.” Please indicate how cases are defined in your jurisdiction:

- The uniform definition set forth above (a charge or set of charges against a single client arising from a single incident)
- A “case” = All charges against a single defendant
- A “case” = A charge
- A “case” = A prosecution charging instrument (indictment, information, etc.)

2. New Assignments

Please use the table below to indicate the total number of new assignments by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Gross Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender	1	64	11	15	19		3		
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly		4		8	8				
Private Defense Counsel Under Contract									

3. Disposition

Please use the table below to indicate the total number of dispositions by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Gross Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender		42	9			3	2		5
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly		1							
Private Defense Counsel Under Contract									

4. Pending Cases

Please use the table below to indicate the total number of pending cases by case type by delivery model provider at the start of calendar year 2007.

	Murder	Felony	Gross Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender	1	17	1	2	13				
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly		3		1	8				
Private Defense Counsel Under Contract									

5. Administratively Closed Cases

A certain percentage of cases are “not active” due to a defendant’s failing to show for his next court date. Nationally, many of these “dead” cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases “left on the books” or does your jurisdiction have a policy for such cases. If so, please explain.

Left on the books until requested dismissal from the District Attorney

6. Administratively Closed Cases

A certain percentage of cases are “not active” due to a defendant’s failing to show for his next court date. Nationally, many of these “dead” cases are administratively closed after 90 days to accurately reflect public defenders actual pending caseload. Are such cases “left on the books” or does your jurisdiction have a policy for such cases. If so, please explain.

Same as #5

7. Trials

Please use the table below to indicate the total number of trials by case type by delivery model provider for calendar year 2007.

	Murder	Felony	Gross Misdemeanor	Juvenile Delinquency	Dependency & Other Family	& Parole/ Probation Revocation	Direct Appeal	Other Appeals	Other
State Public Defender		6	1	7	7				
Primary County Staff Public Defender									
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly				2	3				
Private Defense Counsel Under Contract									

D. Contracts

For those jurisdictions employing indigent defense contract counsel only -- Please forward a copy of all contracts related to the representation of indigent defendants for calendar year 2007.

1. Please describe the process for awarding contracts, including bid review team members and criteria for selection:

NA

E. Assigned Counsel

For those jurisdictions employing private assigned counsel paid at hourly rates only --

1. What hourly rate do you pay private counsel? Is there a different rate for in-court and out-of-court activities? Is there a different rate dependent on seriousness of the case type? Please explain:

Rate charged and paid pursuant to NRS 7.125 - \$125 per hour in which the death penalty is sought and \$100 per hour in all other cases

2. Is there a cap that cannot be exceeded for different case types? Please explain:

Pursuant to NRS 7.125 -

Death or Life Cases - \$20,000

Felony and Gross Misdemeanor Cases - \$2,500

Felony and Gross Misdemeanor Case Appeals - \$2,500

NA

F. Public Defender Offices

For those jurisdictions employing staffed public defender offices only --

1. Please list the number of employees in each job classification:

	Primary Office	Other Office
a. Managing Attorneys	_____	_____
b. Staff Attorneys	_____	_____
c. Investigators	_____	_____
d. Social Workers	_____	_____
e. Paralegals	_____	_____
f. Admin. Assistants	_____	_____
g. Other (Describe: _____)	_____	_____

NA

G. State Public Defender's Office

1. If your county no longer utilizes the State Public Defender's Office, what year did it stop utilizing the Office? _____

2. What motivated your county to stop utilizing the Office?

3. Please provide any additional comments regarding the State Public Defender's Office that may be useful to the Commission or Supreme Court.

Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or jmccormick@nvcourts.nv.gov with questions, comments, or to discuss timelines.

Thank You

TAB 10

Meeting Summaries

DRAFT

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

RONALD R. TITUS
Director and
State Court Administrator

JOAN E. NEUFFER, Esq.
Legal Counsel



KAREN BAGGETT
Deputy Director
Administration

ROBIN SWEET
Deputy Director
Judicial Programs & Services

ROBERT W. KASTELITZ
Deputy Director
Information Technology

SUMMARY

INDIGENT DEFENSE COMMISSION, RURAL SUBCOMMITTEE

Thursday, May 15, 2008
Hyatt Regency Lake Tahoe
Castle Peak Rooms A and B
111 Country Club Drive
Incline Village, NV 89451
1:30 p.m.

Prepared by Iridium Technologies Inc., and John McCormick

MEMBERS PRESENT:

The Honorable Michael Cherry, Supreme Court Justice, Chairman of the Indigent Defense Commission
The Honorable A. William Maupin, Supreme Court Justice
The Honorable James Hardesty, Supreme Court Justice

The Honorable Judge Dan Papez, 7th Judicial District Court Judge, Co-Chair
John Lambrose, Assistant Federal Public Defender, Co-Chair

The Honorable Al Kacin, Elko Justice of the Peace/Municipal Court Judge
The Honorable Robert Lane, 5th Judicial District Court Judge
The Honorable Richard Wagner, 6th Judicial District Court Judge
The Honorable Gene Wambolt, Union Township Justice of the Peace
Jeremy Bosler, Washoe County Public Defender
David Carroll, NLADA
Diane Crow, Chief Deputy Nevada State Public Defender
Joni Eastley, Nye County Commission, NACO
John Ellison, Elko County Commission, NACO

Josh Hicks, Counsel to the Governor

Supreme Court Building ♦ 201 South Carson Street, Suite 250 ♦ Carson City, Nevada 89701 ♦ (775) 684-1700 · Fax (775) 684-1723

Regional Justice Center ♦ 200 Lewis Avenue, 17th floor ♦ Las Vegas, Nevada 89101

Fred Lee, Elko County Public Defender
Jim Shirley, Pershing County District Attorney
Matt Stermitz, Humboldt/Pershing County Public Defender
Ken Ward, Lyon County Contract Public Defender

MEMBERS ABSENT:

The Honorable Max W. Bunch, Argenta Justice Court, Justice of the Peace
David Lockie, Esq., Lockie & Macfarlan, Ltd.

OTHERS PRESENT:

The Honorable Tina Brisebill, Pahrump Justice of the Peace
The Honorable Mike Cowley, Meadow Valley Township Justice of the Peace
The Honorable Susan Fye, Crescent Valley Justice of the Peace
The Honorable David Huff, 3rd Judicial District Court Judge
The Honorable Carol Nelson, Lake Township Justice of the Peace
The Honorable Andrew Puccinelli, 4th Judicial District Court Judge
Hy Forgeron, Lander County District Attorney
Rebecca Gasca, ACLU NV
Wes Henderson, NACO
Ted Herrera, Lander County Public Defender
James Jackson, Thorndal and Armstrong
Phil Kohn, Clark County Public Defender
Gary Peck, ACLU NV

AOC STAFF PRESENT:

Ron Titus, AOC Director
Robin Sweet, AOC Deputy Director
John McCormick, AOC Rural Courts Coordinator

CALL TO ORDER

Co-Chair Papez called the meeting to order at 1:35 p.m.

INTRODUCTIONS

Everyone in attendance introduced themselves.

CO-CHAIRS' OPENING REMARKS

Co-Chair Papez said that the Subcommittee has been reconstituted to re-exam issues regarding indigent defense in rural Nevada. The original Indigent Defense Commission had a rural subcommittee, chaired by John Lambrose, and subcommittee worked through many of these issues last year and made recommendations through the Commission to the Supreme Court. Some of these recommendations were included in the January 4, 2008, ADKT 411 Order. He indicated that he had received many comments from other District Judges in the rural areas of the state regarding implementation of the January 4th Order, and that there is a lot of disagreement with the order and questions as to why it is necessary. The Supreme Court held a hearing in early March, in which testimony was offered regarding some of the issues and concerns with the Order as it would affect the rural Nevada. Justice Papez said that after that hearing, the Nevada Supreme Court issued another order in mid-March directing this Subcommittee to be reconstituted, and to re-visit rural issues and make recommendations by December 31, 2008.

Co-Chair John Lambrose gave a brief description of his background in rural Nevada. He stated that he thinks the one thing everyone agrees on is that the funding for indigent defense is skewed in Nevada when it comes to counties that do not have 100,000 people. The current payment schedule for the State Public Defender's Office is that the State only pays 20% and the Counties are paying 80%, and the Counties that do not use the Office must foot the entire bill. He commented that he thinks that the State of Nevada needs to pay for indigent defense.

ADKT 411 ORDERS AND RURAL ISSUES DISCUSSION

Judge Papez raised the issue of necessity of maintaining the defense function's independence from the judiciary. He said that this issue evolved out of problems in Clark County, and newspaper articles about allegations regarding deficiencies with Clark County's contract system. Judge Papez indicated that because the pool of available conflict counsel in rural Nevada is so small, a different approach may need to be taken.

Judge Wagner stated that, statutorily, he thinks there are only two ways to provide counsel for indigents; either through the State Public Defender's Office or a county public defender's office. He indicated that he think the current contract system used in some jurisdictions is not authorized under statute. He opined there should be a public defender association, and that every county should start with putting around \$2,500 to \$5,000 into a fund to start an association wherein public defenders can come together and be trained appropriately to improve the quality of representation.

Judge Wagner said he wants to see the language taken out of the Order that says that it is unethical for a judge to appoint counsel. He is asking the language be changed to say that when a judge appoints counsel contrary to the Code of Ethics, then it has the appearance of impropriety.

James Jackson explained to the attendees his experience with the State Public Defender's office and his views on the funding issue from when he was the State Public Defender in 1991, to the present. He commented he thinks it is the role of a state public defender to be present at the Legislature and to advocate for adequate funding. He also indicated that from his perspective, that whoever is in charge of a public defense agency has an obligation, not only to the clients, but to the counties that he is serving. He indicated that the state of the State, in terms of indigent public defense, is questionable. He thinks the methodology which has been used as third one is contrary to statute and it needs either to be fixed legislatively, or it needs to be addressed by the Supreme Court.

Justice Hardesty said that there has not been a legal evaluation about the State's responsibility versus the counties' responsibility to fund indigent defense, and that the Subcommittee needs to provide the Court with a brief on this topic. Justice Hardesty went on to describe issues with indigent defense that he experienced while on the bench in Washoe County.

David Carroll addressed the Subcommittee on the legal and constitutional aspects of the current funding system. He indicated that all national standards on this point say explicitly it is a state responsibility, not a county responsibility, and the process by which states have gone about doing this supports this assertion. There are now thirty states in which counties have absolutely no financial responsibility to pay for indigent defense, and in three states, the state foots the bulk of the bill. Nevada is in the minority of seventeen states where most the burden is on counties, and within these 17 states, Pennsylvania and Utah are do not provide any state funding. Except for those two, the cost shared by the State in Nevada the lowest percentage of any state, and ranks 48th out of 50.

Mr. Carroll provided a brief history of the right to counsel and the American Bar Association's ten principles for indigent defense. He indicated that the basis for the principles is that the right to counsel system should be free from undue political and judicial influence. He thinks that the public defenders in Nevada are some of the least independent public defenders in the Country. Mr. Carroll commented that there are areas of the State in which there are high case loads and the public defenders have an ethical obligation to refuse cases right now, but they do not because they know that their livelihood is at stake. Most states that have statewide systems have independent commissions made up of appointments from all three branches so that everyone has a vested interest in it, but no one can force undue political appointments on the system. Mr. Carroll believes that the only answer in Nevada is to move to a statewide system, and to have the Association of Counties, district attorneys, and the Trial Judges Association come together and state that this is needed for justice to prevail in Nevada.

Mr. Carroll stated that in working with a subcommittee on a preamble to the performance standards, there has been a lot of talk about exactly what the standards require. A big part of the standards is to train public defenders on what are the appropriate parameters of adequate representation. He feels there is some need to talk about definitions of language, for example, when you talk about appropriate investigations in a misdemeanor case; reading the police report and talking to your client may be the extent of appropriate investigation. It does not mean that you have to go out and get experts on every misdemeanor case. The level of representation goes up as the seriousness of the charges goes up. He also thinks that these standards are very much the accepted practice in the field, and the standards put out by the ABA and by his organization. He also stated that Strickland does not set out the parameters of performance for public defenders. It creates test to see if the ineffectiveness had bias on the case.

It was noted by Judge Wagner that, in his opinion, Strickland says that this is not to improve the performance of the legal counsel; it sets the bottom baseline of ineffective assistance. It says that once you make the standards mandatory, that becomes an interference with the attorney-client representation, and violates the Sixth Amendment. It was stated that there is great inconsistency across the State in the way people are being represented and the way courtrooms are being run. There needs to be a set of standards that are enforceable and apply across the board, and if there is going to be deviation from those, there needs to be a reason for that.

The question was brought up of how appointed counsel panels are developed across the State, and what level of involvement the judge has in the appointment process. Once there is a case going on in that judge's court, to what extent, if any, is the judge involved in the signing off on investigation fees and expert witness fees? The plans that have been submitted to the Supreme Court by Clark and Washoe counties have the judges divested of that responsibility and it goes to a non-judicial officer.

Judge Puccinelli said that he looks at the nature of the case and also at the experience of the counsel; otherwise, it is just rotational. He was asked if he has a panel of lawyers that he looks to. Judge Puccinelli commented that it is a list and they just go straight down the list. Most of the time lawyers are appointed initially by Judge Kacin in Justice Court, but when he does appoint, that's what he looks at. As far as approving requests for investigating fees, he views them as being officers of the court and he routinely grants the fees.

Mr. Carroll said that the lack of attorneys in some rural counties is why some states have moved to state systems. Then there can be some incentives to get young attorneys out to different areas. The system is based upon one entity administering the panel and contract system. This system can increase efficiencies based upon economies of scale.

It was suggested to put a minimum standard on all criminal lawyers when lists of conflict attorneys are created. The point was raised that the conflict attorney used in a case needs to be competent to handle that particular kind of case, and the person selecting the conflict attorney needs to know what attorneys have experience in what types of cases.

Justice Hardesty indicated that the method of selection is a different from the maintenance of a pool of attorneys. One of the issues that was raised in the pleadings before the Supreme Court on ADKT 411 from Pershing and Humboldt was that there is a statute that empowers the judge to appoint counsel. Unless there is a constitutional basis for invalidating that statute or a factual basis for revisiting it that somehow renders it unconstitutional, it seems to be that the court has to revisit the selection question. Currently, under the statute, it is within the purview of the judge. It was suggested that the Subcommittee ought to recognize that and allow the selection process to continue to occur until there is either a constitutional challenge to the statute or a change by the Legislature. It was asked of him if that would be in compliance with ADKT 411 right now. Justice Hardesty replied that it would not be in compliance with the current order, but the question for him is whether that portion of the order was appropriately considered.

One suggestion was to establish some type of manager to call for conflict attorneys. It was also suggested to advertise for lawyers to apply to be a conflict attorney for the State of Nevada.

Mr. Carroll stated that in states that have statewide assigned counsel systems have several layers of attorney qualifications and there are separate sets of criteria; more stringent for those that are expected to handle the more serious cases. In the best states that have assigned counsel systems have an independent commission with a chief executive officer that sets those criteria, and then has a transparent process by which qualify attorneys are added to the panel.

It was suggested by Judge Wagner to use the language 'In jurisdictions where there are three or less district court judges or three or less limited court judges within a single township, the following guideline should be followed: Any appointment which could result in the appearance of impropriety under the judicial code of ethics, such appointment should be carried out by another judge within the district; for district courts by another limited court judge within the township, if available, and if not, by the district judge who has served longest in the district.' The Subcommittee reached consensus that this would solve the problem statewide, and it would be in compliance with the statute.

It was also suggested that there should be guidelines for the appointment process, in order to create a list of the best attorneys for the more serious cases. It was stated that losing the judge out of the process is losing the most important person who has the best knowledge, and can best evaluate who is the best attorney.

Justice Cherry asked what was thought of having the AOC help the Rurals by putting together a panel of lawyers, and administering the system. Attendees discussed financial concerns related to this idea, and the need for the State to pick up the tab for system improvements.

It was asked that if the state foots the bill, does the county get stuck with the State Public Defenders Office. It was stated that the Subcommittee needs to determine whether the State Public Defender is the best vehicle to provide adequate indigent defense. Justice Hardesty said it would be very helpful to

document concerns about the Public Defenders Office and what systemic problems the Office suffers from.

There was consensus that the Subcommittee needs to have some empirical data. The Subcommittee needs to have a standardized idea of how many cases each of the public defenders has with a uniform way to count it. There was also discussion about having a weighted case study done.

There was discussion about the part of the Order having the subcommittee exam the performance, use, and funding of the State Public Defender's Office. Many in attendance opined that the quality of the representation is not where it should be and there is also a leadership void within the State Public Defender's Office.

Judge Papez indicated that if the Supreme Court wants to see a comprehensive review of the State Public Defender's Office with recommendations, then that is what the Subcommittee needs to do.

Diane Crow stated that funding is a big issue, but what she would like to envision, with the Committee's input, for the State Public Defender, is an outside independent commission that oversees all public defense in the State. The commission would be the entity that judges can go to if they are not getting reasonable response from the state public defender, any county public defender, or any contract attorney. She also commented that she thinks that the State Public Defender needs to be an administrative position; someone that truly is out there lobbying with the Legislature, meeting with the commissioners, meeting with the judges, and not handling a caseload. She opined that it comes down to funding and it is not, currently, there. She said she has seen judges appoint conflict attorneys in several counties and she thinks the judges are clearly the best ones to make that decision, or at least someone in their office has to do it with the judge's guidance.

Attendees expressed the concern that many judges have indicated that there is a serious concern about accountability with the State Public Defender's Office. It was stated that not only the court, but the Governor's office and the Legislature would benefit by some real evaluation of the Office and how best to run the statewide system. Another option would be that the State simply fund the counties so that there is local accountability.

Hy Forgeron indicated Lander County has had a contract public defender for eighteen years. Ted Herrera has an office in Battle Mountain, and charges \$62,000 a year to provide public defense for adults and juveniles, 432B representation, and public guardian case representation. These are activities that the State Public Defender system would never consider. The reason they have a contract public defender is because they went through the same problems with lack of attention to the County from the State Public Defender's Office. They have also saved near a half-million dollars by having a contract public defender and not the State Public Defender. He opined that Lander County does not have a public defender crisis, and they have not had a case reversed for ineffective assistance of counsel in the last eighteen years.

There was discussion about the need for experienced conflict attorneys, and whether a statewide system would meet that need. Mr. Carroll stated that a statewide system does not mean government-staffed employees. It could be that it is an administered assigned counsel system that does get a balance between State oversight and local input. The last few states that have gone statewide have not mandated staffed public defenders office for precisely for that reason.

Mr. Carroll indicated he thinks this court could mandate a uniform definition of a case so that everybody is counting cases exactly the same, and require the same type of reporting so that people do know which attorneys are getting how many cases and what types of cases, so they get the factual data. He stated that the National Center of State Courts has promulgated a standard for how to count cases. He suggested that the Subcommittee consider proposing that back to the Court.

It was pointed out that there is going to be a hearing in front of the Supreme Court on July 1st where it will be reported as to what progress the Subcommittee has made. It was suggested that one thing the Subcommittee could do between now and July 1st is to come up with some solid brief in support of why it is the current system for funding is unconstitutional. There was discussion of a lawsuit by the counties, or another party, as a remedy for the situation.

Attendees agreed that the Subcommittee is not in agreement that there should be a State Public Defender's Office, but they are in agreement that there should be State funding for indigent defense, and some sort of independent statewide indigent defense commission.

It was suggested to have all the constituent stakeholders write to the co-chairs with their concerns over local versus State control and other issues pertaining to indigent defense.

Co-Chair Lambrose indicated that the Subcommittee needs to get the specific data from each county as to the caseloads and funding. There was a concern that it would be costly to do a weighted caseload study for each of the separate public defenders' offices, and they would be better off relying on the uniform system definition and cataloging those as an exhibit to the court.

The Subcommittee will be doing their next meeting by telephone. It was asked that everyone send their comments, and direct their questions and concerns, to John McCormick.

It was stated that for those who are not on the Subcommittee that want to be involved in the meeting for input, Mr. McCormick needs their contact information.

The meeting was adjourned at 4:25 p.m.

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

RONALD R. TITUS
Director and
State Court Administrator

JOAN E. NEUFFER, Esq.
Legal Counsel



KAREN BAGGETT
Deputy Director
Administration

ROBIN SWEET
Deputy Director
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Deputy Director
Information Technology

SUMMARY

INDIGENT DEFENSE COMMISSION, RURAL SUBCOMMITTEE

Wednesday, June 25, 2008
Conference Call
10:00 a.m.

Prepared by John McCormick

MEMBERS PRESENT:

The Honorable Michael Cherry, Supreme Court Justice, Chairman of the Indigent Defense Commission
The Honorable A. William Maupin, Supreme Court Justice

The Honorable Judge Dan Papez, 7th Judicial District Court Judge, Co-Chair
John Lambrose, Assistant Federal Public Defender, Co-Chair

The Honorable Al Kacin, Elko Justice of the Peace/Municipal Court Judge
The Honorable Max W. Bunch, Argenta Justice Court, Justice of the Peace
The Honorable Robert Lane, 5th Judicial District Court Judge
The Honorable Gene Wambolt, Union Township Justice of the Peace
Jeremy Bosler, Washoe County Public Defender
David Carroll, NLADA
Diane Crow, Chief Deputy Nevada State Public Defender
Joni Eastley, Nye County Commission, NACO
John Ellison, Elko County Commission, NACO
Fred Lee, Elko County Public Defender

OTHERS PRESENT:

Wes Henderson, NACO

AOC STAFF PRESENT:

John McCormick, AOC Rural Courts Coordinator
Stephanie Heying, Court Services Analyst I

CALL TO ORDER

Co-Chair Papez called the meeting to order at 10:04 a.m.

INTRODUCTIONS

Everyone in attendance introduced themselves.

CO-CHAIRS' OPENING REMARKS

Co-Chairs Papez and Lambrose said they had no specific opening remarks, but both thanked John McCormick for his work related to the Subcommittee.

APPROVAL OF MAY 15, 2008, SUMMARY

The summary of the May 15, 2008, Subcommittee meeting was approved as presented.

RURAL COUNSEL APPOINTMENT LANGUAGE

Co-Chair Papez commented that the compromise language, written by Judge Wagner, included in the meeting materials was the result of much deliberation at the last Subcommittee meeting, and he explained the basics of proposed rule change with respect to ethics independence from the judiciary.

Co-Chair Lambrose said that proposed language was great accomplishment and recognizes the realities of rural Nevada. He indicated that this language is a step on the way to eventually relieving judges of the responsibility to appoint counsel one day. Mr. Lambrose also commented that he appreciated Judge Wagner's hard work in coming up with the compromise language.

Justice Cherry said that it is his hope to have AOC build a rural panel of conflict counsel and administer the system when the time comes.

Ms. Eastley commented that a statewide appellate and post conviction public defender's office would be helpful in rural Nevada.

Diane Crow said that she would like to see the State Public Defender's Office stay in its current role, but that, in the future, it could become such an appellate office.

Judge Wambolt asked for clarification as to if the proposed language would preclude him from making appointments. Co-Chair Papez responded only in the event that making such an appointment could violate the Canons of Ethics or create an appearance of impropriety.

Judge Kacin said that he liked the point on page 2 that allows judges to ask another judge to make the appointment as many rural judges have an excellent knowledge base regarding attorneys.

Co-Chair Papez commented that he thinks it may be time to begin expanding the panel list for rural conflict appointments. Mr. McCormick indicated he would facilitate that process if the Court so wished.

David Carroll said he agrees that proposed language is an excellent way to deal with the practical realities of rural Nevada, but suggested that a preamble be included with the language that indicates that

this rule is an interim step on the way to eventually being able to relieve the judges of appointment responsibility.

Co-Chair Papez said he thought this was good idea, and asked for other comments.

Co-Chair Lambrose said he agreed and that, after reading the county's letters, he thinks the counties could embrace a system that helped to develop a better panel and lessened the burden on them and the judges.

There was a group census that such a preamble should be included, and Mr. McCormick and Mr. Carroll volunteered to write the preamble. Mr. McCormick said he would distribute the language to the group for approval after the preamble is drafted.

CONSTITUTIONALITY OF CURRENT FUNDING SYSTEM

Co-Chair Lambrose said that Mr. Carroll was taking the lead role in writing the requested brief on the Constitutionality of the current Nevada funding system for indigent defense.

Mr. Carroll said that he is working on the brief, and hopes to have it done by the end of the week. He commented that he believes the current Nevada funding system is unconstitutional as applied, and that the 1967 Nevada Supreme Court Case of *Nevada v. Second Judicial District Court*, 86 Nev. 241, 241, indicates that Court recognized that the question of indigent defense and funding would be a problem in the future. Mr. Carroll also said that the recent U.S. Supreme Court decision in *Rothgery v. Gillespie County* reaffirms the right to counsel.

Mr. Carroll said he appreciates the counties' letters and comments and said he thinks it is very important that the counties are heard.

The group discussed the need for state funding of indigent defense and the need for an independent oversight commission for public defense in Nevada. Ms. Crow indicated that she is offering a bill to create such a commission through the Department of Health and Human Services for the 2009 Legislature.

STATE PUBLIC DEFENDER'S OFFICE REPORT

Ms. Crow reported she has been collecting the history of the State Public Defender's Office and hopes to be able to finalize her report soon.

Co-Chair Papez said the report is very important to help determine the continued viability and existence of the State Public Defender's Office.

Ms. Crow said that she is please to report that the State Public Defender's Office budget has not been cut as of yet.

Justice Cherry said that Chief Justice Gibbons had met with Chief Judges Steinheimer and Hardcastle, of the 2nd and 8th Judicial Districts, respectively, and asked then to increase the number of appointments for appellate and post conviction work in their Districts. Ms. Crow commented that the State Public Defender's Office is obligated to pay for these appointments and the Interim Finance Committee is obligated to refund the account that pays for these appointments.

Justice Maupin commented that Court is also interested in appointments being made for evidentiary hearings in which there is a language difference.

PREAMBLE TO THE PERFORMANCE STANDARDS

Mr. McCormick provided an update on the progress of revising the performance standards, including the approval of a preamble that indicates the function of the standards.

Mr. Carroll indicated that Franny Forsman and Nancy Becker are working on resolving differences between the defense bar and the district attorneys.

INDIGENT DEFENSE SURVEY

Mr. McCormick briefed the Subcommittee on the progress of the development and distribution of an indigent defense survey to the counties to find out information on costs, caseloads, etc.

Co-Chair Papez commented that survey will require some effort on the part of the counties and that it is imperative that the local district judges take a lead role in ensuring the survey is completed. Mr. McCormick indicated he would send a copy of the survey to all the rural district judges and the chief judges of the urban courts.

Ms. Eastley requested she be provided a copy of the survey as well. Mr. McCormick said the entire Subcommittee would be provided a copy as soon as the survey is mailed out.

Co-Chair Lambrose said that the cover letter that goes with the survey should indicate that data collection on indigent defense will become a regular practice of the AOC.

Members of the Subcommittee discussed various historical and practical issues associated with indigent defense data collection.

COUNTY FEEDBACK

Co-Chair Papez said it is clear to him from the counties' letters and comments he has received that the counties want independence in providing indigent defense services with the oversight of an independent commission, and that the State should be funding the indigent defense system.

Co-Chair Lambrose said he appreciates all the information the counties have provided thus far.

Wes Henderson provided background information on the "Dillon's Rule" issue and its impact on counties in only allowing them to carry out duties allowed or prescribed by the State legislature. The Subcommittee discussed the impact of "Dillon's Rule" on the State and county relationship in Nevada. It was requested that Mr. Henderson provide this information to Mr. Carroll, and that Mr. Carroll's brief regarding the constitutionality of the current funding system address the "Dillon's Rule" issue as well.

Justice Maupin provided the Subcommittee with two case citations regarding the State and county relationship in Nevada. Mr. McCormick indicated he would e-mail copies of these cases to the Members of the Subcommittee.

Members discussed the impact of the U.S. Supreme Court's decision in *Rothgery v. Gillespie County* on the indigent defense system in Nevada.

Co-Chair Papez reminded everyone that the next ADKT 411 Hearing will be only July 1, and that he a Co-Chair Lambrose will be updating the Court on the Subcommittee's progress thus far. He said that the Subcommittee would set up another conference call to continue working after the next ADKT 411 Hearing.

Co-Chair Lambrose thanked everyone for their participation and especially thanked Ms. Crow, Mr. Carroll, and Mr. McCormick for their work. This sentiment was echoed by Co-Chair Papez.

The meeting was adjourned at 11:05 a.m.

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

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SUMMARY

INDIGENT DEFENSE COMMISSION, RURAL SUBCOMMITTEE

Wednesday, July 23, 2008
Conference Call
10:00 a.m.

Prepared by John McCormick

MEMBERS PRESENT:

The Honorable Michael Cherry, Supreme Court Justice, Chairman of the Indigent Defense Commission
The Honorable A. William Maupin, Supreme Court Justice

The Honorable Judge Dan Papez, 7th Judicial District Court Judge, Co-Chair
John Lambrose, Assistant Federal Public Defender, Co-Chair

The Honorable Al Kacin, Elko Justice of the Peace/Municipal Court Judge
The Honorable Max W. Bunch, Argenta Justice Court, Justice of the Peace
The Honorable Robert Lane, 5th Judicial District Court Judge
The Honorable Gene Wambolt, Union Township Justice of the Peace
Jeremy Bosler, Washoe County Public Defender
David Carroll, NLADA
Diane Crow, Chief Deputy Nevada State Public Defender
Joni Eastley, Nye County Commission, NACO
John Ellison, Elko County Commission, NACO
Fred Lee, Elko County Public Defender
Jim Shirley, Pershing County District Attorney
Ken Ward, Lyon County Contract Public Defender

OTHERS PRESENT:

Nancy Becker, Clark County Deputy District Attorney
Franny Forsman, Federal Public Defender
Wes Henderson, NACO
Brett Kandt, Advisory Council for Prosecuting Attorneys

AOC STAFF PRESENT:

John McCormick, AOC Rural Courts Coordinator
Robin Sweet, Deputy Director for Judicial Programs and Services

CALL TO ORDER

Co-Chair Papez called the meeting to order at 10:05 a.m.

INTRODUCTIONS

Everyone in attendance introduced themselves.

CO-CHAIRS' OPENING REMARKS

Co-Chair Papez commented that he provided the Supreme Court with an oral progress report at the July 1, 2008, ADKT 411 Administrative Hearing, and that the Court requested that the Rural Subcommittee review the Performance Standards during the hearing. He said that Nancy Becker and Franny Forsman had done a tremendous amount of work on the Standards and that they were on the phone today to answer questions.

APPROVAL OF JUNE 25, 2008, SUMMARY

The summary of the June 25, 2008, Subcommittee meeting was approved as presented.

CONSIDERATION OF REVISED PERFORMANCE STANDARDS

Nancy Becker and Franny Forsman provided an update on the Performance Standards and the progress that they have made in resolving issues between the Defense Bar and District Attorneys.

Ms. Becker and Ms. Forsman said that the Subcommittee Members have a report that details the remaining disputed parts of the Standards as well as two versions of the Standards; Version A with the agreed upon compromises, and Version B which includes the minority's changes.

Ms. Becker and Ms. Forsman discussed the main points of the Standards that are still in contention:

- 1) The use of "quality" vs. "high quality" in the capital case standards.
- 2) The minority's objection to the inclusion of mitigation and mental health experts on the capital defense team.
- 3) Issues as to if the Standards should require advisement of collateral consequences.
- 4) Should the defendant be advised of his or her right to appeal even when entering a guilty plea?

Ms. Becker and Ms. Forsman commented that many disputes regarding the Standards were resolved with the drafting and approval of the preamble, and with the understanding that a request will be made to Court to clarify the applicability of the Standards in its next Order.

The Subcommittee discussed the issue of "quality" vs. "high quality" in describing representation.

Subcommittee members discussed the impact of the Standards on the State Public Defender's office, especially in White Pine County.

The Subcommittee discussed the role of the judge in removing ineffective counsel, and providing oversight. Ms. Becker commented that this would not be an issue in the rurals if the Court adopts the Subcommittees compromise language on appointment of counsel.

The Subcommittee discussed their objection to requiring counties to supply training to private counsel to create a qualified pool of attorneys. The group also discussed other issues around training for counsel, and it was suggested that the Supreme Court provide funding for the training. The Subcommittee discussed, in general, their opposition to the imposition of any unfunded mandates on the counties.

The Subcommittee discussed the difficulty in getting SCR 250 qualified counsel in rural Nevada, and the difficulty in finding qualified experts.

John McCormick offered to draft a report regarding the Subcommittee's view on the Standards and forward that to the membership for approval.

Co-Chairs Papez and Lambrose recommended that if any members had other comments on the Standards the comments should be forwarded to Mr. McCormick so he could include the comments when he files the report with Court.

SUBCOMMITTEE PROGRESS REPORTS/UPDATES

David Carroll reported on his progress in drafting a "white paper" on indigent defense funding in Nevada. Co-Chair Lambrose said that the "white paper" will address the constitutionality of the current funding system.

Diane Crow commented that she is continuing to work on her report, but has nothing new to report.

The Subcommittee discussed the counties' progress in returning the indigent defense survey. Judge Bunch commented that since the primary election is over, the counties should have more time to compile the data now.

The meeting was adjourned at 11:30 a.m.

TAB 11

Committee Roster

DRAFT

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TAB 12

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