Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
Deputy Director
Information Technology

AGENDA

Indigent Defense Commission (IDC)
VIDEOCONFERENCE

Date and Time of Meeting: December 11, 2020 at 2:30 p.m.
Place of Meeting: Remote Access via BlueJeans

All participants attending via teleconference should mute their lines when not speaking; it is highly recommended that teleconference attendees use a landline and handset in order to reduce background noise.

AGENDA

I. Call to Order
   A. Call of Roll
   B. Determination of a Quorum

II. Public Comment
Because of time considerations, the period for public comment by each speaker may be limited. Speakers are urged to avoid repetition of comments already made by previous speakers.

III. Review and Approval of the September 09, 2020 Meeting Summary*

IV. Update on Department of Indigent Defense Services - *Ms. Marcie Ryba*

V. Update on ACLU of Nevada/Lawsuit - *Ms. Holly Welborn/Ms. Franny Forsman*

VI. Update on Indigent Defense Clark County - *Mr. Drew Christensen, Mr. Darin Imlay, Ms. JoNell Thomas*

VII. Update on Indigent Defense in Washoe County - *Mr. John Arrascada, Ms. Krista Meier, Mr. Marc Picker*

VIII. Update on the State Public Defender's Office - *Ms. Karin Kreizenbeck*

IX. Update on the Federal Public Defender's Office - *Mr. Jonathan Kirshbaum*

X. Other Business

A. Updates on Eighth Judicial District Court's Homicide Program - *Judge Doug Herndon, Mr. Chris Lalli*

B. Updates on Settlement Conferences - *All (as applicable)*

XI. Adjournment

- Action items are noted by * and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited to five minutes per person at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Jamie Gradick, (775) 687-9808 - email: jgradick@nvcourts.nv.gov
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030 (4)(a))
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations**: Nevada Supreme Court website: www.nvcourts.gov

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Indigent Defense Commission

Summary Prepared by Jamie Gradick
September 9 2020
1:30 p.m.
Remote Meeting

Attendees	
Sr. Justice Michael A. Cherry, Chair	Marc Picker
Judge Thomas Armstrong	Judge John Schlegelmilch
John Arrascada	Marcie Ryba
Eric Brown	Jordan Savage *(proxy for JoNell Thomas)*
Drew Christensen	Dagny Stapleton
Joni Eastley	Jeff Wells
Franny Forsman	Judge Nathan T. Young
Judge Douglas Herndon	**AOC Staff**
Judge Kevin Higgins	Jamie Gradick
Kriston Hill	Hans Jessup
Jonathan Kirschbaum	John McCormick
Karin Kreizenbeck	
Chris Lalli	

I. Call to order
- Call of Roll and Determination of a Quorum
  - Ms. Gradick called roll.
  - A quorum was present.

II. Public Comment
- There was no public comment.

III. Review and Approval of the January 15, 2020 Meeting Summary
- Attendees approved the summary.

IV. Update the Department of Indigent Defense Services/Board on Indigent Defense Services
- Ms. Marcie Ryba provided an update.
  - The next BIDS meeting is set for September 24.
  - The *Davis v State* stipulated judgement set a timeline for DIDS to complete several tasks.
    - Ensuring class members have immediate access to applications for indigent

defense services
    - Ensuring that class members are screened for indigency within 48 hours
    - Ensuring that class members are eligible for and represented by counsel at initial appearance.
  - DIDS is visiting the courts and counties and encouraging counties to apply for Covid-19 funding for indigent defense purposes.
  - Legal Server contract has been approved. DIDS is hoping to offer this case management system to rural counsel as a means of tracking caseloads and time more efficiently.
  - NSCS will be performing a weighted caseload study on caseloads in the rural counties.
  - Proposed regulations have been submitted to LCB; DIDS is planning to hold a workshop on the regulations once they are returned by LCB.
- Sr. Justice Cherry asked whether DIDS has current plans regarding the urban counties.
  - Ms. Ryba commented that DIDS has included Washoe and Clark data in the annual report and has reached out to these counties regarding the use of Legal Server.
- Judge Young expressed concern with the regulations proposed by DIDS.
  - Many judges feel these regulations are "unworkable" and are requesting advance notice to be heard on these before they are adopted.
    - Ms. Ryba commented that the notice period will comply with the required timeline.
- Judge Schlegelmilch asked Ms. Ryba to provide the proposed regulations as submitted to the LCB.
  - Ms. Ryba explained that DIDS has not distributed the proposed regulations at this point only because it is not clear what changes LCB will make. The attachments are available on the DIDS website.
  - Ms. Ryba encouraged judges to attend the next Board meeting.
  - Attendees discussed concerns in the process. Judge Schelglmilch and Judge Young requested that the proposed regulations, as submitted to the LCB, be shared with the rural judges so that the judges may be prepared for the Board meeting.
    - Ms. Ryba commented that she would prepare something to share with the judges.

V. Status Update on ACLU of Nevada Lawsuit *(Portions of this discussion were inaudible)*

- Ms. Forsman informed attendees that the stipulated consent judgement was filed and encouraged attendees to review the timeline.
  - The lawsuit has not been dismissed; it cannot be dismissed until June 2023 in order to allow for another legislative session or an opportunity to return to court if necessary.
  - Concern was expressed regarding "unworkable" requirements of the consent decree; this is "ad hoc rulemaking" and conflicts with statutory law.
    - Judge Schlegelmilch expressed concern regarding the consent judgment and the lack of an associated funding mechanism. The counties have not been involved in this process and have not signed off.
    - Requiring judges to direct notice of lawsuits to every criminal defendant is not feasible.
    - Judge Young commented that one district court judge does not have authority to

order another to do anything.

- Ms. Forsman offered clarification regarding the judges' remarks.
  - Ms. Forsman will relay the concern regarding the notice requirement back to the AG's Office for further review.
  - The regulations flow out of the lawsuit but they also flow to the statute; it is really separate from the dissent decree.
  - The decree does not force a choice between operating a county public defender's office or going to the state office.
  - The funding mechanism is in statute; the decree "fills in the gaps". The funding mechanism comes from AB81.
- Sr. Justice Cherry suggested Ms. Forsman set up a conference all between the ACLU, the AG's Office and the rural judges to address concerns. Ms. Forsman commented that, at this point, the decree is in place, but she would be happy to offer explanation.
- Concern was expressed regarding workability of the requirements in remote, rural counties.

VI. Status Update on Indigent Defense in Clark County

- Mr. Jordan Savage, as proxy for JoNell Thomas, provided a brief status update.
  - Currently in a transition period; currently no murder trials set for the next few weeks.
  - There is concern regarding limited contact with clients.
- Attendees discussed changes to jury trials due to pandemic-related concerns.
  - Mr. Lalli informed attendees that the 8th Judicial District has reconfigured jury services, the jury selection process, and 2 of the courtrooms to comply with pandemic safety precautions.
  - Attendees briefly discussed safety concerns regarding proceedings in the Las Vegas Justice Court; Mr. Lalli commented that improvements are being made.
- Mr. Lalli informed attendees that the Commission on Statewide Rules of Criminal Procedure recently amended the settlement conference rule and that is working well in Clark County.
- Mr. Christensen provided a status update.
  - The private bar is experiencing issues maintaining contact with in-custody clients. Mr. Christensen's office has been working with the jail; funds have been earmarked to upgrade the systems to allow for private communications.
- Mr. Wells commented that Clark County secured CARES Act funds to upgrade technology in justice courts in all eleven townships. Attendees briefly discussed safety precautions being considered.
- Mr. Wells reported that the public defender's office is fully staffed; most of the attorneys are working primarily from home.

VII. Status Update on Indigent Defense in Washoe County

- Mr. Arrascada provided an update.
  - Jury trials resume Sept. 21; arrangements are currently being made with all parties.
    - Moving to a stacked calendar to address backlog
    - Working to build up a more "robust" settlement program.
  - Caseloads are starting to increase; current case management system is nearing end of

life so his office is currently looking into replacements.
  - Working with jail to ensure client access remotely when necessary; jail has been making contact visits available as jury trials begin.
  - Iweb platform allows for private communication with clients and seems to be working well.
- Mr. Picker reported that the jury trial working group has been meeting for about 6 weeks to prepare for jury trials. Will start with small cases, only one will take place at a time.
- Offices are fully-staffed.

VIII. Status Update from the State Public Defender's Office
- Ms. Kreizenbeck provided a brief update.
  - Main concern at this point is keeping clients protected.
  - Her office has been meeting with justice court judges to discuss jury trials; they are reluctant to postpone so that will be addressed on a case-by-case basis.
  - Attorneys are appearing in court although the office is closed to the public; client access in the prison has been a challenge.

IX. Status Update on the Federal Public Defender's Office *(Portions of this discussion were inaudible)*
- Mr. Kirshbaum informed attendees that Nevada Dept. of Corrections is not allowing in-person visitation and video-conferencing has not been successful.
  - NDOC is allowing phone calls but there are confidentiality concerns when a caseworker refuses to leave the room during a call.
  - There have also been concerns regarding recording conversations without a guarantee that recordings would remain confidential.
- CLEs and training are being offered again and are being very well-attended.

X. Other Business
- The next meeting will be set for early December and will be held remotely.

XI. Adjournment
- Senior Justice Cherry adjourned the meeting at 2:50 pm.

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THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

DIANE DAVIS, JASON LEE ENOX, JEREMY LEE IGOU, and JON WESLEY TURNER II, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

STATE OF NEVADA; STEVE SISOLAK, Governor, in his official capacity,

Defendants.

Case No. 170C002271B

Dept. No. II

STIPULATED CONSENT JUDGMENT

I. BACKGROUND

Plaintiffs Diane Davis, Jason Lee Enox, Jeremy Lee Igou, and Jon Wesley Turner II (collectively, "Plaintiffs"), on behalf of themselves and all other indigent defendants in the Rural Counties, filed the above-captioned action (the "Action") against the State of Nevada and

Governor Steve Sisolak (collectively, "Defendants"), challenging, *inter alia*, the constitutionality of Defendants' policies and practices regarding Defendants' system of indigent defense in Nevada's Rural Counties.[1]

Plaintiffs filed their First Amended Complaint on October 15, 2018; Defendants filed their Answer to Plaintiffs' First Amended Complaint on November 15, 2018; Plaintiffs filed their Amended Motion for Class Certification on December 14, 2018; Defendants filed their Opposition to Plaintiffs' Amended Motion for Class Certification on April 22, 2019; and Plaintiffs filed their Reply in Support of their Motion for Class Certification on May 24, 2019.

On June 3, 2019, the Nevada legislature passed Assembly Bill 81 ("AB 81"),[2] that: (1) acknowledges the State's obligation to provide effective representation to accused indigent persons at each critical stage of criminal and delinquency proceedings and further acknowledges the State's obligation to provide the general framework and resources necessary for the provision of indigent defense services;[3] (2) establishes an independent Board on Indigent Defense Services ("Board") and Department of Indigent Defense Services ("Department") charged with oversight and regulation of indigent defense services throughout the State; and (3) was signed into law by the Governor on June 7, 2019 as Chapter 485, Statutes of 2019.

This Court granted Plaintiffs' Motion for Class Certification on June 14, 2019.

On April 30, 2020, the Interim Finance Committee approved certain expenditures for the Department, allowing it to accelerate implementation of AB 81 in the interim period prior to the 2021-2023 biennial budget, both as to creating the framework contemplated for the Department while also addressing certain immediate economic-incentive issues that Plaintiffs contend must be immediately addressed because of the State's obligation under the Sixth and Fourteenth Amendments to the U.S. Constitution, Article 1 Section 8 of the Nevada Constitution, and

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[1] "Rural Counties" means the following Nevada counties: Churchill, Douglas, Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye, and White Pine.

[2] Codified at Nevada Revised Statutes ("NRS") §§ 180.002 *et seq.*

[3] *See* § 8.2(a). ("The Board shall…[e]stablish minimum standards for the delivery of indigent defense services to ensure that such services meet the constitutional requirements and do not create any type of economic disincentive or impair the ability of the defense attorney to provide effective representation.").

AB 81's acknowledgement that the State remains responsible for ensuring that indigent defense services are properly funded. Following IFC's approval and all other necessary approvals, the requested funds for specific items were made available to the Department.

Without any admission of fault or wrongdoing, and without conceding or otherwise expressing any position on any legal issue or argument previously raised in this Action, the Parties wish to settle the Action and all disputes arising therein as among them, in order to avoid the cost, difficulty, and uncertainty associated with further litigation while implementing AB 81 to improve indigent defense in the Rural Counties for the certified class. Defendants deny Plaintiffs' allegations in this Action. Defendants specifically deny that the State has failed to carry out any constitutional duty whatsoever in relation to the claims and allegations asserted in this Action, and further deny that any act, omission, law, or policy of the State has caused or will cause any harm to Plaintiffs or those whose rights they claim to protect in this Action.

In that context, the parties have negotiated in good faith and have agreed on the following terms in this Consent Judgment in order to resolve this case short of trial and to ensure prospectively that the Plaintiff Class receives representation that is both effective and in compliance with all relevant professional and ethical standards at every critical stage. The Parties agree that such effective representation shall include: timely and frequent client communication; meaningful representation of indigent defendants at initial appearances, bail and bail reduction hearings, and preliminary hearings; timely review of discovery; sufficient case investigation in order to determine the relative strengths and weaknesses of the state's case; retention of qualified experts whenever necessary to provide effective representation; robust pre-trial motion practice; timely and thorough preparation for trial; timely and thorough preparation for sentencing; and competent direct appeal advocacy.

The Plaintiff Class continues to be harmed by the status quo. Plaintiffs and Defendants agree that there is an urgent need to forgo additional litigation so that no member of the Plaintiff Class suffers a deprivation of constitutional rights going forward.

The parties agree that the terms of this Judgment are in the public interest and the interests of the Plaintiff Class and that this Judgment upon the order of the Court is the most appropriate means of resolving this action.

The parties agree that the Department of Indigent Defense Services, created by AB 81, is best suited to implement, on behalf of Defendants, certain obligations arising under this Judgment.

The Board has reviewed those obligations contemplated under this Judgment for implementation by the Department and will direct the Executive Director to implement such obligations in accordance with the terms of this Judgment. This direction is reflected in the *Authorization of the Board on Indigent Defense Services Concerning the Consent Judgment Settling the Davis v. Nevada Lawsuit*, incorporated herein as Appendix A.

II. FINDINGS OF FACT

The Court has subject matter jurisdiction over this action pursuant to Nev. Const. art. 6 § 6; Nev. Rev. Stat. §§ 33.010, 34.330, and venue is proper under Nev. Rev. Stat. § 13.010 because the State of Nevada and the Governor are named as Defendants, and Carson City encompasses the capital city of Nevada and the Governor's office.

The Plaintiff Class consists of all persons who are now or will be under formal charge before a state court in a Rural County of having committed any offense, the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correctional facility (regardless of whether actually imposed) and who are indigent and thus constitutionally entitled to the appointment of counsel.

Defendants are the Governor in his official capacity and the State of Nevada.

Plaintiffs and Defendants have determined that this Judgment is the most effective and prudent means to resolve the disputed issues underlying this action, rather than to engage in extensive fact and expert discovery, pretrial motions, trial, and appeal, which would be both long and costly.

Over twelve years ago, the Nevada Supreme Court created the Indigent Defense Commission based on "concerns about the current process for providing indigent defendants …

with counsel and whether the attorneys appointed are providing quality and effective representation." FAC ¶ 120; Ex. 1. At the Indigent Defense Commission's first meeting, it identified the need for change. FAC ¶ 122; Ex. 2 at 5.

In 2018, the Sixth Amendment Center published a report commissioned by the Nevada Right to Counsel Commission, which had been created by Senate Bill 377, in June 2017. The 2018 Sixth Amendment Center report identified numerous areas in which the representation Plaintiff Class receives needs to be improved; Plaintiffs allege these deficiencies in representation are unconstitutional. As a result of these issues, members of the Plaintiff Class contend that they face a substantial risk that they will be harmed.

III. CONCLUSIONS OF LAW

The right to counsel in criminal cases is protected by the Sixth and Fourteenth Amendments to the United States Constitution, Article 1, Section 8 of the Nevada Constitution, and Nevada Revised Statutes §§ 171.188 and 178.397. *See, e.g.*, *Rothgery v. Gillespie Cty.*, 554 U.S. 191, 217 (2008); *United States v. Wade*, 388 U.S. 218, 228 (1967); *In re Wixom*, 12 Nev. 219, 219-24 (1877).

The federal and state constitutions require the State to provide counsel to criminal defendants who are unable to afford their own legal representation. *Gideon v. Wainwright*, 372 U.S. 335 (1963); *In re Wixom*, 12 Nev. 219, 219-24 (1877); *see also Geders v. United States*, 425 U.S. 80, 88–91 (1976) (holding that a criminal defendant has a constitutional right to consult with his appointed counsel).

Counsel must provide, at least minimally, adequate representation in order to meet federal constitutional standards. *See United States v. Cronic*, 466 U.S. 648, 653 (1984); *see also Strickland v. Washington*, 466 U.S. 668 (1984). The right to counsel may be conceived of as both prospective—i.e. applying from the outset of the criminal proceeding—and retroactive, i.e. permitting a guilty verdict or plea to be set aside if an individual defendant proves that the absence of competent counsel affected her criminal proceeding. *See Rothgery v. Gillespie Cty.*, 554 U.S. 191, 217 (2008).

Proof that systemic inadequacies in a state's public defense system have resulted in actual or constructive denials of counsel at critical stages of prosecution will support a claim for prospective relief under the Sixth Amendment. *See Cronic*, 466 U.S. at 653; *Tucker v. State*, 394 P.3d 54, 62 (Idaho 2017); *State ex rel. Missouri Pub. Def. Comm'n v. Waters,* 370 S.W.3d 592, 608 (Mo. banc. 2012); *Kuren v. Luzerne Cty.*, 146 A.3d 715, 718 (Pa. 2016).

The absence of "traditional markers of legal representation" from a state public defense system—namely, counsel's frequent nonattendance during critical stages of the criminal proceedings; minimally adequate communication with clients; and/or failure to conduct sufficient investigation—can demonstrate that a state's public defense system is constitutionally inadequate. *See Geders v. United States*, 425 U.S. 80, 88–91 (1976); *see also Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1137 (W.D. Wash. 2013); *Avery v. Alabama*, 308 U.S. 444, 446 (1940); *Pub. Defender v. State*, 115 So. 3d 261 (Fla. 2013); *State v. Citizen*, 898 So. 2d 325 (La. 2005); *State v. Peart*, 621 So. 2d 780 (La. 1993).

The U.S. Department of Justice has identified and articulated the "traditional markers of legal representation" in various amicus briefs and statements of interest filed in other public defense reform cases across the country. *See, e.g., Hurrell-Harring, et al. v. State of New York, et al.*, Index No. 8866-07, Doc. No. 11697717 at 12–14 (N.Y. Sup. Ct. 2014), Statement of Interest of the United States; *Kuren, et al. v. Luzerne County, et al.*, 2015 WL 10768531 at 11–13 (Pa. 2016), Brief of the United States as Amicus Curiae in Support of Appellants; *Tucker, et al. v. State of Idaho*, et al., No. 43922-2016, Brief for the United States as Amicus Curiae Supporting Plaintiffs-Appellants at 25–28.

The constitutional guarantee of the assistance of counsel is a guarantee of "untrammeled and unimpaired" loyalty; representation by an attorney "struggl[ing] to serve two masters" amounts to a denial of counsel for purposes of the Sixth Amendment. *Glasser v. United States,* 315 U.S. 60, 70, 75 (1942). In other words, an attorney forced to choose between the interests of two clients—co-defendants with conflicting defenses, for instance, or a current and a former client—is compromised as far as the Constitution is concerned. A defendant need not show prejudice if his attorney is laboring under a conflict of interest. *Holloway v. Arkansas*, 435 U.S.

475, 484 (1978). Where an attorney is unable to provide constitutionally adequate representation to all her clients, her clients' interests are in opposition with one another: doing the constitutional minimum for one defendant necessarily takes time that could be spent providing the constitutional minimum to another. *See Public Defender, Eleventh Judicial Circuit of Fla. v. State,* 115 So. 3d 261, 267 (Fla. 2013); *People v. Roberts*, 321 P.3d 581, 589 (Colo. App. 2013); *State ex rel. Mo. Pub. Def. Comm'n v. Waters*, 370 S.W. 3d 592, 609 (Mo. banc 2012); *In re Edward S.*, 92 Cal. Rptr. 3d 725, 746–47 (Cal. Ct. App. 2009); *United States ex rel. Green* v. *Washington*, 917 F. Supp. 1238, 1275 (N.D. Il. 1996).

As previously determined by this Court, the Class satisfies the requirements of Rules 23(a) and 23(c)(2)[4] of the Nevada Rules of Civil Procedure for class certification; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND ORDERED as follows:

IV. PARTIES

Plaintiff Class Representatives Diane Davis, Jason Lee Enox, Jeremey Lee Igou, and Jon Wesley Turner II, representing the Plaintiff Class, consisting of all persons who are now or will be under formal charge before a state court in a Rural County of having committed any offense, the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correctional facility (regardless of whether actually imposed) and who are indigent and thus constitutionally entitled to the appointment of counsel ("Plaintiffs").

Defendant Stephen F. Sisolak, in his official capacity as the Governor of the State of Nevada, and Defendant State of Nevada ("Defendants").

V. NATURE OF THIS JUDGMENT

A. Duration and Expiration of Terms of this Judgment

Unless otherwise specified, each term of this Judgment shall remain in effect until Defendants demonstrate substantial compliance by Motion, granted by this Court. Compliance may be demonstrated by factual update and/or a showing that a statute or regulation postdating the effective date of this Judgment imposes responsibilities upon Defendants that are identical to

[4] Current Nev. R. Civ. 23(c)(2) was found under section 23(b)(2) prior to the March 2019 amendments to the Nevada Rules of Civil Procedure.

the terms of this Judgment.

B. Interim Deadlines

The following interim deadlines, each of which is discussed more fully below, shall apply to this Judgment:

Event	Deadline
Parties identify potential monitors	14 days after Effective Date
Workload data reporting commences	May 1, 2020
Annual reporting on status of indigent defense in Nevada commences	July 1, 2020
Executive Director shall establish a standard contract for the provision of indigent defense services	Within 6 months of Effective Date
All new county contracts for the provision of indigent defense must be approved by the Executive Director (or a designee) prior to execution	Within 6 months of Effective Date
All Class Members have immediate access to applications for indigent defense services	Within 6 months of Effective Date
All Class Members are screened for indigency within 48 hours.	Within 6 months of Effective Date
All Class Members eligible for publicly funded legal representation are represented by counsel at initial appearance/arraignment	Within 6 months of Effective Date

Event	Deadline
Defendants shall establish a system for issuing client surveys to indigent defendants and incorporating client survey feedback into Defendants' responsibility for reviewing the manner in which indigent defense services are provided throughout the State.	Within 12 months of Effective Date
Delphi study contract executed with qualified provider	12 months after Effective Date
Delphi study standards included in standard indigent defense contract	6 months after completion of Delphi study
Compliance with Delphi study workload standards	12 months after completion of Delphi study

C. Dismissal

Any time after June 30, 2023, and after a determination by this Court that all terms of this Judgment have been substantially complied with, this Court shall dismiss this Action. In evaluating substantial compliance, the Court should consider compliance with the interim deadlines set forth above. Until such dismissal, this Court shall retain jurisdiction over this action. In no event shall this Court dismiss the case before June 30, 2023.

VI. DEFINITIONS

The parties intend that the following terms will have the specified meaning when used throughout this Judgment:

"ABA Criminal Justice Standards" means the latest edition of the Criminal Justice Standards for the Defense Function, published by the American Bar Association, and available at: https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/.

"ABA Ten Principles" means the ABA Ten Principles of a Public Defense Delivery System, and available at:

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf.

"Action" means *Davis v. Nevada,* Case No. 170C002271B, originally filed on November 2, 2017.

"Judgment" and "Consent Judgment" mean this Stipulated Consent Judgment dated May 1, 2020 between and among Plaintiffs and Defendants.

"Assembly Bill 81" or "AB 81" means the Nevada statute signed into law on June 7, 2019, titled "AN ACT relating to criminal defense; creating the Department of Indigent Defense Services to oversee criminal defense services provided to indigent persons in this State; creating the Board on Indigent Defense Services consisting of various appointed persons to provide certain direction and advice to the Executive Director of the Department and to establish certain policies; requiring the Board to establish the maximum amount a county may be required to pay for the provision of indigent defense services; authorizing the Board to adopt regulations governing indigent defense services; providing for the transfer of responsibility for the provision of indigent defense services from certain counties to the State Public Defender in certain circumstances; allowing such services to be transferred back to the county in certain circumstances; and providing other matters properly relating thereto."

"Board" means the Board on Indigent Defense Services as established by AB 81.

"Department" means the Department of Indigent Defense Services as established by AB 81.

"Executive Director" means the Executive Director of the Department of Indigent Defense Services as established by AB 81.

"Corrective action plan" means any requirement relating to indigent defense services that the Department of Indigent Defense Services imposes upon a Rural County pursuant to Sections 13 and 14 of AB 81.

"Criminal defendant" means any person under formal charge before a Nevada state court in a Rural County of having committed any offense, the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correctional facility.

"Plaintiffs," "Plaintiff Class," "Class members," or "Class" means all named Class Representatives and all persons who are now or who will be under formal charge before a state court in a Rural County of having committed any offense, the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correctional facility (regardless of whether actually imposed) and who are indigent and thus constitutionally entitled to appointment of counsel; and

"Rural Counties" means the following Nevada counties: Churchill, Douglas, Esmerelda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye, and White Pine.

"Arraignment/Initial Appearance" means the proceeding at which criminal defendants are presented with the formal charges against them and are required to enter a plea.

"Effective Date" means the date upon which this Court signs the Consent Judgment.

VII. ELIMINATION OF ECONOMIC DISINCENTIVES

A. Standardized Contracting

Consistent with the ABA Ten Principles, Defendants, through the Board and Executive Director, shall ensure that contracts for rural public defense services after the effective date do not include terms such that the pricing structure charges or pays a single fixed fee for the services and expenses of the attorney. Counsel with whom counties contract with to provide public defense services shall be compensated with a reasonable hourly rate that takes into account overhead and expenses, including costs relating to significant attorney travel time. Contracts for public defense services shall specify performance requirements and anticipated workload, provide a funding mechanism for excess, unusual, or complex cases that does not require judicial approval, and separately fund expert, investigative, appellate work, and other litigation support services.

Compensation for public defense services provided by rural counties shall be comparable on an hourly basis to that of prosecutors in the same county with comparable experience, and should take into account that prosecutors do not pay for overhead or expenses out of their own compensation.

Consistent with the ABA Ten Principles, Defendants, through the Board and the Executive Director, shall ensure that selection of private attorneys for public defense contracts

shall be independent of the county District Attorney and the judiciary. Attorney selection shall be based upon individual attorney qualifications and experience and shall not take into account the amount of fees previously charged by the applicant for public defense services.

Defendants, through the Board and the Executive Director, shall establish a standard contract for the provision of indigent defense services within six months of the date upon which the Executive Director assumes his/her duties in that position. The Executive Director shall use the National Legal Aid and Defender Association's Model Contract for Public Defense Services[5] as a model, amending it as necessary, given local needs, and to ensure consistency with AB 81 and all implementing regulations. The contracting process shall include a check for conflicts of interest. Any applicant who previously served as a county prosecutor, shall not be eligible for an indigent defense contract in the same county before 18 months of their last date of employment as a prosecutor. Exceptions to this requirement may be made in extraordinary circumstances by the Executive Director, who shall evaluate any potential conflicts of interest and ensure the county has a process to notify indigent defendants of any such potential conflicts and ensure any conflict waivers obtained are knowing and voluntary and in compliance with legal ethics rules.

Defendants, through the Board, shall require all future county contracts for the provision of indigent defense after the Effective Date to be approved by the Executive Director (or a designee) prior to execution.

B. Flat Fee Contracts in Justice and Municipal Courts

Defendants, through the Executive Director of the Department of Indigent Defense Services, shall include the following in the 2020 annual report required by AB 81, Section 10.1: An analysis of whether Nevada Revised Statutes § 171.188(4) is inconsistent with (1) the State's constitutional and statutory obligation to ensure indigent defendants receive meaningful assistance of counsel, and (2) with AB 81's requirement in section 8.2(a) that the Board on Indigent Defense Services "[e]stablish minimum standards for the delivery of indigent defense services to ensure that such services … do not create any type of economic disincentive … to

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[5] Available at: http://www.nlada.org/defender-standards/model-contract/black-letter.

provide effective representation."

If the Executive Director determines that Nevada Revised Statutes § 171.188(4) is inconsistent with the constitutional and statutory provisions identified above, the Executive Director will—consistent with the enumerated responsibility in AB 81, Section 10.2—recommend legislation to cure those defects in the 2020 annual report.

C. Court-Appointed Defense Counsel

Defendants, through the Executive Director of the Department of Indigent Defense Services, shall include the following in the 2020 annual report required by AB 81 Section 10.1: An analysis of whether Nevada Revised Statutes §§ 7.115-7.175[6] (1) are inconsistent with AB 81's requirement in section 8.2(a) that the Board on Indigent Defense Services "[e]stablish minimum standards for the delivery of indigent defense services to ensure that such services … do not create any type of economic disincentive … to provide effective representation;" (2) provide adequate hourly rates to counsel; (3) create economic disincentives to counsel by capping total payments; (4) create economic disincentives for counsel to employ investigative, expert or other services by capping payment; and (5) are inconsistent with the State's constitutional and statutory obligation to ensure indigent defendants receive meaningful assistance of counsel, including the "the obligation of the Legislature to provide the general framework and resources necessary for the provision of indigent defense services."

If the Executive Director determines that Nevada Revised Statutes §§ 7.115-7.175 are deficient, the Executive Director will—consistent with the enumerated responsibility in AB 81 Section 10.2—recommend legislation to cure those defects in the 2020 annual report.

VIII. ESTABLISHMENT OF MINIMUM STANDARDS

A. Initial Appearance and Arraignment

Defendants shall ensure, within six months of the effective date of the Consent Judgment and continuing thereafter, that:

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[6] These statutes' references to "appointed defense counsel" and "attorney[s] other than public defender" are routinely understood to mean attorneys who provide representation to indigent criminal defendants and are neither contracted with a county to serve as a primary provider of indigent defense nor employed by an institutional public defender office.

- All Class Members have immediate access to applications for indigent defense services by, among other things, ensuring that county jails are aware of all relevant laws and rules regarding the provisions of such applications;
- All Class Members are promptly screened for indigence in order to provide representation at such person's initial appearance/arraignment; and
- All Class Members who are eligible for publicly funded legal representation are represented by counsel in person at his or her initial appearance/arraignment. A timely initial appearance with counsel shall not be delayed pending a determination of defendant's eligibility.

Defendants, through the Board and Executive Director, shall include in the model contract referenced above provisions requiring that indigent defense providers:

- Make all reasonable efforts to meet with the client, in a private confidential space, prior to the initial appearance, and that in-court discussions with clients supplement, not supplant, such meetings;
- Make an argument for the client's release at the initial appearance and/or for a bail amount that the client can afford to pay; and
- Advise all clients not to waive any substantive rights or plead guilty at the initial appearance.

B. Client Communication

Defendants, through the Board and Executive Director, shall include in the model contract referenced above a provision requiring that indigent defense providers make all reasonable efforts to meet with each client within the first seven days following the assignment of the case, as well as every 30 days thereafter, unless there are no significant updates in the client's case.

Defendants, through the Board and Executive Director, shall also ensure that indigent defense providers comply with the performance standards regarding client communication laid out in the Nevada Indigent Defense Standards of Performance ordered implemented by the Nevada Supreme Court in *In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT No. 411 (Oct. 16,

2008), including making all reasonable efforts to conduct an initial interview with the client in a confidential setting as soon as practicable and before any court proceeding, which interview shall include, at a minimum, an explanation to the client of the charges against him or her and potential penalties; a discussion concerning pretrial release; an explanation of the attorney-client privilege; a general procedural overview of the progression of the case; how and when counsel can be reached; and when counsel will see the client next. These Standards of Performance are incorporated herein as Appendix B. In addition, Defendants, through the Board and Executive Director, shall engage in reasonable efforts to ensure that clients are able to contact their indigent defense providers throughout the pendency of their case, including requiring indigent defense providers to maintain a system for receiving collect telephone calls and emails from incarcerated clients.

Defendants shall take appropriate legal steps to ensure that county jails and state prisons are in compliance with all existing laws and rules regarding access to counsel and the privacy of client communications.

C. Attorney Qualifications

Consistent with the ABA Ten Principles, Defendants, through the Board and Executive Director, shall ensure that indigent defense providers' ability, training, and experience match the complexity of the case. A defense attorney shall not be assigned a case if that attorney lacks the experience or training to handle the particular case competently.

Defendants' eligibility requirements for attorneys to provide indigent defense services (See AB 81 Section 12.1(b)) shall include a minimum amount of representative experience (including jury trials) at each of the following offense levels before attorneys are deemed eligible for the next level: (1) misdemeanors and gross misdemeanors; (2) category C-E felonies; (3) non-capital category A-B felonies; and (4) capital category A felonies. Defendants' eligibility requirements for attorneys to provide indigent defense services shall include specialized requirements for attorneys to be deemed eligible to represent juveniles facing delinquency proceedings or charges in criminal court.

D. Training & Resources

Consistent with the ABA Ten Principles, Defendants, through the Board and Executive Director, shall provide indigent defense providers with access to a systematic and comprehensive training program, specifically including a certain amount of CLE specific to criminal defense. All indigent defense attorneys shall comply with the Board's requirement for systematic and comprehensive training.

Training topics shall be tailored to the needs of indigent defense practitioners and shall include, at a minimum: (1) client intake interviews; (2) client communication; (3) securing pretrial release; (4) preparation for arraignment, including preservation of a client's rights, and requests for formal and/or informal discovery; (5) investigation; (6) filing and responding to pre- and post-trial motions; (7) plea and sentencing outcome negotiations; (8) trial advocacy; and (9) appeals; and (10) special issues regarding the representation of juveniles.

Defendants shall make training and guidance resources available to all indigent defense providers. Such resources shall include experienced criminal attorneys available for consultation and a brief and motion bank of pleadings to be used for drafting guidance.

E. Performance

In implementing AB 81 Section 13, Defendants shall incorporate the performance guidelines set forth in the ABA Criminal Justice Standards and the Nevada Indigent Defense Standards of Performance ordered implemented by the Nevada Supreme Court in *In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT No. 411 (Oct. 16, 2008), included as Appendix B.

F. Evaluation

Consistent with the ABA Ten Principles, Defendants, through the Board, shall ensure that public defense counsel are systematically reviewed on an annual basis for quality and efficiency according to nationally and locally adopted standards, including, but not limited to, the ABA Criminal Justice Standards.

Within 12 months of the effective date, Defendants shall establish a system for issuing client surveys to indigent defendants and shall establish a system for incorporating client survey

feedback into Defendants' responsibility for "reviewing the manner in which indigent defense services are provided throughout the State." AB 81, Section 13. Client surveys shall be modeled on the survey included at Appendix C.

G. Workload

As part of its obligations under AB 81 Section 8.2(d)(4) ("Establishing guidelines to be used to determine the maximum caseloads for attorneys who provide indigent defense services"), Defendants shall commission a Delphi study to establish workload standards for the Rural Counties modeled upon the American Bar Association's Louisiana and Rhode Island Projects.[7] Defendants shall make best efforts to enter into a contract with a qualified provider for the Delphi study within 12 months of the effective date.

Within six months of the study's completion, Defendants, through the Board, shall include in the model contract referenced above, provisions to ensure that indigent defense providers' workloads—including any private work outside of their indigent defense duties—are consistent with the standards established in the Delphi study.

These workload standards may be superseded by standards of equal or greater rigor promulgated by the Board and/or Department.

Defendants shall require compliance with workload standards established as a result of the Delphi study within 12 months of completion of the Delphi Study.

H. Enforcement of Minimum Standards

Defendants shall timely and uniformly report to Plaintiffs all Board and/or Department determinations made pursuant to AB 81 Sections 13 and 14 that a specific Rural County is not meeting minimum standards and shall share the corrective action plan to address any deficiencies. Defendants shall regularly monitor the progress of each corrective action plan and provide

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[7] Available at: https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf; https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf

monitoring reports to Plaintiffs.

IX. UNIFORM DATA COLLECTION AND REPORTING

A. Uniform Workload Data Collection

Consistent with the Board's authority in AB 81, Section 8.2(d)(2), Defendants shall ensure that indigent defense providers' reports include at a minimum: (1) public defense caseload numbers and case outcome, organized by type of case (capital category A felony, non-capital category A-B felony, category C-E felony, gross misdemeanor, misdemeanor, probation violation, parole violation, capital appeal, felony appeal, misdemeanor or gross misdemeanor appeal); (2) attorney and staff hours spent per public defense case; (3) investigator hours per case; (4) expert hours per case; (5) total number of motions to suppress (i) filed and (ii) litigated; (6) number of trials over the reporting period; and (7) private workload, if any, measured in attorney hours.

B. Workload Data Reporting Requirements

Defendants shall ensure that the indigent defense providers' reports of workload data described above are provided to Plaintiffs and made publicly available on a quarterly basis, commencing no later than May 1, 2020.

C. Indigent Defense Services Reporting Requirements

Consistent with the Executive Director's enumerated responsibilities in AB 81 Sections 10.1(f) and 10.2 regarding annual reporting, Defendants shall ensure that such annual reports regarding the state of indigent defense services in the State of Nevada are provided to Plaintiffs and the public, commencing no later than July 1, 2020. Such reporting shall comport with AB 81's enumerated requirements and shall include, at a minimum: (1) any workload and case disposition data collected from the Rural Counties; and (2) any costs related to provision of indigent defense services.

Plaintiffs may seek additional information pertaining to implementation of AB 81 and this Consent Judgment from the Department on a reasonable basis, with the Department agreeing to use best efforts to provide any such requested information in a timely fashion.

X. MONITORING

In order to facilitate the successful implementation of this Consent Judgment, the Court shall appoint a Monitor to assess, on an ongoing basis, the extent to which Defendants are complying with the terms of this Consent Judgment, and to advise the Court on any compliance issues that may arise. The Monitor's authority shall be limited to the duties expressly set forth in this Consent Judgment.

Within fourteen days of the effective date of this Consent Judgment, the Parties shall identify and recommend potential monitors to each other. If the Parties can reach an agreement, the Court will appoint the agreed upon monitor. If the Parties cannot come to an agreement on who the monitor should be, the Parties shall identify their recommended monitors to the Court for consideration. The Court shall make the final determination as to which of these proposed monitors will be appointed for purposes of this Consent Judgment. Should the Monitor, or any successor, become unwilling or unable to serve as Monitor while this Consent Judgment is effective, then the Parties shall repeat the initial process to select a replacement monitor: first try to reach a joint decision; if a joint decision cannot be reached, submit potential names to the Court for decision. Defendants shall make all reasonable efforts to ensure that the fees and costs of the Monitor are paid in full in an amount not to exceed $75,000 per year (absent agreement by the parties or Court approval for additional work) in a timely manner.

The duties of the Monitor shall include the following: 1) receive reports and information from the Department, Department staff, and the Board related to the Board's and Department's obligations under the terms of the Agreement; 2) analyze the information received to evaluate compliance with the terms of the Agreement; and 3) file quarterly written reports to the District Court and Parties, either confirming compliance with the terms of the Agreement or notifying the District Court and Parties of any failures to comply with the terms of the Agreement. The Monitor's first report shall be due within 3 months of his or her start date.

Disputes between the parties regarding the Monitor's compliance findings shall be resolved according to the following process: 1) within 7 work days of being served a copy of the

Monitor's compliance report, a party shall notify the other party of the dispute;[8] 2) the parties shall meet and confer within 7 work days in order to resolve the dispute; 3) if in order to resolve the dispute, the parties agree that this Judgment requires revision, the parties shall file a joint motion to amend this Judgment; and 4) if the parties are unable to reach a resolution, the complaining party may file a motion with the District Court to either enforce the terms of this Judgment or dispute the Monitor's findings. The opposing party shall file its opposition within 15 calendar days of the motion and the parties shall have an opportunity for a hearing by the District Court, to be attended by the Monitor.

The Monitor shall have access to Board members and Department personnel, upon reasonable notice, in order to complete his/her reports to the District Court and Parties. Such access shall be reasonably limited to what the Monitor deems necessary to fulfill his or her duties. Additional investigatory efforts to evaluate compliance, such as site visits in the Rural Counties, that will cause the Monitor's annual fee to exceed $75,000, requires either prior agreement of the parties or Court approval.

The Court in which this case was filed, Department II of the First District Judicial Court of the State of Nevada in and for Carson City, will maintain jurisdiction for purposes of adjudicating disputes under this Section.

XI. ATTORNEYS' FEES AND COSTS

Each party shall bear their respective expenses and costs incurred from the date the Action was commenced through the Effective Date. In the event that further legal fees and costs are incurred as the result of a dispute arising from this Judgment, enforcement thereof and/or the terms herein, each Party shall bear its own future attorneys' fees and costs, unless the Court determines there is a material breach of a term of this Judgment, in which case the successful Party shall be awarded reasonable attorneys' fees and costs as determined by the Court.

XII. DISPUTES

In the event that a Party believes that any other Party is not in compliance with the terms

[8] If either party elects not to dispute the Monitor's findings or conclusions in one report, that party shall not have waived their ability to dispute the same findings or conclusions in a subsequent report.

of this Judgment, the complaining Party will notify the allegedly noncompliant Party of such noncompliance within 30 days of becoming aware of any issues of noncompliance. Notification will be in writing and will be provided to counsel for the Party alleged to be in noncompliance.

The Party alleged to be in noncompliance will have 30 days following receipt of the notification concerning the alleged noncompliance to respond to the notification.

Following the complaining Party's receipt of the response from the allegedly noncompliant Party, the Parties agree to negotiate in good faith to resolve any remaining disputes regarding the alleged noncompliance. The complaining Party agrees not to file any motion to enforce this Judgment until this dispute resolution process has been completed, and then only if the alleged noncompliance has not been corrected or deemed by the Parties to be unfounded. If the allegedly noncompliant Party fails to respond to the notification as set forth above, the complaining Party may file a motion to enforce this Judgment after the expiration of the 30 day period identified in that subdivision. Any motion to enforce this Judgment shall be filed in the Court in which this Action was filed.

The Court in which this case was filed, Department II of the First District Judicial Court of the State of Nevada in and for Carson City, will maintain jurisdiction for purposes of monitoring and enforcing of this Judgment.

This Section shall not apply to disputes arising out of the Monitor compliance report process, as set forth in Section X, above.

XIII. RESERVATION OF RIGHTS

Nothing in this Judgment shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.

XIV. REPRESENTATIONS AND WARRANTY

Counsel for the Parties, on behalf of themselves and their clients, represent that they know of nothing in this Judgment that exceeds the legal authority of the Parties or is in violation of any law. Defendants' counsel represents and warrant that they are fully authorized and empowered to stipulate to this Judgment on behalf of the State of Nevada and the Governor of Nevada, Steve

Sisolak, in his official capacity, and acknowledge that Plaintiffs stipulate to this Judgment in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to stipulate to this Judgment on behalf of the Plaintiffs, and acknowledge that Defendants stipulate to this Judgment in reliance on such representation. The undersigned, by their signatures on behalf of Plaintiffs and Defendants, warrant that upon execution of this Stipulated Judgment in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

XV. SEVERABILITY

In the event any of the terms or provisions of this Judgment are found to be legally unenforceable, then the remaining terms and conditions shall nevertheless be enforceable without regard to any such provisions or terms that are found to be legally unenforceable.

XVI. SOLE AGREEMENT

The Parties understand and agree that this Judgment constitutes the sole agreement among them as to the subject matter of this Judgment, and that in stipulating to this Judgment they have not relied on any other promises, inducement, or representations other than as expressly set forth herein in deciding to stipulate to this Judgment. Any modifications must be made in writing and signed by all Parties to this Judgment.

XVII. EXECUTION

Having read the foregoing and understood and agreed to the terms of this Judgment, consisting of a total of twenty-two typewritten pages (not including counterpart signature pages) and having been advised by counsel, the Parties hereby voluntarily affix their signatures. This Judgment may be executed in counterparts, and a copy shall be as valid and admissible into evidence as the original in any subsequent proceeding among the Parties.

XVIII. APPLICABLE LAW

This Judgment shall be interpreted under the laws of the State of Nevada.

IT IS SO ORDERED

Dated August 11, 2020

Hon. James E. Wilson Jr.
District Judge

For Plaintiffs:

Signed:

Title: Attorney for Plaintiffs

Dated: 6/11/20

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For Defendants:

Signed: _____

Title: Deputy Solicitor General

Dated: June 19, 2020

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JEFFREY M. CONNER
Deputy Solicitor General
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APPENDIX A

Authorization of the Board on Indigent Defense Services Concerning Consent Judgment Settling the Davis v. Nevada Lawsuit

Pursuant to AB 81, the Board on Indigent Defense Services has the authority to act in pursuit of its statutory responsibility to make efforts to improve the quality of mandated legal representation in the state of Nevada. The Board has reviewed the Consent Judgment settling the *Davis v. Nevada* lawsuit and the State's obligations contained therein that are expressly intended for implementation by the Board, the Department of Indigent Defense Services, and/or the Executive Director (or designee). The Board acknowledges that those obligations constitute measures that, once implemented, will improve the quality of indigent legal services. Therefore, the Board hereby authorizes and directs the Executive Director and Department to implement those obligations in accordance with the terms of the Consent Judgment. The Board represents and warrants that it is authorized to take this action.

Board Chair Signature: _____ Date: May 8, 2020

APPENDIX B

Nevada Indigent Defense Standards of Performance ordered implemented by the Nevada Supreme Court in *In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT No. 411 (Oct. 16, 2008)

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE REVIEW OF ISSUES CONCERNING REPRESENTATION OF INDIGENT DEFENDANTS IN CRIMINAL AND JUVENILE DELINQUENCY CASES.

ADKT No. 411

FILED

OCT 16 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER

WHEREAS, the paramount obligation of criminal defense counsel is to provide zealous and competent representation at all stages of criminal proceedings, adhere to ethical norms, and abide by the rules of the court; and

WHEREAS, the performance standards attached as Exhibit A provide guidelines that will promote effective representation by both appointed and retained counsel;

IT IS HEREBY ORDERED that the performance standards contained in Exhibit A to this order are to be implemented effective April 1, 2009.

IT IS FURTHER ORDERED that an extension for Washoe County and Clark County to complete the weighted caseload studies is granted to May 15, 2009; and

IT IS FURTHER ORDERED that this court shall hold a public hearing at 2:00 p.m. on Tuesday, January 6, 2009, at which time the court will consider the final report from the Rural Issues Subcommittee; and

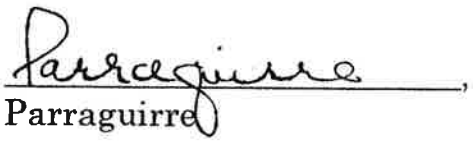
IT IS FURTHER ORDERED that representatives from Clark

County and Washoe County shall appear at the hearing scheduled for 2:00 p.m. on Tuesday, January 6, 2009, for a status report on the weighted caseload studies.

Dated this 15th day of October, 2008.

Gibbons, C.J.

Hardesty, J.



Parraguirre, J.

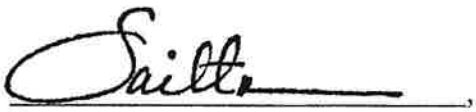
Douglas, J.

cc: Members of the Indigent Defense Commission
Hon. Connie Steinheimer, Chief Judge, Second Judicial District
Howard W. Conyers, Washoe District Court Clerk
Hon. Kathy Hardcastle, Chief Judge, Eighth Judicial District
Ed Friedland, Court Executive Officer
All District Court Judges
All Justices of the Peace
All Justices' Court Administrators
All Municipal Court Judges
All District Attorneys
All Public Defenders
Washoe County Alternative Public Defender
Clark County Special Public Defender
All City Attorneys
Franny Forsman, Federal Public Defender
All County Managers
Administrative Office of the Courts

SAITTA, J., with whom, CHERRY, J., agrees, concurring in part and dissenting in part:

I concur with the majority's decision to adopt the performance standards but dissent, in part, with respect to the adoption of standards 2-11(b)(2), 4-9(e)(2) and 5-9(e)(2). It is well settled that deportation, as a consequence of conviction, does not affect the voluntariness of a guilty plea.[1] However, in my opinion, an attorney properly exercising his duty to the client is still obligated to advise of any and all consequences of a plea. Specifically, I believe that counsel should not only be required to advise the defendant of potential penalties in any criminal prosecution, but also circumstances involving forfeiture of assets, deportation and civil liabilities which may be affected by the acceptance of a plea offer. The majority standard fails to recognize the significance of this.

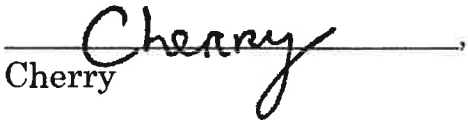
I also dissent from the majority with respect to the effective date of the adoption of these standards. I would make the standards effective January 1, 2009.



Saitta, J.

Saitta

I concur:



Cherry, J.

Cherry

[1]Barajas v. State, 115 Nev. 440, 991 P.2d 474 (1999).

MAUPIN, J., concurring in part and dissenting in part:

I concur with the adoption of the revised performance standards[1] with three qualifications.

First, the adoption of performance standards 2-11(b)(2), 4-9(e)(2) and 5-9(e)(2) specifically omit any obligation to advise a criminal defendant of the collateral consequences of a plea of guilty to a criminal charge. This is seemingly based upon the notion, with which I disagree, that such an obligation would undermine case authority concerning the enforceability of such pleas. In any case, while collateral consequences do not of necessity affect the legal voluntariness of a guilty plea,[2] a criminal lawyer must still communicate with the client concerning any consequences of a guilty plea that are either known or should be known by the attorney in the reasonable exercise of his or her professional duties.[3] The standards adopted today by this court should acknowledge this fact.

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[1]This order revisits and revises the standards promulgated by our previous order in ADKT 411 entered January 4, 2008.

[2]See, e.g., Barajas v. State, 115 Nev. 440, 442, 991 P.2d 474, 475-76 (1999) (holding that potential deportation of criminal defendant is a collateral consequence that does not affect the voluntariness of a guilty plea).

[3]In Barajas, we also noted that "trial counsel's failure to provide such information does not fall below an objective standard of reasonableness" for the purposes of ineffective assistance of counsel. 115 Nev. at 442, 991 P.2d 475-76. While such failures do not compel the invalidation of guilty pleas for ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984), such failures still implicate a lawyer's general duty of care toward the client.

Second, with regard to performance standard 2-6, applicable to capital cases, it would seem fundamental that mitigation and psychological consultants should be part of any defense team in a capital case. Certainly, the absence of such support has been the repeated subject of prolonged and costly litigation in this court and in federal courts—much of which could be preempted by a performance standard mandating these consultants. Having said this, standard 2-6 does appear to be consistent with the United States Supreme Court case of Wiggins v Smith.[4]

Third, while the performance standards we adopt today could and probably should be made effective immediately, and while Justices Saitta and Cherry properly note that imposition should come sooner than later, the majority draws a reasonable compromise to allow providers of indigent defense services ample time to adjust to the impact of today's order.

Maupin, J.

Maupin

[4]539 U.S. 510 (2003).

NEVADA INDIGENT DEFENSE
STANDARDS OF PERFORMANCE

Standard 1: Function of Performance Standards

(a) These performance standards are designed to improve the quality of criminal defense representation in Nevada and provide objective guidelines for the allocation of resources for indigent defense.

(b) These standards are intended to serve as a guide for attorney performance in criminal cases at the trial, appellate and post-conviction level, and contain a set of considerations and recommendations to assist counsel in providing competent representation for criminal defendants. The standards also may be used as a training tool.

(c) Every attorney who defends persons accused of crime shall be familiar with these standards. The steps covered in these standards are not to be undertaken automatically in every case. Instead, the steps actually taken should be tailored to the requirements of a particular case. The standards recognize that the representation of criminal defendants is a difficult and complex responsibility. Attorneys must have the flexibility to choose a strategy and course of action that ethically "fits" the case, the client and the court proceeding.

(d) These standards are intended to facilitate the efficient and effective operation of indigent and other criminal defense programs and are to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. Failure to adhere to the standards does not, in and of itself, constitute ineffective assistance of counsel. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances. These standards are not intended to create substantive or procedural rights which might accrue either to the accused, or convicted persons, or to counsel. Nothing contained herein shall be construed to overrule, expand, or extend, whether directly or by analogy, the decision reached by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984), nor its progeny as adopted by the Nevada Supreme Court.

CAPITAL CASE REPRESENTATION

Standard 2-1: The Defense Team and Services of Experts in Capital Cases

(a) The Defense Team

The defense team should:

1. consist of no fewer than two attorneys qualified in accordance with Standard 2-2.

(b) Expert and Ancillary Services

1. Counsel should:

(A) secure the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide competent legal representation at every stage of the proceedings, including but not limited to, an investigator, mitigation specialist and persons qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments;

(B) have the right to have such services provided by persons independent of the government; and

(C) have the right to protect the confidentiality of communications with the persons providing such services to the same extent as would counsel paying such persons from private funds.

Standard 2-2: Appointment, Retention, and Removal of Defense Counsel

(a) Qualifications of Defense Counsel

1. Consistent with Supreme Court Rules, the appointing authority should develop and publish qualification standards for defense counsel in capital cases. These standards should be construed and applied in such a way as to further the overriding goal of providing each client with competent legal representation.

2. In formulating qualification standards, the appointing authority should ensure that every attorney representing a capital client has:

(A) obtained a license or permission to practice in the jurisdiction;

(B) demonstrated a commitment to providing zealous advocacy and quality legal representation in the defense of capital cases; and

(C) satisfied the training requirements set forth in Standard 2-3.

3. The appointing authority should ensure that the pool of defense attorneys as a whole is such that each capital client within the jurisdiction receives competent legal representation. Accordingly, the qualification standards should ensure that the pool includes sufficient numbers of attorneys who have demonstrated:

(A) substantial knowledge and understanding of the relevant state, federal, and international law, both procedural and substantive, governing capital cases and skill in the management and conduct of complex negotiations and litigation;

(B) skill in legal research, analysis, and the drafting of litigation documents;

(C) skill in oral advocacy;

(D) skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;

(E) skill in the investigation, preparation, and presentation of evidence bearing upon mental status;

(F) skill in the investigation, preparation, and presentation of mitigating evidence; and

(G) skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements.

(b) Workload

The appointing authority should implement effectual mechanisms to ensure that the workload of attorneys representing clients in death penalty cases is maintained at a level that enables counsel to provide each client with competent legal representation in accordance with the Nevada Indigent Defense Standards of Performance.

(c) Monitoring; Removal

1. The appointing authority should monitor the performance of all defense counsel to ensure that the client is receiving competent legal representation. Where there is evidence that an attorney is not providing competent legal representation, the responsible agency should take appropriate action to protect the interests of the attorney's current and potential clients. The appointing authority shall not interfere with counsel's legal representation. Nor shall the appointing authority, if that is other than the judge, remove or attempt to remove an attorney from a specific case.

2. The appointing authority should establish and publicize a regular procedure for investigating and resolving any complaints made by judges, clients, attorneys, or others that defense counsel failed to provide competent legal representation.
3. The appointing authority should periodically review the rosters of attorneys who have been certified to accept appointments in capital cases to ensure that those attorneys remain capable of providing competent legal representation. Where there is evidence that an attorney has failed to provide competent legal representation, the attorney should not receive additional appointments and should be removed from the roster. Where there is evidence that a systemic defect in a defender office has caused the office to systemically fail to provide competent legal representation, the office should not receive additional appointments.
4. Before taking final action making an attorney or a defender office ineligible to receive additional appointments, the appointing authority should provide written notice that such action is being contemplated and give the attorney or defender office an opportunity to respond in writing.
5. An attorney or defender office sanctioned pursuant to this Standard should be restored to the roster only in exceptional circumstances.
6. The appointing authority should ensure that this standard is implemented consistently with standard 2-2, so that an attorney's zealous representation of a client cannot be cause for the imposition or threatened imposition of sanctions pursuant to this guideline.

Standard 2-3: Training

(a) Funds should be made available for the effective training, professional development, and continuing education of all members of the defense team who are employed by an institutional defender.
(b) Attorneys seeking to qualify to receive appointments should be required to satisfactorily complete a comprehensive training program in the defense of capital cases Such a program should include, but not be limited to, presentations and training in the following areas:
1. relevant state, federal, and international law;
2. pleading and motion practice;

3. pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;

4. jury selection;

5. trial preparation and presentation, including the use of experts;

6. ethical considerations particular to capital defense representation;

7. preservation of the record and of issues for post-conviction review;

8. counsel's relationship with the client and his family;

9. post-conviction litigation in state and federal courts; and

10. the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.

(c) Attorneys seeking to remain on the appointment roster should be required to attend and successfully complete, at least once every 2 years, a specialized training program that focuses on the defense of death penalty cases.

Standard 2-4: Funding and Compensation

(a) The appointing authority must ensure funding for the full cost of competent legal representation by the defense team and outside experts selected by counsel, as defined by these guidelines,.

(b) Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of competent legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.

1. Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases.

2. Appointed counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with the prevailing rates for similar services performed by retained counsel in the jurisdiction, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.

(c) Non-attorney members of the defense team should be fully compensated at a rate that is commensurate with the provision of legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

1. Mitigation specialists and experts retained by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale for comparable expert services in the private sector.
2. Members of the defense team assisting private counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with prevailing rates paid by retained counsel in the jurisdiction for similar services, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.

(d) Additional compensation should be provided in unusually protracted or extraordinary cases.

(e) Counsel and members of the defense team should be fully reimbursed for reasonable incidental expenses.

Standard 2-5: Obligations of Counsel Respecting Workload

Counsel representing clients in death penalty cases should limit their caseloads to the level needed to provide each client with competent legal representation in compliance with the Nevada Indigent Defense Standards of Performance.

Standard 2-6: Role of the Defense Team

As soon as possible after appointment, counsel should assemble a defense team by selecting and making any appropriate contractual agreements with non-attorney team members in such a way that the team includes, if reasonably necessary and appropriate under the facts of the case and applicable case law:

(a) at least one mitigation specialist and one fact investigator;

(b) at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments;

(c) any other members needed to provide competent legal representation; and

(d) at all stages demanding on behalf of the client all resources necessary to provide competent legal representation. If such resources are denied, counsel should make an adequate record to preserve the issue for further review.

Standard 2-7: Relationship With the Client

(a) Counsel at all stages of the case should:

1. make every appropriate effort to establish a relationship of trust with the client and should maintain close contact with the client;
2. conduct an interview of the client within 24 hours of initial counsel's entry into the case, barring exceptional circumstances;
3. promptly advise the prosecution the client is represented by counsel and communicate in an appropriate manner with the client regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards; and
4. at all stages of the case, re-advise the client and communicate with the prosecution regarding these matters as appropriate.

(b) Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:

1. the progress of and prospects for the factual investigation, and what assistance the client might provide to it;
2. current or potential legal issues;
3. the development of a defense theory;
4. presentation of the defense case;
5. potential agreed-upon dispositions of the case;
6. litigation deadlines and the projected schedule of case-related events; and
7. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).

Standard 2-8: Additional Obligations of Counsel Representing a Foreign National

(a) Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals.

(b) Unless predecessor counsel has already done so, counsel representing a foreign national should:

1. immediately advise the client of his or her right to communicate with the relevant consular office; and

2. obtain the consent of the client to contact the consular office. After obtaining consent, counsel should immediately contact the client's consular office and inform it of the client's detention or arrest.

Standard 2-9: Investigation

(a) Counsel at every stage has an obligation to conduct an appropriate and independent investigation relating to the issues of both guilt and penalty.

1. The investigation regarding guilt should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.

2. The investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented.

(b) Post-conviction counsel has an obligation to conduct a full examination of the defense provided to the client at all prior phases of the case. This obligation includes at minimum interviewing prior counsel and members of the defense team and examining the files of prior counsel.

(c) Counsel at every stage has an obligation to assure that the official record of the proceedings is complete and to supplement the record as appropriate.

Standard 2-10: Duty to Assert Legal Claims

(a) Counsel at every stage of the case, exercising professional judgment in accordance with these standards, should:

1. consider all legal claims potentially available;

2. thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted; and

3. evaluate each potential claim in light of:

(A) the unique characteristics of death penalty law and practice; and

(B) the near certainty that all available avenues of post-conviction relief will be pursued in the event of conviction and imposition of a death sentence;

(C) the importance of protecting the client's rights against later contentions by the government that the claim has been waived defaulted, not exhausted, or otherwise forfeited; and

(D) any other professionally appropriate risks and benefits to the assertion of the claim.

(b) Counsel who decide to assert a particular legal claim should:

1. present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction; and

2. ensure that a full record is made of all legal proceedings in connection with the claim.

Standard 2-11: Duty to Seek an Agreed-Upon Disposition

(a) Counsel at every stage of the case has an obligation to take all steps that maybe appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition.

(b) Counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition. In so doing, counsel should fully explain the rights that would be waived, and the legal, factual, and contextual considerations that bear upon the decision. Specifically, counsel should know and fully explain to the client:

1. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser-included or alternative offenses;

2. the use of the disposition adversely to the client in penalty phase proceedings of other prosecutions of the client as well as any direct consequences of potential penalties less than death, such as the possibility and likelihood of parole, place of confinement, and goodtime credits;

3. the general range of sentences for similar offenses committed by defendants with similar backgrounds and the impact of any applicable sentencing guidelines or mandatory sentencing requirements;

4. the governing legal regime, including, but not limited to, whatever choices the client may have as to the fact-finder and/or sentencer;

5. the types of pleas that may be agreed to, such as a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere, or other plea that does not require the client to personally acknowledge guilt, along with the advantages and disadvantages of each;

6. whether any agreement negotiated can be made binding on the court, penal/parole authorities, and any others who may be involved;

7. the practices, policies, and concerns of the particular jurisdiction, the judge and prosecuting authority, the family of the victim, and any other persons or entities that may affect the content and likely results of plea negotiations;

8. Concessions that the client might offer, such as:

(A) an agreement to waive trial and to plead guilty to particular charges;

(B) an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;

(C) an agreement, if permitted under applicable law, regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case;

(D) an agreement to forgo in whole or part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications;

(E) an agreement to provide the prosecution with assistance in investigating or prosecuting the present case or other alleged criminal activity;

(F) an agreement to engage in or refrain from any particular conduct, as appropriate to the case;

(G) an agreement with the victim's family, which may include matters such as a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution; and

(H) agreements such as those described in the foregoing subsections respecting actual or potential charges in another jurisdiction.

9. Benefits the client might obtain from a negotiated settlement, including:

(A) a guarantee that the death penalty will not be imposed;

(B) an agreement that the client will receive a specified sentence;

(C) an agreement that the prosecutor will not advocate a certain sentence, will not present certain information to the court, or will engage in or refrain from engaging in other actions with regard to sentencing;
(D) an agreement that one or more of multiple charges will be reduced or dismissed;
(E) an agreement that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;
(F) an agreement that the client may enter a conditional plea to preserve the right to further contest certain legal issues;
(G) an agreement that the court or prosecutor will, to the extent provided by law, make specific recommendations to correctional or parole authorities regarding the terms of the client's confinement; and
(H) agreements such as those described in the foregoing subsections respecting actual or potential charges in another jurisdiction.
(c) Counsel should keep the client fully informed of any negotiations for a disposition, convey to the client any offers made by the prosecution, and discuss with the client possible negotiation strategies.
(d) Counsel should inform the client of any tentative negotiated agreement reached with the prosecution and explain to the client the full content of the agreement along with the advantages, disadvantages, and potential consequences of the agreement.
(e) If a negotiated disposition would be in the best interest of the client, initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Similarly, a client's initial opposition should not prevent counsel from engaging in an ongoing effort to persuade the client to accept an offer of resolution that is in the client's best interest.
(f) Counsel should not accept any agreed-upon disposition without the client's express authorization.
(g) The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting litigation.

Standard 2-12: Entry of a Plea of Guilty

(a) The informed decision whether to enter a plea of guilty lies with the client.
(b) In the event the client determines to enter a plea of guilty, prior to the entry of the plea, counsel should:

1. make certain that the client understands the rights to be waived by entering the plea and that the client's decision to waive those rights is knowing, voluntary, and intelligent;
2. ensure that the client understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and direct consequences to which he or she will be exposed by entering the plea; and
3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions in court, and providing a statement concerning the offense.
(c) During entry of the plea, counsel should make sure that the full content and conditions of any agreements with the government are placed on the record.

Standard 2-13: Trial Preparation Overall

As the investigations addressed in Standard 2-7 produce information, trial counsel should formulate a defense theory. Counsel should seek a theory that will be effective in connection with both guilt and penalty, and should seek to minimize any inconsistencies.

Standard 2-14: Voir Dire and Jury Selection

(a) Counsel should consider, along with potential legal challenges to the procedures for selecting the jury that would be available in any criminal case (particularly those relating to bias on the basis of race or gender), whether any procedures have been instituted for selection of juries in capital cases that present particular legal bases for challenge. Such challenges may include challenges to the selection of the grand jury and grand jury forepersons, as well as to the selection of the petit jury venire.
(b) Counsel should be familiar with the precedents relating to questioning and challenging of potential jurors, including the procedures surrounding "death qualification" concerning any potential juror's beliefs about the death penalty. Counsel should be familiar with techniques:
1. for exposing those prospective jurors who would automatically impose the death penalty following a murder conviction or finding that the client is death-eligible, regardless of the individual circumstances of the case;

2. for uncovering those prospective jurors who are unable to give meaningful consideration to mitigating evidence; and 3. for rehabilitating potential jurors whose initial indications of opposition to the death penalty make them possibly excludable.
(c) Counsel should consider seeking expert assistance in the jury selection process.

Standard 2-15: Defense Case Concerning Penalty

(a) As set out in Standard 2-7, counsel at every stage of the case has a continuing duty to investigate issues bearing upon penalty and to seek information that supports mitigation or rebuts the prosecution's case in aggravation.
(b) Counsel should discuss with the client early in the case the sentencing alternatives available and the relationship between the strategy for thesentencing phase and for the guilt/innocence phase.
(c) Prior to the sentencing phase, trial counsel should discuss with the client thespecific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.
(d) Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning penalty that they intend to present to the sentencing or reviewing body or individual, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.
(e) Counsel should consider, and discuss with the client, the possible consequences of having the client testify or make a statement to the sentencing or reviewing body or individual.
(f) In deciding which witnesses and evidence to prepare concerning penalty, the areas counsel should consider include the following:
1. witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, or would otherwise support a sentence less than death;
2. expert and lay witnesses along with supporting documentation (e.g., school records, military records) to provide medical, psychological, sociological, cultural, or other insights into the client's mental and/or emotional state and life history that

may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation or adaptation to prison; to explain possible treatment programs; or otherwise support a sentence less than death; and/or to rebut or explain evidence presented by the prosecutor;

3. witnesses who can testify about the applicable alternative to a death sentence and/or the conditions under which the alternative sentence would be served;

4. witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones; and

5. demonstrative evidence, such as photos, videos, and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts, and letters of praise or reference.

(g) In determining what presentation to make concerning penalty, counsel should consider whether any portion of the defense case will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions in limine) to ensure that the defense case concerning penalty is constricted as little as possible by this consideration and should make a full record in order to support any subsequent challenges.

(h) Trial counsel should determine at the earliest possible time what aggravating factors the prosecution will rely upon in seeking the death penalty and what evidence will be offered in support thereof. If the jurisdiction has rules regarding notification of these factors, counsel at all stages of the case should object to any noncompliance, and if such rules are inadequate, counsel at all stages of the case should challenge the adequacy of the rules.

(i) Counsel at all stages of the case should carefully consider whether all or part of the aggravating evidence may appropriately be challenged as improper, inaccurate, misleading, or not legally admissible.

(j) If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

1. consider what legal challenges may appropriately be made to the interview or the conditions surrounding it;

2. consider the legal and strategic issues implicated by the client's cooperation or noncooperation;
3. ensure that the client understands the significance of any statements made during such an interview; and
4. attend the interview.

(k) Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, inaccurate, or confusing and should offer alternative instructions. Post-conviction counsel should pursue these issues through factual investigation and legal argument.

(l) While taking into consideration all ethical and legal requirements, counsel at every stage of the case should take advantage of all appropriate opportunities to argue why death is not suitable punishment for their particular client.

Standard 2-16: Official Presentence Report

If an official presentence report or similar document may or will be presented to the court at any time, counsel should become familiar with the procedures governing preparation, submission, and verification of the report. In addition, counsel should:

(a) where preparation of the report is optional, consider the strategic implications of requesting that a report be prepared;

(b) provide to the report preparer information favorable to the client. In this regard, counsel should consider whether the client should speak with the person preparing the report; if the determination is made to do so, counsel should discuss the interview in advance with the client and attend it;

(c) review the completed report;

(d) take appropriate steps to ensure that improper, incorrect, or misleading information that may harm the client is deleted from the report; and

(e) take steps to preserve and protect the client's interests where the defense considers information in the presentence report to be improper, inaccurate, or misleading.

Standard 2-17: Duty to Facilitate the Work of Successor Counsel

In accordance with professional norms, all persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client and should cooperate fully with successor counsel. This duty includes, but is not limited to:

(a) maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the litigation;

(b) providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;

(c) sharing potential further areas of legal and factual research with successor counsel; and

(d) cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

Standard 2-18: Duties of Trial Counsel After Conviction

Trial counsel should:

(a) be familiar with all state and federal post-conviction options available to the client. Trial counsel should discuss with the client the post-conviction procedures that will or may follow imposition of the death sentence;

(b) While considering all ethical and legal requirements, take whatever action(s), such as filing a notice of appeal and/or motion for a new trial, will maximize the client's ability to obtain post-conviction relief;

(c) not cease acting on the client's behalf until successor counsel has entered the case or trial counsel's representation has been formally terminated. Until that time, Standard 2-17 applies in its entirety; and

(d) take all appropriate action to ensure that the client obtains successor counsel as soon as possible.

Standard 2-19: Duties of Post-Conviction Counsel

(a) Counsel representing a capital client at any point after conviction should be familiar with the jurisdiction's procedures for setting execution dates and providing notice of them. Post-conviction counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution.

(b) If an execution date is set, post-conviction counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available forms.

(c) Post-conviction counsel should seek to litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to competent capital defense representation, including challenges to any overly restrictive procedural rules. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review.

(d) The duties of the counsel representing the client on direct appeal should include, where appropriate, filing a petition for certiorari in the Supreme Court of the United States. If appellate counsel does not intend to file such a petition, he or she should immediately notify successor counsel if known and the responsible agency.

(e) Post-conviction counsel should fully discharge the ongoing obligations imposed by these standards, including the obligations to:

1. maintain close contact with the client regarding litigation developments;
2. continually monitor the client's mental, physical, and emotional condition for effects on the client's legal position;
3. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments; and
4. continue an aggressive investigation of all aspects of the case.

Standard 2-20: Duties of Clemency Counsel

Clemency counsel should:

1. be familiar with the procedures for and permissible substantive content of a request for clemency;
2. conduct a reasonable investigation in accordance with Standard 2-7;
3. ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case, and jurisdiction; and
4. ensure that the process governing consideration of the client's application is substantively and procedurally just, and if not, should seek appropriate redress.

APPELLATE AND POST-CONVICTION REPRESENTATION

Standard 3-1: Role of Appellate Defense Counsel

The paramount obligation of appellate criminal defense counsel is to provide zealous and competent representation to their clients at all stages of the appellate process. Attorneys also have an obligation to abide by ethical norms and act in accordance with the rules of the court. Trial counsel should advise the client of his or her right to appeal and any limits on that right, pursuant to then-existing case law. If the client instructs the attorney to proceed with an appeal, even if the attorney believes that the appeal is without merit or is not cognizable, trial counsel will assure that a Notice of Appeal is filed. If the client wishes to proceed with the appeal, against the advice of counsel, counsel should present the case, so long as such advocacy does not involve deception of the court and complies with the Nevada Rules of Appellate Procedure.

Standard 3-2: Identification of issues on appeal

In selecting issues to be presented on appeal, counsel should:

(a) conduct a thorough review of the trial transcript, the pleadings, and docket entries in the case;

(b) investigate potentially meritorious unpreserved claims of error.;

(c) assert claims of error that are supported by facts of record that will benefit the client if successful, that possess arguable legal merit, and that should be recognizable by a practitioner familiar with criminal law and procedure who engages in diligent legal research;

(d) not hesitate to assert claims that may be complex, unique, or controversial in nature, such as issues of first impression or arguments for change in the existing law;

(e) inform the client when counsel has decided not to raise issues that the client desires to be raised and the reasons why the issues were not raised; and

(f) consider whether there are federal constitutional claims that, in the event that relief is denied in the state appellate court, would form the basis for a writ of habeas corpus in federal district court. Such claims should raise and argue the federal

constitutional claims, unless counsel concludes that there is a tactical basis for not including such claims.

Standard 3-3: Diligence and Accuracy

In presenting the appeal, counsel should:

(a) be diligent in perfecting appeals and expediting prompt submission to the appellate court;

(b) be accurate in referring to the record and the authorities upon which counsel relies in the presentation to the court of briefs and oral argument; and

(c) not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.

Standard 3-4: Duty to Meet With Trial Lawyers

In preparing the appeal, counsel should consult trial counsel in order to assist appellate counsel in understanding and presenting the client's issues on appeal.

Standard 3-5: Duty to Confer and Communicate With Client

In preparing and processing the appeal, counsel should:

(a) assure that the client is able to contact appellate counsel telephonically during the pendency of the appeal including arrangements for the acceptance of collect telephone calls. Promptly after appointment or assignment to the appeal, counsel shall provide advice to the client, in writing, as to the method(s) which the client can employ to discuss the appeal with counsel;

(b) discuss the merits, strategy, and ramifications of the proposed appeal with each client prior to the perfection and completion thereof. When possible, appellate counsel should meet in person with the client, and in all instances, counsel should provide a written summary of the merits and strategy to be employed in the appeal along with a statement of the reasons certain issues will not be raised, if any. It is the obligation of the appellate counsel to provide the client with his or her best professional judgment as to whether the appeal should be pursued in view of the possible consequences and strategic considerations;

(c) inform the client of the status of the case at each step in the appellate process, explain any delays, and provide general information to the client regarding the process and procedures that will be taken in the matter, and the anticipated timeframe for such processing;

(d) provide the client with a copy of each substantive document filed in the case by both the prosecution and defense;

(e) respond in a timely manner to all correspondence from clients, provided that the client correspondence is of a reasonable number and at a reasonable interval; and

(f) promptly and accurately inform the client of the courses of action that may be pursued as a result of any disposition of the appeal and the scope of any further representation counsel will provide.

Standard 3-6: Duty to Seek Release during Appeal

Appellate counsel should file appropriate motions seeking release pending appeal when the granting of such motions is reasonably possible.

Standard 3-7: Responsibilities in "Fast Track" Appeals

If the conviction qualifies for "fast track" treatment under NRAP 3C, counsel shall fulfill the responsibilities set forth in the rule. In preparing the "fast track" statement, counsel should:

(a) order a rough draft of those portions of the transcript provided for in NRAP 3C(d) in all cases in which trial counsel is not handling the appeal and in all other cases in which information from the proceedings is necessary for a fair determination of the issues to be raised on appeal;

(b) thoroughly research the issues in the case and shall set forth all viable issues in the "fast track" statement provided for by NRAP 3C(e); and

(c) consult, if possible within the "fast track" deadlines, with the client as to which issues should be presented in the statement.

Standard 3-8: Post-Decision Responsibilities

If the decision of the appellate court is adverse to the client, appellate counsel should:

(a) promptly inform the client of the decision and confer with the client with regard to the availability of rehearing or en banc reconsideration and the benefits or disadvantages of filing such a motion;
(b) file a Motion for Rehearing and/or Request for en banc reconsideration if grounds for such a motion and/or request exist;
(c) advise the client whether a petition for writ of certiorari to the United States Supreme Court is warranted and determine whether such a petition will be filed;
(d) promptly advise the client of any remedies that are available in state or federal court for post-conviction review and shall advise the client of the applicable statute of limitations for filing for such relief;
(e) advise the client of any claims such as ineffective assistance of counsel that may be available to the client but that will not be pursued by appellate counsel;
(f) provide the client with any available forms for post-conviction relief and appointment of counsel; and
(g) cooperate with the client and with post-conviction counsel in securing the trial and appellate record and investigation of potential claims for postconviction relief.

Standard 3-9: Post-Conviction Representation
Counsel appointed to represent a client in post-conviction proceedings should:
(a) assure that the client is able to contact post-conviction counsel telephonically during the pendency of the appeal including arrangements for the acceptance of collect telephone calls. Promptly after appointment or assignment to the post-conviction case, counsel shall provide advice to the client, in writing, as to the method(s) that the client can employ to discuss the post-conviction proceeding with counsel;
(b) consult with trial/appellate counsel and secure the entire trial and appeal file;
(c) seek to litigate all issues, whether or not previously presented, that are arguably meritorious;
(d) maintain close contact with the client and consult with the client on all decisions with regard to the content of any pleadings seeking collateral or post-conviction relief prior to the filing of any petition for post-conviction relief. When possible, post-conviction counsel should meet in person with the client and in all instances, counsel

should provide a written summary of the merits and strategy to be employed in the post-conviction proceeding along with a statement of the reasons certain issues will not be raised, if any;

(e) investigate all potentially meritorious claims that require factual support;

(f) secure the services of investigators or experts where necessary to develop claims to be raised in the post-conviction petition;

(g) raise all federal constitutional claims, along with appropriate citations, that are arguably meritorious; and

(h) advise the client of remedies that may be available should post-conviction relief not be granted, including appeal from the denial and federal habeas corpus along with any applicable time limits for seeking such relief. Postconviction counsel shall advise the client in writing if counsel will not be representing the client in any subsequent proceedings and shall provide advice on the steps that must be taken and the time limits that are applicable to appeals or the seeking of relief in the federal courts.

FELONY AND MISDEMEANOR TRIAL CASES

Standard 4-1: Role of Defense Counsel

(a) The paramount obligation of criminal defense counsel is to provide zealous and competent representation to their clients at all stages of the criminal process. Attorneys also have an obligation to abide by ethical norms and act in accordance with the rules of the court.

(b) Counsel at every stage of the case has an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition.

Standard 4-2: Education, Training, and Experience of Defense Counsel

(a) To provide competent representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the courts of Nevada. Counsel has a continuing obligation to stay abreast of changes and developments in the law. Where appropriate, counsel should also be informed of the practice of the specific judge before whom a case is pending.

(b) Prior to handling a criminal matter, counsel should have sufficient experience or training to provide competent representation and should move to be relieved as counsel should counsel determine at a later point that he or she does not possess sufficient experience or training to handle the case assigned.

Standard 4-3: Adequate Time and Resources

Counsel has an obligation to make available sufficient time, resources, knowledge, and experience to afford competent representation of a client in a particular matter before agreeing to act as counsel or accepting appointment. Counsel must maintain an appropriate, professional office in which to consult with clients and witnesses, and must maintain a system for receiving collect telephone calls from incarcerated clients.

Standard 4-4: Initial Client Interview

(a) Preparing for Initial Interview: Prior to conducting the initial interview, the attorney should:

1. be familiar with the elements of each offense charged and the potential punishment;
2. obtain copies of relevant documents that are available, including copies of any charging documents, recommendations, and reports made by agencies concerning pretrial release, and law enforcement reports;
3. be familiar with legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;
4. be familiar with the different types of pretrial release conditions the court may set; and
5. be familiar with any procedures available for reviewing the judge's setting of bail.

(b) Timing of the Initial Interview: Counsel should conduct the initial interview with the client as soon as practicable and sufficiently before any court proceeding so as to be prepared for that proceeding. When the client is in custody, counsel should attempt to conduct the interview no later than 72 hours after appointment to the case. The initial interview should be conducted, whenever possible, in a confidential setting.

(c) Contents of the Initial Interview: The purpose of the initial interview is both to inform the client of the charges/penalties and to acquire information from the client concerning pretrial release. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy are overcome. Information that counsel should consider acquiring from the client includes, but is not limited to:

1. the client's ties to the community, including the length of time in the community, family relationships, immigration status, and employment record and history;
2. the client's physical and mental health, education, and armed services record;
3. the client's immediate medical needs;
4. the client's criminal history and a determination of whether the client has other pending charges or is on supervision;
5. the ability of the client to meet any financial conditions of release; and
6. sources of verification (counsel should obtain permission from the client before contacting such sources).

(d) The following information should be provided to the client in the initial interview:

1. an explanation of the procedures that will be followed in setting the conditions of pretrial release;
2. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and an explanation that the client should not make any statements regarding the offense;
3. an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney;
4. the charges and the potential penalties;
5. a general procedural overview of the progression of the case;
6. how and when counsel can be reached;
7. when counsel will see the client next;
8. realistic answers, where possible, to the client's most urgent questions; and
9. what arrangements will be made or attempted for the satisfaction of the client's most pressing needs, e.g., medical or mental health attention, contact with family or employers.

Standard 4-5: Pretrial Release Proceedings

When a client is in custody, counsel should explore with the client the pretrial release of the client under the conditions most favorable to the client and attempt to secure that release. Counsel should:

(a) present about the client's circumstances and the legal criteria supporting release. Where appropriate, counsel should make a proposal concerning conditions of release that are least restrictive with regard to the client. Counsel should arrange for contact with or the appearance of parents, spouse, relatives, or other persons who may take custody of the client or provide third-party surety;

(b) consider pursuing modification of the conditions of release under available procedures when the client is not able to obtain release under the conditions set by the court; and

(c) explain to the client the available options, procedures, and risks in posting security if the court sets conditions of release.

Standard 4-6: Preliminary Hearings/Grand Jury Representation

(a) Where the client is entitled to a preliminary hearing, the attorney should take steps to see that the hearing is conducted timely unless there are strategic reasons for not doing so.

(b) In preparing for the preliminary hearing, the attorney should consider:

1. the elements of each offense charged;
2. the law for establishing probable cause;
3. the factual information that is available concerning probable cause;
4. the tactics of calling witnesses or calling the client as a witness and the potential for later use of the testimony; and
5. any issues arising from the limited availability of discovery inherent at this stage of the proceeding.

(c) Counsel should meet with the client prior to the preliminary hearing. The client has the sole right to waive a preliminary hearing. Counsel must evaluate and advise the client regarding the consequences of such waiver and the tactics of full or partial cross-examination.

(d) Where counsel becomes aware that his or her client is the subject of a grand jury investigation, appointed counsel should consult with the client to discuss the grand

jury process, including the advisability and ramifications of the client testifying. Counsel should examine the facts in the case and determine whether the prosecution has fulfilled its obligation under Nevada law to present exculpatory evidence and should make an appropriate record in that regard. Upon return of an indictment, counsel should determine if proper notice of the proceedings was provided and should obtain the record of the proceeding to determine if procedural irregularities or errors occurred that might warrant a challenge to the proceedings such as a writ of habeas corpus or a motion to quash the indictment.

Standard 4-7: Case Preparation and Investigation

(a) Counsel should conduct, or secure the resources to conduct, a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The duty to investigate exists regardless of the client's admissions or statements to defense counsel of facts constituting guilt or the client's stated desire to plead guilty, however counsel may consider such admissions, statements or desires in determining the scope of the investigation.

(b) Counsel should:

1. obtain and examine all charging documents, pleadings, and discovery;
2. research and review the relevant statutes and case law to identify elements of the charged offense(s); defects in the prosecution such as statute of limitations or double jeopardy; and available defenses and required notices of those defenses;
3. conduct an in-depth interview of the client to assist in shaping the investigation;
4. attempt to locate all potential witnesses and have them interviewed. (If counsel conducts a witness interview, counsel should do so in the presence of a third person who can be called as a witness);
5. request and secure discovery including exculpatory/impeaching information; names and addresses of prosecution witnesses and their prior statements and criminal records; the prior statements of the client and his or her criminal history; all papers, tapes, or electronic recordings relevant to the case; expert reports and data upon which they are based, statements of co-defendants, an inspection of physical evidence, all documents relevant to any searches conducted, 911 tapes and dispatch reports, mental health, drug treatment, or other records of the client, victim, or witnesses and records of police officers as appropriate;

6. inspect the scene of the offense as appropriate; and

7. obtain the assistance of such experts as are appropriate to the facts of the case and reasonably necessary under applicable case law.

Standard 4-8: Pretrial Motions and Writs

(a) Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the applicable law may entitle the client to relief, which the court has discretion to grant.

(b) The decision to file pretrial motions should be made after investigation and after considering the applicable law in light of the circumstances of the case. Among the issues that counsel should consider addressing in a pretrial motion are:

1. the pretrial custody of the client;
2. the constitutionality of the implicated statute(s);
3. any defects in the charging process or the charging document;
4. severance of charges or defendants;
5. discovery issues;
6. suppression of evidence or statements;
7. speedy trial issues; and
8. evidentiary issues.

(c) Counsel should determine whether a pretrial writ should be filed challenging the determination that probable cause exists. The decision whether to file a pretrial writ should be made based upon an examination of the preliminary hearing or grand jury transcripts. If transcripts are not available at the time of arraignment, appropriate steps should be taken to secure an extension of time to prepare the writ after the transcripts are received pursuant to NRS 34.700. Counsel shall advise the client as to the effect of filing a pretrial writ on his speedy trial rights and provide an evaluation of the likelihood of success to assist in the decision to waive such rights, which rests with the client, after consultation with counsel.

(d) Counsel should only withdraw or decide not to file a motion after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights against later claims of waiver or procedural default.

(e) Motions should be filed in a timely manner and with an awareness of the effect of filing the motion on the client's speedy trial rights. When an evidentiary hearing is scheduled on a motion, counsel's preparation for the hearing should include:

1. investigation, discovery, and research relevant to the claim advanced;
2. subpoenaing of all helpful evidence and witnesses; and
3. full understanding of the burdens of proof, evidentiary principles, and trial court procedures applying to the hearing, including the benefits and costs of having the client testify.

(f) Requests or agreements to continue a trial date shall not be made without consultation with the client.

(g) Motions and writs should include citation to applicable state and federal law in order to protect the record for collateral review in federal courts.

Standard 4-9: Plea Negotiations

(a) Under no circumstances should defense counsel recommend to a client acceptance of a plea offer unless the investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial.

(b) Counsel should:

1. with the consent of the client explore diversion and other informal and formal admission or disposition agreements, including early case resolutions, with regard to the allegations;
2. fully explain to the client the rights that would be waived by a decision to enter into any admission or disposition agreement;
3. keep the client fully informed of the progress of the negotiations;
4. convey to the client any offers made by the prosecution and the advantages and disadvantages of accepting the offers, including any additional investigation or legal challenges discussed in Standards 4-7(b) and 4-8 that would be abandoned as a result of accepting an offer ;
5. continue to preserve the client's rights and prepare the defense notwithstanding ongoing negotiations; and
6. not enter into any admission or disposition agreement on behalf of the client without the client's authorization.

(c) In developing a negotiation strategy, counsel shall be familiar with:

1. Concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to: not to proceed to trial on the merits of the charges; to decline from asserting or litigating any particular pretrial motions; an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity.

2. Benefits the client might obtain from a negotiated settlement, including, but not limited to, an agreement: that the prosecution will not oppose the client's release on bail pending sentencing or appeal; that the client may enter a conditional plea to preserve the right to litigate and contest certain issues affecting the validity of the conviction; to dismiss or reduce one or more of the charged offenses either immediately or upon completion of a deferred prosecution agreement; that the client will not be subject to further investigation
or prosecution for uncharged alleged criminal conduct; that the client
will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range; that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the Division of Parole and Probation, a specified position with respect to the sanction to be imposed on the client by the court; and that the client will receive, or the prosecution will recommend, if permitted by case law or statute, specific benefits concerning the client's place and/or manner of confinement and/or release on parole.

(d) In the decision-making process, counsel should:

1. inform the client of any tentative negotiated agreement reached with the prosecution, explain to the client the full content of the agreement, and explain advantages, disadvantages, and direct consequences of the agreement; and

2. not attempt to unduly influence the decision, as the decision to enter a plea of guilty rests solely with the client. Where counsel reasonably believes that acceptance of a plea offer is in the best interest of the client, counsel should advise the client of the benefits of this course of action.

(e) Prior to the entry of the plea, counsel should meet with the client in a confidential setting that fosters full communication and:

1. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary, and intelligent;
2. make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and other direct consequences the client will be exposed to by entering the plea; and
3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense.

(f) After entry of the plea, counsel should:

1. be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for the client's release on bail pending sentencing; and
2. make every effort to review and explain the plea proceedings with the client and to respond to any client questions and concerns.

Standard 4-10: Trial Preparation

(a) The decision to proceed to trial with or without a jury rests solely with the client. Counsel should discuss the relevant strategic considerations of this decision with the client.

(b) Where appropriate, counsel should have the following materials available at the time of trial:

1. copies of all relevant documents filed in the case;
2. relevant documents prepared by investigators;
3. voir dire questions;
4. outline or draft of opening statement;
5. cross-examination plans for all prospective prosecution witnesses;
6. direct examination plans for all prospective defense witnesses;
7. copies of defense subpoenas;
8. prior statements of all prosecution witnesses (e.g., preliminary hearing/grand jury transcripts, police reports/statements);

9. prior statements of all defense witnesses;

10. reports from all experts;

11. a list and copies or originals of defense and prosecution exhibits;

12. proposed jury instructions with supporting authority;

13. copies of all relevant statutes or cases; and

14. outline or draft of closing argument.

(c) Counsel should be fully informed as to the rules of evidence and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

(d) Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., admissibility of evidence, use of prior convictions of client) and, where appropriate, counsel should prepare motions and memoranda in support of the client's position.

(e) Throughout the trial process, counsel should endeavor to establish a proper record for appellate review. As part of this effort, counsel should request, whenever necessary, that all discussions and rulings be made on the record.

(f) Counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated or is not able to secure appropriate clothing for trial, counsel shall arrange for the provision of appropriate clothing for the client to wear in the courtroom.

(g) Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek an order to facilitate conferences with the client.

(h) If, during the trial, it appears to counsel that concessions to facts or offenses are strategically indicated, such concessions may only be made in consultation with, and with the consent of, the client.

(i) Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

Standard 4-11: Voir Dire and Jury Selection

In preparing for and conducting jury selection, counsel should:

(a) be familiar with the law governing selection of the jury venire. Counsel should also be alert to any potential legal challenges to the composition or selection of the venire;

(b) be familiar with the local practices and the individual trial judge's procedures for selecting a jury and should be alert to any potential legal challenges to these procedures;

(c) seek access to any jury questionnaires that have been completed by jurors and should petition the court to use a special questionnaire when appropriate due to unique issues in the case;

(d) should seek attorney-conducted voir dire and should develop, support, and file written voir dire questions if the court restricts attorney-conducted voir dire;

(e) consider whether additional peremptory challenges should be requested due to the circumstances present in the case;

(f) consider whether sensitive or unusual facts or circumstances of the case support sequestered voir dire of jurors;

(g) consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client; and

(h) object to and preserve all issues relating to the unconstitutional exclusion of jurors by the prosecutor.

Standard 4-12: Defense Strategy

Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.

Standard 4-13: Trial

(a) Counsel should anticipate weaknesses in the prosecution's proof and consider appropriate motions for judgment of acquittal at all appropriate stages of the litigation.

(b) Counsel should consider the strategic advantages and disadvantages of entering into any stipulations.

(c) In preparing for cross-examination, counsel should:

1. be prepared to question witnesses as to the existence of prior statements that they may have made or adopted;
2. consider the need to integrate cross-examination, theory, and theme of the defense;
3. avoid asking unnecessary questions that may hurt the defense case;
4. anticipate witnesses that the prosecution may call in its case-in-chief and on rebuttal;
5. create a cross-examination plan for all anticipated witnesses;
6. review all prior statements and testimony of the witnesses in order to be aware of all inconsistencies or variances;
7. review relevant statutes, regulations, and policies applicable to police witnesses; and
8. consider a pretrial motion or voir dire examination of prosecution experts to determine qualifications of the expert or reliability of the anticipated opinion.

Standard 4-14: Presenting the Client's Case

(a) Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should maintain a record of the advice provided to the client and the client's decision concerning whether to testify.

(b) Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

(c) In preparing for presentation of a defense case, counsel should, where appropriate, do the following:

1. develop a plan for direct examination of each potential defense witness;
2. determine the implications that the order of witnesses may have on the defense case;

3. determine which facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

4. consider the possible use of character witnesses;

5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;

6. review all documentary evidence that must be presented; and,

7. review all tangible evidence that must be presented.

(d) In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

(e) Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

(f) Counsel should conduct redirect examination as appropriate.

(g) At the close of the defense case, counsel should seek an advisory instruction directing the jury to acquit when appropriate.

Standard 4-15: Jury Instructions

(a) Counsel should be familiar with the appropriate rules of the court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of instructions typically given, and preserving objections to the instructions.

(b) Counsel should always submit proposed jury instructions in writing.

(c) Where appropriate, counsel should submit modifications to instructions proposed by the State or the court in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser-included offense. Counsel should provide citations to appropriate law in support of the proposed instructions.

(d) Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.

(e) If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of proposed instructions is included in the record along with counsel's objection.

(f) During delivery of the charge, counsel should be alert to any deviations from the judge's planned instruction, object to deviations unfavorable to the client, and if necessary, request additional or curative instructions.

(g) If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.

Standard 4-16: Obligations of Counsel in Final Sentencing Hearings

Among counsel's obligations in the sentencing process are:

(a) To correct inaccurate information that is potentially detrimental to the client and to object to information that is not properly before the Court in determining sentence. Counsel should further correct or move to strike any improper and harmful information from the text of the presentence report.

(b) To present to the court all known and reasonably available mitigating and favorable information, including relevant expert testimony or reports.

(c) To develop a plan that seeks to achieve the least restrictive and burdensome sentencing alternative that is most favorable to the client and that can reasonably be obtained based on the facts and circumstances of the offense, the client's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision.

Standard 4-17: Preparation for Sentencing

In preparing for sentencing, counsel shall:

(a) inform the client of the applicable sentencing requirements, options, alternatives including any applicable regulations and statutory minimum requirements concerning parole eligibility;

(b) maintain contact with the client prior to the sentencing hearing and inform the client of the steps being taken in preparation for sentencing;

(c) obtain from the client relevant information concerning his or her background and personal history, prior criminal record, employment history, skills, education,

medical history and condition, and financial status and obtain from the client sources that can corroborate the information provided by the client;

(d) request any necessary and appropriate client evaluations, including those for mental health and substance abuse;

(e) ensure the client has an opportunity to examine the presentence report;

(f) inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to deliver to the court;

(g) inform the client of the effects that admissions and other statements may have upon an appeal, retrial, or other judicial proceedings, such as forfeiture or restitution proceedings;

(h) inform the client of the sentence or range of sentences counsel will ask the court to consider;

(i) where appropriate, collect affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence;

(j) prepare to address victim participation either through the victim impact statements or by direct testimony at sentencing; and

(k) advise the client of the difference between testimony and allocution. If the client elects to testify, counsel should prepare the client for possible cross-examination by the prosecution where applicable.

Standard 4-18: Official Presentence Report

(a) Counsel should prepare the client for the interview with the official preparing the presentence report.

(b) Counsel has a duty to become familiar with the procedures concerning the preparation, submission, and verification of the presentence investigation report. In addition, counsel shall:

1. determine whether a presentence report will be prepared and submitted to the court prior to sentencing; where preparation of the report is optional, counsel should consider the strategic implications of waiving the report;

2. provide to the official preparing the report relevant information favorable to the client, including, where appropriate, the client's version of the offense;
3. attend any interview of the client by an agency presentence investigator where appropriate;
4. review the completed report prior to sentencing;
5. take appropriate steps to ensure that erroneous or misleading information that may harm the client is deleted from the report;
6. take appropriate steps to preserve and protect the client's interests where the defense challenges information in the presentence report as being erroneous or misleading; and
7. make sure that, if there is a significant change in the information contained in the report by the judge at the sentencing hearing, counsel takes reasonable steps to ensure that a corrected copy is sent to corrections officials.

Standard 4-19: Sentencing Hearing

(a) At the sentencing proceeding, counsel shall take steps necessary to advocate fully for the requested sentence and to protect the client's interest.
(b) Counsel shall endeavor to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the client.
(c) Where appropriate under statutory or case law, counsel shall request specific orders or recommendations from the court concerning alternative sentences and forms of incarceration.
(d) Counsel should obtain a copy of the judgment and review it promptly to determine that it is accurate or to take steps to correct any errors.

Standard 4-20: Post-Disposition Responsibilities

Counsel should be familiar with the procedures available to the client after disposition. Counsel should:
(a) be familiar with the procedures to request a new trial, including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised;
(b) inform the client of his or her right to appeal a conviction after trial, after a conditional plea or after a guilty plea, pursuant to then-existing case law or where

counsel has received new information indicating the plea was not entered in a knowing, intelligent, and voluntary manner. Counsel should also advise the client of the legal effect of filing or waiving an appeal, and counsel should document the client's decision. If the client instructs counsel to appeal after consultation with counsel, even if counsel believes that an appeal will not be successful or is not cognizable, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the client's right to appeal;

(c) fulfill the responsibilities set forth in NRAP 3C if the conviction qualifies for "fast track" treatment under the rule. Counsel shall order a rough draft of those portions of the transcript provided for in NRAP 3C(d) in all cases in which trial counsel is not handling the appeal and in all other cases in which information from the proceedings is necessary for a fair determination of the issues to be raised on appeal. Counsel shall thoroughly research the issues in the case and shall set forth all viable issues in the "fast track" statement provided for by NRAP 3C(e);

(d) timely respond to requests from appellate counsel for information about or documents from the case, when appellate counsel was not trial counsel;

(e) inform the client of any right that may exist to be released pending disposition of the appeal;

(f) consider requesting a stay of execution of the judgment to permit the client to report directly to the place of confinement, if a custodial sentence is imposed;

(g) include in the advice to the client an explanation of the limited nature of the relief available on direct appeal and, where appropriate, an explanation of the remedies available to him or her in post-conviction proceedings. Counsel should provide a pro se habeas packet to any client who needs assistance in preparing his or her pro se habeas corpus petition. Counsel should advise the client of the relevant time frames for filing state and federal habeas corpus petitions and provide information and advice necessary to protect a client's right to post-conviction relief; and

(h) inform the client of procedures available for requesting that the record of conviction be expunged or sealed.

JUVENILE DELINQUENCY CASES

Counsel for juveniles in delinquency proceedings should abide by the Nevada Indigent Defense Standards of Performance applicable to felony and misdemeanor cases where applicable. The performance standards set forth below recognize the need to meet some concerns particular to representation of juveniles in delinquency proceedings.

Standard 5-1: The Role of Defense Counsel

(a) The role of counsel in delinquency cases is to be an advocate for the child. Counsel should:

1. Ensure that the interests and rights of the client are fully protected and advanced irrespective of counsel's opinion of the client's culpability;
2. fully explain to the juvenile the nature and purpose of the proceedings and the general consequences of the proceeding, seeking all possible aid from the juvenile on decisions regarding court proceedings;
3. make sure the juvenile fully understands all court proceedings, as well as all his or her rights and defenses;
4. upon appointment, counsel should first seek to meet separately with the juvenile out of the presence of the parent;[1]
5. not discuss any attorney-client privileged communications with the parent, or any other person, without the express permission of the juvenile;
6. fully inform both the juvenile and juvenile's parents about counsel's role, especially clarifying the lawyer's obligation regarding confidential communications;
7. present the juvenile with comprehensible choices, help the juvenile reach his or her own decisions, and advocate the juvenile's viewpoint

and wishes to the court; and

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[1] The use of the word "parent" in these Standards refers to parent, guardian, custodial adult, agency or other natural person assuming legal responsibility for the child.

8. refrain from waiving substantial rights or substituting counsel's own view, or the parents' wishes, for the position of the juvenile.

(b) Counsel may request the appointment of a guardian ad litem, or may elect not to oppose such an appointment, only when very unusual circumstances warrant such an appointment. Every effort should be made to limit the role of the guardian ad litem to the minimum required for him/her to accomplish the purpose for which the appointment was made. In most cases, both the guardian and the client should be instructed not to discuss the facts of the case as this discussion may not be privileged.

Standard 5-2: Education, Training, and Experience of Defense Counsel

(a) Counsel who undertake the representation of a client in a juvenile delinquency proceeding shall have the knowledge and experience necessary to represent a child diligently and effectively.

(b) Counsel should consider working with an experienced juvenile delinquency practitioner as a mentor when beginning to represent clients in delinquency cases.

(c) At a minimum, counsel should attend 4 hours of CLE relevant to juvenile defense annually.

(d) Counsel shall familiarize themselves with Nevada statutes relating to delinquency proceedings, as well as the Nevada Rules of Criminal Procedure, Nevada Rules of Evidence, Nevada Rules of Appellate Procedure, relevant case law, and any relevant local court rules. Counsel should be knowledgeable about and seek ongoing formal and informal training in the following areas:

1. Competency and Developmental Issues:

(A) Child and adolescent development;

(B) Brain development;

(C) Mental health issues, common childhood diagnoses, and other disabilities; and

(D) Competency issues and the filing and processing of motion for competency evaluations.

2. Attorney/Client Interaction:

(A) Interviewing and communication techniques for interviewing and communicating with children, including police interrogations and Miranda considerations;

(B) Ethical issues surrounding the representation of children and awareness of the role of the attorney; and

(C) Awareness of the role of the attorney versus the role of the guardian ad litem, including knowledge of how to work with a guardian ad litem

3. Department of Juvenile Justice Services/Other State and Local Programs:

(A) Diversion services available through the court and probation;

(B) The child welfare system and services offered by the child welfare system;

(C) Nevada Department of Child and Family Services facility operations, release authority, and parole policies;

(D) Community resources and service providers for children and all alternatives to incarceration available in the community for children;

(E) Intake, programming, and education policies of local detention facility;

(F) Probation department policies and practices; and

(G) Gender specific programming available in the community.

4. Specific Areas of Concern:

(A) Police interrogation techniques and Miranda consideration, as well as other Fourth, Fifth, and Sixth Amendment issues as they relate to children and adolescents;

(B) Substance abuse issues in children and adolescents;

(C) Special education laws, rights, and remedies;

(D) Cultural diversity;

(E) Immigration issues regarding children;

(F) Gang involvement and activity;

(G) School-related conduct and zero tolerance policies ("school to prison pipeline" research, search and seizure issues in the school setting);

(H) What factors lead children to delinquent behaviors;

(I) Signs of abuse and/or neglect;

(J) Issues pertaining to status offenders; and

(K) Scientific technologies and evidence collection.

Standard 5-3: Adequate Time and Resources

Counsel should not carry a workload that by reason of its excessive size or representation requirements interfere with the rendering of competent legal service,

endangers the juvenile's interest in the speedy disposition of charges, or risks breach of professional obligations. Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that he or she has sufficient time, knowledge, and experience and will pursue adequate resources to offer competent legal services in a particular matter. If, after accepting an appointment, counsel finds he or she is unable to continue effective representation, counsel should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action. Counsel must maintain an appropriate, professional office in which to consult with clients and witnesses and must maintain a system for receiving collect telephone calls from incarcerated clients.

Standard 5-4: Initial Client Interview

(a) Preparing for the Initial Interview: Prior to conducting the initial interview, the attorney should:

1. be familiar with the elements of the offense and the potential punishment;
2. obtain copies of relevant documents that are available, including copies of any charging documents, recommendations, and reports made by the Department of Juvenile Justice and law enforcement;
3. be familiar with detention alternatives and the procedures that will be followed in setting those conditions;
4. consider all possible defenses and affirmative defenses and any lesserincluded offenses that may be available;
5. consider the collateral consequences attaching to any possible sentencing, for example parole or probation revocation, immigration consequences, sex offender registration and reporting provisions, loss of driving privileges, DNA collection, school suspension or expulsion, consequences relating to public housing, etc.; and 6. review the petition for any defects.

(b) Counsel shall make every effort to conduct a face-to-face interview with the client as soon as practicable and sufficiently in advance of any court proceedings. In cases where the client is detained or in custody, counsel should make efforts to visit with the client no later than 72 hours after receiving the appointment. Counsel should:

1. interview the client in a setting that is conducive to maintaining the confidentiality of communications between attorney and client;
2. maintain ongoing communications and/or meetings with the client, which are essential to establishing a relationship of trust between the attorney and client;
3. provide the client with a method to contact the attorney, including information on calling collect from detention facilities;
4. utilize the assistance of an interpreter as necessary and seek funding for such interpreting services from the court;
5. work cooperatively with the parents, guardian, and/or other person with custody of the child to the extent possible without jeopardizing the legal interests of the child;
6. consider the client's age, developmental stage, mental retardation, and mental health diagnoses in all cases, understand the nature and consequences of a competency proceeding, and resolve issues of raising or not raising competency in consultation with the client; and
7. be alert to issues that may impede effective communication between counsel and client and ensure that communication issues such as language, literacy, mental or physical disability, or impairment are effectively addressed to enable the client to fully participate in all interviews and proceedings. Appropriate accommodations should be provided during all interviews, preparation, and proceedings, which might include the use of interpreters, mechanical or technological supports, or expert assistance.

Standard 5-5: Detention Hearing

(a) When appropriate, counsel should attempt to obtain the pretrial release of any client. Counsel should advocate for the use of alternatives to detention for the youth at the detention hearing. Such alternatives might include electronic home monitoring, day or evening reporting centers, utilization of other community-based services such as after school programming, etc. If counsel is appointed after the initial detention hearing or if the youth remains detained after the initial detention hearing, counsel should consider the filing of a motion to review the detention decision.

(b) If the youth's release from secure detention is ordered by the court, counsel should carefully explain to the juvenile the conditions of release from detention and any obligations of reporting or participation in programming. Counsel should take steps to secure appointment of counsel to juveniles prior to the detention hearing.

Standard 5-6: Informal Supervision/Diversion

Counsel should be familiar with all available alternatives offered by the court or available in the community. Such programs may include diversion, mediation, or other informal programming that could result in a juvenile's case being dismissed, handled informally, or referred to other community programming. When appropriate and available, counsel should advocate for the use of informal mechanisms that could steer the juvenile's case away from the formal court process.

Standard 5-7: Case Preparation and Investigation

An investigation by defense counsel is essential for competent representation of youth in delinquency proceedings. The duty to investigate exists regardless of the youth's admissions or statements to defense counsel of facts or the youth's stated desire to plead guilty, however counsel may consider such admissions statements or desires in determining the scope of the investigation.

Counsel should:

(a) obtain and examine all charging documents, pleadings, and discovery;

(b) request and secure discovery, including exculpatory/impeaching information;

(c) request the names and addresses of prosecution witnesses, their prior statements, and criminal records;

(d) obtain the prior statements of the client and his or her delinquency history; all papers, tapes, or electronic recordings relevant to the case; expert reports and data upon which they are based, statements of co-defendants, an inspection of physical evidence, all documents relevant to any searches conducted, 911 tapes and dispatch reports, records of the client, including, but not limited to, educational, psychological, psychiatric, substance abuse treatment, children services records, court files, and prior delinquency records and be prepared to execute any needed releases of information or obtain any necessary court orders to obtain these records;

(e) research and review the relevant statutes and case law to identify elements of the charged offense(s), defects in the prosecution, and available defenses;
(f) conduct an in-depth interview of the client to assist in shaping the investigation;
(g) consider seeking the assistance of an investigator when necessary and consider moving the court for funding to pay for the use of an investigator;
(h) attempt to locate all potential witnesses and have them interviewed (if counsel conducts a witness interview, counsel should do so in the presence of a third person who can be called as a witness);
(i) obtain the assistance of such experts as are appropriate to the facts of the case;
(j) consider going to the scene of the alleged offense or offenses in a timely manner;
(k) consider the preservation of evidence and document such by using photographs, measurements, and other means; and

Standard 5-8: Pretrial Motions

Counsel should consider filing an appropriate motion whenever there exists a good faith reason to believe that the applicable law may entitle the client to relief that the court has discretion to grant. Counsel shall review all statements, reports, and other evidence and interview the client to determine whether any motions are appropriate. Counsel should timely file all appropriate pretrial motions and participate in all pretrial proceedings.
(a) The decision to file pretrial motions should be made after investigation and after considering the applicable law in light of the circumstances of the case. Among the issues that counsel should consider addressing in a pretrial motion are:
1. the pretrial detention of the client;
2. the constitutionality of the implicated statute(s);
3. defects in the charging process or the charging document;
4. severance of charges or defendants;
5. discovery issues;
6. suppression of evidence or statements;
7. speedy trial issues; and
8. evidentiary issues.

(b) Counsel should only withdraw or decide not to file a motion after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights against later claims of waiver or procedural default.

(c) Motions should be filed in a timely manner and with an awareness of the effect of filing the motion on the client's speedy trial rights. When an evidentiary hearing is scheduled on a motion, counsel's preparation for the hearing should include:

1. investigation, discovery, and research relevant to the claim advanced;
2. subpoenaing of all helpful evidence and witnesses; and
3. full understanding of the burdens of proof, evidentiary principles, and trial court procedures applying to that hearing, including the benefits and costs of having the client testify.

(d) Requests or agreements to continue a contested hearing date shall not be made without consultation with the client. Counsel shall diligently work to complete the investigation and preparation in order to be fully prepared for all court proceedings. In the event that counsel finds it necessary to seek additional time to adequately prepare for a proceeding, counsel should consult with the client and discuss seeking a continuance of the upcoming proceeding. Whenever possible, written motions for continuance made in advance of the proceeding are preferable to oral requests for continuance. All requests for a continuance should be supported by well-articulated reasons on the record in the event it becomes an appealable issue.

Standard 5-9: Plea Negotiations

(a) Under no circumstances should defense counsel recommend to a client acceptance of a plea offer unless the investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial.

(b) Counsel should:

1. with the consent of the client, explore diversion and other informal and formal admission of disposition agreements with regard to the allegations;
2. fully explain to the client the rights that would be waived by a decision to enter into any admission or disposition agreement;
3. keep the client fully informed of the progress of the negotiations;

4. convey to the client any offers made by the prosecution and the advantages and disadvantages of accepting the offers, including any additional investigation or legal challenges that would be abandoned as a result of accepting an offer;

5. continue to preserve the client's rights and prepare the defense notwithstanding ongoing negotiations; and

6. not enter into any admission or disposition agreement on behalf of the client without the client's authorization.

(c) In developing a negotiation strategy, counsel must be completely familiar with:

1. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:

(A) not to proceed to trial on the merits of the charges;

(B) to decline from asserting or litigating particular pretrial motions;

(C) an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and

(D) providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal/delinquent activity.

2. benefits the client might obtain from a negotiated settlement, including, but not limited to:

(A) that the prosecution will not oppose the client's release pending disposition or appeal;

(B) that the client may enter a conditional plea to preserve the right to litigate and contest certain issues affecting the validity of the conviction;

(C) that one or more of the charged offenses may be dismissed or reduced either immediately or upon completion of a deferred prosecution agreement;

(D) that the client will not be subject to further investigation or prosecution for uncharged alleged delinquent conduct;

(E) that the client will receive, with the agreement of the court, a specified sentence or sanction;

(F) that the prosecution will take, or refrain from taking, at the time of disposition and/or in communications with the probation department a specified position with respect to the sanction to be imposed on the client by the court; and

(G) that the client will receive, or the prosecution will recommend, specific benefits concerning the client's place and /or manner of confinement and/or release on probation.

(d) In the decision-making process, counsel should:

1. inform the client of any tentative negotiated agreement reached with the prosecution, explain to the client the full content of the agreement, and explain advantages, disadvantages, and direct consequences of the agreement; and

2. not attempt to unduly influence the decision, as the decision to enter a plea of guilty rests solely with the client; where counsel reasonably believes that acceptance of a plea offer is in the best interest of the client, counsel should advise the client of the benefits of this course of action.

(e) Prior to the entry of the plea, counsel should meet with the client in a confidential setting that fosters full communication and:

1. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary, and intelligently made;

2. make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and other direct consequences the client will be exposed to by entering the plea; and

3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge, and providing a statement concerning the offense.

(f) After entry of the plea, counsel should:

1. be prepared to address the issue of release pending disposition hearing. Where the client has been released, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for the client's release pending disposition; and

2. make every effort to review and explain the plea proceedings with the client and to respond to any client questions and concerns.

Standard 5-10: Adjudicatory Hearing

(a) Counsel should develop a theory of the case in advance of the adjudicatory hearing. Counsel shall issue subpoenas and obtain court orders for all necessary evidence to ensure the evidence's availability at the adjudicatory hearing. Sufficiently in advance of the hearing, counsel shall subpoena all potential witnesses. Where appropriate, counsel should have the following materials available at the time of the contested hearing:

1. copies of all relevant documents filed in the case;
2. relevant documents prepared by investigators;
3. outline or draft of opening statement;
4. cross-examination plans for all prospective prosecution witnesses;
5. direct examination plans for all prospective defense witnesses;
6. copies of defense subpoenas;
7. prior statements of all prosecution witnesses;
8. prior statements of all defense witnesses;
9. reports from all experts;
10. a list and copies of originals of defense and prosecution exhibits;
11. copies of all relevant statutes or cases; and
12. outline or draft of closing argument.

(b) Counsel should be fully informed as to the rules of evidence and the law relating to all stages of the trial process and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

(c) Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., admissibility of evidence), and where appropriate, counsel should prepare motions and memoranda in support of the client's position.

(d) Throughout the adjudicatory process, counsel should endeavor to establish a proper record for appellate review. As part of this effort, counsel should request, whenever necessary, that all discussions and rulings be made on the record.

(e) Counsel should advise the client as to suitable courtroom dress and demeanor.

(f) Counsel should plan with the client the most convenient system for conferring throughout the contested hearing.

(g) During the adjudicatory hearing, counsel shall raise objections on the record to any evidentiary issues; in order to best preserve a client's appellate rights, counsel

shall object on the record and state the grounds for such objection following the courts denial of any defense motion.

(h) Counsel shall ensure that an official court record is made and preserved of any pretrial hearings and the adjudicatory hearing.

(i) Counsel shall utilize expert services when appropriate and petition the court for assistance in obtaining expert services when necessary.

(j) Counsel should anticipate weaknesses in the prosecution's proof and consider appropriate motions for judgment of acquittal at all appropriate stages of the litigation.

(k) Counsel should consider the strategic advantages and disadvantages of entering into any stipulations.

(l) In preparing for cross-examination, counsel should:

1. be prepared to question witnesses as to the existence of prior statements that they may have made or adopted;
2. consider the need to integrate cross-examination, theory, and theme of the defense;
3. avoid asking unnecessary questions that may hurt the defense case;
4. anticipate evidence that the prosecution may call in its case-in-chief and on rebuttal;
5. create a cross-examination plan for all anticipated witnesses;
6. review all prior statements and testimony of the witnesses in order to be aware of all inconsistencies or variances; and
7. review relevant statutes, regulations, and policies applicable to police witnesses and consider a pretrial motion or voir dire examination of prosecution experts to determine qualifications of experts or reliability of the anticipated opinion.

Standard 5-11: Presenting the Client's Case

(a) Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.

(b) Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should maintain a record of the advice provided to the client and the client's decision concerning whether to testify.

(c) Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

(d) In preparing for presentation of a defense case, counsel should, where appropriate, do the following:

1. develop a plan for direct examination of each potential witness;
2. determine the implications that the order of witnesses may have on the defense case;
3. determine which facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
4. consider the possible use of character witnesses;
5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
6. review all documentary evidence that must be presented; and
7. review all tangible evidence that must be presented.

(e) In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

(f) Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

(g) Counsel should conduct redirect examination as appropriate.

Standard 5-12: Objections to the Hearing Master's Recommendations

Counsel should advise client of the role of the Hearing Master and the procedure and purpose of filing objections to the Hearing Master's findings and recommendations. Counsel should review the Hearing Master's decision for possible meritorious grounds for objection. If the Hearing Master's decision does not contain findings of facts and conclusions of law, counsel request in writing such findings of

facts and conclusions of law in accordance with NRS 62B.030(3) Counsel should ensure that the transcript of the proceeding is timely obtained and objections are timely filed in accordance with NRS 62B.030(4). Counsel should draft and file objections and supplemental points and authorities with specificity and particularity and participate in the oral argument if scheduled.

Standard 5-13: Preparation for the Disposition Hearing

Preparation for disposition should begin upon appointment. Counsel should:

(a) be knowledgeable of available dispositional alternatives both locally and outside of the community;

(b) review, in advance of the dispositional hearing, the recommendations of the probation department or other court department responsible for making dispositional recommendations to the court;

(c) inform their client of these recommendations and other available dispositional alternatives; and

(d) be familiar with potential support systems of the client such as school, family, and community programs and consider whether such supportive services could be part of a dispositional plan.

Standard 5-14: The Disposition Process

During the disposition process, counsel should:

(a) correct inaccurate information that may be detrimental to the client and object to information that is not properly before the court in determining the disposition;

(b) present to the Court all known and reasonably available mitigating and favorable information, including relevant expert testimony or reports;

(c) develop a plan that seeks to achieve the least restrictive and burdensome disposition alternative and that can reasonably be obtained based on the facts and circumstances of the offense, the client's background, the applicable disposition and alternatives, and other information pertinent to the disposition decision;

(d) consider filing a memorandum setting forth the defense position with the court prior to the dispositional hearing;

(e) maintain contact with the client prior to the disposition hearing and inform the client of the steps being taken in preparation for sentencing;
(f) obtain from the client and/or the client's family relevant information concerning his or her background and personal history, prior delinquency record, employment history, education, and medical history and condition and obtain from the client sources that can corroborate the information provided;
(g) request any necessary and appropriate client evaluations, including those for mental health and substance abuse;
(h) ensure the client has an opportunity to examine the disposition report;
(i) inform the client of his or her right to speak at the disposition hearing and assist the client in preparing the statement, if any, to deliver to the court;
(j) inform the client of the effects that admissions and other statements may have upon an appeal, retrial, or other judicial proceedings;
(k) collect affidavits to support the defense position when appropriate and prepare witnesses to testify at the sentencing hearing and request the opportunity to present tangible and testimonial evidence;
(l) prepare to address victim participation either through the victim impact statement or by direct testimony at the disposition hearing; and
(m) ensure that an official court record is made and preserved of any disposition hearing.

Standard 5-15: The Disposition Report

Counsel should:
(a) become familiar with the procedures concerning the preparation, submission, and verification of the disposition report;
(b) prepare the client for the interview with the official preparing the disposition report;
(c) determine whether a written disposition report will be prepared and submitted to the court prior to the disposition hearing; where preparation ofthe report is optional, counsel should consider the strategic implications ofrequesting report;
(d) provide to the official preparing the report relevant information favorable to the client, including, where appropriate, the client's version of the offense;

(e) attend any interview of the client by an agency disposition investigator; review the completed report prior to sentencing;
(f) take appropriate steps to ensure that erroneous or misleading information that may harm the client is deleted from the report; and
(g) take reasonable steps to ensure that a corrected copy of the report is sent to corrections officials if there are any amendments made to the report by the court.

Standard 5-16: Post-Disposition Responsibilities/Advocacy

Following the disposition hearing, counsel should:
(a) review the disposition order to ensure that the sentence is clearly and accurately recorded and take steps to correct any errors and ensure that it includes language regarding detention credits and plea agreements;
(b) be aware of sex offender registration requirements and other requirements, both state and federal, imposed on sex offenders and communicate those requirements to the client;
(c) be familiar with the procedure for sealing and expunging records, advise the client of those procedures, and utilize those procedures when available;
(d) be familiar with the procedures to request a new contested hearing, including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised and advise the client of his or her rights with regard to those procedures;
(e) inform the client of his or her rights to representation and to appeal an adjudication after a contested hearing, after a conditional plea or after an admission that was not entered in a knowing, intelligent, and voluntary manner and document the client's decision regarding appeal;
(f) ensure that the notice of appeal and request for appointment of counsel is filed, or that the client has obtained or the court has appointed, appellate counsel in a timely manner even if counsel believes that an appeal will not be successful or is not cognizable;
(g) timely respond to requests from appellate counsel for information about or documents from the case, when appellate counsel was not trial counsel;

(h) inform the client of any right that may exist to be released pending disposition of the appeal;

(i) consider requesting a stay of execution of the judgment to permit the client to report directly to the place of confinement, if a custodial sentence is imposed; and

(j) include in the advice to the client, an explanation of the limited nature of the relief available on direct appeal and, where appropriate, an explanation of the remedies available to him or her in post-adjudication proceedings.

Standard 5-17: Transfer Proceedings to Adult Court

(a) Transfer proceedings require special knowledge and skill due to the severity of the consequence of the proceedings. Counsel shall not undertake representation of children in these areas without sufficient experience, knowledge, and training in these unique areas. It is recommended that counsel representing children in transfer proceedings have litigated at least 2 criminal jury trials or be assisted by co-counsel with the requisite experience.

(b) Counsel representing juveniles in transfer proceedings should:

1. be fully knowledgeable of adult criminal procedures and sentencing;
2. be fully knowledgeable of the legal issues regarding probable cause hearings and transfer proceedings;
3. investigate the social, psychological, and educational history of the child;
4. retain or employ experts including psychologists, social workers, and investigators, as necessary and appropriate under the facts of the case and applicable case law, in order to provide the court with a comprehensive analysis of the child's strengths and weaknesses in support of retention of juvenile jurisdiction;
5. be knowledgeable of the statutory findings the court must make before transferring jurisdiction to the criminal court and any case law affecting the decision;
6. be prepared to present evidence and testimony to prevent transfer, including testimony from teachers, counselors, psychologists, community members, probation officers, religious associates, employers, or other persons who can assist the court in determining that juvenile jurisdiction should be retained;
7. ensure that all transfer hearing proceedings are recorded;
8. preserve all issues for appeal; and

9. investigate possible placements for the client if the case remains in juvenile court.

APPENDIX C

CLIENT SURVEY

THE PUBLIC DEFENDER SERVICE
for the District of Columbia

2018 PDS
Client Satisfaction Survey

1. I would identify my gender as:

- ☐ Male
- ☐ Female
- ☐ Transgender
- ☐ Other

2. I would identify my sexuality as:

- ☐ Heterosexual
- ☐ Gay
- ☐ Lesbian
- ☐ Bisexual
- ☐ Queer
- ☐ Asexual
- ☐ Other

3. I would describe my race as:

- ☐ African American/Black
- ☐ Hispanic/Latino
- ☐ Asian
- ☐ Native American
- ☐ Pacific Islander
- ☐ Caucasian/White
- ☐ Other

4. My primary language is:

- ☐ English
- ☐ Spanish
- ☐ French
- ☐ Amharic
- ☐ Mandarin
- ☐ Korean
- ☐ Other

5. My age range is:

- ☐ 16-25
- ☐ 25-40
- ☐ 40-55
- ☐ Over 55

6. I am incarcerated now because my case was resolved by:

- ☐ Plea
- ☐ Trial
- ☐ Probation Revocation

7. After arrest I was held at the DC Jail.

- ☐ Yes
- ☐ No

8. I was released from jail while my case was ongoing (before your trial, plea or revocation).

- ☐ Yes
- ☐ No

9. My PDS lawyer treated me with respect and courtesy:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

10. Did you work with a PDS investigator?

- ☐ Yes
- ☐ No

11. If yes: The PDS investigator treated me with respect and courtesy:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

12. Did you work with a PDS social worker?

- ☐ Yes
- ☐ No

13. If yes: The PDS social worker treated me with respect and courtesy:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

14. My PDS lawyer helped me understand what was happening at each of my court dates:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

15. My PDS lawyer explained the choice I had between going to trial and pleading guilty:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

16. My PDS lawyer kept me informed throughout my case:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

17. I felt my PDS lawyer was working for me:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

18. I was able to reach my PDS lawyer when I needed to:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

19. I felt my PDS lawyer was concerned about what happened to me:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

20. My PDS lawyer was prepared in court and knowledgeable about the facts and law that applied in my case:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

21. My PDS lawyer saw me within 48 hours of my arrest/indictment:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

22. Overall, the service I received from my PDS lawyer was excellent:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

23. The sentence I received was less than what the government was asking for:

- ☐ Yes
- ☐ No
- ☐ The sentence was agreed upon with the government before sentencing
- ☐ Don't know

24. The PDS team also helped me with the following issues:

- ☐ Immigration
- ☐ Housing
- ☐ Education
- ☐ Employment
- ☐ Public Benefits
- ☐ Substance Abuse
- ☐ Mental Health
- ☐ Record Sealing
- ☐ Child Custody
- ☐ Other

25. Overall, I was satisfied with the help I received from the PDS team.

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

26. The PDS team communicated with me in my primary language:

- ☐ Strongly Agree
- ☐ Agree
- ☐ Slightly Agree
- ☐ Slightly Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know

27. Is there anything you would like to add about your experience with PDS?

(See other side of page for response to question 27.)

A

EXHIBIT 2

INDIGENT CRIMINAL DEFENSE CLASS ACTION SETTLEMENT

***Davis v. State of Nevada*, Case No. 170C002271B**

Please Read this Notice Carefully.
This Notice Contains Important Information.

This is a Notice of a Class Action and Proposed Settlement Regarding the Provision of Publicly Funded Criminal Defense Representation in Churchill County, Douglas County, Esmeralda County, Eureka County, Lander County, Lincoln County, Lyon County, Mineral County, Nye County, and White Pine County.

A Nevada State Court approved and authorized this Notice.
*This is **not** a solicitation from a lawyer.*
*You will **not** be asked to pay any money under any circumstances.*

What is this lawsuit about?
Plaintiffs claim that Nevada State and Governor Steve Sisolak have failed to provide constitutionally required criminal representation to poor people in ten counties, including Churchill County, Douglas County, Esmeralda County, Eureka County, Lander County, Lincoln County, Lyon County, Mineral County, Nye County, and White Pine County (collectively, the "Counties"). Plaintiffs claim that lawyers are not available to poor defendants at critical stages of the criminal process, including that defendants face first appearances without counsel and that defendants effectively have no one advocating for them during plea negotiations. Plaintiffs do not seek to overturn any criminal conviction. Instead, Plaintiffs seek to reform the public defense system by getting a court order declaring that the State and its Governor are not providing constitutionally sufficient representation to poor people and requiring the State and Governor to fix the constitutional problems.

Who brought this lawsuit?
Diane Davis, Jason Lee Enox, Jeremy Lee Igou, and Jon Wesley Turner II brought this lawsuit, on behalf of themselves and all other people similarly situated in the Counties in Nevada who are or will be entitled to receive constitutionally required, publicly funded criminal defense representation. A Nevada State Court certified the case as a class action in June 2019.

Where is this lawsuit pending?
The lawsuit is pending in the First Judicial District Court of the State of Nevada in Carson City.

Who is this lawsuit against?
The lawsuit is against the State of Nevada and Governor Steve Sisolak.

Who is settling?
The Plaintiff class is settling its claims against the State of Nevada and Governor Steve Sisolak that exist up to the date of the settlement agreement.

Who are the lawyers for the class?
The class is represented by lawyers at the American Civil Liberties Union of Nevada, 616 S. 8th Street Las Vegas, NV 89101; American Civil Liberties Foundation, 125 Broad Street, New York, New York 10004; the law firm of O'Melveny & Myers LLP, 400 South Hope Street, 18th Floor, Los Angeles, CA 90071; and the Law Office of Franny Forsman, PLLC, 1509 Becke Circle, Las Vegas, NV 89104.

Can I get any money from this lawsuit?
No. The lawsuit does not and has never included a claim for money damages. It seeks declaratory and injunctive relief, which means a court order setting out a party's obligations and requiring a party to do something.

Can I overturn my criminal conviction or withdraw my guilty plea?
This lawsuit is not a way to attack your individual criminal conviction or plea. The lawyers for the Plaintiff class cannot advise you on these matters. But nothing in the settlement agreement bars you from bringing an ineffective assistance of counsel claim to challenge your conviction.

Do I have to pay any lawyers?
No. The Plaintiffs' attorneys are litigating this case pro bono, meaning they are not seeking any payment for their services.

What are the terms of the settlement?
The State of Nevada will ensure that defense attorneys are present at all arraignments or first appearances in each of the Counties. The State will, through the Nevada Board on Indigent Defense Services ("BIDS"), establish and implement caseload/workload standards, including hiring attorneys and support staff as needed in each county to meet those standards. The State, through BIDS, will create plans to improve the quality of public defense representation in the Counties. The State will also monitor and report on its obligations under the agreement to Plaintiffs' counsel and the Court.

In exchange, the Plaintiff class has agreed that if a court determines that the State of Nevada has complied with the requirements of the settlement, that at any time after June 30, 2023, the court may dismiss the Plaintiff class's claims concerning the constitutionality of criminal representation for poor people in the Counties.

What if I want to object to the settlement?
Any person seeking to be heard in opposition to the settlement may object in writing or appear at the Fairness Hearing that will be held on _____ at 9:30am at the Carson City District Court, 885 East Musser Street, Carson City, Nevada 89701-3031.

To submit a written objection, you must send a written Notice of Objection entitled, "Objection to Class Settlement in Davis v. State of Nevada, No. 170C02271B" to: Clerk of Court, Carson City District Court, 885 East Musser Street, Suite 3031, Carson City, Nevada 89701.

Any written objection must be postmarked by _____. Your objections will be provided to the Court, which will consider them in deciding whether to approve the settlement.

If you make a written objection, it must include: (i) your name and address; (ii) a statement as to whether you plan to appear at the Fairness Hearing; (iii) a description of your objection; and (iv) any documents that you want the court to consider.

What happens next?
A Nevada First Judicial District Court Judge will hold a fairness hearing, as described above. After these hearings, the judge will determine whether the settlement should be approved as fair and reasonable. You are not required to attend any hearing, but you may if you wish.

How do I get more information?
Do not call or write the court, the judge, any county, or the State of Nevada for additional information.

You may review the pleadings, the full settlement agreement, and certain other court documents at www.aclunv.org/PublicDefenseLawsuit. If you have any questions concerning the matters in this notice please contact the American Civil Liberties Union of Nevada at (702)-366-1226, and one of the attorneys for the Plaintiff class will respond to your inquiry