

**MODEL PLAN FOR THE PROVISION OF APPOINTED COUNSEL  
FOR URBAN COURTS IN NEVADA**

**May 22, 2008**

**Committee Note: The Model Plan has been recommended for Washoe and Clark County as of its writing due to continuing discussion by rural courts of ADKT 411. The Committee does not recommend that a dual system of representation should be permitted in Nevada for Urban and Rural Courts but recognizes that some practical differences in implementation will be required in carrying out the intent of the order in ADKT 411.**

**I. STATEMENT OF POLICY**

**A. Objectives**

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services of appointed counsel, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

2. The further objective of this Plan is to implement the requirements set forth in the Order entered by the Supreme Court of Nevada on January 4, 2008 in ADKT 411: "In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases."

**II. DEFINITIONS**

A. "Representation" includes counsel and investigative, expert and other services.

B. "Appointed attorney" includes private attorneys, both contracted and hourly, Public Defenders and staff attorneys of the Public Defender offices.

**III. PROVISION OF REPRESENTATION**

A. Mandatory: Representation Shall be provided for any financially eligible person who:

1. is charged with a felony;
2. is charged with a misdemeanor in which the prosecution is seeking jail time (incarceration);

3. is alleged to have violated probation or other supervision and jail time a sentence of confinement may be imposed;
4. is a juvenile alleged to have committed an act of juvenile delinquency;
5. is subject to commitment pursuant to NRS 433A.310;
6. is seeking relief from a death sentence pursuant to NRS 34.724(1);
7. is in custody as a material witness;
8. is entitled to appointment of counsel under the Sixth Amendment to the U.S. Constitution or any provision of the Nevada Constitution, or when due process requires the appointment of counsel, or the judge is likely in impose jail time;
9. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
10. faces loss of liberty for criminal contempt;
11. has received notice that a grand jury is considering charges against him/her and requests appointment of counsel.

B. Discretionary: Whenever a court determines that the interests of justice so require, representation may be provided for any financially eligible person who:

1. is charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized;
2. is seeking post-conviction relief, other than from a death sentence, pursuant to NRS 34.724(1).
3. is charged with civil contempt who faces loss of liberty;
4. has been called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
5. faces any other case in which the interest of justice requires appointment of counsel
6. is party to a dependency case in which termination of rights is a possibility

### C. When Counsel Shall be Provided

Counsel shall be provided to eligible persons within 72 hours or as soon as feasible after their first appearance before a judge, when they are formally charged or notified of charges if formal charges are sealed, or when a Justice of the Peace, Municipal Judge or District Judge otherwise considers appointment of counsel appropriate.

D. Number and Qualifications of Counsel in Capital Cases

1. Number: Two lawyers must be appointed as soon as possible in all open murder cases which are reasonably believed to result in a capital charge.
2. Qualifications: Appointment of attorneys to represent defendants charged in capital cases shall comport with SCR 250 and ADKT 411.

E. Eligibility for Representation

1. Financial Eligibility: A person shall be deemed “indigent” who is unable, without substantial hardship to himself or his dependents, to obtain competent, qualified legal counsel on his or her own. “Substantial hardship” is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in public housing, or earn less than 200 percent of the Federal Poverty Guideline. A defendant is presumed to have a substantial hardship if he or she is currently serving a sentence in a correctional institution or housed in a mental health facility or is a minor. Defendants not falling below the presumptive threshold will be subjected to a more rigorous screening process to determine if their particular circumstances, including seriousness of charges being faced, monthly expenses, and local private counsel rates, would result in a substantial hardship were they to seek to retain private counsel.

2. Screening for Eligibility: [The Pretrial Services Agency, Court Administrator or other administrative agency] shall conduct any screening for financial eligibility and provide a recommendation to the court with regard to eligibility of the defendant for the services of appointed counsel based upon the provisions set forth in subsection (1) above. Appointed Counsel may assist in providing information during the screening but shall not be asked to make a recommendation with regard to eligibility.

3. Partial Eligibility: If a court determines that a defendant is able to afford counsel but cannot be effectively represented due to inability to pay for appropriate services such as investigators, experts or other services, the court shall order reasonably necessary services be provided at no cost to the defendant, subject to the procedures

established in each jurisdiction for the approval and payment of fees and expenses.

4. Disclosure of Change in Eligibility: If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as privileged communication, counsel shall advise the court.

5. Appointment of Counsel in Juvenile Matters: In Juvenile Delinquency matters filed with the court, the juvenile should be presumed to be indigent. The court may order the parents of the juvenile to reimburse the county for the reasonable attorney fees, whether Public Defender, contract, or appointed counsel (NRS 62E.300) based on ability to pay .

#### IV. APPOINTMENT OF THE PUBLIC DEFENDER

##### A. Determination of Conflict of Interest

The Public Defender shall, as soon as practicable, upon appointment, conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the defendant. If such a conflict is determined by the Public Defender to exist, such fact shall be brought to the attention of the court as soon as possible. In no instance, shall the Public Defender be appointed to represent co-defendants in a case.

##### B. Assignment of Attorneys

The determination of which attorney within the office of the Public Defender shall be assigned to any case rests solely within the discretion of the Public Defender.

##### C. Complaints by Clients

The Public Defender shall maintain a system for receipt and review of written complaints made by clients.

#### V. APPOINTMENT OF PRIVATE ATTORNEYS

##### A. Contract and Hourly Attorneys

###### 1. Contract Attorneys:

a. Compensation of Contract Attorneys

If a contract is employed for appointment of counsel, compensation may be based either on an hourly basis, a flat fee basis, or a combination of both. If the contract is based on a flat fee basis, the contract should consider the following factors:

1. The average overhead for criminal defense practitioners in the locality;
2. The number of assignments expected under the contract;
3. The hourly rate paid for all appointed counsel; and
4. The ability of the appointed attorney to comply with the Performance Standards for Appointed Counsel as adopted and amended by the Nevada Supreme Court.

2. Categories of Assigned Counsel

Qualified Appointed counsel will be selected for appointments in the following areas:

[The [court/contract administrator/Appointed Counsel Administrator] may choose to create lists in specialty areas, e.g. Juvenile, Appellate, Misdemeanor, Life sentence/death-attorneys may be appointed to multiple lists]

3. Assignment of Cases

Assignment of counsel to a courtroom or to a case may not be performed by the judiciary. The assignment shall be made in the following fashion:

a. Non-hourly Representations: In courts using contract attorneys who are not paid hourly, in all cases which cannot be handled by the Public Defender or the Special Public Defender, an attorney will be assigned by [e.g. the Appointed Counsel Administrator, the Contract Attorneys Administrator] except in cases carrying a penalty of life or when the [court/Appointed Counsel Administrator] determines the complexity of the cases or the severity of the penalty are such as to necessitate the appointment of an hourly attorney.

b. Hourly Representations: In all cases that have a possible penalty of life-time imprisonment or death, that cannot be handled by the Public Defender or Special Public Defender, counsel shall be selected from a list of qualified attorneys maintained by [e.g. Appointed Counsel Administrator]. Hourly compensation should be provided for work

directly related to the filing of any notice that a sentence of life imprisonment will be sought under NRS 207.010(b) (Habitual Offender statute).

## B. Selection of Panel of Attorneys

1. Appointed Counsel Selection Committee: The [Court Administrator, Assigned Counsel Administrator, or other] shall establish a committee to review the qualifications of applicants for contract or hourly appointments, to review the list of attorneys from which appointments are made in hourly cases, to determine which attorneys shall be selected for appointments in the district and to [other duties].

2. Composition of Selection Committee: The committee shall be made up of [number] members. The committee will be composed of members from a variety of stakeholders concerned with the integrity of indigent criminal defense. No member of the committee should have a pecuniary interest in the outcome of the attorney selection process or be in any way legally or financially related to any attorney whose qualifications will be evaluated. Organizations may designate representatives from bar associations and groups, e.g. State Bar of Nevada, Nevada Attorneys for Criminal Justice, [Clark/Washoe] Bar Associations, National Bar Association, Asian Bar Association [other Associations]. Additionally, a designee of the Public Defender, Special Public Defender and the Federal Public Defender shall be members of the committee. Additionally, the committee will be free from any judicial or prosecutorial involvement.

3. Qualifications of Appointed Counsel: The Selection Committee shall determine the minimum qualifications for all Appointed Counsel and shall determine any additional qualifications required for cases of exceptional difficulty such as death penalty and sexual assault cases. Inquiries on the application should reflect those minimum qualifications.

4. Review of Applications and Continuing Eligibility: The Selection Committee shall meet at least once a year and shall solicit input from judges, and others familiar with the practice of criminal defense, shall review any complaints from clients and the history of participation in training of each applicant and each contract or hourly attorney receiving appointments to determine eligibility and continuing participation.

5. **Responsibility Cannot be Delegated:** While appointed counsel may receive assistance from associate attorneys, participants in a mentorship program, or other attorneys deemed qualified by the Selection Committee, in carrying out his/her responsibilities, appointed counsel cannot delegate responsibilities for representation to another attorney. All substantive court appearances must be made by an attorney who has been determined to be qualified by the Selection Committee.

6. **Complaints by Clients:** Complaints from clients, judges or the public about representation by appointed counsel shall be transmitted to [Appointed Counsel Administrator, Court Administrator, other] for consideration by the Selection Committee in evaluation of appointed counsel.

C. Payment of Fees and Expenses of Private Attorneys

[insert details of process of review of fees and expert/investigator expenses]

VI. MENTORSHIP AND TRAINING

A. Mentoring Programs: If the Selection Committee determines that the ends of justice will be served by selection of attorneys who do not possess the requisite experience as determined by the committee, a mentoring program should be established to insure that the inexperienced attorney will be provided supervision and mentoring from an experienced criminal defense attorney. In no instance shall an attorney who has not tried at least one felony trial be permitted to try a felony case without an experienced criminal defense attorney sitting as "second chair."  
[insert details here of a mentoring program]

B. Annual Training: An intensive training program shall be conducted once each year for all private attorneys who receive appointments to criminal cases. The program shall include training in bail and release, motions practice, search and seizure, evidentiary issues and trial practice, appeals and post-conviction practice. All contract and hourly appointed attorneys shall attend. Attorneys who are new members of the contract or hourly lists are required to attend in order to receive any further appointments.

C. Periodic Training: Periodic training events will be conducted throughout the year on issues of interest to appointed counsel.

D. Creation and Coordination of Training: [ \_\_\_\_\_ ] shall be responsible for coordinating, scheduling and creating the training events described above.

## VII. DUTIES OF APPOINTED COUNSEL

A. Standards: The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person. Representation shall be provided in compliance with the Performance Standards for Representation of Indigent Defendants adopted by the Supreme Court.

B. Professional Conduct: Attorneys appointed under this Plan shall conform to the highest standards of professional conduct, including but not limited to the provisions of the Nevada Rules of Professional Conduct.

C. No Receipt of Other Payment: Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.

D. Continuing Representation: Once counsel is appointed, counsel shall continue representation until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order. If appointed counsel is relieved, such counsel must assist successor counsel in securing the file and other necessary information to insure that all deadlines are met, including those applicable to post-conviction matters.

## VIII. APPOINTED COUNSEL ADMINISTRATOR

A. Selection

B. Duties



# Nevada Supreme Court Indigent Defense Commission Rural Subcommittee



## Report and Recommendations

Justice Michael A. Cherry  
Chairman, Indigent Defense Commission

Judge Dan L. Papez, Seventh Judicial District Court  
Co-Chair, Rural Subcommittee

John Lambrose, Esq., Assistant Federal Public Defender  
Co-Chair, Rural Subcommittee

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Supreme Court of Nevada

**Indigent Defense Commission**  
**Rural Subcommittee Report**

**Table of Contents**

Letter from the Co-Chairmen.....	Tab 1
Summary.....	Tab 2
Recommendations.....	Tab 3
White Paper on Delegation of Indigent Defense Duties to the Counties.....	Tab 4
Nevada Association of Counties Funding Bill Draft.....	Tab 5
Independent Oversight Commission.....	Tab 6
Appointment of Conflict Counsel/Billing.....	Tab 7
Report and Comments on the Performance Standards.....	Tab 8
Report on the State Public Defender’s Office.....	Tab 9
Indigent Defense Data and Surveys.....	Tab 10
Meeting Summaries.....	Tab 11
Committee Roster.....	Tab 12

TAB 1

Letter from the Co-Chairmen



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DAN L. PAPEZ  
DISTRICT JUDGE

October 28, 2008

WHITE PINE  
EUREKA, AND LINCOLN COUNTIES  
STATE OF NEVADA

Chief Justice Mark Gibbons  
Justice Michael S. Cherry  
Justice Michael L. Douglas  
Justice James W. Hardesty  
Justice A. William Maupin  
Justice Ron D. Parraguirre  
Justice Nancy M. Saita

201 South Carson Street  
Carson City, Nevada 89701

Re: Final Report - Indigent Defense Commission, Rural Subcommittee

Dear Chief Justice Gibbons and Members of the Court:

On behalf of the Rural Subcommittee of the Indigent Defense Commission, my co-chair John Lambrose and I are pleased to submit our final report to the Court. Pursuant to the Order of this Court issued on March 21, 2008, and on July 8, 2008, we have examined and are reporting on the following issues: (1) the appointment of conflict counsel and approval of fees in rural jurisdictions; (2) the obligation of state government to totally fund the delivery of indigent defense services in all counties of Nevada; (3) the use, funding and performance of the State Public Defender's Office in the rural counties; (4) the creation of an independent oversight board to oversee the delivery of indigent defense services in Nevada; (5) the method of delivery of indigent defense services in the various counties of Nevada; and (6) the revised performance standards.

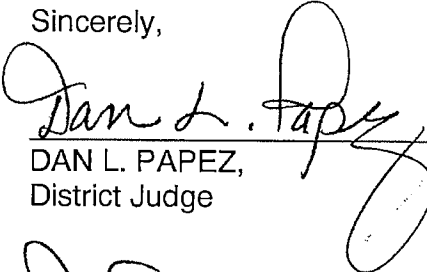
In undertaking this assignment, we have provided information and data developed in this endeavor to all members of the Subcommittee, to members of the Indigent Defense Commission, and to other interested persons and entities in an effort to seek suggestions, comments and a review of our work from all corners of the State. The input that we received spurred much discussion on these issues and was helpful in developing our final recommendations.

October 28, 2008

While all of the issues reviewed and discussed by the Subcommittee are important and pose their individual challenges, we believe the most important issue, an issue of constitutional magnitude, is whether state government is required by the Sixth Amendment, as discussed in *Gideon vs. Wainwright*, 372 U.S. 335, 344 (1963), to fund 100% of the cost of indigent defense services in all counties of Nevada. We believe the points and authorities submitted in Tab 5 provide a powerful and persuasive argument that state government, and not county government, is responsible for such costs. Appropriate funding of indigent defense services is necessary to ensure the uniform quality of representation in all counties of Nevada. We therefore urge the Court to carefully consider this matter to the end that our constitutional mandates are met.

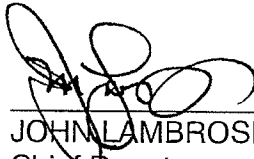
Finally, let me thank my co-chair John Lambrose, and AOC Rural Court Coordinator, John McCormick for their hard work and the many hours spent on this project. Let me thank as well members of the Subcommittee and others who provided comments and input on these issues. A special thanks goes to David Carroll and his team for the excellent white paper they prepared on the funding issue.

Sincerely,



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DAN L. PAPEZ,  
District Judge



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JOHN LAMBROSE  
Chief Deputy  
Federal Public Defender

DLP/wjl

TAB 2

Summary

## Summary

The Rural Subcommittee of the Nevada Supreme Court's Indigent Defense Commission presents the following report and five key recommendations after re-examining the indigent defense situation in rural Nevada since March 2008. The reconstituted Subcommittee led by Judge Dan Papez and John Lambrose put much thought and work into the following recommendations and report and asks the Court consider it fully.

The Subcommittee firmly and unanimously believes that it the responsibility of the State of Nevada to fully fund indigent defense throughout the state, in accordance with *Gideon*, in order to ensure that each citizen of Nevada, regardless of where they live, is afforded the full equal protection of the law when accessed of a crime. Support for this argument can be found throughout the work and deliberations of the Subcommittee, but is best detailed in the letter offered by the National Legal Aid and Defender Association, the American Civil Liberties Union, the NAACP Legal Defense and Education Fund, the Charles Hamilton Huston Institute for Race and Justice, and the National Association of Criminal Defense Lawyers.

This recommendation of the Subcommittee is firmly based upon the data contained herein (Tab 9) that shows rural counties are in crisis in terms of indigent defense, one with a caseload of almost 2,000 per contract lawyer. Three of the Subcommittee's remaining four recommendations are also predicated on the idea that the State provide full funding.

The Subcommittee recognizes that retaining county choice in indigent defense delivery models is imperative in order to best serve local populations, and hence, the counties should be free to choose an appropriate delivery model as long as it complies with the Court's performance standards, potential caseload standards, and is subject to independent oversight.

The Subcommittee recommends the creation of a statewide indigent defense oversight committee, that can work to improve the delivery of service, develop standards for presentation to the court, and advocacy for the cause of public defense. Most importantly this board will ensure the accountability of public defenders and appointed counsel, and ensure that counsel is free to act in the best interest of their clients.

The Rural Subcommittee recognizes the practical realities currently at work in rural Nevada, and as such, requests that the Court adopt the language contained in Tab 6 of this report, to allow for the continued involvement of the judiciary in the appointment of counsel and payment of fees, while providing a sound methodology to avoid the appearance of impropriety. The Subcommittee further recognizes that this is only an interim step until a system of appointment and payment can be developed that relieves the judges and counties of the burden, while retaining the expertise of the judges in selection and administration of counsel. This could be handled, as the Chairman of the Indigent Defense Commission suggested, by an office within the Administrative Office of Courts, or under the purview of the statewide indigent defense commission.

Finally, the Subcommittee offers a critique of the State Public Defender's Office (Tab 8) as a foundation for its recommendation that the Office be fully funded by the State and made an independent agency no longer housed in the Department of Health and Services.

The Subcommittee also offers its comment on the performance standards to be implemented April 1, 2009 in Tab 7.



TAB 3

Recommendations  
(Annotated)

**Indigent Defense Commission**  
**Rural Subcommittee**  
(Annotated)

**Recommendations**

1. The Rural Subcommittee recommends that the State of Nevada accept its constitutional responsibility to totally fund all aspects of the delivery of indigent defense services in all counties of Nevada.<sup>1</sup>
2. Each county of Nevada should be free to choose its own indigent defense delivery system, provided that system conforms to performance standards, caseload standards, and is subject to the oversight of an independent board.<sup>2</sup>
3. That the State of Nevada create and totally fund an independent, statewide oversight board to oversee the delivery of indigent defense services in Nevada. The board should consist of members from all three branches of government at both the state and local level, the State Bar, and other interested persons. The board will provide a source of accountability for indigent defense services.<sup>3</sup>
4. Regarding the appointment of indigent defense conflict counsel and the approval and payment of attorneys' fees in such cases in the rural counties, the Nevada Supreme Court should adopt the proposed rule stated in Tab 6. This matter should be reserved for review and modification in the event that a comprehensive and flexible statewide approach suitable to the unique circumstances of rural jurisdictions is developed at some future time.
5. The office of the Nevada State Public Defender must be adequately and totally funded by the State of Nevada. The history of the State Public Defender's Office since its creation to present demonstrates that it has been and continues to be inadequately funded, all to the detriment of indigent persons requiring these services.<sup>4</sup> Attorney salaries must be made competitive with like positions,<sup>5</sup> attorney training must be improved,<sup>6</sup> investigative services must be adequately funded,<sup>7</sup> and the Office should not be administered under the direction of the Department of Health and Human Services.<sup>8</sup>

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<sup>1</sup> 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. 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, for example, 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. And, indeed, thirty states now relieve their counties entirely of having to shoulder any funding responsibilities for the right to counsel (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).

The obligation of states to fund right to counsel services is more fully set out in a white paper submitted to the Nevada Supreme Court and drafted by the National Legal Aid & Defender Association, the American Civil Liberties Union, NAACP – Legal Defense & Education Fund, Inc., the National Association of Criminal Defense Lawyers, and the Charles Hamilton Houston Institute for Race & Justice at Harvard Law School. (Attached as Tab 4)

<sup>2</sup> The need to balance the interest of the state to ensure uniformity and oversight and the interests of counties to have services delivered in a manner that recognizes the unique culture of each local jurisdiction and court is inherently recognized in national standards. Specifically, ABA *Principle 2* allows for systems consisting of staffed public defender offices (where caseload warrants one), part-time defenders, and/or controlled assigned counsel systems (*Principle 2: "Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar. The private bar participation may include part time defenders, a controlled assigned counsel plan, or contracts for services."*) A "sufficiently high" caseload (as described in detail in NAC Standard 13.5 and ABA Standard 5-1.2), is noted in the ABA *Ten Principles* as meaning that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases is enough to support meaningful involvement of the private bar. N.R.S. 206.010's requirement that counties with a population of over 100,000 must create a county office of public defender complies with this standard.

More importantly, a number of states – especially those of large geographic expanse – have created statutory language that balances such state and local interests in a way that could serve as a model for Nevada including Montana and New Mexico, amongst others. The legislative intent of the Louisiana Public Defender Act of 2007 (R.S. 141 §1B) perhaps exemplifies this best: "In recognition of its mandates under both the United States and Louisiana constitutions, the legislature enacts the Louisiana Public Defender Act of 2007 to provide for all of the following: (1) Ensuring that adequate public funding of the right to counsel is provided and managed in a cost-effective and fiscally responsible manner. (2) Ensuring that the public defender system is free from undue political and judicial interference and free of conflicts of interests. (3) Establishing a flexible delivery system that is responsive to and respectful of jurisdictional variances and local community needs and interests. (4) Providing that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state. (5) Providing for statewide oversight with the objective that all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding. (6) Providing for the ability to collect and verify objective statistical data on public defense workload and other critical data needed to assist state policymakers in making informed decisions on the appropriate funding levels to ensure an adequate service delivery system. (7) Providing for the development of uniform binding standards and guidelines for the delivery of public defender services and for an effective management system to monitor and enforce compliance with such standards and guidelines."

<sup>3</sup> The first of the ABA's *Ten Principles* addresses the importance of independence in indigent defense systems, explicitly limiting judicial oversight -- and calls for the establishment of an independent oversight board whose members are appointed by diverse authorities, so that no single official or political party has unchecked power over the indigent defense function [ABA *Principle 1*: "The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To

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safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.” See also: U.S. Department of Justice, Office of Justice Programs report, *Improving Criminal Justice Through Expanded Strategies and Innovative Collaborations: A Report of the National Symposium on Indigent Defense*: “The ethical imperative of providing quality representation to clients should not be compromised by outside interference or political attacks.” (NCJ 181344, February 1999, at 10.); “The mediator between two adversaries cannot be permitted to make policy for one of the adversaries.” (NSC Report, at 220, citing National Advisory Commission on criminal Justice Standards and Goals (1973), commentary to Standard 13.9).]

While the vast majority of judges strive to do justice in all cases, political pressures, administrative priorities such as the need to move dockets, or publicity generated by particularly notorious crimes can make it difficult for even the most well-meaning judges to maintain their neutrality. The importance of keeping the judiciary out of the day to day management of the public defense system was made clear by the U. S. Supreme Court as early as the *Powell* decision. Bemoaning the involvement of the state court judge in arranging the defense of the Scottsboro Boys, the Court remarked, “[H]ow can a judge, whose functions are purely judicial, effectively discharge the obligations of counsel for the accused? He can and should see to it that, in the proceedings before the court, the accused shall be dealt with justly and fairly. He cannot investigate the facts, advise and direct the defense, or participate in those necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional.” [Quoting Justice George Sutherland, *Powell v. Alabama*, 287 U.S. 45 (1932)].

Many states have met the call for independence by placing the authority for oversight of the state’s indigent defense system with a statewide indigent defense commission. National standards call for the creation of independent oversight commissions as a means of insulating the defense function from these types of undue political and judicial interference. [See: 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. The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics. No single branch of government should have a majority of votes on the Commission. Organizations concerned with the problems of the client community should be represented on the Commission. A majority of the Commission should consist of practicing attorneys. The Commission should not include judges, prosecutors, or law enforcement officials.”]

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. As an interim step to a full statewide indigent defense commission, some states -- California, Idaho, Illinois, Michigan and Washington -- have created state funded, appellate defender offices overseen by commissions though trial-level services remain funded and administered at the county level. Other states (Indiana, Ohio, South Carolina and Texas for example) have what is classified as “partial” commissions – or centralized, statewide indigent defense assistance boards that offset local indigent defense funding (to varying degrees) if the counties meet certain state standards but lacking regulatory authority to enforce compliance. Whereas in 1983, 33 states had no commission whatsoever, only 16 remain – including Nevada - that have made no move to a commission format at all (ME, VT, WA, NM, AZ, SD, UT, WY, NY, PA, AL, IA, NJ, RI, DE, NV).

One function of the Nevada statewide commission should be the direct oversight of assigned counsel services including qualification of attorneys and payment of vouchers in regions of the state where either primary or conflict services require paying the private bar on hourly fees. National standards again require that assigned counsel services not be ad-hoc. Besides requiring state funding for indigent defense services and flexible deliver systems that includes the private bar, ABA *Principle 2* states: “*The appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.*”

<sup>4</sup> The historical failures of the various Nevada indigent defense systems is detailed in the white paper submitted to the Nevada Supreme Court and drafted by the National Legal Aid & Defender Association, the American Civil Liberties Union, NAACP – Legal Defense & Education Fund, Inc., the National Association of Criminal Defense Lawyers, and the Charles Hamilton Houston Institute for Race & Justice at Harvard Law School. (See again Tab 4)

<sup>5</sup> In calling for public defenders to have parity with prosecutors in terms of salaries and access to investigators and experts, ABA *Principle 8* states: “*There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let*

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primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative and other litigation support services. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.”

<sup>6</sup> All national standards, including ABA *Principle 6*, require attorneys representing indigent clients in criminal proceedings to have the appropriate experience to handle a case competently. [Principle 6 of the ABA *Ten Principles* demands that “[d]efense counsel’s ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.” See also *Performance Guidelines for Criminal Defense Representation* (NLADA 1995), Guidelines 1.2, 1.3(a); *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (ABA 1989), Guideline 5.1.]

Policy-makers should not assume that an attorney who is newly admitted to the bar is skilled to handle any type of case or that even an experienced real estate lawyer would have the requisite skill to adequately defend a person accused of a serious sexual assault. ABA *Principle 6* acknowledges that attorneys with basic skills can effectively handle less complicated cases and those with less serious potential consequences. However, significant training, mentoring, and supervision are needed to foster the budding skills of even the most promising young attorney before allowing her to handle more complex cases.

The systemic need to foster attorneys is the thrust of the call for on-going training encapsulated in ABA *Principle 9*. For example, new-attorney training is essential to cover matters such as how to interview a client, the level of investigation, legal research and other preparation necessary for a competent defense, trial tactics, relevant case law, and ethical obligations. Effective training includes a thorough introduction to the workings of the indigent defense system, the district attorney’s office, the court system, and the probation and sheriff’s departments, as well as any other corrections components. It makes use of role playing and other mock exercises and videotapes to record student work on required skills such as direct and cross-examination and interviews (or mock interviews) of clients, which are then played back and critiqued by a more experienced attorney or supervisor.

As *Principle 9* indicates, training should be an on-going facet of a public defender agency (“*Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.*”) Skills need to be refined and expanded, and knowledge needs to be updated as laws change and practices in related fields evolve. As the practice of law grows more complex each day, even the most skilled attorney practicing criminal law must undergo training to stay abreast of such continually changing fields as forensic sciences and police eye witness identification procedures, while also learning to recognize signs of mental illness or substance abuse in a client. [Commentary to the ABA *Standards for Providing Defense Services* views attorney training as a “cost-saving device” because of the “cost of retrials based on trial errors by defense counsel or on counsel’s ineffectiveness.” The Preface to the NLADA *Defender Training and Development Standards* states that quality training makes staff members “more productive, efficient and effective.” [www.nlada.org/Defender/Defender\\_Standards/Defender\\_Training\\_Standards](http://www.nlada.org/Defender/Defender_Standards/Defender_Training_Standards).]

Such training should not be limited to theoretical knowledge. Defense practitioners also must gain practical trial experience by serving as co-counsel in a mentoring situation on a number of serious crimes, and/or having competently completed a number of trials on less serious cases, *before* accepting appointments on serious felonies. Moreover, the authority to decide whether or not an attorney has garnered the requisite experience and training to begin handling serious cases as first chair should be given to an experienced criminal defense lawyer who can review past case files and continue to supervise, or serve as co-counsel, as the newly qualified attorney begins defending her initial serious felony cases – as demanded by ABA *Principle 10*. [“*Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.*”) Without supervision, attorneys are left to determine on their own what constitutes competent representation and will often fall short of that mark.

<sup>7</sup> See note 5.

<sup>8</sup> Nevada is the only state that has found it proper to create a state public defender system as a sub-department of another Executive Branch agency – in this case the Department of Health & Human Services (HHS).

TAB 4

White Paper on Delegation of Indigent  
Defense Duties to the Counties

September 2, 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

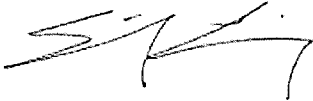
In Care Of:  
The Nevada Supreme Court  
201 South Carson Street  
Carson City, Nevada 89701  
(775) 684-1600

**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,



Emily Chiang, Racial Justice Program  
American Civil Liberties Union



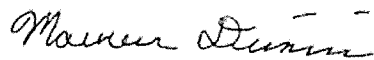
Johanna Steinberg, Asst. Counsel  
Criminal Justice Project, NAACP  
Legal Defense & Educational Fund,  
Inc.



Charles J. Ogletree, Jr.  
Jesse Climenko Professor of Law &  
Executive Director of the Charles Hamilton  
Houston Institute for Race and Justice



David J. Carroll, Research Director  
National Legal Aid & Defender  
Association



Maureen Dimino, Indigent Defense Counsel  
National Association of Criminal Defense Lawyers

## *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.<sup>1</sup>

### **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 (4<sup>th</sup> 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).

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<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>2</sup> 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,<sup>3</sup> appeals of right,<sup>4</sup> and in some probation and parole proceedings.<sup>5</sup> 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.”<sup>6</sup>

In 1969, only four states had state-funded indigent defense systems.<sup>7</sup> 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.<sup>8</sup> Another three states

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

<sup>4</sup> *Douglas v. California*, 372 U.S. 353 (1963).

<sup>5</sup> *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).

<sup>6</sup> 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.”

<sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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%.

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<sup>9</sup> 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).

<sup>10</sup> 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.

<sup>11</sup> 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 standards<sup>12</sup> and increasingly are viewed as violating attorney ethical standards.

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<sup>12</sup> 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).<sup>13</sup> In 1997, after several years of study, the Task Force issued a report<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

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

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<sup>13</sup> 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.

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

<sup>15</sup> 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/legal/services/sclaid/defender.html](http://www.abanet.org/legal/services/sclaid/defender.html).)

<sup>16</sup> 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.<sup>17</sup>

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

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<sup>17</sup> *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.<sup>18</sup> 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.<sup>19</sup> 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%.<sup>20</sup> 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.<sup>21</sup> 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

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<sup>18</sup> See NACDL Testimony before Nevada Supreme Court (Dec. 20, 2007).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *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.<sup>22</sup> 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.<sup>23</sup> 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 Americans<sup>24</sup>**

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.<sup>25</sup> 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

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<sup>22</sup> 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.

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

<sup>24</sup> 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.

<sup>25</sup> 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.<sup>26</sup> Between 2006 and 2007 alone, Nevada saw a 5% increase in its prison population.<sup>27</sup> 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 19<sup>th</sup> consecutive year, with an overall 56% increase in resident population between 1996 and 2006.<sup>28</sup> During this same time period, the Nevada prison population increased 58%.<sup>29</sup> 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.<sup>30</sup> Nationally, Nevada has the 14<sup>th</sup> highest incarceration rate of African Americans.<sup>31</sup> Nevada incarcerates African Americans at nearly five (4:7) times the rates of whites.<sup>32</sup>

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

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<sup>26</sup> Pew Center on the States, Public Safety Performance Project, Work in the States: Nevada at 1.

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

<sup>28</sup> Pew Center on the States, *Nevada State Profile*.

<sup>29</sup> *Id.*

<sup>30</sup> Sentencing Project, see note 25, at 6.

<sup>31</sup> *Id.*

<sup>32</sup> *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.

TAB 5

Nevada Association of Counties Funding  
Bill Draft

SUMMARY—Requires the State Public Defender to provide defense services to indigent persons in counties without county public defender offices and to fully fund such services. (BDR 20-457)

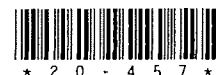
FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Yes.

AN ACT relating to public defenders; authorizing the creation and discontinuation of county public defender offices; requiring the State to reimburse counties for expenditures made in providing defense services to indigent persons; requiring the State Public Defender to establish branch offices in counties that do not have a county public defender office; requiring, under certain circumstances, that the State Public Defender provide defense services to indigent persons in counties with a county public defender office; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, any county whose population is 100,000 or more (currently Washoe and Clark Counties) must create an office of public defender to provide defense services to indigent persons, and any county whose population is less than 100,000 may, but is not required to, create such an office. (NRS 260.010) The State Public Defender provides defense services to indigent persons in counties that do not have a county public defender and may charge those counties, in



amounts not to exceed limits previously set by the Legislature, for providing those services. (NRS 180.110) The State Public Defender and any county with a county public defender may contract with each other for the State Public Defender to provide defense services to indigent persons in that county if a court, for cause, has disqualified the county public defender or if the county public defender is otherwise unable to provide representation. (NRS 180.060, 260.065)

This bill repeals the requirement that counties whose population is 100,000 or more must create an office of public defender and repeals the authority of the State Public Defender to charge counties for expenses related to the defense of indigent persons in counties that do not have a county public defender. Instead, this bill authorizes, but does not require, each county to create an office of county public defender and requires the State Public Defender to establish at least one branch office in each county that does not have a county public defender. Each county must notify the State Public Defender by October 1, 2009, whether it will have an office of county public defender, and the State Public Defender must create a branch office in each county without a county public defender by July 1, 2010. After July 1, 2010, a county may only create or discontinue an office of county public defender if the county notifies the State Public Defender by March 1 of an odd-numbered year of its intent to do so. If an office of county public defender is being created, it must then be created as of July 1 of the same year that notice of intent is given; if an office of county public defender is being discontinued, the State Public Defender must establish a branch office in that county by July 1 of that year.

This bill also requires the State to reimburse counties for expenditures made in providing defense services to indigent persons and requires the State Public Defender to provide such



services to any county if a court, for cause, has disqualified the county public defender or if the county public defender is otherwise unable to provide representation.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 260 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A county whose board of county commissioners has:*

*(a) Created an office of county public defender pursuant to NRS 260.010; or*

*(b) Joined with one or more other counties pursuant to NRS 260.020 to establish one office of county public defender to serve those counties,*

*↪ may submit a claim for reimbursement to the State Public Defender for the costs associated with operating the office of county public defender.*

*2. A claim for reimbursement submitted pursuant to subsection 1 must be made in the form and at such times as prescribed by the State Public Defender pursuant to section 4 of this act.*

**Sec. 2.** NRS 260.010 is hereby amended to read as follows:

260.010 1. ~~In counties whose population is 100,000 or more, the boards of county commissioners shall create by ordinance the office of public defender.~~



~~2. Except as otherwise provided by subsection 4, in counties whose population is less than 100,000, boards} A board of county commissioners may {in their respective counties create} :~~

*(a) Create, by ordinance, at the beginning of a fiscal year, the office of county public defender.*

~~{3. Except as otherwise provided in subsection 4, if}~~

*(b) If the county has an office of county public defender, discontinue, by ordinance, at the beginning of a fiscal year, the office of county public defender.*

2. *If a board of county commissioners intends to create the office of county public defender, the board shall notify the State Public Defender in writing on or before March 1 of any odd-numbered year and the office may not be created before July 1 of the same year in which the notice was given.*

~~{4. If the county contribution approved by the Legislature exceeds the estimate provided to the county on December 1 by more than 10 percent for either year of the biennium, the}~~

3. *A board of county commissioners {may create} that has created the office of county public defender {on July 1 of the next even-numbered year if} pursuant to this section or NRS 260.020 shall not discontinue the office of county public defender:*

*(a) Unless the board notifies the State Public Defender on or before March 1 {of the same year in which the office is to be created.*

~~5.} of an odd-numbered year that the board intends to discontinue the office of county public defender; and~~

*(b) Before July 1 of the same year in which the notice is given.*



4. The office of *county* public defender when created must be filled by appointment by the board of county commissioners.

~~{6.}~~ 5. The *county* public defender serves at the pleasure of the board of county commissioners.

**Sec. 3.** NRS 260.065 is hereby amended to read as follows:

260.065 Any county in which the office of *county* public defender has been created may ~~{contract for}~~ *use* the services of the State Public Defender in providing representation for indigent persons when the court, for cause, disqualifies the county public defender or when the county public defender is otherwise unable to provide representation.

**Sec. 4.** Chapter 180 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The State Public Defender shall prescribe the form and time of filing for counties to submit claims for reimbursement for the costs associated with operating an office of county public defender established pursuant to NRS 260.010 or 260.020.*

*2. At least once every 3 months, and upon verification of a claim for reimbursement submitted by a county to the State Public Defender pursuant to section 1 of this act, the State Public Defender shall authorize reimbursement to the county by the State from money appropriated for that purpose.*

**Sec. 5.** NRS 180.040 is hereby amended to read as follows:





180.040 1. The Office of the State Public Defender shall be in Carson City, Nevada, and the Buildings and Grounds Division of the Department of Administration shall provide necessary office space.

2. ~~The~~ *Subject to the provisions of subsection 3, the State Public Defender* ~~may establish branch offices necessary to perform his duties. He shall designate~~ *shall establish at least one branch office in each county that:*

*(a) Has not established an office of county public defender.*

*(b) Has established an office of county public defender but the board of county commissioners in such county has notified the State Public Defender pursuant to subsection 3 of NRS 260.010 that the board will discontinue the office of county public defender.*

3. *A branch office established pursuant to paragraph (b) of subsection 2 must be established as of July 1 of the same year that the State Public Defender is notified that the board of county commissioners intends to discontinue the office of county public defender.*

4. *Except as otherwise provided in subsection 5, the State Public Defender shall maintain each branch office established pursuant to this section.*

5. *If the State Public Defender is notified pursuant to subsection 2 of NRS 260.010 that a board of county commissioners intends to create an office of county public defender, the State Public Defender shall discontinue each branch office in that county on June 30 of the same year in which it is notified.*

6. *The State Public Defender shall designate a deputy state public defender to supervise each ~~such office.~~ branch office established and maintained pursuant to this section.*



**Sec. 6.** NRS 180.060 is hereby amended to read as follows:

180.060 1. The State Public Defender may, before being designated as counsel for that person pursuant to NRS 171.188, interview an indigent person when he has been arrested and confined for a public offense or for questioning on suspicion of having committed a public offense.

2. The State Public Defender shall, when designated pursuant to NRS 62D.030, 62D.100, 171.188 or 432B.420, and within the limits of available money, represent without charge each indigent person for whom he is appointed.

3. When representing an indigent person, the State Public Defender shall:

(a) Counsel and defend him at every stage of the proceedings, including revocation of probation or parole; and

(b) Prosecute any appeals or other remedies before or after conviction that he considers to be in the interests of justice.

4. In cases of postconviction proceedings and appeals arising in counties in which the office of *county* public defender has been created pursuant to the provisions of chapter 260 of NRS, where the matter is to be presented to the Supreme Court, the State Public Defender shall prepare and present the case and the public defender of the county shall assist and cooperate with the State Public Defender.

5. The State Public Defender ~~may contract with~~ **shall provide to** any county in which the office of *county* public defender has been created ~~to provide~~ representation for indigent persons



when the court, for cause, disqualifies the county public defender or when the county public defender is otherwise unable to provide representation.

**Sec. 7.** NRS 180.090 is hereby amended to read as follows:

180.090 Except as *otherwise* provided in *NRS 180.040*, subsections 4 and 5 of NRS 180.060 ~~and~~ *and section 4 of this act*, the provisions of this chapter apply only to counties in which the office of public defender has not been created pursuant to the provisions of chapter 260 of NRS.

**Sec. 8.** NRS 180.110 is hereby repealed.

**Sec. 9.** 1. Subject to the provisions of subsections 2 and 3 and chapter 260 of NRS, a board of county commissioners for a county that does not have an office of county public defender on July 1, 2009, may create, by ordinance, the office of county public defender.

2. Except as otherwise provided in NRS 260.010, a board of county commissioners may not create an office of county public defender unless it notifies the State Public Defender in writing on or before October 1, 2009, that it intends to create such an office.

3. A board of county commissioners that notifies the State Public Defender pursuant to subsection 2:

(a) Shall create the office as of July 1, 2010; and

(b) May not discontinue the office except pursuant to the provisions of NRS 260.010.

4. Subject to the provisions of subsections 5 and 6, a board of county commissioners for a county that has an office of county public defender on July 1, 2009, may, by ordinance, discontinue that office.



5. Except as otherwise provided in NRS 260.010, a board of county commissioners may not discontinue an office of county public defender unless it notifies the State Public Defender, in writing, on or before October 1, 2009, that it intends to discontinue the office.

6. A board of county commissioners that notifies the State Public Defender pursuant to subsection 5 shall discontinue the office as of July 1, 2010.

7. On July 1, 2010, the State Public Defender shall establish at least one branch office in each county that:

(a) Does not have an office of county public defender on July 1, 2009, and whose board of county commissioners does not notify the State Public Defender pursuant to subsection 2 that it intends to create the office; and

(b) Has an office of county public defender on July 1, 2009, and whose board of county commissioners notifies the State Public Defender pursuant to subsection 5 that it intends to discontinue the office.

**Sec. 10.** This act becomes effective on July 1, 2009.

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**TEXT OF REPEALED SECTION**

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**180.110 Collection of charges to counties for services.**



1. Each fiscal year the State Public Defender may collect from the counties amounts which do not exceed those authorized by the Legislature for use of his services during that year.

2. The State Public Defender shall submit to the county an estimate on or before the first day of May and that estimate becomes the final bill unless the county is notified of a change within 2 weeks after the date on which the county contribution is approved by the Legislature.

The county shall pay the bill:

(a) In full within 30 days after the estimate becomes the final bill or the county receives the revised estimate; or

(b) In equal quarterly installments on or before the 1st day of July, October, January and April, respectively.

↪ The counties shall pay their respective amounts to the State Public Defender who shall deposit the amounts with the Treasurer of the State of Nevada and shall expend the money in accordance with his approved budget.



TAB 6

Independent Oversight Commission

EXECUTIVE BRANCH BILL DRAFT REQUEST  
FOR THE  
2009 LEGISLATIVE SESSION

Agency Name: State Public Defender

Person to be consulted if more information is needed:

Name: Diane R. Crow

Title: State Public Defender

Mailing Address: 511 E. Robinson St., Carson City, NV 89701

Phone Number: 775-687-4880 x 230

E-mail Address: [drcrow@govmail.state.nv.us](mailto:drcrow@govmail.state.nv.us)

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

Name: Same as above

Person to be contacted to provide testimony regarding the measure during the legislative session: 1. The Honorable Justice Michael Cherry

Nevada Supreme Court Justice

201 S. Carson Street

Carson City, NV 89701

775-684-1540

[mcherry@nvcourts.nv.gov](mailto:mcherry@nvcourts.nv.gov)

2. Franny Forsman  
Federal Public Defender, Nevada  
411 E. Bonneville  
Suite200  
Las Vegas, NV 89101  
702-388-5100  
[franny\\_forsman@fd.org](mailto: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](mailto:John_Lambrose@fd.org)

4. John McCormick  
AOC  
201 S. Carson St.  
Carson City, NV 89701  
775-687-9813  
[jmccormick@nvcourts.nv.gov](mailto:jmccormick@nvcourts.nv.gov)

Request:

The Nevada Supreme Court on January 4, 2008 ordered that a permanent statewide commission for the oversight of indigent defense be established. In September 2004, the Office of Internal Audits also recommended that the State Public Defender in coordination with the Governor's office create a taskforce to research creation of an Indigent Defense Commission. The Supreme Court formed the Indigent Defense Commission to review the state of indigent defense in Nevada. Order ADKT411 was issued as a result of the findings and recommendations of that commission. After receiving more input from various entities in the state, the Supreme Court decided to hold all conditions in the order except that creating the permanent Indigent Defense Commission.

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?

X Yes

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?

X No

*Local:*

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

X No

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 there from less likely?

X No

**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?

X Unknown



**Suggested Language of Proposed Solution to Problem:**

Creation of a permanent statewide commission for the oversight of indigent defense be established by the Nevada Supreme Court with the advise of the permanent Indigent Defense Commission.

The Commission membership will exclude sitting judges and prosecutors.

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.

**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.
- The originating legislation creating the Office of the State Public Defender, required the creation of an oversight commission.

**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)

The Commission for Indigent Defense Oversight must be an independent agency, not within the Dept of Health and Human Services and must have a separate budget from any Public Defender office, any Prosecutor office, or any court.

Commission members should meet at least 4 times per year (preferably 6 times per year - 2 in the north, 2 in the south, and 2 meetings in the rural counties - one north and one south), covering the north, south, and the rural counties. They would receive per diem and travel, but no salary.

The make up of the Commission for Indigent Defense Oversight: Appointments to the Commission should be non-partisan.

The primary consideration in establishing the composition of the Commission should be ensuring the independence of the Defender Director. The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics.

- a) No single branch of government would have a majority of votes on the commission.
- b) Organizations concerned with the problems of the client community should be represented on the Commission.
- c) A majority of the Commission should consist of practicing attorneys.
- d) The Commission should not, in a voting capacity, include judges, prosecutors, or law enforcement officials.  
Members of the Commission should have staggered terms in order to ensure continuity and avoid upheaval.

A person appointed to the Commission must have significant experience in the defense of criminal cases or must have demonstrated a strong commitment to quality representation of indigent defendants. No person shall be appointed to the Commission, in a voting capacity, that has received compensation to be an elected judge, judicial officer, prosecutor, law enforcement official, indigent defense provider, or employees of all such persons, within a two-year period prior to appointment. No active part-time, full-time, contract or court-appointed indigent defense provider, or active employees of such persons may be appointed to serve on the Commission as a voting member. No person having an official responsibility to the Commission, administratively or financially, or their employee shall be appointed to the Commission until two years have expired from the time the person held such position and the date of the appointment to the Commission.

The Governor - appoints two positions

The Chief Justice - two

Speaker of the House - one

Pres. of the Senate - one

Pres. of the State Bar - two

Dean of the Law School – one

Nevada Association of Counties - one

Nevada League of Cities - one

Dean of the National Judicial College - one

Dean of the National Council of Juvenile and Family Court Judges – one

TAB 7

Appointment of Conflict Counsel/Billing

**Rural Subcommittee**  
**Proposed Rule Change for Indigent Defense Commission**

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 ordered 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 6<sup>th</sup> 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 Canons 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 shown 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 8

Report and Comments on the Performance  
Standards

## **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 9

Report on the State Public Defender's Office

## Nevada State Public Defender – 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, Esmeralda 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 57<sup>th</sup> 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 – September 22, 2008 – the Governor had not appointed a Public Defender.

September 23, 2008 – present – Diane Crow appointed

**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.

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
	<u>1,395,504</u> counties
Total..	\$2,752,255
Fiscal year '08.....	421,617 general fund
	800,000-post conviction general fund
	<u>1,362,853</u> 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**

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

**STOREY**

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

**EUREKA**

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

**WHITE PINE**

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

**LINCOLN**

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

**STATE/AG (CARSON AND ELY)**

<b>FY05</b>	57	11
<b>FY06</b>	26	12
<b>FY07</b>	24	4
<b>FY08</b>	22	3

**APPELLATE/POSTCONVICTION**

	<u>Appeal to S Ct</u>	<u>Post Conv/Habeas</u>	<u>Parole/Pardons</u>
<b>FY05</b>	10	5	53
<b>FY06</b>	12	3	40
<b>FY07</b>	13	1	39
<b>FY08</b>	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>
<u>Carson City</u>	155	57	0	39
<u>Eureka</u>	179	114	129	146
<u>Lincoln</u>	94	140	194	373
<u>Storey</u>	68	75	10	18
<u>White Pine</u>	145	60	22	102
<u>*State/Appellate</u>	121	153	80	335
<u>**Humboldt/Pershing 24</u>		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>
<u>State Public Defender</u>		\$118,156
<u>Chief Deputy</u>	\$118,156	*position was redefined in 2005
<u>Sr. Deputy</u>	106,904	position does not exist
<u>*Supervising Office (was Chief Deputy position)</u>		\$106,904
<u>Supervising Appellate (was Chief Appellate)</u>		106,904
<u>Supervising Trial (was Chief Trial)</u>		106,904
<u>Deputy</u>	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.

Judge Papez,

This is the weighted caseload study for the NSPD for FY 2005-2008 used in preparing the FY 10 and 11-budget request. In summary, it shows the total number of cases, total number of hours by prosecuting entity (county or AG), and by category of case (adult and juvenile). Then hours per case are calculated by category. Using 1720 hours per year per attorney, I calculated the number of attorneys required to cover each county for each year in the study. The total hours includes travel and administrative time.

Results show:

**1. Carson City**

- a. While the number of cases has decreased, the total number of hours has significantly increased, and thus decreasing the number of cases each attorney can cover. (2788 cases in 05 to 2435 cases in 08 and 7371 hrs to 10794 hrs).
- b. The number of attorneys required to cover the caseload has gone from 4.3 (FY 2005) to 6.3 (FY 2008).

**2. Storey Co.**

- a. The number of cases has increased from 83 (FY 2005) to 217 (FY 2008). However, the number of hours has decreased.
- b. The number of attorneys required to cover the caseload has gone from .5 (FY05) to .4 (FY 08).

Prior to the reorganization of the office and the method of determining county: state financial responsibility, Carson/Storey shared 5 trial attorneys.

This justifies adding at least one FT attorney to the Carson/Storey Co. office.

**3. White Pine**

- a. There was a slight increase in total cases – 305 (FY 05) to 329 (FY 08).
- b. There was decrease in total hours from 2785 (FY05) to 2594 (FY08).
- c. The number of attorneys necessary to cover the caseload decreased from 1.6 to 1.5. This statistically is insignificant.

**4. Lincoln**

- a. There was a decrease in both total number of cases and total hours.
- b. However, the decrease was disproportionate.
- c. The number of attorneys to cover the caseload decreased from .6 to .3.
- d. This is statistically significant.

**5. Eureka**

- a. There was a slight (insignificant) decrease in the number of cases.
- b. There was a 25% decrease in the number of hours.
- c. The number of attorneys required to cover the caseload decreased from .4 (FY 05) to .3 (FY 08) – this is statistically insignificant.

**6. State (AG) cases**

- a. There was a significant decrease in the number of cases from 66 (FY 05) to 18 (FY 08)
- b. However, there was not a proportionate decrease in the number of hours. From 1643 to 1150.
- c. There was a significant increase in the number of hours spent on each case, 24 (FY 05) to 63 (FY 08)
- d. The number of attorneys required to cover the caseload decreased from .95 (FY 05) to .67 (FY 08). This is not a significant change, and 1 FT attorney would be required to handle the state/AG matters.
- e. These were equally divided between the Carson office and the Ely office.

The total number of attorneys required for the Seventh Judicial District is 3.1.

The two investigators totaled 3907 hours in FY 2008. This is for both the Carson and the Ely offices. However, I was advised that the Ely office does not routinely request investigation for cases less than felony status. The Ely office had 294 non-felony cases in FY 2008.

This justifies an investigator for the Ely office.

Let me know if you would like any other number crunching.

I do have the number of each category of case (both adult and juvenile) that each attorney can handle in one year for the Supreme Court caseload statistics.

Diane

FY 2005	ADULT						JUVENILE						TOTAL ADULTS	TOTAL JUVENILES	TOTAL TOTALS	ATTORNEY'S FEES PER HOUR	TOTAL CASES	TOTAL HOURS	TOTAL SALARY	TOTAL COST	TOTAL FTE																					
	GM	M	PV	OTHER	JC APPEAL	TRAVEL ADMIN	GM	M	PV	OTHER	JC APPEAL	TRAVEL ADMIN										GM	M	PV	OTHER	JC APPEAL	TRAVEL ADMIN															
Cases	700	128	1633	145	8	16	29	11	51	49	18	159	2679			163,342.80	29,867	32,282	6,692	3,732,624	1,434	4,207,244																				
Hours	4412	189	1765	351	11	101	197	10	137	54	104	502	7371			4,285,468.116																										
Cost	6,988,714	1,320,313	1,088,833	2,428,699	1,375	5,3125	6,751,001	0,910,906	2,886,275	1,102,041	5,777,778	18,602																														
% of Total Cases	27.00%	5.00%	62.00%	6.00%	0.30%	0.61%	18.80%	7.00%	32.80%	31.00%	11.00%																															
Cases	728	110	1568	140	3	11	24	6	29	40	11	109	2679			154,724,626	23,081	32,817	3,087,732	29,351	6,628	2,306,121	5,031,682	1,379,223	3,870,507	8,386,153	2,308,192															
Hours	4246	282	2828	361	16	34	7845	177	71	59	49	359	8004			4,769,674.42																										
Cost	5,733,397.5	2,858,536	1,803,571	2,724,428	5,533,333	3,080,909	7,375	0.5	2,535,714	1,475	4,454,545																															
% of Total Cases	29.00%	4.00%	61.00%	6.00%	0.15%	0.33%	22.80%	6.00%	26.90%	37.00%	10.00%																															
Cases	633	96	1440	135	3	8	57	10	31	35	15	148	2618			5,441,674.42																										
Hours	3765	269	2763	363	0	77	173	8	179	43	188	591	9265			116,258,969	17,631	264,474	24,794	0.52	1,469,062	10,468	1,838,628	5,693	2,754,929	7,754,929																
Cost	5,819,873	2,177,083	1,918,915	2,911,111	2	9,625	3,035,888	0.8	6,774,194	1,285,771	12,533,333																															
% of Total Cases	26.00%	4.00%	59.00%	6.00%	0.10%	0.30%	33.80%	7.00%	21.00%	24.00%	10.00%																															
Cases	596	127	1475	116	2	2	38	3	37	22	16	116	2335			6,215,837,359																										
Hours	4419	328	2890	207	81	38	304	1663	9930			10794																														
Cost	7,428,938	2,826,177	1,983,022	1,754,237	20.5	19	2,369,421	2,605,667	2,189,188	2,954,545	11,75																															
% of Total Cases	28%	6%	64%	5%	0.10%	0.10%	33%	3%	32%	19%	14%																															

FEV

FELONY  
 GROSS MISDEMEANOR  
 VIOLATION  
 PUNISHMENT  
 OTHER- INVOLUNTARY COMMITMENTS  
 JAIL- JUSTICE COURT APPEALS  
 4328 - CHILD IN NEED OF PROTECTION  
 MANY CASES/ATTY - THE MAXIMUM NUMBER OF CASES ONE ATTORNEY CAN HANDLE PER YEAR BASED ON 1720 HOURS PER YEAR FOR FTE  
 \*OF ATTORNEY AT 1720 HRS/YR=NUMBER OF ATTORNEYS IT TAKES TO COVER THE NUMBER OF TOTAL HOURS THAT FY

STOHEY CO.

FY 2005

										ADULT				JUVENILE				TOTALS		#attny/yr 1720hr/yr
	F	GM	M	PV	OTHER	JC APPEALS	TRAVEL	ADMIN	TOTAL	F	GM	M	PV	432B						
Cases	23	4	47	1	0	0	0	0	75	1	3	3	0	0	1			83		
Hours	393	14	74	2	0	0	10	0	493	0	0	0	0	0	1.9			987.9	0.57836	
Hrs./Case	17.08696	3.5	1.574468	2						0	0	0	0	0	1.9				63/1	
Max cases/attny	40.04454	6.964288	81.83014	1.741067					130.58	1.741067	5.223201	5.2232007	0	1.741067				144.508553		

FY 2006

Cases	41	8	58						107	0	0	0	0	2	0			109	
Hours	229	22	260				75		586	0	0	0	0	6	0			592	0.344186
Hrs./Case	5.585366	2.75	4.482759											3					
Max # cases/attny	119.1216	23.24324	168.5135						310.8784	0	0	0	5.810811	0				316.889189	

FY 2007

Cases	74	18	123	0	0	0			215	3	0	6	1	1	1			226	
Hours	306	43	426	15	0	0	68	3	861	3	0	1	2	2	9			1737	1.009984
Hrs./Case	4.135135	2.388989	3.463415							1	0.1666667	2	9						
Max # cases/attny	73.27576	17.82383	121.7962	0	0				212.8958	2.970639	0	5.9412781	0.990213	0.990213				223.78814	

FY 2008

Cases	56	14	139	4	0	0			213	0	0	1	3	0	0			217	
Hours	167	23	321	22	0	0	181		714	0	0	1	3	0	0			718	0.417442
Hrs./Case	2.982143	1.642857	2.309353	5.5	0	0													
Max # cases/attny	134.1504	33.5376	332.9805	9.582173	0	0			510.2507	0	0	2.3955432	7.18663	0				519.832869	

ADULT													JUVENILE					TOTAL		#Attory@1720hr/yr
FY 2005	F	GM	M	PV	OTHER	JC APPEALS	TRAVEL	ADMIN	F	GM	M	PV	432B	TOTAL						
Cases	98	24	107	22					8	5	28	1	12	305						
Hours	1705	112	407	121			22		95	50	43	12	218	2785						
Hrs./Case	17.39796	4.666667	3.803738	5.5					11.875	10	1.535714	12	18.16667	9.131147541	99					
Max#Cases/Attory	60.52424	14.82226	66.08259	13.58707					4.940754	3.087971	17.29264	0.617594	7.411131	188.3662478	1.619186047					
<b>FY 2006</b>																				
Cases	74	27	107	21					9	2	18	6	5	271						
Hours	2251	218	374	76			60		135	4	26	26	160	3361						
Hrs./Case	30.41892	8.074074	3.495327	3.619048					15	2	1.444444	4.333333	32	12.40221402						
Max #Cases/Attory	37.86968	13.81732	54.75751	10.7468					4.605772	1.023505	9.211544	3.070515	2.558762	138.6849152	1.954069767					
<b>FY 2007</b>																				
Cases	99	17	96	25					12	2	23	10	1	289						
Hours	1552	152	287	86			145		64	30	97	34	103	2967						
Hrs./Case	15.67677	8.941176	2.989583	3.44					5.333333	15	4.217391	3.4	103	10.26643599						
Max#Cases/Attory	57.3913	9.855072	55.65217	14.49275					6.956522	1.15942	13.33333	5.797101	0.57971	167.5362319	1.725					
<b>FY 2008</b>																				
Cases	107	22	142	20					2	1	13	6	14	329						
Hours	1444	57	351	67			352		36	22	64	1	132	2594						
Hr./Case	13.49533	2.590909	2.471831	3.35					18	22	4.923077	0.166667	9.428571	7.88449848						
Max#Cases/Attory	70.94834	14.58751	94.15574	13.26137					1.326137	0.663069	8.619892	3.978412	9.282961	218.1495759	1.508139535					



LIVVULN		ADULT										JUVENILE					TOTAL		#ATTNYAT 1720 HRS/YR
FY 2005		F	GM	M	PV	OTHER	JC	APPEAL	TRAVEL	F	GM	M	PV	432B	TOTAL				
Cases		39	9	35	7	0	0	0	0	5	2	4	2	2	105				
Hours		503	57	121	33	0	0	194	194	43	10	8	4	35	1008				
Hrs./Case		12.89/44	6.33/3333	3.45/743	4.71/4286			194		8.6	5	2	2	17.5					
Max#Cases/Attny		66.54/762	15.35/714	59.72/222	11.94/444					8.53/1746	3.41/2698	6.82/5397	3.41/2698	3.41/2698	179.166667		0.586046512		
FY 2006																			
Cases		33	4	31	17					0	0	1	1	4	91				
Hours		427	22	118	60			140		0	0	5	1	51	824				
Hrs./Case		12.93/939	5.5	3.80/6452	3.52/9412							5	1	12.75	9.05/494505				
Max # Cases/ Attny		68.88/35	8.34/9515	64.70/874	35.48/544							2.08/7379	2.08/7379	8.34/9515			0.479069767		
FY 2007																			
Cases		40	10	28	10					3	1	0	0	3	95				
Hours		614	34	89	38			94		32	8	0	0	10	919				
Hrs./Case		15.35	3.4	3.17/8571	3.8					10.66/667	8			3.33/3333	9.67/368421				
Max # cases/ Attny		74.86/398	18.71/6	52.40/479	18.71/6					5.61/4799	1.87/16			5.61/4799			0.534302326		
FY 2008																			
Cases		26	7	31	16					0	1	0	0	0	81				
Hours		361	68	68	9			507		0	0	0	0	507	507				
Hr./Case		13.88/462	9.71/4286	2.19/3548	0.56/25			6.25/9259						6.25/925926					
Max#Cases/Attny		88.20/513	23.74/753	105.16/77	54.28/808			3.39/2505	274.79/29					274.79/2899			0.294767442		



TAB 10

Indigent Defense Data and Surveys

## **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.

### **Future Data Collection Efforts**

Going forward, the Rural Subcommittee endorses the development and collection of indigence defense statistical tracking measures by the Administrative Office of Courts, as instructed on page 8 of the original ADKT 411 Order of January 4, 2008. The Rural Subcommittee encourages the AOC to develop these measures with input from outside experts, and to consider the weighted caseload studies being conducted by Washoe and Clark Counties as ordered by the January 4, 2008 ADKT 411 Order. Additionally, it is imperative that the measures developed by AOC take into consideration the unique situation in the rurals posed by the vast distances between communities and lack of available resources.

County: Carson City

**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: \$ 562,458  
Contract Public Defender: \$ —  
Conflict Counsel: \$ 352,353  
*Attorneys paid for appointments*  
Case Related Expenses (if separate): \$ 16,830  
Percentage of County Budget on Defense: 17.  
Percent of County Budget on Justice System: 37.

\* 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?

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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.*

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*\*\*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](mailto: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

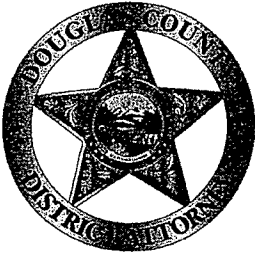
Criminal Attorneys	9
Family Attorneys	5
Investigators	4
Social Workers	1
Admin. Assistants	4

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,**

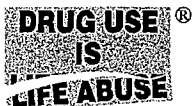
**Attached is the survey that the Court requested. Unfortunately, much of the data you requested is not readily retrievable.**

**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**

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**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.

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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.

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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

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**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.

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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.

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**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](mailto:jmccormick@nvcourts.nv.gov) with questions, comments, or to discuss timelines.\*\**

**Thank You**

FILED

NO. 2008.112

CONTRACT FOR LEGAL SERVICES

2008 JUN 11 AM 9:18

This contract is entered into this 1 day of July 2008, by Nathan Todd Young (Attorney) and Douglas County, a political subdivision of the State of Nevada (County).

HARRARA J. GRIFFIN  
CLERK  
BY [Signature]

Recital

This contract is entered into pursuant to the provisions of Chapter 260 of the Nevada Revised Statutes. The Attorney has provided County with resumes, background information and professional references supporting Attorney's representation that Attorney is qualified and able to render the professional services provided in this contract. The Attorney is currently under contract to provide these professional legal services.

In consideration of the recitals and the mutual promises contained in this agreement, the parties agree as follows:

1. Attorney agrees to perform the services of an attorney in the defense of indigent adults charged with a public offense.
2. Attorney agrees to perform the services of an attorney for a child alleged to be delinquent or in need of supervision where the Court orders the appointment of an attorney in accord with NRS 62.085.
3. Attorney agrees to perform the services of an attorney for a child, parent or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128. Attorney will be paid supplemental fees at the statutory rate for any work performed beyond ten (10) hours, per case, for appointments pursuant to NRS 128.100.
4. Attorney agrees to perform the services of an attorney for a person against whom proceedings are commenced to revoke any probation which was granted to that person, provided that the Court appoints Attorney on the matter to represent the person at the probation revocation proceedings and the person in indigent.
5. Attorney agrees to perform the duties required by NRS 260.050.
6. In performing the professional services described in ¶¶ 1-5 of this agreement, Attorney will:
  - A. Conduct interviews.
  - B. Perform or supervise the performance of necessary investigation.

C. Conduct necessary preparation.

D. Appear at all Court hearings concerning the assigned matter including, but not limited to, detention hearing (if available), preliminary hearing, arraignment, pre-trial writ or motion hearings, trial and sentencing as required to provide a full professional defense of the matter.

E. Be required to represent the person in the assigned matter on any appeal to the Ninth Judicial District Court or Nevada Supreme Court whether based upon a preliminary matter or final judgment subject to limitations prescribed by NRS 180.060(4).

The professional services described in this paragraph as well as those described in ¶¶ 1-5 must be performed in a professional, competent and effective manner given the law applicable to the particular matter for which legal services are being rendered and the applicable rules and standards of professional responsibility.

7. County and Attorney acknowledge that County will contract with other lawyers in the same manner and for the same purposes as Attorney. It is agreed by County and Attorney that these agreements will enable appointments to be made by the Court, on a rotating basis and to eliminate appointment of Attorney in a matter that would create a conflict of interest for Attorney in a particular matter.

8. Attorney agrees to staff and maintain an office in Douglas County, Nevada. Attorney agrees to furnish to the Justice Courts, District Courts and District Attorney a telephone number for use after normal office hours in any emergency that may arise where Attorney's services are requested pursuant to the terms of this contract. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of attorney's practice as required by this contract are the responsibility of Attorney and are part of Attorneys' compensation paid pursuant to ¶ 9 of this contract.

9. County agrees to pay to Attorney and Attorney agrees to accept as full compensation for the performance of legal services under this contract the following amount: \$195,833.33, or \$48,958.33 per quarter.

10. Attorney may secure reimbursement from County for extraordinary investigative, required expert or other services necessary for an adequate defense in any assigned matter in the statutorily prescribed manner codified in NRS 7.135, 7.145 and 7.155.

11. The compensation specified in ¶ 9 is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court can, for the reasons specified in NRS 7.125(4) (a)-(d), award extraordinary fees to Attorney in a particular matter, which are over and above the compensation specified in ¶ 9, provided that the statutorily prescribed procedures contained in NRS 7.125(4) are complied with.

12. Mileage and travel expenses of Attorney are the responsibility of Attorney and are



part of the compensation paid pursuant to ¶ 9.

13. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

14. County is contracting for the personal and professional services of Attorney. If Attorney practices law with a law firm, another lawyer within the firm may appear for Attorney at any stage of the proceeding. However, no additional compensation will be paid to the Attorney or the other lawyer in Attorney's firm by virtue of this change. If in the interests of justice, Attorney is required to substitute out of an assigned matter, Attorney must petition the court for approval of this substitution. The Court will make reasonable efforts to appoint and substitute in one of the county's other contract Attorneys, if possible. If the County's other contract Attorney cannot properly be substituted into Attorney's assigned matter, the Court may appoint and order the compensation of another non contract lawyer in the manner provided in NRS 7.105 to 7.165, inclusive.

15. Cases will be assigned to the contracting law firms on a rotating basis. The rotation in the justice courts will be divided into felony cases and misdemeanor cases. The clerk of the justice courts must maintain the two rotation lists, felonies and misdemeanors, and supply the list to the parties to this agreement upon request.

16. Prior to the appointment of any of the contracting law firms, the Justice of the Peace will inquire as to the financial ability of the defendant to pay for a private attorney. This canvass will include preparation by the defendant of a financial questionnaire which, at a minimum, requires the defendant to disclose real and personal property assets, bank accounts, and employment.

17. If a defendant who is requesting appointed counsel due to indigence has contacted one of the County's contract law firms, who are parties to this agreement, concerning retaining that firm for representation, that firm will not be obligated to accept the appointed case. The firm must notify the appropriate court, by letter, of the contact with the indigent defendant prior to the proposed appointment, and the next firm in the rotation will be appointed.

18. The Court may order monthly time summaries from Attorney in a form prescribed by the Court. These time summaries, when ordered by the Court, will report the amount of time necessarily and reasonably spent for travel, investigation, research, trial preparation and hearings as well as trial. If ordered, these time summaries will be filed with the Court at the conclusion of each assigned matter and sealed by the Clerk until requested by the Court. These time reports may be made available by the Court for audit by the County's representative. Nothing contained in this paragraph may be construed in a manner that violates the confidences of the client or the attorney-client privilege contained in Court rules of statute.

19. Attorney will maintain adequate liability insurance, including errors and omissions coverage, in the policy limits of at least \$250,000 per claim and \$500,000 aggregate during the term of this contract with the County named as an additional insured. Attorney will provide proof of this insurance coverage to County during the term of this agreement and the policy will be written with an insurance carrier authorized to write policies insuring this type of risk in the State of Nevada. The premium expense for this coverage is the responsibility of Attorney.

20. This contract becomes effective July 1, 2008, when approved by the County's Board of Commissioners and continues in effect through June 30, 2009, unless the contract is terminated in accordance with ¶ 21.

21. Either Attorney or County may terminate this agreement without cause by giving the other party 45 days advance written notice of their intent to terminate this contract pursuant to this paragraph. The Court may elect to appoint non contract attorneys and compensate them in accord with NRS 7.125 on any matters pending as of the date this contract is terminated. In the event of termination of this Agreement for any reason, the total compensation of Attorney will be reduced to the proportionate number of days worked by Attorney.

22. Should Attorney be unable to perform any or all of his duties by reason of illness, accident or other cause beyond his control, and the disability exists for a period beyond 10 judicial days, Attorney must provide a substitute attorney (which could include other contract attorneys) to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of his duties impossible, or the disability continues beyond 60 days, the County may, at its discretion, terminate this agreement, and the respective duties, rights and obligations of this agreement will terminate.

23. Written notices required pursuant to the terms of this contract must be transmitted via first class mail (postage prepaid) to the parties at the following addresses:

Douglas County  
Post Office Box 218  
Minden, Nevada 89423

Law offices of Nathan Tod Young, P.C.  
1701 County Road  
Minden, Nevada 89423

24. Attorney is an independent contractor. The County is contracting for the independent professional services of Attorney and does not control the means by which Attorney provides those services. Attorney is not an employee of County and there will be no:

- A. Withholding of income tax by County;
- B. Provision of industrial insurance coverage by County;
- C. Participation by Attorney in any group insurance plans which may be available to County employees;
- D. Contributions by County on behalf of Attorney to the Public Employees' Retirement System; and
- E. Accumulations of vacation and sick leave or any other employee benefit



normally available to Douglas County employees.

25. This contract may be amended in writing by the parties only after giving 90 days advance written notice to the other party.

26. This contract constitutes the entire agreement between the parties and will be interpreted according to Nevada law.

Douglas County

Attorney

By *Kelly D. Kite*  
Kelly D. Kite, Chair  
Douglas County Board of Commissioners

By *Nathan Tod Young*  
Nathan Tod Young

Attest: Barbara J. Griffin  
Clerk-Treasurer

*Barbara J. Griffin*  
By Lorraine Diedrichsen  
Clerk to the Board

SEAL

**CERTIFIED COPY**

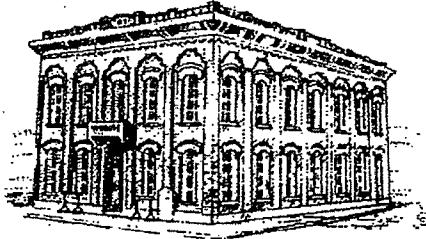
The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: June 11, 2008

Barbara J. Griffin Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas.

By *Carol M. Hulbeck* Deputy

5



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,

A handwritten signature in cursive script that reads "Michael Rebaleati". The signature is written in black ink and is positioned above the printed name.

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](mailto: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  
both 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	18		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*

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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*

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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](mailto: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	<del>N/A</del> 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

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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

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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	Miscellaneous 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								
Secondary County Staff Public Defender									
Assigned Counsel Paid Hourly		2							
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

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**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.

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

No.

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**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?

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

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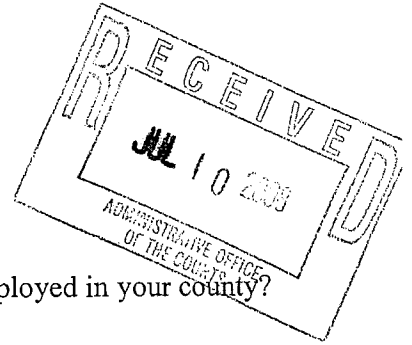
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*\*\*Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or [jmccormick@nvcourts.nv.gov](mailto:jmccormick@nvcourts.nv.gov) with questions, comments, or to discuss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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

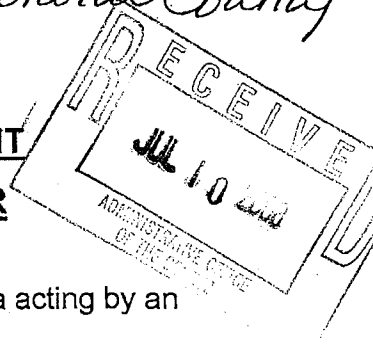
*\*\*Please contact John McCormick, Rural Courts Coordinator at the Nevada Supreme Court, Administrative Office of the Courts at (775) 687-9813 or [jmccormick@nvcourts.nv.gov](mailto:jmccormick@nvcourts.nv.gov) with questions, comments, or to discuss timelines.\*\**

**Thank You**

Documents  
for Survey  
(Indigent  
Defense)

Mineral County

**CONTRACT FOR SERVICES OF INDEPENDENT  
CONTRACTOR COUNTY PUBLIC DEFENDER**



A contract between the COUNTY OF MINERAL, State of Nevada acting by and through the Board of County Commissioners, hereinafter referred to as "County", and Paul W. Drakulich, Esq., hereinafter referred to as "Contractor".

**PREAMBLE**

WHEREAS, N.R.S. Chapter 20 authorizes the County to appoint a County Public Defender to serve at the pleasure of the Board of County Commissioners; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interest of the County; and

WHEREAS, Contractor represents that he is duly qualified and able to render the services as hereinafter described;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties hereto mutually agree as follows:

1. That this contract shall become effective as of the 1st day of July, 2007, and shall continue in affect as hereinafter provided.
2. That the parties agree that the services to be performed by Contractor are as follows:
  - A. Contractor shall provide all public defender services to Mineral County for the period from the 1st day of July, 2007, to the 30th day of June, 2008, to be renewed, extended or limited at the pleasure of the Board of County Commissioners;

B. These duties shall consist of representing persons who have requested and have received the appointment of the County Public Defender, when designated pursuant to N.R.S. 62.085, 171.188 or 432B.420; without charge to each indigent person for whom he is appointed;

C. Such duties shall include representations at all stages of criminal proceedings, including interviewing, and all appearances and Justice Court's status conferences. Contractor shall also represent persons who have requested and received an appointment of the Public Defender in petitioning for writs of habeas corpus, post-conviction relief, and parole and probation revocation hearings, which are conducted in the County.

3. Contractor shall not represent any co-defendant in a criminal trial in which he has been appointed as counsel for an indigent pursuant to statutes noted above. Contractor shall not represent any interest which conflicts with his duties as counsel for persons charged with crimes under Nevada Statutes.

4. In consideration of the above duties, Contractor shall receive the sum of SIXTY TWO THOUSAND AND NO/100 DOLLARS (\$62,000.00) for the year commencing July 1, 2007. The County shall pay Contractor the statutory hourly rate for any portion of a non-capital jury trial longer than three regular working days.

The County shall also reimburse Contractor for mileage at the statutory rate.

Contractor shall provide sworn verification to the County of any additional fees or expenses to be paid by County.

5. Contractor further agrees to provide the County with an attorney qualified pursuant to Nevada Supreme Court Rule 250 to act as defense counsel in any capital

case arising in the County. Contractor shall guarantee the County that said attorney will remain current with all conditions and training required by law to attain and maintain capital case qualification solely at Contractor's expense.

County and Contractor recognize that capital cases provide extraordinary circumstances, which will require Contractor to petition, the Court for additional fees and expenses related to investigation and employment of expert witnesses.

6. All costs associated with necessary defense witnesses, including expert witnesses, and court transcripts shall be paid pursuant to the relevant provisions of the Nevada Revised Statutes.

7. Contractor will specifically be responsible for payment of investigators, employees, secretaries and associates who are considered necessary and important to the performance of Contractor's duties with the exceptions noted herein.

8. Contractor shall be construed and interpreted according to the laws of the State of Nevada

9. The Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this agreement without prior written consent of the County, except to those specifically employed by the Contractor.

10. The books, records, documents and practice of the Contractor relevant to this agreement shall be subject to inspection and examination by the County (except privileged information protected by Statute).

11. Any reports, studies, photographs, negatives or other documents or drawings prepared by Contractor in the performance of his obligations under this agreement shall be the exclusive property of the County and all such materials shall be remitted to the County by Contractor upon completion, termination or cancellation of this contract.

12. The parties agree that Contractor is an independent contractor and it is expressly understood and agreed that Contractor is not a County employee and there shall be no: (1) withholding of income taxes by the County; (2) State Industrial Insurance Service coverage provided by the County; (3) participation in group insurance plans which may be available to employees of the County; (4) participation or contributions by either the independent contractor or the County to the Public Employees Retirement System; (5) accumulations of vacation leave or sick leave; (6) unemployment compensation coverage provided by the County if the requirements of N.R.S. 612.085 for independent contractors are met.

13. This contract constitutes the entire agreement between the parties and may only be modified by a written amendment signed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

DATED this 5th day of April, 2007.

PAUL W. DRAKULICH, Esquire  
101 North Maine Street  
Post Office Box 1797  
Fallon, Nevada 89406

COUNTY OF MINERAL  
STATE OF NEVADA  
BOARD OF MINERAL COUNTY  
COMMISSIONERS  
Hawthorne, Nevada

By: \_\_\_\_\_  
Paul W. Drakulich, Esquire

By: Jessie Apelo  
Chairman



PAUL DRAKULICH

ATTORNEY AT LAW

A PROFESSIONAL CORPORATION  
101 N. MAINE STREET  
P.O. BOX 1797  
FALLON, NEVADA 89406  
(775) 423-3500  
FAX (775) 423-4004



March 2, 2007

Mineral County Board of Commissioners  
PO Box 1450  
Hawthorne, NV 89415

RE: Contract for Public Defender Services, 2007-2008

Dear Board of Commissioners:

I would propose to continue to provide Public Defender Services to Mineral County for the 2007-2008 fiscal years for the contract price of \$62,000. This represents an increase of approximately 12%.

My costs of doing business continue to escalate and I believe the proposed price is very fair.

By comparison, Humboldt County, with a public defender caseload approximately three times that of Mineral County pays \$330,000 per year, 532% of my proposed cost, for Public Defender services. Pershing County, with a comparable caseload to that of Mineral County, pays \$155,000 per year, 250% of my proposal.

I believe I have provided a high level of competency and efficiency.

I would certainly encourage the Commission to consult Judges Davis, Gunter and Trujillo or the District Attorney, Cheri Emm-Smith regarding the level of my services and the fairness of the contract price.

I look forward to continuing to provide Public Defender services for the upcoming year.

Should you have any questions or wish to discuss this matter further, please feel free to call my office at your earliest convenience.

Sincerely,

Paul W. Drakulich, Esq.

/bs  
cc: file

COPY

*Mineral County*

**CONTRACT FOR SERVICES OF INDEPENDENT  
CONTRACTOR COUNTY PUBLIC DEFENDER**

A contract between the COUNTY OF MINERAL, State of Nevada acting by and through the Board of County Commissioners, hereinafter referred to as "County", and Paul W. Drakulich, Esq., hereinafter referred to as "Contractor".

**PREAMBLE**

WHEREAS, N.R.S. Chapter 20 authorizes the County to appoint a County Public Defender to serve at the pleasure of the Board of County Commissioners; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interest of the County; and

WHEREAS, Contractor represents that he is duly qualified and able to render the services as hereinafter described;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties hereto mutually agree as follows:

1. That this contract shall become effective as of the 1st day of July, 2006, and shall continue in affect as hereinafter provided.
2. That the parties agree that the services to be performed by Contractor are as follows:
  - A. Contractor shall provide all public defender services to Mineral County for the period from the 1st day of July, 2006, to the 30<sup>th</sup> day of June, 2007, to be renewed, extended or limited at the pleasure of the Board of County Commissioners;

- B. These duties shall consist of representing persons who have requested and have received the appointment of the County Public Defender, when designated pursuant to N.R.S. 62.085, 171.188 or 432B.420; without charge to each indigent person for whom he is appointed;
- C. Such duties shall include representations at all stages of criminal proceedings, including interviewing, and all appearances and Justice Court's status conferences. Contractor shall also represent persons who have requested and received an appointment of the Public Defender in petitioning for writs of habeas corpus, post-conviction relief, and parole and probation revocation hearings, which are conducted in the County.

3. Contractor shall not represent any co-defendant in a criminal trial in which he has been appointed as counsel for an indigent pursuant to statutes noted above. Contractor shall not represent any interest which conflicts with his duties as counsel for persons charged with crimes under Nevada Statutes.

4. In consideration of the above duties, Contractor shall receive the sum of FIFTY SEVEN THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$57,750.00) for the year commencing July 1, 2006. The County shall pay Contractor the statutory hourly rate for any portion of a non-capital jury trial longer than three regular working days.

The County shall also reimburse Contractor for mileage at the statutory rate.

Contractor shall provide sworn verification to the County of any additional fees or expenses to be paid by County.

5. Contractor further agrees to provide the County with an attorney qualified pursuant to Nevada Supreme Court Rule 250 to act as defense counsel in any capital case arising in the County. Contractor shall guarantee the County that said attorney will remain current with all conditions and training required by law to attain and maintain capital case qualification solely at Contractor's expense.

County and Contractor recognize that capital cases provide extraordinary circumstances, which will require Contractor to petition, the Court for additional fees and expenses related to investigation and employment of expert witnesses.

6. All costs associated with necessary defense witnesses, including expert witnesses, and court transcripts shall be paid pursuant to the relevant provisions of the Nevada Revised Statutes.

7. Contractor will specifically be responsible for payment of investigators, employees, secretaries and associates who are considered necessary and important to the performance of Contractor's duties with the exceptions noted herein.

8. Contractor shall be construed and interpreted according to the laws of the State of Nevada

9. The Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this agreement without prior written consent of the County, except to those specifically employed by the Contractor.

10. The books, records, documents and practice of the Contractor relevant to this agreement shall be subject to inspection and examination by the County (except privileged information protected by Statute).

11. Any reports, studies, photographs, negatives or other documents or drawings prepared by Contractor in the performance of his obligations under this agreement shall be the exclusive property of the County and all such materials shall be

remitted to the County by Contractor upon completion, termination or cancellation of this contract.

12. The parties agree that Contractor is an independent contractor and it is expressly understood and agreed that Contractor is not a County employee and there shall be no: (1) withholding of income taxes by the County; (2) State Industrial Insurance Service coverage provided by the County; (3) participation in group insurance plans which may be available to employees of the County; (4) participation or contributions by either the independent contractor or the County to the Public Employees Retirement System; (5) accumulations of vacation leave or sick leave; (6) unemployment compensation coverage provided by the County if the requirements of N.R.S. 612.085 for independent contractors are met.

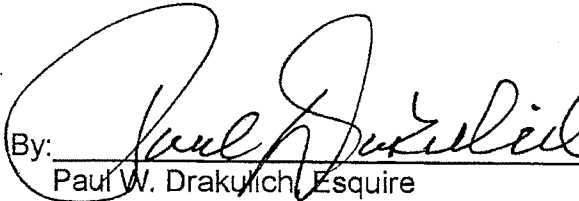
13. This contract constitutes the entire agreement between the parties and may only be modified by a written amendment signed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

DATED this 7<sup>th</sup> day of June, 2006.

PAUL W. DRAKULICH, Esquire  
101 North Maine Street  
Post Office Box 1797  
Fallon, Nevada 89406

COUNTY OF MINERAL  
STATE OF NEVADA  
BOARD OF MINERAL COUNTY  
COMMISSIONERS  
Hawthorne, Nevada

By:   
Paul W. Drakulich, Esquire

By:   
Chairman

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 Kosak,  
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	<del>_____</del>	<del>_____</del>
b. Staff Attorneys	<del>_____</del>	<del>_____</del>
c. Investigators	<del>_____</del>	<del>_____</del>
d. Social Workers	<del>_____</del>	<del>_____</del>
e. Paralegals	<del>_____</del>	<del>_____</del>
f. Admin. Assistants	<del>_____</del>	<del>_____</del>
g. Other (Describe: _____)	<del>_____</del>	<del>_____</del>

**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](mailto: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 Alien 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:

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**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?



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

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*\*\*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](mailto: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

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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

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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 ot 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?

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

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*\*\*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](mailto:jmccormick@nvcourts.nv.gov) with questions, comments, or to discuss timelines. \*\**

**Thank You**

TAB 11

Meeting Summaries



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, 7<sup>th</sup> 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, 5<sup>th</sup> Judicial District Court Judge  
The Honorable Richard Wagner, 6<sup>th</sup> 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, 17<sup>th</sup> 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, 3<sup>rd</sup> Judicial District Court Judge  
The Honorable Carol Nelson, Lake Township Justice of the Peace  
The Honorable Andrew Puccinelli, 4<sup>th</sup> 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 4<sup>th</sup> 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 48<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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  
Judicial Programs & Services

ROBERT W. KASTELITZ  
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, 7<sup>th</sup> 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, 5<sup>th</sup> 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 Cannons 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 2<sup>nd</sup> and 8<sup>th</sup> 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

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**

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, 7<sup>th</sup> 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, 5<sup>th</sup> 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.

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

RONALD R. TITUS  
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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**

Monday, December 8, 2008  
Supreme Court Law Library Room 104/105  
-and-  
Teleconference  
1:00 p.m.

*Prepared by John McCormick*

**MEMBERS PRESENT:**

The Honorable Michael Cherry, Supreme Court Justice, Chairman of the Indigent Defense Commission

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

The Honorable Gene Wambolt, Union Township Justice of the Peace  
Jeremy Bosler, Washoe County Public Defender  
David Carroll, NLADA  
Diane Crow, Nevada State Public Defender  
Joni Eastley, Nye County Commission, NACO  
John Ellison, Elko County Commission, NACO  
Jim Shirley, Pershing County District Attorney  
Ken Ward, Lyon County Contract Public Defender

**OTHERS PRESENT:**

Rob Stokes, County Manager, Elko County  
Wes Henderson, NACO Government Affairs Coordinator

**AOC STAFF PRESENT:**

John McCormick, AOC Rural Courts Coordinator

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, 17<sup>th</sup> floor ♦ Las Vegas, Nevada 89101



**CALL TO ORDER**

Co-Chair Papez called the meeting to order at 1:00 p.m.

**ROLL CALL**

John McCormick called the roll.

**CO-CHAIRS' OPENING REMARKS**

Co-Chair Papez commented that the purpose of the meeting is to review and make changes to the Rural Subcommittee's Draft Report to the Supreme Court, that he and Co-Chair Lambrose will present on January 6, 2009.

**REVIEW OF THE DRAFT REPORT**

Wes Henderson said that NACO's funding BDR should be included in the final report. All agreed the bill would be included as 'Tab 5: Nevada Association of Counties' Funding Bill Draft.'

Commissioner Eastley said that she is please with the report and specifically appreciates that the report recommends that counties be able to choose their own delivery models so long as the services comply with the performance standards and the contemplated caseload standards.

Commissioner Ellison commented that he thinks the Subcommittee has come along way from the first meeting at Lake Tahoe and that the report is now right on track.

Commissioner Eastley commented that she also likes that the report takes the legislature and policy makers to task regarding the indigent defense system and funding in clear and unambiguous language.

Co-Chair Lambrose said that David Carroll is to be thanked for helping to create the report and providing some of the language.

District Attorney Shirley commented that he thinks the report encapsulates the discussions of the Subcommittee and is consistent with the Subcommittee's agreement.

Mr. Henderson and the Commissioners commented that recommendation number 4 should be changed to clarify that representatives of the independent oversight commission should come from all levels of government, state and local, as well as all three branches. Mr. McCormick indicated he would change the wording as such. Co-Chair Papez asked if there is a census on this point and all in attendance agreed that there is.

Jeremy Bosler commented that he thinks we need to make sure that we are clear that no one branch of government should have a majority on the oversight commission.

David Carroll said that this point is noted in the annotations to the recommendations in footnote 3.

The attendees discussed the make up of the oversight commission and concluded that sitting judges could serve on the board only in an ex-officio, non-voting capacity, and that elected officials should be removed from the language recommended on board composition in the bill draft contained in Tab 5.

Diane Crow provided technical corrections to the report on pages 27 and 43.

Justice Cherry commented that he is thrilled with the progress the Rural Subcommittee has made and with the quality of the report.

The Subcommittee discussed the publication of the report and decided that this would be handled by AOC.

Co-Chair Papez asked if there is a consensus on the final report and the Subcommittee answered in the affirmative.

Co-Chair Lambrose commented that Franny Forsman, NLADA, and AOC are working on a performance standards training.

Judge Wambolt thanked the Supreme Court for their interest in indigent defense in rural Nevada, and thanked Judge Papez and Mr. Lambrose for co-chairing the Subcommittee.

Co-Chair Papez thanked everyone for their comments, input, and hard work. He also thanked John Lambrose, David Carroll, and John McCormick for their work with Subcommittee and on the report.

Co-Chair Lambrose thanked the Subcommittee, David Carroll, the Supreme Court, and John McCormick

Co-Chair Papez adjourned the meeting at 1:37 p.m.

TAB 12

Committee Roster

## Rural Subcommittee of the Indigent Defense Commission

### Membership List

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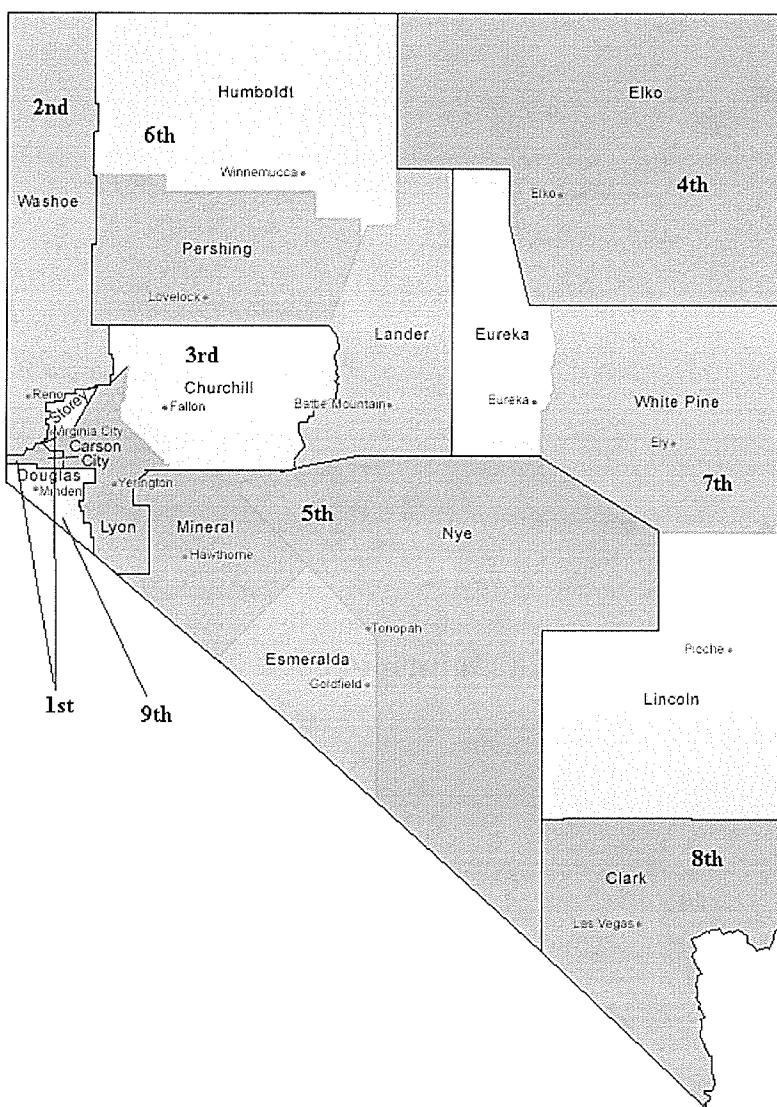
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## Nevada's Judicial Districts



### Population\*

Carson City (Capital): 57,701  
 Churchill: 27,371  
 Clark: 1,874,837  
 Douglas: 51,770  
 Elko: 48,339  
 Esmeralda: 1,262  
 Eureka: 1,460  
 Humboldt: 17,751  
 Lander: 5,655  
 Lincoln: 3,987  
 Lyon: 54,031  
 Mineral: 4,399  
 Nye: 44,795  
 Pershing: 6,955  
 Storey: 4,110  
 Washoe: 409,085  
 White Pine: 9,542  
 State Total: 2,623,050

\* Nevada State Demographer 2006 Estimates

### Travel Distances from Carson City (miles)

Fallon: 62	Yerington: 64
Las Vegas: 448	Hawthorne: 134
Minden: 15	Tonopah: 237
Elko: 319	Lovelock: 122
Goldfield: 264	Virginia City: 15
Eureka: 242	Reno: 33
Winnemucca: 195	Ely: 320
Battle Mountain: 248	
Pioche: 428	