

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET  
Director and  
State Court Administrator



SCOTT SOSEBEE  
Deputy Director  
Information Technology

VERISE V. CAMPBELL  
Deputy Director  
Foreclosure Mediation

**MEETING NOTICE AND AGENDA**

**Indigent Defense Commission**

**VIDEOCONFERENCE**

**Date and Time of Meeting:** Monday, March 19, 2012, 10:00 a.m.

**Place of Meeting:**

Carson Supreme Court Library Room 104/105 201 S. Carson Street Carson City, Nevada	Clark Regional Justice Center AOC Conference Room B 200 Lewis Avenue Las Vegas, Nevada	Washoe Second Judicial District Court 2 <sup>nd</sup> Floor Conference Room 75 Court Street Reno, Nevada
Teleconference Access: Dial-In #: 1-877-336-1829 Access Code: 2469586		

**AGENDA**

- I. Call to Order
  - a. Call of Roll and Determination of a Quorum

- II. Public Comment

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

- III. Approval of Minute of November 28, 2011, Meeting\*
- IV. Washoe County Early Case Resolution Program Update
- V. Indigent Defense Data Collection\*
  - a. County Responses to Information Request
- VI. Flat Fee Contracts\*
  - a. County Contracts
  - b. Regulation

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

Regional Justice Center ♦ 200 Lewis Avenue, 17<sup>th</sup> floor ♦ Las Vegas, Nevada 89101

## VII. Next Meeting Date and Location

## VIII. Public Comment

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

## IX. Adjournment

- Action items are noted by an asterisk (\*) 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 Committee 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 under agenda item three. Public comment is welcomed by the Committee but may be limited at the discretion of the Chair.
- The Committee is pleased to provide reasonable accommodations for members of the public who are disabled and require special arrangements or assistance at the meeting. If assistance is required, please notify Committee staff by phone or by email no later than two working days prior to the meeting, as follows: John McCormick, 775-684-9813 · email: [jmccormick@nvcourts.nv.gov](mailto:jmccormick@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.nevadajudiciary.us](http://www.nevadajudiciary.us); Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: Regional Justice Center, 200 Lewis Avenue, 17<sup>th</sup> Floor.

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**MEETING SUMMARY**

*Prepared by Erin Miller*

**INDIGENT DEFENSE COMMISSION (IDC)**

Monday, November 28, 2011

Videoconference\*

Regional Justice Center, 17<sup>th</sup> Floor, Room A, Las Vegas  
Supreme Court Building, Library Room 107, Carson City  
2<sup>nd</sup> Judicial District Courthouse, Room 220, Reno  
10:00 a.m.

**Attendees**

Associate Chief Justice Michael A. Cherry,  
Chairman  
Chief Justice Nancy Saitta  
Judge Steve Dahl  
Judge Kevin Higgins  
Judge Jerry Polaha  
Judge Connie Steinheimer  
Judge Anne Zimmerman  
Nancy Becker  
John Berkich  
Jeremy Bosler  
Al Casteneda  
David Carroll  
Drew Christensen  
Maggie Clark  
Diane Crow  
Joni Eastley  
Paul Elcano

Franny Forsman  
Richard Gammick  
John Helzer  
Phil Kohn  
John Lambrose  
John Petty  
Staci Pratt  
Katrina Rogers  
David Schiek  
Jeff Wells

**AOC Staff**

Erin Miller  
Stephanie Heying  
Hans Jessup  
John McCormick  
Robin Sweet

**I. Call to Order**

- a) Call of Roll and Determination of a Quorum

Justice Cherry called the meeting to order and asked everyone to introduce themselves.

b) Approval of Meeting Summary from March 21,2011, meeting

Justice Cherry asked if anyone had anything to add to the summary of the March 21, 2011, meeting. An inquiry as made asking if Justice Cherry and John McCormick had reviewed and revised the Indigent Defense Commission (IDC) membership list as noted in the summary, and Mr. McCormick stated that there was no substantive change to the membership. The summary was approved as published.

II. Washoe County Early Case Resolution (ECR) Program

Paul Elcano stated that in Washoe County's indigent criminal defense system, 99 percent of the cases are settled. Many of the cases are amiable for prompt settlement, but are not promptly settled, so the defendants spend a lot of time in jail, which causes them to lose their jobs and family and incurs extra costs for the County. Washoe County approached Mr. Elcano to develop a mechanism for dealing with the situation in an effective way so the County can use their limited resources on cases that really need them.

Mr. Elcano stated that Washoe Legal Services (WLS) looked at how to efficiently settle cases and satisfy Constitutional and statutory requirements. The right to settle is not just a legal decision for the defendant, it is a life decision. Mr. Elcano explained there are factors each defendant must consider: whether or not they will be incarcerated, the stigma of conviction, loss of job and/or home, breakup of family, and access to social programs. There were two types of cases Mr. Elcano tried to identify for the Early Case Resolution (ECR) program. The first was diversion drug cases, where there was no stigma of conviction, no risk of incarceration, and access to treatment. The second type of case is a felony reduced to a misdemeanor, so any incarceration was incidental and there was no serious stigma of conviction.

The key thing that Mr. Elcano and WLS came up with was to make ECR Constitutional and practically supplemental. All Constitutional requirements would be met by an appointed trial counsel. The ECR lawyer would be supplementary to trial counsel. Two lawyers could be appointed in most cases: a public defender and an ECR lawyer.

Another requirement for ECR was for it to be entirely voluntary for the defendant because the defendant's right to settle was his or hers alone.

Statutorily, the appointment process is governed by two statutes: NRS 171.188 and NRS 260.060. NRS 171.188 deals with the appointment of a single counsel and requires good cause. It does not deal with second chair appointments. NRS 260.060 deals with the appointment of indigent co-counsel and only requires cause, not good cause.

Mr. Elcano stated the cause in Washoe County was that the Public Defender conflicts out on 25 percent of the cases, and the Public Defender's Office did not think they could perform under this system.

Mr. Elcano stated that WLS saw every in-custody client within 24 hours of receipt of the offer and explained the offer to the client for 45 minutes. They are also \$60,000 per year cheaper. Mr. Elcano believes that \$1,000,000 to \$2,000,000 per year will be saved per ECR lawyer. The savings, as well as the Public Defender's Office stance, led Mr. Elcano to believe there is cause under NRS 260.060 for the program.

Mr. Elcano explained that in any ECR system, there needs to be investigation. Full investigation is often illusory and every trial lawyer knows they often don't learn everything about the case until after it has

been tried. The depth and breadth of the investigation needs to be balanced with the settlement offer. If there was a full investigation, about a week before the trial is when the defense lawyer knew more about the case than the prosecutor, so defense lawyers are always operating, to some degree, without total knowledge of the facts.

Mr. Elcano stated that the ECR gives the defense lawyer everything the prosecutor has along with what the defendant has told them. Although ECR happens early in the process, and there is not a complete investigation, the defense lawyer knows more than the prosecutor does so, in many cases, there is a position of leverage.

From this framework, Mr. Elcano and WLS came up with a system that was only implemented for 16 days. During those 16 days, 21 cases were assigned. Of the 21 cases, 9 were in custody and were seen within 24 hours of receipt of the ECR offer for an average of 45 minutes. Of those 9 in-custody defendants, 6 accepted the offered plea deal.

Two plea offers were rejected by the client, and one was rejected because the attorney felt there were competency issues with the defendant.

Of the six cases settled and in custody, all were arrested and incarcerated for felonies. Four of those cases were reduced to misdemeanors and two agreed to diversion.

Three defendants listed that their primary motive for settlement was to get access to treatment. Two cases listed their primary motive as their ability to maintain their employment, and the last case that settled did so due to a risk of a longer jail sentence.

Of the three cases that rejected the offer in the ECR program, one rejected the offer because he/she believed they were innocent, one rejected the offer because he/she did not want to participate in treatment, and the last one was rejected because the lawyer felt the defendant was incompetent.

Mr. Elcano explained that of the out-of-custody defendants, three were seen by ECR counsel and nine were not seen. The nine defendants were not seen because they did not return phone calls or letters within the time before the program was discontinued. Of the three that were seen, one did not take the settlement offer due to a perceived search and seizure issue and the other two retained private counsel so the settlement offer was not taken. Of the nine who were not seen, two had felony offers reduced to misdemeanors and four were offered drug court diversion.

Mr. Elcano stated that the Model Court Plan had been discussed, but that plan applied to trial counsel only. An ECR lawyer is not trial counsel so the Model Court Plan would not apply to them. He stated that there was discussion that the ECR lawyers were operating on a flat fee contract, but that was incorrect. The lawyer salary was \$80,000 per year irrespective of the number of cases handled. Mr. Elcano stated they had projected the lawyer could hand 500 cases per year, but it was not a requirement.

Mr. Elcano stated that an argument had cited 2,000 cases per year per lawyer, but that was a mischaracterization of a memo that went to the County Commission. When the program was fully instituted, Mr. Elcano was hopeful that there would be four lawyers operating the ECR program who would each be able to handle 500 cases per year, or 40 cases per month.

The hiring of the ECR lawyer was solely Mr. Elcano's responsibility. Washoe Legal Services signed a contract with the County to provide the services, and, after asking around the community, Mr. Elcano

hired a lawyer who had spent years, and had extensive experience, as a prosecutor, a defense lawyer, and in the drug court system. Mr. Elcano had known the person's family for years, and he knew the person was trustworthy. There was no input from any judge or district attorney in the hiring process.

Mr. John Berkich stated that the Washoe County initially contacted Mr. Elcano and WLS, not the Washoe County District Attorney's Office. Mr. Berkich and Mr. Elcano brought the DA's office into the conversation and created a contract.

Mr. Jeremy Bosler stated that the dissolution of the previous ECR program was a joint decision of the DA's office and the Public Defender's office after ADKT 411 was issued. He explained the concern was the inability to have enough discovery to do a conflict check, and to have a meaningful discussion with the client. Mr. Bosler stated that District Attorney Richard Gammick instituted technology projects, including e-discovery, to give the public defenders the materials they need to participate. Mr. Bosler stated that he has had meetings with the Justice Courts and Manager's Office so the public defenders can get all the materials they need to participate in the program.

Mr. Richard Gammick stated the ECR program has, after previously instituted for 11 years, and at the conception this time, furnished open file discovery as soon as the defense attorney, the ECR attorney, and the prosecutor met. He indicated that how the discovery happens, either by e-discovery or not, makes no difference because there is total open file when they walk into the DA's office.

Mr. Gammick stated that Washoe County took the liberty of contacting WLS because Mr. Bosler felt that he could not participate in ECR due to ADKT-411 as ordered by the Supreme Court of Nevada. Mr. Gammick agreed with Mr. Bosler at that time because ADKT-411 required a full investigation along with a number of items that would not allow the cases to be resolved within 72 hours.

However, Mr. Gammick stated the rulings of the United States Supreme Court in *Strickland* and *Bobby v. Van Hook* upheld the standard that defense attorneys cannot be told what they can and cannot do. It is up to the defense attorney to make those decisions. Mr. Gammick stated he spoke with Mr. Bosler after the ruling in *Van Hook*, and Mr. Bosler stated he still felt he was restricted by ADKT 411, and in his ethical opinion, he had to follow the Performance Standards.

Mr. Gammick explained that there is no reason to do the ECR program if the cases cannot be resolved quickly. Mr. Berkich contacted WLS, and Mr. Elcano felt that, knowing the guidelines in ADKT 411, there was not an issue with ECR cases.

Mr. Gammick stated that 28 percent of the workforce at the DA's office was laid off. There needed to be a plan to alleviate the workload and make the system more efficient. When Mr. Gammick came into office, the bulk of the cases would wait until right before trial before they would plead. Every person involved in the cases knew it would end in a plea agreement, but it would be held off until the end. ECR identifies those cases within the first 24 hours and reaches a resolution within 72 hours, while protecting the defendant's rights.

Mr. Gammick stated that in the 11 years prior to ADKT-411, when an ECR program was in place, there was one challenge (appeal) to the program in over 5,000 felony cases, and the challenge failed before it even got started. Mr. Gammick stated the program works, protects the defendant's rights, gives them the choice, and lets them get out of jail and into diversion programs so they become productive citizens.

Mr. Gammick stated that he is not asking for an order to be issued by the Supreme Court, he is asking for a mediator to be appointed under the Supreme Court's administrative authority so that the Washoe County Public Defender's Office, Reno Justice Court, District Attorney's Office, and Washoe Legal Services can work out the issues regarding ECR.

Mr. Gammick stated that the Board of County Commissioners, which has the authority over the budget, heard the arguments regarding ECR on June 28, 2011, from Mr. Berkich, Mr. Gammick, Ms. Franny Forsman, and Ms. Rebecca Gaska. After all comments were made, the Board voted unanimously to adopt the concept of ECR, and approved a budget on August 9, 2011.

Mr. Gammick stated that there was discussion that there had been a multitude of lawsuits filed regarding ECR. Mr. David Bennett, the national ECR consultant, told Mr. Gammick that he is not aware of a single lawsuit within the six jurisdictions that have adopted ECR programs.

Mr. Gammick stated that if people have challenges to the ECR program, he is willing to litigate it in court.

Mr. Gammick clarified he would like help from someone without preconceived notions, and who would listen to all comments, and provide suggestions and directions

Mr. Lambrose stated that his perception, given the materials in the agenda, was that the reason the ECR program was still being argued was because the Justice Court in Washoe County did not want to implement the plan. From his understanding, Mr. Gammick and Mr. Elcano wanted the IDC to make a recommendation to the Supreme Court of Nevada to change the Washoe County Model Plan. Mr. Lambrose? wanted to know if the IDC was going to be deciding on the issue, and if so, would there be a vote/

Ms. Forsman asked if the ECR program had ever been submitted to the group put together to consider the Model Plan to ask for an amendment to the plan. If it had not, Ms. Forsman stated that the ECR program should be submitted to whomever it was Washoe County decided to draft the Plan, and let them decide whether it complies with ADKT 411 and other regulations, and whether it should be implemented.

Mr. Lambrose stated that if the Model Plan is amended, the amendment has to be ratified by the Supreme Court.

Justice Cherry asked Judge Connie Steinheimer what the District Judges and Justices of the Peace felt regarding ECR. Judge Steinheimer stated that the Reno Justice Court had been active with regards to the discussion regarding ECR procedures and implementation, and were unified in what they thought. Judge Kevin Higgins added that Sparks Justice Court had not been approached to start the ECR program. Judge Higgins stated that he believed that Reno Justice Court did not think they had the authority to appoint any counsel other than a public defender under NRS 171.188.

Judge Dahl stated he did not believe that the IDC could act on this issue until there was a full, written explanation regarding how ECR is going to work.

Mr. Lambrose stated that the issue needs to be resolved by the Supreme Court through a positive or negative recommendation from the IDC. Mr. Lambrose was concerned that Mr. Elcano's interpretation

of the statute and the Model Plan was dubious, particularly in light of the fact that the Washoe County Justices of the Peace stated that in a letter they wrote to Mr. Gammick.

Mr. Phil Kohn asked if a defendant pleads to something, and there was suspended time over their head, who handled the matter if they did not do what they were supposed to do or got a new offense?

Mr. Elcano stated that the ECR lawyer stayed with the case through sentencing once the plea was accepted. If the plea was not accepted, the Public Defender would take over as trial counsel, and could plead the person later.

Judge Dahl asked if the ECR lawyer was going to show up for status checks and find their client if they go missing for a salary of \$80,000 per year on what Mr. Gammick stated was 34-38 percent of the felony caseload of the Washoe County District Attorney's Office.

Mr. Elcano stated that if the pilot program was successful, and they did not know if it would be yet, the program would add lawyers and the number of lawyers, added up, would handle that segment of cases. Mr. Elcano stated that regular meetings took place over a 3 year period discussing the program that included the District Court, the Justice Court, Public Defender, Alternate Public Defender, County Assistant Manager, District Attorney, Assistant District Attorney, and Mr. Elcano.

Mr. Elcano stated that one of the goals was to see how effective the program would be if implemented for a 6 month trial period.. He explained that Washoe Legal Services did not have the conflict issue the Public Defender has, so WLS could handle more cases not being trial counsel.

Justice Cherry asked Mr. Bosler what he thought regarding the ECR program. Mr. Bosler stated that the issue for the Public Defender's Office was sufficient discovery. The e-discovery does not change the amount of discovery, but it does change the speed in which they get it. They have seen, through e-discovery, that they are getting more than the PC sheet. Those are the tools needed to negotiate deals in an expedited fashion. Technologically, things have changed between the offices. The Reno Justice Court developed a Mandatory Status Conference, which compels the attorneys to appear within 7 days of the arrest. Mr. Bosler stated the process is working well and acts as an ECR program and will hopefully yield the same savings that occurred with the old ECR program. For the cases in which there can be complete discover within 24 hours, and can be resolved without any additional investigation or actions, there may be a way to resolve the issues. The Public Defender is ready to participate, but will not know until details of the program are known.

Justice Cherry asked who would do ECR: the Public Defender's Office or WLS?

Mr. Bosler stated that the Public Defender's Office would handle ECR. That would be consistent with the statute, Model Plan, and the idea that they already do most of the representation in the drug courts. They wanted to create program that used existing resources and the Public Defender's Office.

Mr. Gammick stated he is not comfortable with going with the Public Defender because over the 3 year period the ECR program has been discussed, there have been many inconsistent representations made. That is the reason he is asking for the mediator.

Mr. Gammick also raised the issue of the courts getting too involved with ECR because if an appeal is taken on one of the cases, it will go to the courts. If judges are getting involved in approving or disapproving ECR, there could be future conflict issues.



Judge Higgins clarified that the ECR discussions happened with the Reno Justice Court. He stated that had never been invited to a meeting regarding the new ECR program, and the program had never been explained to him.

Ms. Nancy Becker stated the original decision of the Washoe County Public Defender's Office not to proceed with ECR was based on the original ADKT 411 guidelines, which were then amended. One of the issues for amendment was to recognize the amount of investigation required to adequately advise the client. Ms. Becker stated Mr. Bosler's issues after ADKT 411 was amended were regarding whether having a probable cause affidavit was enough information to advise clients on a plea, and would the defendant's decision to accept a plea be based more on their custody status than on a realistic assessment of the case. Ms. Becker stated that Mr. Bosler thought that if sufficient information was obtained in the 24-72 hour program complete discovery was not needed, but a sufficient amount would be required to ascertain if there were other types of motions or investigation that needed to be undertaken.

Mr. Elcano stated that the amendment for ADKT 411 had already taken place when Mr. Bosler decided he would not participate.

Mr. Bosler asked for clarification on the amendment. Ms. Becker stated ADKT 411 amended the guidelines to change the amount of discovery needed, and factors to look at when discussing with the client whether or not to continue on with a case. The issue of ECR was always separate and distinct. Ms. Becker explained that an argument could be made that the Model Plan should have included ECR, but there was also an argument that the Court never intended the Model Plan deal with an ECR program. The manner in which the Model Plan came up in discussing the amendment to ADKT 411 never included ECR.

Ms. Becker stated that nothing in the ADKT 411 guidelines is inconsistent with ECR, depending on how ECR is set up and how much information the attorney dealing with ECR feels they need in order to evaluate and convey the offer. Without clarification from the Court, Ms. Becker did not believe a decision could be made.

Ms. Forsman stated that she thought the issue was if the ECR plan, as laid out by Washoe County and Mr. Elcano, was a plan for provision of counsel for indigent defendants. If it is, should it be an amendment considered by the Judge Steinheimer's committee.

Mr. Lambrose stated did not believe the plan could work outside the scope of ADKT 411 without the Courts blessing. Mr. Lambrose stated he had not heard a defense lawyer, outside of Mr. Elcano, speak in favor of ECR. Mr. Lambrose suggested either going back to the drawing board or putting it to a vote.

Judge Dahl stated his concern was that if they allow ECR to be implemented without approval, it would allow for other counties to be creative in getting around the rule and save money at the expense of indigent defense.

Jeff Wells stated that the Model Plan was not a one size fits all plan. It was a plan that gave general guidelines, and it was the only plan that the IDC had ever approved. The original order was not just for the counties to submit a plan; it was ordering each district to submit a plan. Mr. Wells stated that Judge Dahl's suggested that every county would look for something clever would reign in because there would be a joint submission with the judicial district.

Mr. Lambrose stated that, as far as order of creating the plans, it was by judicial district, but individual counties could abstain if they wanted. Mr. Wells stated that if the county strayed far from the Model Plan, it risked running afoul of whatever the Supreme Court later ruled. Mr. Wells would hate to get into a posture that any judicial district or county that wants to make a change to the plan has to get the Courts blessing because the Model Plan is just a model.

Ms. Forsman stated that if there was going to be a change to the Second Judicial District Model Plan that will incorporate an ECR program, it would have to be part of the amendment process.

Mr. Wells stated there is no amendment process, and the Second Judicial District could do what they did in the first place, which was to submit the plan to the Supreme Court.

Ms. Forsman stated she agrees that the amendment should be filed with the Supreme Court, and the Court should ask the IDC to weigh in. Ms. Becker added that if they chose not to do that and they want to proceed forward, then it is up to the Court to take action, it is not the Commission's responsibility.

Judge Steinheimer stated if the IDC wanted to be involved in ECR, then the Commission should make a model ECR plan. Judge Steinheimer stated that if the IDC wanted to create a statement regarding ECR, they should do that, and if the Supreme Court ordered the Second Judicial District Court to evaluate the Model Plan based on those findings, they would.

Judge Polaha agreed with Judge Steinheimer that ECR was a local issue. The Public Defender originally stated that ECR could not be implemented due to ADKT 411, but the situation had changed.

Judge Polaha requested that the Commission take up the concept of ECR and see if it could be done.

Ms. Forsman stated that if the Public Defender was to carry out the ECR program, it did not have to go through an amendment process because it is an institutional public defender's office. When the defense is provided for outside of that office is when you need an amendment process. If the District Court was not interested in adopting an amendment to include appointment of counsel for pleas, and Justice Court stated that they would not go forward with an ECR plan, the Commission did not have anything to look into.

Mr. Gammick motioned that the IDC take no position on the Washoe County ECR program since this is a local issue. The motion was seconded by Mr. Berkich.

Mr. McCormick called the roll and took a vote. The motion did not pass.

Mr. Lambrose motioned for the Indigent Defense Commission to respectfully recommend to the Second Judicial District Court and the Reno Justice Court to review the proposed ECR program. If the ECR program is embraced, the IDC requests that the Courts amend their existing Plan for the Appointment of Counsel and send that amendment to the Nevada Supreme Court for consideration because the IDC believes that such a change to the Plan would require Supreme Court Approval. Ms. Forsman seconded the motion.

Judge Steinheimer wanted to remind the IDC that the both Judges from the Second Judicial District suggested the IDC make a recommendation on ECR so that opinion could be known.

Mr. Lambrose clarified that the reason the IDC was making the recommendation to Washoe County was that the IDC believed that the ECR plan proposed by Mr. Elcano was outside the scope of Washoe County's Model Plan. If they want to do ECR, they would have to amend their plan and get approval from the Supreme Court. Implicit in the motion is the belief that the ECR plan pitched to the IDC does not fall within the scope the Nevada Supreme Court or the plan approved by the Second Judicial District.

Mr. Gammick asked what would happen if an ECR case was challenged, since the IDC wanted the Second Judicial District Court to make a decision regarding ECR. Mr. Gammick also wondered if the IDC had the authority over the Second Judicial District Court to tell them to make the decision, and does it mean that every single issue not technically word for word in the Plan would have to have an amendment.

Justice Cherry stated that it would be in the best interest of the Second Judicial District Court to come up with a recommendation for the Supreme Court so they know exactly what the District Court wants to do.

Mr. Gammick stated that all arguments are negating NRS 260.060, and he has never heard of the Supreme Court approving or disapproving something before it was appealed or a case of controversy.

Mr. Lambrose stated that Mr. Gammick was asking for a mediator, so that proves there was some controversy to ECR. Mr. Gammick stated he was not asking for an order from the Supreme Court, he was asking for a mediator under the administrative authority.

Judge Higgins stated he was concerned that the ECR issue went beyond the IDC's original intent. Judge Higgins stated it was local issue that needed to be resolved locally.

Mr. Lamrose agreed with Judge Higgins and stated that the reason he imported the IDC's stand in the motion was because there was a 90 minute discussion regarding it and Judge Steinheimer asked the IDC to give the Second Judicial District Court an opinion.

The Commission voted, and the motion passed.

### III. Indigent Defense Data Collection

Mr. McCormick stated he was still working up the memo to send to the counties asking for a plan to collect data.

Judge Dahl stated that there was a new type of plea negotiation happening more frequently where the DA's office was taking a felony and turning it into two misdemeanors with 6 month sentences running consecutively, essentially creating a gross misdemeanor that is handled in the Justice Court.. That type of negotiation kept the case in the court, increasing the seriousness of the case, and increasing the amount of time the public defender had to spend on the case.

Ms. Forsman explained that is why the data collection is necessary because it would capture that plea, so resource issues could be assessed.

Ms. Becker stated the point of the data collection was to know how the cases are being disposed of.

Judge Connie Steinheimer stated that the data collection was serious problem for those at the local level because they had no resources to collect the data or implement a collection process. Any recommendation that requires the County Courts to collect data would be very difficult to implement.

Ms. Becker explained the first step was to identify what data was already being collected that met the definitions because some of it was designed to work the existing systems. Ms. Becker asked how the data that was not already being collected could be tracked without additional resources.

Ms. Forsman asked Mr. Carroll if he knew of any grants to help with the data collection project. Mr. Carroll stated that there were no assured grant funds. He would be willing to go to the Bureau of Justice Statistics and tell them decisions and information could not be obtained due to lack to resources.

Ms. Forsman wondered if the IDC should use the data the IDC and court system already have and apply the definitions so that the caseloads part of the project could move forward.

Judge Dahl asked Robin Sweet about tweaking the numbers in order to match the proposed indigent defense data with existing USJR measures.

Ms. Sweet stated the information needed would be a subset of information that AOC collects. For most places, you would need another way of pulling the data out. In some instances, you would modify the report to add a field or train the clerks to put the information in because not all cases get a public defender.

Ms. Sweet suggested asking the courts/counties for a plan to come up with the information. The next step should be taking the information that can be collected so the AOC can develop databases to store the information and pull the data out for the IDC.

Ms. Crow stated that she could pull out the data for her office. However, many rural courts that have contract or flat-fee attorneys do not keep any data at all because they are all individual offices. Mr. Lambrose clarified that some counties have a public defender who could get the numbers.

Ms. Becker re-iterated that the IDC needed to find out what the local counties have in the way of resources so the IDC could help them, in the most cost-effective way, so they could collect the data they were not collecting that falls within the approved definitions.

Chief Justice Saitta stated the IDC should use UNR and UNLV to help collect the data. Justice Cherry asked the IDC how that could happen.

Ms. Becker stated that the local districts, as a team, should see if there was a way to start collecting the data. If they cannot, they should provide that information back to the AOC, so the AOC could see what could be done to help.

Judge Steinheimer asked if there was a definitive list, and how do the definitions relate to AOC's Uniform System of Judicial Records (USJR) reports. Ms. Sweet stated that the IDC started with the definitions used by the USJR and the National Center for State Courts to make them compatible. Ms. Becker clarified that many definitions are the same in both the IDC definitions and USJR.

The Commission agreed to send a letter to the courts, counties, public defenders, and defense attorneys and ask what data they already collect and how they would collect requested data they do not already collect. Ms. Sweet and Mr. McCormick would handle the drafting of the letter.

#### IV. Urban Plans for the Provision of Appointed Counsel

Justice Cherry stated this topic was covered in the ECR discussion.

#### V. Flat Fee Contracts

Mr. Drew Christensen stated Clark County does have flat fee contracts. They pay an hourly stipend plus benefits depending on the case.

Mr. Wells stated that Clark County uses a flat track fee, and lawyers could get an extra fee beyond the flat fee if they chose to go to trial.

Mr. Lambrose stated the problem with flat fees was in the rural courts because a number of counties have gone in this direction due to fiscal limitations.

Ms. Crow agreed with Mr. Lambrose and stated her office deals with Carson City, Storey County, Eureka County, and White Pine County. Most other rural counties, besides Pershing, Humbolt, and Elko, do not have county public defenders. The counties that go with a private contractor opt out of the state process under NRS 260, which lays out the ways in which counties can establish a public defender's office. They have to appoint a county public defender and the public defender can hire deputies as they see fit. Some of the smaller counties contract with a private practitioner and do not hire a public defender so she believes they are in violation of NRS 260.

Mr. Lambrose stated that if the IDC ever made a recommendation on caseload standards, it will be the death of flat fee contracts, and he suggested the IDC do something about flat fee contracts now.

Judge Dahl stated that it is not just a problem with rural counties; it is also problem in municipal courts.

Mr. Carroll stated that the types of flat track contracts used in Clark County are not the type of contracts the issue is about. The issue is about contracts where there is a single, flat fee for an unlimited number of cases. Mr. Carroll stated he thought the IDC should have this become an ADKT hearing so people could make their recommendations and concerns known directly to the Court. Mr. Carroll believed the flat fee contract offer a financial incentive for the attorney to do as little as possible, causing people to not get justice, was a huge problem in Nevada.

Ms. Forsman stated that the IDC needed to get educated on what was actually going on in the courts as far as flat fee contracts are concerned. Ms. Forsman suggested having a hearing before the IDC where representatives from the various courts and counties report about what is going on regarding flat fee contracts.

Ms. Becker stated that in the letters go out to the courts and counties regarding the hearing, the letter should ask them to explain, either at the hearing or through a written submission, exactly what was going on in the contract.

Just Cherry agreed and will work with Mr. McCormick to set a hearing date.

## VI. Future of Indigent Defense Commission

Justice Cherry postponed the future of the Indigent Defense Commission for discussion at a future meeting.

## VII. Next Meeting Date and Location

The Commission will be notified of the next meeting date.

## VIII. Public Comment

Mr. Al Casteneda stated he sent the IDC a submission regarding issues with Public Defenders and indigent defense. Mr. McCormick stated he would make Mr. Castenda's submission available to the Commission.

## IX. Adjournment

Justice Cherry adjourned the meeting.

SUPREME COURT OF NEVADA  
MICHAEL A. CHERRY, JUSTICE  
201 SOUTH CARSON STREET  
CARSON CITY, NEVADA 89701-4702  
(775) 684-1540  
Fax (775) 684-1543



January 20, 2012

Ms. Lisa Lloyd  
County Clerk  
Lincoln County  
Po Box 90  
Pioche, NV 89043

RE: Information Request from the Supreme Court's Indigent Defense Commission

Dear Ms. Lloyd:

Since 2007 the Nevada Supreme Court's Indigent Defense Commission (Commission) has been studying and making recommendations regarding the system used in Nevada to provide public defense services to those charged with a crime who cannot afford their own lawyer.

The Commission is now engaged in an endeavor to collect accurate statistical information regarding the number and types of cases being handled by indigent defense providers in each county of the State. Towards this end, the Commission has approved definitions of data collection terms and a collection instrument worksheet to gather the information.

At this time, I am asking you to review the attached data dictionary and worksheet and provide me with an assessment of your county's current capacity to provide the requested data. Please include information on the ability of your county to collect this data including the entity or person who would be/is responsible for data collection, and any estimated new expenditures that this data collection would necessitate.

Additionally, the Commission is examining the topic of flat fee contracting, and it is my understanding that your County currently utilizes contracted public defenders. I would ask that you provide a copy of your County's current contract for indigent defense services. Please provide any other information you deem pertinent regarding the contract, including any limits or restrictions placed upon the contract defender, including any caseload specifics. This information will be discussed by the Commission in reference to any contemplated changes in flat fee contracting in Nevada.

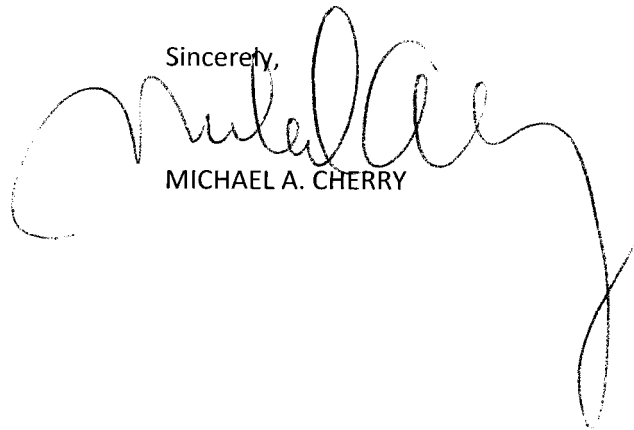
Ms. Lisa Lloyd  
January 20, 2012  
Page 2

I am asking that you provide this information to John McCormick at the Administrative Office of the Courts on or before March 5, 2012, so the Commission can review the information at its next meeting scheduled for March 19, 2012.

Please contact Mr. McCormick at 775-687-9813 or [jmccormick@nvcourts.nv.gov](mailto:jmccormick@nvcourts.nv.gov) if you questions or require additional information.

I thank you for your time and attention to this important matter, which will help to improve public criminal defense services across Nevada.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Cherry", with a long, sweeping tail that extends downwards and to the right.

MICHAEL A. CHERRY

Enclosure

MAC/jrm



SUPREME COURT OF NEVADA  
MICHAEL A. CHERRY, JUSTICE  
201 SOUTH CARSON STREET  
CARSON CITY, NEVADA 89701-4702  
(775) 684-1540  
FAX (775) 684-1543



January 20, 2012

Mr. John Berkich  
Assistant County Manager  
Washoe County  
PO Box 11130  
Reno, NV 89520

RE: Information Request from the Supreme Court's Indigent Defense Commission

Dear Mr. Berkich:

Since 2007 the Nevada Supreme Court's Indigent Defense Commission (Commission) has been studying and making recommendations regarding the system used in Nevada to provide public defense services to those charged with a crime who cannot afford their own lawyer.

The Commission is now engaged in an endeavor to collect accurate statistical information regarding the number and types of cases being handled by indigent defense providers in each county of the State. Towards this end, the Commission has approved definitions of data collection terms and a collection instrument worksheet to gather the information.

At this time, I am asking you to review the attached data dictionary and worksheet and provide me with an assessment of your county's current capacity to provide the requested data. Please include information on the ability of your county to collect this data including the entity or person who would be/is responsible for data collection, and any estimated new expenditures that this data collection would necessitate.

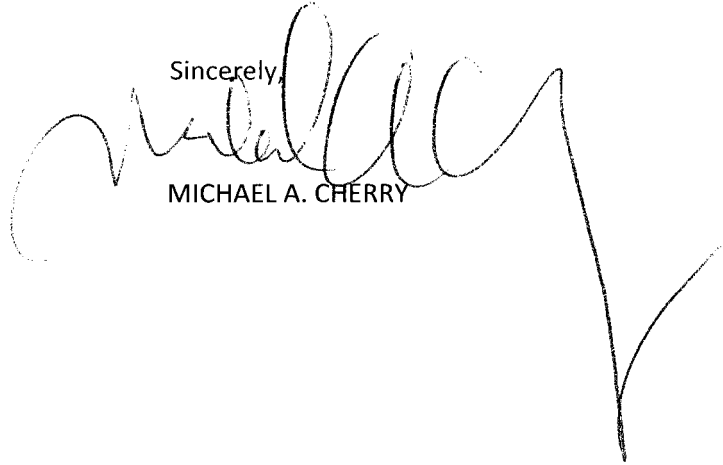
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Please contact Mr. McCormick at 775-687-9813 or [jmccormick@nvcourts.nv.gov](mailto:jmccormick@nvcourts.nv.gov) if you questions or require additional information.

Mr. John Berkich  
January 20, 2012  
Page 2

I thank you for your time and for your attention to this important matter, which will help to improve public criminal defense services across Nevada.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Cherry". The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

MICHAEL A. CHERRY

Enclosure  
MAC/jrm

## INDIGENT DEFENSE DATA DICTIONARY

### Phase I, Indigent Defense Commission Approved Version, October 14, 2010

**OBJECTIVE:** To identify and define basic data elements for counting of cases assigned to appointed or indigent defense counsel. Phase I is expected to define those basic cases assigned and disposed categories necessary to begin understanding the caseload of appointed counsel. Future phases will expand data elements to be captured by counsel.

#### CASES APPOINTED

**Appointment:** Any time a lawyer is asked or assigned to act on behalf of a person in a criminal or juvenile matter by a judicial officer. An appointment ends when a lawyer is no longer involved in a case for whatever reason. There can be multiple appointments for a single defendant/case during the duration of the case.

**Unit of Count** - For felony, gross misdemeanor, and misdemeanor criminal cases, the unit of count is a single defendant on a single charging document (i.e., one defendant on one complaint or information from one or more related incidents on one charging document is one case, regardless of the number of counts).<sup>1</sup> For juvenile cases, the unit of count is a single juvenile defendant on a single petition regardless of the number of counts. For traffic cases, the unit of count is a single case (by defendant) based on an original charging document from a single incident.

For defendants in cases whereby multiple charges are involved, courts will utilize a hierarchy (described below) when classifying the case for statistical purposes. For example, if a defendant is charged on a single charging document with a felony and a gross misdemeanor, for statistical purposes, the case is counted as a felony.

Felony and gross misdemeanor cases in Justice Court are counted when counsel is appointed to the case by the Court.

Misdemeanor and traffic cases in Justice and Municipal Courts are counted when counsel is appointed to the case by the Court.

Additional charges such as failure to appear or habitual criminal are not counted at this time because those are added after the initial charging document.

**Felony Case:** A subcategory of criminal cases in which a defendant is charged with the violation of a state law(s) that involves an offense punishable by death, or imprisonment in the state prison for more than 1 year.

**Gross Misdemeanor Case:** A subcategory of criminal cases in which a defendant is charged with the violation of state laws that involve offenses punishable by imprisonment for up to 1 year and (or) a fine of \$2,000.

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<sup>1</sup> This definition varies from the national standard as promulgated by the National Center for State Courts in that it counts a single defendant on a single charging document, while the national standard counts a single defendant with a single incident/transaction. This means that the Nevada measure herein, will under report caseload at times when one defendant is charged with separate crimes from separate incidents that may necessitate indigent defense counsel to treat the appointment as multiple cases. In the event that the capacity to accurately count cases in line with the national model becomes available in Nevada, the intent of the Subcommittee is that this definition be revisited.

**Misdemeanor Non-Traffic Case:** A criminal subcategory in which a defendant is charged with the violation of state laws and/or local ordinances that involve offenses punishable by fine or incarceration or both, the upper limits of which are prescribed by statute (NRS 193.120, generally set as no more than 6 months incarceration and/or \$1,000 fine).

**Misdemeanor Traffic Case:** A criminal subcategory for Justice and Municipal Courts in which a defendant is charged with the violation of traffic laws, local ordinances pertaining to traffic, or federal regulations pertaining to traffic.

**Juvenile Case:** A subcategory of juvenile cases that includes cases involving an act committed by a juvenile, which, if committed by an adult, would result in prosecution in criminal court and over which the juvenile court has been statutorily granted original or concurrent jurisdiction.

### **CASES ADJUDICATED/DISPOSED**

**Unit of Count** - For felony, gross misdemeanor, and misdemeanor criminal cases, the unit of count is a single defendant on a single charging document (i.e., one defendant on one complaint from one or more related incidents is one case, regardless of the number of counts).<sup>2</sup>

A criminal case is considered disposed when final adjudication for that defendant or case occurs. For statistical purposes, final adjudication is defined as the date of sentencing, date of adjudication, or date charges are otherwise disposed, whichever occurs last. A case may be considered closed for an appointed attorney when the appointment ends regardless of adjudicatory status.

Counsel should count the case adjudicated or disposed in the same category as it was counted in (felony in, felony out).

### **CASELOAD INVENTORY**

**Unit of Count** - For felony, gross misdemeanor, misdemeanor, and traffic criminal cases, the unit of count is a single defendant on a single case. The ending pending number for one month should be the beginning pending number for the next month.

**Beginning Pending:** A count of cases by defendant that, at the start of the reporting period, are awaiting disposition.

**New Appointments:** A count of cases by defendant that have been assigned counsel for the first time of each new appointment.

**Warrant (Placed on Inactive Status):** A count of cases in which a warrant for failure to appear has been issued, a diversion program has been ordered, or other similar incident that makes the case inactive.

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<sup>2</sup> This definition varies from the national standard as promulgated by the National Center for State Courts in that it counts a single defendant on a single charging document, while the national standard counts a single defendant with a single incident/transaction. This means that the Nevada measure herein, will under report caseload at times when one defendant is charged with separate crimes from separate incidents that may necessitate indigent defense counsel to treat the appointment as multiple cases. In the event that the capacity to accurately count cases in line with the national model becomes available in Nevada, the intent of the Subcommittee is that this definition be revisited.

**Returned from Warrant (Re-activated):** A count of cases in which a defendant has been arrested on a failure to appear warrant and has appeared before the court, returned from diversion program, or other similar occurrence that makes the case active.

**Adjudicated/Disposed/Closed Cases:** A count of cases by defendant for which an original entry of adjudication has been entered or for which an appointment has ended.

**Ending Pending:** A count of cases by defendant that, at the end of the reporting period, are awaiting disposition.

**Set for Review:** A count of cases that, following an initial Entry of Judgment during the reporting period, are awaiting regularly scheduled reviews involving a hearing before a judicial officer. For example, if a status check hearing is ordered to review post adjudication compliance.

### **ADDITIONAL STATISTICS**

**Death Penalty:** The number of defendants for which the District Attorney's Office has filed the notice of intent to seek the death penalty, in accordance with Supreme Court Rule 250.

**Probation Revocations:** The number of defendants for which post-adjudication criminal activity involving a motion to revoke probation due to an alleged violation of one or more conditions of probation (usually from the Department of Parole and Probation) or suspended sentence. The unit of count for revocation hearings is a single defendant, regardless of the number of charges involved. Revocation hearings are counted when the initiating document (e.g., violation report) is received by the court.

**Informal Juvenile Hearing (involving a judicial officer):** The number of hearings/events involving a juvenile in which no formal charge has been filed with the court. Only record an informal hearing if it is held on a matter that is not a part of an existing case. The court may impose a disposition as a result of the informal hearing.

**Juvenile Detention Hearing:** The number of hearings requesting a juvenile to be held in detention, or continued to be held in detention, pending further court action(s) within the same jurisdiction or another jurisdiction. Only record a detention hearing if it is held.

**Conflicts:** The number of defendants during the reporting period that a lawyer's appointment to case ended because of a conflict that necessitated the transfer of the case to another lawyer.

**Specialty Court Cases:** A count of cases in which a lawyer represents a defendant in a specialty court program, i.e., drug court or mental health court. This type of case should be counted in this additional category when the defendant appears during a specialty court session within the reporting period or if the indigent defense counsel is assigned to the defendant for specialty court.

**Justice Court Felony/Gross Misdemeanor Reductions:** A number of defendants for which any felony or gross misdemeanor charge was totally (and only) adjudicated in justice court.

Reporting Unit: \_\_\_\_\_

Reporting Period: \_\_\_\_\_  
 MMM / YYYY

**Indigent Defense Caseload Inventory Worksheet**

	Felony	Gross Misdemeanor	Misdemeanor Non-Traffic	Misdemeanor Traffic	Juvenile	
1. Beginning Pending	5	5	5	10	5	
2. New Appointments	1	0	3	1	3	(+)
3. Returned From Warrant (Re-activated)	1	1	1	1	1	(+)
4. Adjudicated/Disposed/Closed	0	0	4	1	3	(-)
5. Warrant (Placed on Inactive Status)	1	0	3	1	0	(-)
6. End Pending	6	6	2	10	6	
7. Set for Review						

**Indigent Defense Additional Statistics**

Death Penalty (S.C.R. 250) <b>CASES</b>	Probation Revocations <b>HEARINGS</b>	Informal Juvenile <b>HEARINGS</b> (Involving a Judicial Officer)	Juvenile Detention <b>HEARINGS</b>	Conflicts <b>CASES</b>	Specialty Court <b>CASES</b>	Justice Court Felony/Gross Misdemeanour Reductions <b>CASES</b>

Prepared by: \_\_\_\_\_

Approved by: \_\_\_\_\_

## **County Responses to IDC Request for Information**

### **Carson City**

Utilizes State Public Defender's Office

### **Churchill County**

Exhibit A

### **Clark County**

Exhibit B

### **Douglas**

No response

### **Elko County**

Data: Public Defender's Office reports that collection of the proposed data would create a burden and necessitate the hiring of an additional employee. Currently data is reported once per year (per NRS) and Public Defender's Assistant compiles the data as best she can.

County Manager reports that the County is currently looking at purchasing a county-wide case management system (CMS) at a cost of approximately \$500,000 to \$600,000, this CMS would include the functionality necessary to collect the data. The County Manager also reports that, in his estimation, much of the contemplated data would need to come from/be collected by local courts.

Contract: N/A

### **Esmeralda County**

Exhibit C

### **Eureka County**

Utilizes State Public Defender's Office

### **Humboldt County**

Data: Verbally reported that they will have little to no problem implementing the contemplated data collection measures as the Humboldt County Public Defender's Office currently collects data measures and could collect the additional data required.

Contract: N/A

### **Lander County**

No response

### **Lincoln County**

Data: Currently, Lincoln County has no ability to automate this reporting. The County Clerk and her staff would have to individually review every case file to gather the information. Lincoln County utilizes the same ADS CMS<sup>1</sup> as Mineral County, so a system update could be up to \$4,000.

Contract: Exhibit D

### **Lyon County**

Data: Data collection could be included in public defender contracts, and ADS CMS could be updated. Data collection could also require additional staff time and resources.

Contract: County Manager indicated it was sent, however AOC has not received it and is process of following-up.

### **Mineral County**

Data: Reported that the Court could collect the data with an upgrade to its CMS. The CSM provider is ADS in Carson City, and they report a rough estimate of approximately \$4,000 to make the case management changes.

Contract: No contract supplied.

### **Nye County**

Data: Data would be collected by contract public defenders, and there are doubts about the accuracy of the data.

Contract: Exhibit E

### **Pershing County**

No response; however, County does have an institutional public defender's office.

### **Washoe County**

Information forthcoming, per Assistant County Manager

### **White Pine County**

Utilizes State Public Defender's Office

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<sup>1</sup> CMS operates on an AS/400 platform





# Office of the Churchill County Manager

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March 2, 2012

John McCormick  
201 South Carson Street, Suite 250  
Carson City, Nevada 89701-4702

RE: Information Request from the Supreme Court's Indigent Defense Commission

Dear Mr. McCormick,

Churchill County is in receipt of Justice Cherry's letter dated January 20, 2012. The letter as well as the attached data dictionary and worksheet were reviewed by representatives from district court, justice court, district attorney, public defender, juvenile probation, and juvenile court master. As a result, the following response is submitted.

First, the County's capacity to provide the requested data is limited. Currently, the Courts are best suited to collect the data as counsel is assigned to cases. Staff from both the District Court and Justice Court are willing to collect the data. However, limitations in their software would prevent automated data entry, tracking and reporting. Therefore, any collection and reporting of the data would have to be manually completed by those agencies. Given current staffing levels, this requirement would create a substantial burden on court staff, and as a result, accuracy and timeliness of the data may suffer.

However, with software updates to the systems utilized by the courts, the data could be easily entered, tracked and reported. The Justice Court currently utilizes Court View as their case tracking system, and the District Court utilizes Advanced Data Systems for their software. It is anticipated that the contemplated software upgrade will cost between \$10,000 - \$20,000 for each court.

Currently, both the Justice Court and District Court provide reporting to the Administrative Office of the Courts. It is anticipated that the reporting requirements contemplated would be completed in conjunction with current reporting requirements. This would alleviate the additional requirement of compiling the data into one report from the County. Therefore, the

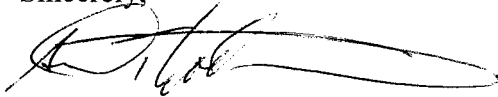
**Exhibit A**

responsibility for the Justice Court report would be with Alethea Steuart (775-423-2845), and the responsibility for the District Court report would be with Sue Sevon (775-423-6088).

As requested, we have enclosed a copy of the current contract with our public defender. The County maintains that the current system of provision of indigent defense in Churchill County is a highly effective system. While no limitations are placed on the caseload for the contracted public defender, there is no indication that the caseload is excessive to the point that indigent defendants do not receive an effective defense. The current public defender has held the contract for public defender services for 22 years. In that time, there has not been a finding of ineffective assistance of counsel in Churchill County. The public defender works well with the Courts, the County and the District Attorney's Office. Churchill County currently contracts with one public defender, and pursuant to the contract, the public defender also provides one conflict counsel. Where a particular case requires additional counsel, or both the public defender and the conflict defender have conflicts of interest, the Court appoints an attorney at the statutory rate. This is prevalent in 432B cases where multiple attorney appointments are frequently required.

We remain happy to assist in answering any additional questions that you may have.

Sincerely,



Brad T. Goetsch  
Churchill County Manager

Encl: Churchill County Contract for Public Defender Services

**AGREEMENT FOR PUBLIC DEFENDER SERVICES**

This Agreement made and entered into, effective as of the 1<sup>st</sup> day of October, 2004, by and between Churchill County, Nevada, a political subdivision of the State of Nevada, through the Board of County Commissioners, hereinafter, "County," and PAUL DRAKULICH, Esq., hereinafter "Public Defender."

**RECITALS**

- A. County is a political subdivision of the State of Nevada..
- B. Public Defender is an attorney licensed to practice law in all courts of the State of Nevada and is duly qualified and able to discharge all duties associated with this Agreement;
- C. Nevada Law provides for the creation of the office of public defender by County through enactment of ordinance;
- D. That County has by ordinance enacted Chapter 2.56 of the Churchill County Code providing for the office of public defender;
- E. That the services of the Public Defender are deemed to be of paramount importance to the citizens of Churchill County, Nevada; and,
- F. That the parties here desire by Agreement to establish terms of service for the Public Defender.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, the parties agree as follows:

**PUBLIC DEFENDER SERVICES  
AGREEMENT**

ARTICLE I

PUBLIC DEFENDER SERVICES


**1.0. Services.** Public Defender agrees to provide all services, associated with the office of public defender to the County. The duties of the Public Defender include, without limitation, the legal representation of any person appointed by the courts of the State of Nevada as provided for by NRS 62.085, NRS 171.188, and 432B.420, without charge to each indigent person for whom an appointment has been made. Such duties shall further include, without limitation, representation at all stages of criminal proceedings in the courts of the State of Nevada, client interviews, appearance at status conferences conducted in the justice's court of the New River Township, the preparation of any appropriate petitions for extraordinary relief, including without limitation, any petition for writ of habeas corpus.

The Public Defender shall timely pursue, where necessary, any appellate remedy on behalf of any appointed client to either the Third Judicial District Court or the Nevada Supreme Court as proper appellate procedure may dictate.

The Public Defender shall be responsible for the sealing of any eligible record relating to an indigent person in consequence to participation by any such person in "Drug Court" sponsored by the Third Judicial District Court, or by virtue of participation in any diversion program rising under any other provision of state law.

**1.1. Conflict of Interest.** The Public Defender, as a licensed attorney in the State of Nevada, shall be subject to the canons of professional responsibility promulgated by the Nevada Supreme Court. He shall not represent any co-defendant in a criminal trial for which he has been

**PUBLIC DEFENDER SERVICES  
AGREEMENT**

28/86  


appointed in his role as Public Defender. The Public Defender shall not represent any interest which constitutes a conflict of interest with his duties as Public Defender.

**1.2. Provision of Other Counsel.** Public Defender shall be responsible for the costs of providing a minimum of one other independent counsel or attorney who shall provide all legal services to any client where a conflict of interest with the Public Defender exists. The use of such other counsel, known for purposes of this Agreement as "conflict counsel" shall be undertaken as provided for by Supreme Court Rule or the law of Nevada.

**1.3. Nature of Contractual Relationship Had By Public Defender with County.** The relationship had by the Public Defender with the County is that of an independent contractor; that no provision of this Agreement is intended to create the relationship by the County with the Public Defender as a county employee. The parties specifically agree that Public Defender shall be responsible for his own payment of state or federal taxes, insurance policies and associated premiums, retirement benefits, vacation and sick leave related benefits, or any other payment or cost required of a person engaged in the provision of a professional service, including without limitation, licensure fees and professional liability insurance.

The County will not provide to the Public Defender the withholding of any state or federal taxes, including without limitation, federal income tax, State Industrial Services coverage, group insurance available to employees of the County, contributions to the Public Employees Retirement System, accumulations of vacation leave or sick leave, or contributions for unemployment compensation.

The parties intend that the Public Defender, as an attorney licensed in the State of Nevada,

is subject to control and sanction by the highest court of the State of Nevada, the Nevada Supreme Court; that the Public Defender is free from control by the County in the performance of his duties under this Agreement and in fact.

**1.4. Report of Services Performed.** The Public Defender shall provide, on a quarterly basis, on a form created by County, a report bearing the following information:

1. The total number of cases on which the Public Defender has been appointed during the quarter.
2. Public Defender hours per quarter.
3. The number of cases which were tried by the Public Defender's Office during the quarter designated by their status: misdemeanors, gross misdemeanors, felonies, juvenile evidentiary hearings, or parole/probation revocation hearings.
4. The number of Drug Court graduates during the quarter and verification that graduates, who are eligible have had their records sealed;
5. An accounting of any expert witnesses or investigative fees and expenses ordered by the courts which are billed to the County and are not covered by the contract price;
6. The number of cases in which the courts appoint conflict counsel at the expense of the County.

**1.5. Licensure.** For purposes of this Agreement, Public Defender here represents himself as meeting all licensing requirements as an attorney within the State of Nevada; that he further represents that he is in good standing with the highest attorney licensing authority of the State of Nevada, to-wit: the Nevada Supreme Court. The Public Defender shall maintain such certifications,



endorsements, or licensures as is or may be required by the Nevada Supreme Court, or the Nevada State Bar Association, relating to the provision of criminal representation including any requirement for an endorsement as a specialist in criminal law.

**1.6. Other Duties.** Public Defender agrees to perform such other duties as is or may be required of him on behalf of any indigent client in consequence of his appointment or as a requirement of any court rule or order.

**1.7. Maintenance of Certification or Licensure.** Public Defender shall maintain, for inspection by the County, any license or certificate granted him by any professional licensing authority, including without limitation the Nevada Supreme Court and the State Bar of Nevada.

**1.8. Place of Assignment.** The place of performance of duties under this Agreement is Churchill County, Nevada or such other place as is directly related to the representation of an indigent criminal defendant upon appointment by a court within Churchill County, Nevada.

**1.9. Best Efforts.** Public Defender agrees that he will at all times faithfully, industriously, and to the best of his knowledge, experience, and talents, perform all of the duties that may be required of him under the terms of this Agreement.

**1.10. Population to be Served by Public Defender Under Agreement.** The Parties hereto agree that this Agreement contemplates the provision of legal services to any person who is deemed indigent by a court of competent jurisdiction within Churchill County, Nevada.

**1.11. Private Practice.** The Public Defender shall be allowed to engage in the private practice of law where such engagement does not pose a conflict of interest to any indigent client.

**1.12. Personnel—Appointment and Qualification.** The Public Defender may appoint as

**Exhibit A**

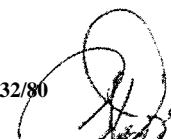
many deputies or assistant attorneys, clerks, investigators, stenographers and such other persons as he considers necessary to enable him to carry out his responsibilities. No such deputy or assistant attorney, clerk, investigator, stenographer or such other person shall be deemed an employee of Churchill County, Nevada.

**1.13. Provision of Office Space, Equipment, and Supplies.** The Public Defender shall be responsible for the provision of office space, furniture, equipment and supplies relating to performance of services under this Agreement.

**1.14. Inspection of Records.** The books, records, documents and practice of the Public Defender relating to performance of the duties and obligations under this Agreement shall be subject to inspection and examination by the County, except where any such matters are deemed privileged information by court rule or Nevada law.

**1.15. Ownership of Records.** Any reports, studies, photographs, negatives or other documents or drawing prepared by the Public Defender in the performance of his duties and obligations under this Agreement shall be the exclusive property of the County. All such materials shall be remitted to the County by the Public Defender upon completion, termination, or cancellation of this Agreement. The provision of any case file to successor counsel shall be made as provided for by Supreme Court Rule.

**PUBLIC DEFENDER SERVICES  
AGREEMENT**





**ARTICLE II**

**TERM OF AGREEMENT**

**2.0. Commencement of Term.** This Agreement shall commence effective the 1<sup>st</sup> day of October, 2004, and shall terminate on the 30<sup>th</sup> day of June, 2005, unless earlier terminated as provided for in Article V hereof.

**2.1. Renewal.** Unless otherwise modified or terminated, this Agreement may be renewed for four additional one-year terms, at the same compensation rate and on the same terms and conditions as set forth herein. Unless canceled in writing by one of the parties the Agreement shall be deemed to be renewed. Prior to the renewal of the Agreement a performance review shall be conducted by the County at or near the time of the termination of the one-year term. The performance review shall include, without limitation, the availability of the Public Defender to clients, the number of cases defended and resolved, the number of service hours performed, the availability of the Public Defender to discharge the duties set forth in this Agreement, and the Public Defender's compliance with this Agreement. This Agreement and all renewals shall not exceed a total term of five (5) years in duration, including the initial one-year term, unless the matter of the provision of Public Defender services shall first have been subject to a competitive bid process.

**2.2. Early Termination.** Notwithstanding any other provisions of this Agreement, the parties acknowledge and agree that this Agreement may be terminated prior to the expiration of the term pursuant to the provisions of Article V hereof.



**ARTICLE III**  
**COMPENSATION**

**3.0. Compensation.** Compensation under this Agreement shall be the sum of One Hundred Eighty Eight Thousand Dollars (\$188,000.00) annually. Compensation hereunder shall be made and provided for in twelve equal- monthly installments with each such installment made following the second regular monthly meeting of the Board of County Commissioners. Such monthly payments shall thereafter be placed in the United States mail for delivery to the Public Defender. Such amount shall include all expenses and costs associated with conflict counsel provided for pursuant to Section 1.2 of this Agreement, and the costs and expenses of all deputies, assistant attorneys, clerks, investigators, stenographers and such other persons as the Public Defender considers necessary to enable him to carry out his responsibilities. The Public Defender shall provide at his own expense, from the compensation received under this Section, payment for office space, furniture, equipment, licensing fees, and professional liability insurance coverage.

**3.1. Compensation for Additional Terms of Service.** In the event that renewal of this Agreement is made compensation for each additional term of service shall be as provided for by Section 3.0 hereof.

**3.2. Compensation Relating to Capital Cases.** In the event that representation of an indigent person causes application of Supreme Court Rule (SCR) 250, the Public Defender agrees to provide another attorney qualified to act as defense counsel, in such case. The Public Defender shall require that any attorney provided under this Section shall remain current with all conditions and training required of him or her by law so as to obtain and maintain compliance with SCR 250;

**PUBLIC DEFENDER SERVICES  
AGREEMENT**



**Exhibit A**

that all costs associated with compliance with SCR 250 shall be borne at the expense of the Public Defender. The cost of representation in a capital case shall not exceed the sum of Fifteen Thousand Dollars (\$15,000.00) which shall be payable by County in addition to any other compensation to Public Defender under this Agreement.

**3.3 . Additional Duties in Capital Cases.** The Public Defender shall ensure that all records of litigation created in connection with a capital case be made and preserved as provided for by SCR 250(3)(a).



**ARTICLE IV**

**PAYMENT OF OTHER COSTS**

**4.0. Costs Associated with Witnesses and Transcript Fees.** County will be responsible for the payment of all costs associated with necessary defense witnesses, including expert witnesses, and court transcripts.

**4.2. Additional Costs Associated with a Capital Case.** The Public Defender may make application to the district court for additional fees and costs associated with a capital case. Such request must be made and based upon a showing of extraordinary circumstances.



ARTICLE V

TERMINATION OF AGREEMENT

**5.0. Termination.** This Agreement may be terminated for any reason, with or without cause, by either party hereto upon the provision of Ninety (90) days advance notice.

**5.1. Illegality.** This Agreement shall be construed to be immediately terminated in the event that any Party hereto, in the performance of duties hereunder, engages in any conduct deemed to be criminal or in violation of Professional licensure requirements.

**5.2. Breach.** It is Agreed by the Parties that if any breach or evasion of any of the terms of this Agreement by any Party hereto will result in immediate and irreparable injury to any other Party hereto, such aggrieved Party is authorized hereunder to pursue recourse to injunction or specific performance as well as to all other legal or equitable remedies to which such injured Party may be entitled under this Agreement.

**5.3. Duties of Public Defender to Clients Upon Termination of Agreement.** In the event that this Agreement is terminated prior to expiration of the term, unless a successor to the Public Defender or another person or persons has otherwise assumed duties of representation for indigent persons, the Public Defender shall, pursuant to the terms of Section 5.4 hereof, conclude any representation commenced under this Agreement in accordance with all applicable rules of professional responsibility promulgated by the Nevada Supreme Court or by a court order.

**5.4 Duties of County Upon Termination of Public Defender Agreement.** In the event that this Agreement is terminated prior to the expiration of the term of employment, County shall provide for the appointment of a successor public defender or other qualified person or persons to perform

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**Exhibit A**

such duties, at County expense, within Ninety (90) days of the date of termination. Pending the appointment of a successor or other person or persons, Public Defender shall continue to be compensated for all services provided to any indigent person, as provided for by Section 3.0 hereof, during the period of time from termination of this Agreement until a successor public defender or other qualified person or persons shall have assumed such duties. The intent of this Section, and Section 5.3 hereof, is to ensure continuing representation to any indigent person during the term of transition of representation by Public Defender to his successor(s).

ARTICLE VI.

OTHER APPLICABLE CONTRACTUAL PROVISIONS

**6.0. Choice of Law.** It is the intention of the Parties hereto that this Agreement, as to its construction and performance be interpreted, and all suits and special proceedings, be construed under the laws of the State of Nevada; and, that any action special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Nevada shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted.

**6.1. Attorney Fees.** In the event that any action is filed in relation to this Agreement, the unsuccessful party to any suit or action shall pay the successful party, in addition to all the sums that either Party may be called on to pay, a reasonable sum for the successful Party's attorney's fees.

**6.2. No Waiver.** The failure of any Party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

**6.3. Paragraph Headings.** The titles to the paragraphs of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the construction of this Agreement.

**6.4. Modification.** Any modification to this Agreement must be made in a writing signed by all Parties hereto.

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**6.5. Notice.** Any notice required pursuant to this Agreement shall be made in writing, and sent by registered or certified mail as provided for by Section 6.12 of this Agreement.

**6.6. Assignability.** This Agreement is not assignable.

**6.7. Severability.** Each provision of this Agreement is severable from the whole. If any portion of this Agreement is deemed to be invalid, that invalidity shall not impair the remaining provisions of this Agreement..

**6.8. Confidentiality.** This Agreement contemplates that Public Defender will have information made known to him which is not known to the general public nor is any such disclosure intended to be made known to the general public. Public Defender is under a duty to retain confidential information disclosed by clients subject only to disclosure as is or may be authorized by a client or by court order, court rule or state law.

**6.9. Indemnity.** Public Defender agrees to indemnify and hold harmless the County, its agents and employees, harmless from any and all claims, causes of action or liability relating to the performance of this Agreement.

**6.10. Entire Agreement.** This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained in this Agreement. This Agreement shall supersede all other previous communications, representations, or agreements, either verbal or written, between the Parties.

**6.11. Insurance.** The Public Defender agrees to obtain professional liability insurance , including errors and omissions coverage, with policy limits of at least \$250,000.00 per claim and \$500,000.00 aggregate during the term of this contract. Such insurance coverage will be written by





**Exhibit A**

an insurance carrier authorized to write such policies in the State of Nevada. The cost of a premium expense for this coverage is the responsibility of the Public Defender. The parties agree that the covenant of maintaining insurance by the Public Defender cannot be waived; that insurance coverage must be in existence at the time of execution of this Agreement as a condition precedent. Public Defender agrees to provide proof of such insurance coverage at the time of execution hereof and at the time of any extension made hereto.

**6.12. Notices.** Any notices, statements, or correspondence to be made hereunder shall be addressed to parties as follows:

1. County:

CHURCHILL COUNTY, NEVADA  
c/o Brad Goetsch  
County Manager  
155 N. Taylor Street  
Fallon, Nevada 89406

2. Public Defender:

Paul Drakulich, Esq.  
101 N. Maine Street  
Fallon, Nevada 89406

**6.13. Past Performance.** The parties agree that pending execution of this Agreement, all matters of compensation to the Public Defender are controlled by that certain agreement had between the parties entitled "Contract for Services of Independent Contractor County Public Defender", dated the 1<sup>st</sup> day of November, 2001.

**IN WITNESS OF THE ABOVE,** each Party to this Agreement has caused it be executed on the date shown herein-below.

**PUBLIC DEFENDER SERVICES  
AGREEMENT**

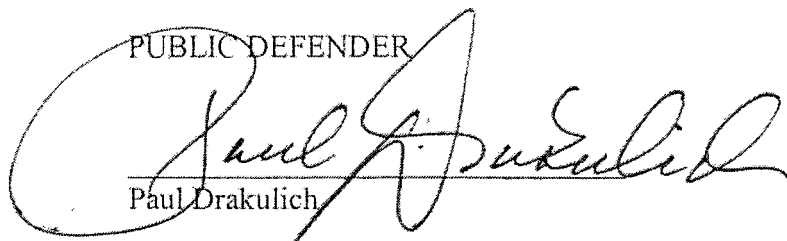


DATED this 20<sup>th</sup> day of October, 2004.

CHURCHILL COUNTY, NEVADA

By:   
Chair, Churchill County Board of Commissioners

DATED this 28<sup>th</sup> day of October, 2004.

PUBLIC DEFENDER  
  
Paul Drakulich





# Office of the County Manager

500 S Grand Central Pky 6th Fl • Box 551111 • Las Vegas NV 89155-1111  
(702) 455-3530 • Fax (702) 455-3558

Donald G. Burnette, County Manager

Jeffrey M. Wells, Assistant County Manager • Randall J. Tarr, Assistant County Manager • Edward M. Finger, Assistant County Manager



February 28, 2012

The Honorable Michael A. Cherry  
Associate Chief Justice  
Supreme Court of Nevada  
200 South Carson Street  
Carson City, Nevada 89701-4702

Dear Justice Cherry:

Since 2008, Clark County has worked on developing a mechanism to collect accurate statistical information about the Public Defender's Office caseload. The purpose of this letter is twofold. First, I have attached three charts showing the current caseload data being kept for the Clark County Public Defender's Office. As you will note, we have updated these charts significantly to incorporate much of the Indigent Defense Commission's data dictionary and requested statistical data.

Additionally, this letter is in response to your letter of January 20, 2012, requesting information about the challenges facing Clark County in trying to provide all of the data and statistical information requested by the Indigent Defense Commission. Please note that the information provided in Attachments A, B and C represents the Clark County Public Defender's Office only and does not constitute all cases processed by the Eighth Judicial District.

The Clark County Public Defender's Office utilizes a case management software system named Justware Defender (Justware). While the system offers some reporting capability, the focus of the system is on case management, not statistical analysis. As a case management system, the information that can be collected from Justware shows certain information about cases exactly at the time the information is being collected, attorney calendars for example, and it does not automatically create a record of prior events or data summaries.

## Clark County Caseload Summaries

### Summary of Felony and Gross Misdemeanor Cases (Attachment A)

This summary serves as an end-of-year snapshot of the felony and gross misdemeanor caseload in the Clark County Public Defender's Office. For each year, 2008 through 2011, the summary details the total number of cases received, and separates out the cases that are in bench warrant status, or were conflict or substitution cases.

## Exhibit B

Associate Chief Justice Cherry  
February 28, 2012  
Page Two

Using this information, an estimate for the average number of felony cases per attorney is calculated illustrating caseload when all the attorneys, with the exception of juvenile and appeals attorneys, are included. Due to the organizational structure of the Public Defender's Office, this statistic is shown in two ways: total attorneys and then using only those attorneys assigned cases on a standard track team.

In response to the request of the Indigent Defense Commission, the data for 2011 also includes a beginning pending number utilizing open cases from prior years. This calculation based on closed cases will be available for future years as well.

### Current Status of Felony and Gross Misdemeanor Cases (Attachment B)

To further analyze the caseload data for the Public Defender's Office, the current status of the cases received during a given calendar year is detailed in this report. The number of cases that are closed, open and set for review are broken down into specific categories (ex., bench warrants, specialty courts) in addition to showing the location of the cases.

Through this report, it has been determined that upwards of 90% of cases are closed after a year with that percentage continuing to increase incrementally as more time elapses. It has also been illustrated that, as the number of cases closed approaches 100%, approximately 2/3rds of them will have been resolved in Justice Court. This means 2/3rds of the felony/gross misdemeanor cases received by the Public Defender's Office are resolved as misdemeanors in Justice Court.

### Misdemeanor Cases (Attachment C)

The summary of misdemeanor cases currently shows the number of misdemeanor cases received and closed in a given calendar year. For 2011, a "beginning pending" and a "net yearly cases" figure has been calculated using misdemeanor caseload information dating back to 2008.

## **Indigent Defense Commission Caseload Information Request**

In specific response to your letter of January 20, 2012, please note that, while Justware is primarily a case management system, some statistical caseload information can be extracted from the system. Limitations in data collection mostly involve historical data that the system is not set up to collect. The following "dashboard" table illustrates information that is currently provided (in green), information that can be provided but with some caveats (in yellow), and information that cannot be identified (in red) with the current Justware case management system. A detailed explanation of system capabilities follows for each of the items specified by the Indigent Defense Commission in its data dictionary approved on October 14, 2010.



**Exhibit B**

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**Table 1.** Visual Analysis of Capability to Use Indigent Defense Caseload Inventory Worksheet

**Indigent Defense Caseload Inventory Worksheet**

	Felony	Gross Misdemeanor	Misdemeanor Non-Traffic	Misdemeanor Traffic	Juvenile
1. Beginning Pending					
2. New Appointments					
3. Returned From Warrant (Re-activated)					
4. Adjudicated/Disposed/Closed					
5. Warrant (Placed on Inactive Status)					
6. End Pending					
7. Set for Review					

**Indigent Defense Additional Statistics**

Death Penalty (S.C.R. 250) <u>CASES</u>	Probation Revocations <u>HEARINGS</u>	Informal Juvenile <u>HEARINGS</u> (Involving a Judicial Officer)	Juvenile Detention <u>HEARINGS</u>	Conflict <u>CASES</u>	Specialty Court <u>CASES</u>	Justice Court Felony/Gross Misdemeanor <u>CASES</u>

**Categorization By Case Type**  
 (Able to provide/some restrictions)

With regard to the ability to categorize cases by type (felony, gross misdemeanor, misdemeanor non-traffic, misdemeanor traffic and juvenile), Justware currently captures this information; however, the ability to produce the information as a statistical report is currently unavailable.

Additionally, it should be noted that the Clark County Public Defender's Office does not receive misdemeanor traffic cases.

**Beginning Pending**  
 (Able to provide/some restrictions)

Felony, Gross Misdemeanor, Misdemeanor Non-Traffic and Juvenile Cases

The Clark County Public Defender's Office is able to provide a beginning pending number starting with 2011 and going forward. This is calculated by summing the current open cases from the previous years that have been tracked (2008-current). This number does not include any open cases still pending prior to 2008. We don't believe there are many cases that fall into this category and obviously over time they will be eliminated.

## Exhibit B

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Justware is a caseload management system, not a system designed to collect statistics; therefore, information is dynamic and presents a snapshot of information about cases at the time the information is collected from the system. This means that we cannot identify case history.

### **New Appointments**

(Able to Provide)

#### Felony, Gross Misdemeanor, Misdemeanor Non-Traffic and Juvenile Cases

The Clark County Public Defender's Office currently tracks new appointments in the Justware system by the date the case was received and entered into the system. The cases are assigned a case type based on the highest charge to differentiate between felonies, gross misdemeanors and misdemeanors.

### **Returned From Warrant (Re-activated)**

(Unable to Provide)

#### Felony, Gross Misdemeanor, Misdemeanor Non-Traffic and Juvenile Cases

Justware has a status for cases that have returned from warrant; however, as soon as any other activity is scheduled for the case, it becomes an open case and information that could be used to identify the case as having returned from warrant is lost. Since Justware only shows the current status of a case and the next activity scheduled, identifying cases that have returned from warrant by searching for cases with a status of bench warrant returned does not yield an accurate measure of these cases. In essence, a case returned from warrant is treated simply as an open case.

### **Adjudicated/Disposed/Closed**

(Able to Provide)

#### Felony, Gross Misdemeanor, Misdemeanor Non-Traffic and Juvenile Cases

Cases in the Justware system with a status or completed, bench warrant, conflict, substitution or cases that are no longer listed with their original case received date (i.e., were reopened as a new case in a subsequent year) are used to determine the number of cases that have been adjudicated/disposed closed for a given time period. Using the case type assigned to the case further allows the cases to be identified as a felony, gross misdemeanor, misdemeanor or juvenile case.

### **Warrant (Placed on Inactive Status)**

(Able to Provide)

#### Felony, Gross Misdemeanor, Misdemeanor Non-Traffic and Juvenile Cases

At the time data is collected, cases with a bench warrant status can be identified and counted.



## **Exhibit B**

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### **End Pending**

(Able to provide/some restrictions)

#### *Felony, Gross Misdemeanor, Misdemeanor Non-Traffic and Juvenile Cases*

With the exception of cases that have returned from bench warrant, the Clark County Public Defender's Office, through the use of Justware, can measure the remaining statistics that contribute to determining the end pending number going forward.

### **Set For Review**

(Able to Provide)

#### *Felony, Gross Misdemeanor, Misdemeanor Non-Traffic and Juvenile Cases*

Cases scheduled for a status check are identifiable in the Justware case management system.

### **Death Penalty Cases**

(Able to Provide)

Death Penalty Cases are tracked by each Clark County office that represents these cases which are the Office of Appointed Counsel, Public Defender's Office and Special Public Defender's Office. Current open Death Penalty cases are as follows:

- Office of Appointed Counsel, 34 open cases
- Public Defender's Office, 29 open cases
- Special Public Defender's Office, 13 open cases

### **Probation Revocation Hearings**

(Unable to Provide)

Justware captures data at a point in time which means that Probation Revocation Hearings that are scheduled at the time the data is requested will appear; however, any hearings that were already held would not and there is not a method to determine whether the hearing was actually held, only that it was scheduled.

### **Informal Juvenile Hearings and Juvenile Detention Hearings**

(Unable to Provide)

With the exception of case information handled by the team of attorneys assigned to juvenile cases in the Public Defender's Office, statistics and other information related to juvenile justice is tracked by the Clark County Department of Juvenile Justice Services. Information related to youth detained, pre-and post-adjudication is generally not a part of case counting in the Public Defender's Office.

## **Exhibit B**

Associate Chief Justice Cherry  
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### **Conflict Cases**

(Able to Provide)

Cases that reach the Clark County Public Defender's Office and become conflict cases are indicated as such in the Justware system. The statistics provided would only encompass cases that reached the Public Defender's Office and were entered into the Justware case management system. Cases that were identified as conflict cases prior to an assignment to the Public Defender's Office would not be a part of the number provided.

### **Specialty Court Cases**

(Able to provide/some restrictions)

Cases that have been assigned to a specialty court are identifiable in Justware as long as they remain in the specialty court. Due to the historical data limitations, cases that close or have their status otherwise changed are no longer identifiable as having been in a specialty court.

The definition of a specialty court case in the Indigent Defense Data Dictionary states that:

This type of case should be counted in this additional category when the defendant appears during a specialty court session within the reporting period or if the indigent defense counsel is assigned to the defendant for specialty court.

Due to the limitations of Justware, capturing individual appearances at a specialty court session would not be possible. Cases that are open specialty court cases would be recognizable and are able to be counted.

### **Justice Court Felony / Gross Misdemeanor Reduction Cases**

(Able to Provide)

The Public Defender's Office can identify cases in which a reduction in charges has occurred by determining closed cases that do not have a district court case number.

### **Conclusions**

Over the last few years the Clark County Public Defender's Office has made great strides in being able to provide accurate caseload information. While much of the data being requested can be provided, there are still technical issues that need to be resolved. Clark County continues to work on these issues; however, additional technical systems such as upgrades to Justware as well as additional human resources such as IT staff or quality assurance staff may be needed in order to provide every data collection point as requested by the Indigent Defense Commission. We have not attempted to specifically address the costs of this additional software or staff.

Lastly, I need to repeat the caveat that this data is reflective of the Clark County Public Defender's Office only. We believe these data collection efforts will have to be undertaken by the Eighth Judicial District itself in order to incorporate all of the cases handled by the Court.



**Exhibit B**

Associate Chief Justice Cherry  
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Thank you for giving us the opportunity to provide this assessment of our current capabilities.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey M. Wells". The signature is written in a cursive style with a large initial "J".

JEFFREY M. WELLS  
Assistant County Manager

JMW:dj

cc: The Honorable Nancy Saitta, Chief Justice, Supreme Court of Nevada  
The Honorable Michael L. Douglas, Associate Chief Justice, Supreme Court of Nevada  
The Honorable Mark Gibbons, Justice, Supreme Court of Nevada  
The Honorable James W. Hardesty, Justice, Supreme Court of Nevada  
The Honorable Ron D. Parraguirre, Justice, Supreme Court of Nevada  
The Honorable Kristina Pickering, Justice, Supreme Court of Nevada

**Exhibit B**  
**Attachment A**



**Clark County Public Defender's Office**  
**Summary of Felony and Gross Misdemeanor Cases**  
As of December 31, 2011

2008	Cases	
<b>Received by PD's Office</b>	<b>17,318</b>	
Benchwarrants (-)	1,088	
Conflict (-)	1,387	
Substitutions (-)	997	
<b>Office Caseload</b>	<b>Total <sup>1</sup></b>	<b>Track <sup>2</sup></b>
	<b>13,846</b>	<b>13,585</b>
Average Number of Attorneys (÷)	82	63
<b>Caseload Per Attorney</b>	<b>169</b>	<b>216</b>
<b>Total Closed <sup>3</sup></b>	<b>19,036</b>	

2009	Cases	
<b>Received by PD's Office</b>	<b>17,711</b>	
Benchwarrants (-)	1,189	
Conflict (-)	1,495	
Substitutions (-)	1,160	
<b>Office Caseload</b>	<b>Total <sup>1</sup></b>	<b>Track <sup>2</sup></b>
	<b>13,867</b>	<b>13,634</b>
Average Number of Attorneys (÷)	87	66
<b>Caseload Per Attorney</b>	<b>159</b>	<b>207</b>
<b>Total Closed <sup>3</sup></b>	<b>17,370</b>	

2010	Cases	
<b>Received by PD's Office</b>	<b>16,466</b>	
Benchwarrants (-)	1,275	
Conflict (-)	1,265	
Substitutions (-)	1,070	
<b>Office Caseload</b>	<b>Total <sup>1</sup></b>	<b>Track <sup>2</sup></b>
	<b>12,856</b>	<b>12,572</b>
Average Number of Attorneys (÷)	89	64
<b>Caseload Per Attorney</b>	<b>144</b>	<b>196</b>
<b>Total Closed <sup>3</sup></b>	<b>19,708</b>	

2011	Cases	
<b>Beginning Pending <sup>4</sup></b>	<b>4,791</b>	
<b>Received by PD's Office</b>	<b>15,298</b>	
Benchwarrants (-)	1,059	
Conflict (-)	949	
Substitutions (-)	879	
<b>Office Caseload</b>	<b>Total <sup>1</sup></b>	<b>Track <sup>2</sup></b>
	<b>12,411</b>	<b>12,227</b>
Average Number of Attorneys (÷)	91	65
<b>Caseload Per Attorney</b>	<b>136</b>	<b>188</b>
<b>Total Closed <sup>3</sup></b>	<b>21,859</b>	
<b>Net Yearly Cases <sup>5</sup></b>	<b>-1,770</b>	

Notes:

- <sup>1</sup> Total number of attorneys represents all attorneys in the Public Defender's office that receive cases with the exception of attorneys that only handle appeals or juvenile cases.
- <sup>2</sup> Track attorneys refers to attorneys assigned to a track team (i.e., not the murder or sexual assault teams) that receive cases. The average number of track attorneys is reduced by two to mitigate instances of reduced or no caseload by an attorney such as with new hires, FMLA, etc.
- <sup>3</sup> Closed cases include those that were completed, in benchwarrant status, conflict cases, substitutions and administrative
- <sup>4</sup> Beginning pending cases are determined based at the end of the calendar year by identifying cases in an open status (open, specialty courts, etc.) This information is being tracked as of 2011 and includes open cases from 2008-2010. There could be open cases from before 2008.
- <sup>5</sup> Net yearly cases has not been calculated prior to 2011 because beginning pending has not been tracked prior to 2011.



# Exhibit B

## Attachment B



### Clark County Public Defender's Office Felony and Gross Misdemeanor Caseload Current Status of Cases As of December 31, 2011

2008	Cases	% Of Total	District Court	Justice Court
<b>Closed</b>	<b>16,878</b>	<b>97.5%</b>	<b>5,832</b> 35%	<b>10,908</b> 65%
Completed <sup>1</sup>	13,268		5,318	7,950
Benchwarrants	1,088		203	885
Conflict	1,387		104	1,283
Substitution	997		207	790
Miscellaneous <sup>2</sup>	138		-	-
<b>Open</b>	<b>341</b>	<b>2.0%</b>	<b>318</b> 93%	<b>23</b> 7%
Not Completed	173		162	11
Specialty Courts	27		22	5
Probation Revocation	32		32	0
Other <sup>3</sup>	109		102	7
<b>Set for Review</b>	<b>99</b>	<b>0.6%</b>	<b>26</b> 26%	<b>73</b> 74%
<b>Total</b>	<b>17,318</b>			

2009	Cases	% Of Total	District Court	Justice Court
<b>Closed</b>	<b>16,835</b>	<b>95.1%</b>	<b>5,404</b> 32%	<b>11,366</b> 68%
Completed <sup>1</sup>	12,926		4,768	8,158
Benchwarrants	1,189		223	966
Conflict	1,495		126	1,369
Substitution	1,160		287	873
Miscellaneous <sup>2</sup>	65		-	-
<b>Open</b>	<b>707</b>	<b>4.0%</b>	<b>510</b> 72%	<b>197</b> 28%
Not Completed	469		290	179
Specialty Courts	22		16	6
Probation Revocation	86		85	1
Other <sup>3</sup>	130		119	11
<b>Set for Review</b>	<b>169</b>	<b>1.0%</b>	<b>52</b> 31%	<b>117</b> 69%
<b>Total</b>	<b>17,711</b>			

2010	Cases	% Of Total	District Court	Justice Court
<b>Closed</b>	<b>15,216</b>	<b>92.5%</b>	<b>4,431</b> 29%	<b>10,785</b> 71%
Completed <sup>1</sup>	11,606		3,960	7,646
Benchwarrants	1,275		179	1,096
Conflict	1,265		100	1,165
Substitution	1,070		192	878
Miscellaneous <sup>2</sup>	13		-	-
<b>Open</b>	<b>804</b>	<b>4.9%</b>	<b>549</b> 68%	<b>255</b> 32%
Not Completed	644		399	245
Specialty Courts	5		4	1
Probation Revocation	66		66	0
Other <sup>3</sup>	89		80	9
<b>Set for Review</b>	<b>433</b>	<b>2.6%</b>	<b>130</b> 30%	<b>303</b> 70%
<b>Total</b>	<b>16,453</b>			

2011	Cases	% Of Total	District Court	Justice Court
<b>Closed</b>	<b>9,716</b>	<b>63.5%</b>	<b>2,252</b> 23%	<b>7,464</b> 77%
Completed <sup>1</sup>	6,829		1,916	4,913
Benchwarrants	1,059		163	896
Conflict	949		56	893
Substitution	879		117	762
Miscellaneous <sup>2</sup>	0		-	-
<b>Open</b>	<b>2,939</b>	<b>19.2%</b>	<b>1,506</b> 51%	<b>1,433</b> 49%
Not Completed	2,874		1,448	1,426
Specialty Courts	1		0	1
Probation Revocation	25		24	1
Other <sup>3</sup>	39		34	5
<b>Set for Review</b>	<b>2,643</b>	<b>17.3%</b>	<b>255</b> 10%	<b>2,388</b> 90%
<b>Total</b>	<b>15,298</b>			

**Notes:**

- <sup>1</sup> Completed consists of cases with a status of closed or administrative recusals.
- <sup>2</sup> Miscellaneous refers to cases that have been reopened in subsequent years (i.e., returned from benchwarrant).
- <sup>3</sup> Other refers to cases such as appeals, juvenile diversion, and post conviction relief.

**Exhibit B**

**Attachment C**



**Clark County Public Defender's Office**

**Misdemeanor Cases**

As of December 31, 2011

<b>2008</b>	<b>Cases</b>
Received by PD's Office	5,446
Closed Misdemeanors	4,292

<b>2009</b>	<b>Cases</b>
Received by PD's Office	6,305
Closed Misdemeanors	4,658

<b>2010</b>	<b>Cases</b>
Received by PD's Office	6,354
Closed Misdemeanors	5,523

<b>2011</b>	<b>Actual Cases</b>
<b>Beginning Pending</b>	<b>3,632</b>
Received by PD's Office	2,936
Closed Misdemeanors	6,382
<b>Net Yearly Cases</b>	<b>186</b>

**Notes:** In January 2011, cases were transferred to the Office of Appointed Counsel resulting in a higher than normal number of resolved cases. DUI and domestic violence (non-felony) cases are currently being assigned to the Office of Appointed Counsel.



**BOARD OF COUNTY COMMISSIONERS**  
ESMERALDA COUNTY, NEVADA

MEMBERS

NANCY J. BOLAND, CHAIR  
DOMINIC PAPPARALDO, VICE CHAIR  
WILLIAM KIRBY, MEMBER  
P.O. BOX 517  
GOLDFIELD, NEVADA 89013

SANDRA JOHNSON  
ADMINISTRATIVE ASSISTANT  
(775) 485-3406 FAX (775) 485-6351  
(800) 884-4072  
[sjesmcoaa@gmail.com](mailto:sjesmcoaa@gmail.com)

February 29, 2012

Attn: Mr. John McCormick  
Nevada Supreme Court Administrative Office  
201 South Carson Street  
Carson City, Nevada 89701-4702

RE: Information request from Indigent Defense Commission

Dear Mr. McCormick:

After receiving the letter from Justice Cherry I went over the request on data collection with the Esmeralda County Clerk, Justice of the Peace, and District Attorney.

In our county requests for assignment of the Public Defender are almost solely addressed in the Justice Court. On rare occasions the assignment has been made at the District Court level.

No one is specifically tracking indigent defense cases in our county because the contract we have has no upper limit of cases.

Our County Clerk, LaCinda Elgan, (775)485-6309 PO Box 547, Goldfield, NV 89013, said that to gather the case information on the District Court cases she could access the court records in our county data system. Then isolate those where one of the Public Defenders was the lawyer of record. The court information has only recently been added to computerized data so if the request is for a recent period she could use this method. The only failure in information that could happen is if a lawyer with our Public Defender firm represented a defendant as private counsel.

The Justice of the Peace said that she would have to take the same approach with the exception that her records are not computerized so she would have to go through all her dockets for whatever period your information request covered. Contact: Judge Juanita Colvin PO Box 370, Goldfield, NV 89013 (775)485-6359

As to new expenditures, the letter did not state over what past period you wanted the information for, or, if you wished to add indigent case information to the existing reports required in the future.

## Exhibit C

If we need to computerize the Justice Court records, and add programming to the District Court reporting system to track indigent cases I would estimate \$75,000. If the request is for one year and can be accomplished with existing information there would possibly be a cost associated with hiring temporary help as all our elected officials are already overburdened.

Sincerely

A handwritten signature in blue ink that reads "Nancy J. Boland". The signature is written in a cursive style with a large initial "N" and "B".

Nancy Boland  
Esmeralda County Commissioner District 2  
Chair, BOCC



2 011- 2012 PUBLIC DEFENDER SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 5<sup>441</sup>-day of hereinafter referred to as "County," and HAROLD KUEHN, Esq. of GIBSON & KUEHN, LLP, Attorneys at Law, the successor entity to EARNEST, GIBSON & KUEHN, Attorneys at Law, of 1601 E. Basin Ave., Suite 101, Pahrump, NV 89060, telephone 775/751-9000; facsimile 775/751-1910, hereinafter referred to as "Attorney."

WITNESSETH:

WHEREAS, County is obliged **to provide for the legal** representation of indigents residing in or found in Esmeralda County and who are entitled under certain circumstances to the services of an **attorney at County's** expense; and

WHEREAS, Attorney is willing to provide such services at a reasonable **expense** to County; and

WHEREAS, County, by and through the Esmeralda County Commission previously approved the services of Attorney at a regular session of the Board of County Commissioners;

NOW THEREFORE, COUNTY and ATTORNEY, for good and sufficient consideration, receipt of which is hereby acknowledged, agree as set forth below:

1. Attorney shall provide indigent representation, as directed by **the** several courts in Esmeralda County, as the Esmeralda County Public Defender. **This representation shall** include defendants, appointed to the **Esmeralda County public** defender, who are charged with capital offenses. Attorney shall not be obliged to provide the services of a "conflict attorney."

**Exhibit C**

2. The term of this agreement shall run from July 1, 2011 through 5:00 p.m. on June 30, 2012, inclusive.

3. For the term of this Agreement, County shall compensate Attorney for his services, for the services of his assistants and employees, if any, and for an allowance for office space, furniture, equipment and supplies, in a sum totaling THIRTY TWO THOUSAND DOLLARS (\$32,000.00) per year, paid quarterly, in advance.

4. Either party may cancel this Agreement by written notice to the other party received at least NINETY (90) days prior to the termination date. Prior to any contemplated termination, the parties agree to meet and confer regarding the basis for the termination at an agendaed and scheduled session of the Board of County Commissioners. Any sums paid to Attorney in advance of services being performed and unearned by Attorney shall immediately be refunded to County on a pro rated basis.

5. Attorney may assign other attorneys to take his place as needed. Attorney shall act in good faith and endeavor to avoid ethical or practical conflicts with the court and clients.

IN WITNESS WHEREOF, the parties hereto do hereby execute this Agreement on the date hereinabove first pearing.

2

NANWB LAND \_\_\_\_\_  
Chairperson  
Esmeralda County Commissioners

\_\_\_\_\_  
HAROLD KUEHN, Esq.  
Partner  
GIBSON & KUEHN, LLP

ATTEST:

NDA ELGAN, Clerk of the Board  
ESMERALDA COUNTY COMMISSION

2



ORIGINAL

CONTRACT FOR LEGAL SERVICES

This contract is entered into this 7<sup>th</sup> day of March 2011, by Dylan V. Frehner and Richard W Sears (Attorneys) and Lincoln County, a political subdivision of the State of Nevada (County).

RECITAL

This Contract is entered into pursuant to the provisions of Chapter 260 of the Nevada Revised Statutes. The Attorneys attest that they are qualified and able to render the professional services provided in the contract and as required by NRS 260.

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

1. Attorneys agree to perform the services of an attorney in the defense of indigent adults charged with a public offense, including participation in the Adult Drug Court Program.
2. Attorneys agree to perform the services of an attorney for a child alleged to be delinquent or in need of supervision where the Court orders the appointment of an attorney in accord with NRS 62.085, including participation in the Juvenile Drug Court Program.
3. Attorneys agree to perform the services of an attorney for a child, parent or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the Court orders the appointment of Attorneys pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.
4. Attorneys agree to perform the services of an attorney for a person against whom proceedings are commenced to revoke any probation, which was granted to that person, provided that the Court appoints Attorneys on the matter to represent the person at the probation revocation proceedings and the person is indigent. Attorneys will attend parole violation hearing at the request of the client.
5. Attorneys agree to perform the duties required by NRS 260.050. Attorneys are licensed by the State of Nevada and are subject to the canons of professional responsibility promulgated by the Nevada Supreme Court.
6. In performing the professional services described in Paragraphs 1-5 of this agreement, Attorneys will:
  - a. Conduct Interviews
  - b. Perform or supervise the performance of necessary investigation
  - c. Conduct necessary preparation
  - d. Appear at all court hearings concerning the assigned matter including but not limited to, detention hearing, if available, preliminary hearings, arraignment, pretrial writ or motion hearings, misdemeanor, gross

# 7



misdemeanor and felony trials and sentencing as required to provide a full professional defense of the matter

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

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

- 7. Attorneys agree to staff and maintain a full-time office in Lincoln County, Nevada, as well as a part-time office in White Pine County, Nevada, for the benefit of Lincoln County. One part-time Attorney will staff the White Pine County office and one part-time attorney will staff the Lincoln County Office. Attorneys agree to furnish to the Justice Courts, District Courts and District Attorneys a telephone number for use after normal office hours in any emergency that might arise where Attorneys services are requested pursuant to the terms of this contract. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of attorneys practice as required by this contract are the responsibility of Attorney and are part of Attorneys compensation paid pursuant to Paragraph 9 of this contract.
- 8. The attorney from the White Pine County office will provide representation as conflict counsel in Lincoln County as part of the compensation under paragraph 10 as follows: A) in cases in which the attorney in the Lincoln County office has a private conflict, and/or B) any cases involving 2 or more defendants in which the Lincoln County attorney is appointed to represent one defendant then the White Pine attorney will cover a second defendant.
- 9. County and Attorneys acknowledge that County will contract with other lawyers in the same manner and for the same purpose as Attorneys for cases that Attorneys are unable to cover pursuant to paragraph 8.
- 10. County agrees to pay Attorneys and Attorneys agree to accept as full compensation for the performance of legal services under this contract the following amount: \$122,000.00 per year or \$30,500.00 per quarter, payable on or before the 1<sup>st</sup> day of each quarter. This is based upon Attorneys providing legal services to Lincoln County Indigent Defendants as previously indicated. County agrees to provide one (1) Lexis Nexis and/or Westlaw Accounts for the use of attorney in Lincoln County.
- 11. Attorneys may secure reimbursement from County for extraordinary investigative, required expert, or other services necessary for an adequate defense in any assigned matter in the statutorily prescribed manner codified in NRS 7.135, 7.145 and 7.155.
- 12. The Compensation specified in paragraph 9 is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court can for the



reasons specified in NRS 7.125(4)(a)-(d), award extraordinary fees to Attorneys in a particular matter, which are over and above the compensation specified in paragraph 9, provided the statutorily prescribed procedures contained in NRS 7.125(4) are complied with.

13. Mileage and travel expenses of Attorneys are the responsibility of Attorneys and are part of the compensation paid pursuant to paragraph 9.
14. Attorneys may engage in private practice of law, which does not conflict with Attorneys' professional services required pursuant to this contract.
15. County is contracting for the personal and professional services of Attorneys. If Attorneys practice law with a law firm, another lawyer, another lawyer within the firm may appear for Attorney at any stage of the proceeding. However, no additional compensation will be paid to the Attorney or the other lawyer in Attorneys firm by virtue of this change. If in the interests of justice, Attorney is required to substitute out of an assigned matter, Attorneys must petition the court for approval of this substitution. The Court may then appoint and order the compensation of another lawyer in the manner provided in NRS 7.105 to 7.165 inclusive.
16. Prior to the appointment of Attorneys, the Justice of the Peace, Municipal Judge or District Court Judge will inquire as to the financial ability of the defendant to pay for a private attorney pursuant Nevada Revised Statutes and conditions determined by the Nevada Legislature.
17. Attorneys will provide an annual review of the total number cases for County based upon number of cases appointed, divided by number of felonies, misdemeanors and gross misdemeanors; cases that go to trial, are settled and appealed.
18. Attorneys will maintain adequate liability insurance, including errors and omissions coverage, in the policy limits of at least \$250,000.00 per claim and \$500,000.00 aggregate during the term of the this contract with the County named as an additional insured. Attorneys will provide proof of insurance coverage to the County during the term of this Agreement. The policy will be written by an insurance carrier authorized to write such policies insuring this type of risk in the State of Nevada. The premium expense for this coverage is the responsibility of the Attorneys.
19. This contract becomes effective July 1, 2011, when approved by the County's Board of Commissioners and continues in effect through June 30, 2013, unless the contract is terminated in accordance with paragraphs 21 and/or 22.
20. This contract will automatically renew for an additional two year term unless A) the parties renegotiate the terms prior to its expiration as part of the County's budgetary process or B) the parties provide notice to terminate the contract pursuant to paragraph 21.
21. Either Attorneys or County may terminate this agreement without cause by giving the other party 90 days advance written notice of their intent to terminate this contract pursuant to this paragraph. The court may elect to appoint non-contract attorneys and compensate them in accord with NRS 7.125 on any matters pending as of the date this contract is terminated. In the event of termination of this Agreement for any reason, the total compensation



of Attorneys will be reduced to the proportionate number of days worked by Attorneys.

- 22. Should Attorneys be unable to perform any or all of his duties by reason of illness, accident or other cause beyond his control, and the disability exists for a period beyond 10 judicial days, Attorneys must provide a substitute attorney to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable or of such nature to make the performance of his duties impossible, or the disability continues beyond 60 days, the County may, at its discretion, terminate this agreement and the respective duties, rights and obligations of this agreement will terminate.
- 23. Written notice required pursuant to the terms of this contract must be transmitted via first class mail (postage prepaid) to the parties at the following addresses:

Lincoln County	Dylan V. Frehner
P.O. Box 90, Pioche, NV 89043	Po Box 517, Pioche, NV 89043

- 24. Attorneys are independent contractors. The County is contracting for the independent professional services of Attorneys and does not control the means by which Attorneys provides those services. Attorneys are not employees of the County and there will be no:
  - a. Withholding of income tax by County
  - b. Provision of Industrial insurance coverage by County
  - c. Participation by Attorney in any group insurance plans which may be available to County employees
  - d. Contributions by County on behalf of Attorney to the Public Employees' Retirement System; and
  - e. Accumulations of vacation and sick leave or any other benefit normally available to Lincoln County employees.
- 25. This contract may be amended in writing by the parties only after giving 90 days advance written notice to the other party.
- 26. This contract constitutes the entire agreement between the parties and will be interpreted according to Nevada law.

Lincoln County  
 By: George T. Rowe  
 \_\_\_\_\_, Chair

Attorneys  
 By: Dylan V. Frehner  
 \_\_\_\_\_  
 Dylan V Frehner

Lincoln County Commission

By: Richard W. Sears  
 \_\_\_\_\_  
 Richard W Sears

Attested:  
 By: [Signature]  
 \_\_\_\_\_

Witness

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**

**A CONTRACT BETWEEN NYE COUNTY  
and  
GIBSON & KUEHN, LLP  
Attorneys at Law  
1601 E. Basin Avenue, Suite 101  
Pahrump, NV 89060  
tel: 775/751-9000  
fax: 775/751-1910**

**WHEREAS**, Nye County, a political subdivision of the State of Nevada, from time to time requires the services of independent contractors; and

**WHEREAS**, Nye County has elected to contract for the services of the Nye County Public Defender; and

**WHEREAS**, Nye County has approved a contract proposal for public defender services proffered by GIBSON & KUEHN, LLP, Attorneys at Law (hereinafter "Contractor"); and

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

**WHEREAS**, Contractor represents that it is duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

**NOW, THEREFORE**, in consideration of the agreements herein made, the parties mutually agree as follows:

1. **DOCUMENTS INCORPORATED.** The following exhibits are by this reference incorporated herein and are made part of this contract:

Exhibit A - General Conditions for Contracts  
Exhibit B - Scope of Services  
Exhibit C - Fee Schedule  
The original Request For Proposals, if applicable  
The Proposal submitted by the Contractor

Except as otherwise specifically provided herein, no other documents shall be part of this contract.

The provisions of paragraph 10 of Exhibit A are

specifically superseded by the terms and conditions of this Contract. Additionally, paragraphs 17 and 19 of Exhibit A shall be construed by the parties to pertain only to those material and records relating to the Nye County public defender responsibilities, and not those material and records pertaining to the private practice of GIBSON & KUEHN, LLP.

2. **WORK TO BE PERFORMED.** Except as otherwise provided in this contract, Contractor shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described in Exhibit B.

3. **PERIOD OF PERFORMANCE.** Contractor shall perform and complete all work within the time periods set forth in Exhibit C. The time periods set forth in Exhibit C may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract.

4. **COMPENSATION.** Contractor agrees to perform the work for the period of July 1, 2009 through June 30, 2010, inclusive, for a total cost not to exceed FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000.00).

Contractor agrees to perform the work for the period of July 1, 2010 through June 30, 2011, inclusive, for a total cost not to exceed FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000.00).

Contractor agrees to perform the work for the period of July 1, 2011 through June 30, 2012, inclusive, for a total cost not to exceed FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000.00).

Contractor agrees to perform the work for the period of July 1, 2012 through June 30, 2013, inclusive, for a total cost not to exceed FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000.00).

Contractor agrees to perform the work for the period of July 1, 2013 through June 30, 2014, inclusive, for a total cost not to exceed FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000.00).

\* \* \*

Contractor shall be paid pro rata in advance for a three month period as follows:

ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$137,500.00) due on July 1, 2009;

ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$137,500.00) due on October 1, 2009;

ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$137,500.00) due on January 1, 2010;

ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$137,500.00) due on April 1, 2010;

\* \* \*

ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS

Exhibit E

(\$137,500.00) due on July 1, 2010;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on October 1, 2010;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on January 1, 2011;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on April 1, 2011;  
\* \* \*  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on July 1, 2011;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on October 1, 2011;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on January 1, 2012;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on April 1, 2012;  
\* \* \*  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on July 1, 2012;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on October 1, 2012;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on January 1, 2013;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on April 1, 2013;  
\* \* \*  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on July 1, 2013;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on October 1, 2013;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on January 1, 2014;  
ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS  
(\$137,500.00) due on April 1, 2014.

5. **TERMINATION.** Either party may cancel this Agreement by written notice to the other party received at least NINETY (90) days prior to the termination date. Prior to any contemplated termination, the parties agree to meet and confer regarding the basis for the termination.

6. **EFFECTIVE DATE OF CONTRACT.** This contract shall not become effective until and unless approved by the Nye County Board of County Commissioners.

7. **NOTICES.** All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United

States mail, postage prepaid, and registered or certified, and shall be addressed to:

**COUNTY REPRESENTATIVE:**

Judy Dyer  
Purchasing and Contracts Administrator  
P.O. Box 1592  
Tonopah, Nevada 89049


**CONTRACTOR REPRESENTATIVE:**

Thomas J. Gibson, Esq.  
GIBSON & KUEHN, LLP  
Attorneys at Law  
1601 E. Basin Avenue, Suite 101  
Pahrump, Nevada 89060

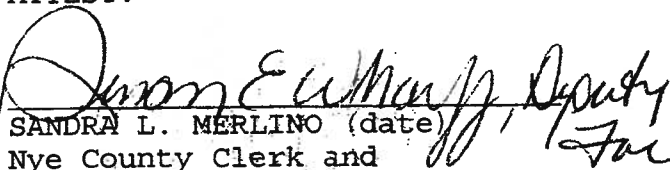
Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The County or Contractor may change the address or representative by giving written notice to the other party.

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

 9/24/09  
\_\_\_\_\_  
NYE COUNTY COMMISSION (date)  
Chairperson

 7/28/09  
\_\_\_\_\_  
GIBSON & KUEHN, LLP (date)  
THOMAS J. GIBSON, Partner

ATTEST:

  
\_\_\_\_\_  
SANDRA L. MERLINO (date)  
Nye County Clerk and  
Ex-Officio Clerk of the Board



**EXHIBIT A  
GENERAL CONDITIONS**

**1. DEFINITIONS.....GC-3**

**2. INDEPENDENT CONTRACTOR STATUS AND PROVISION OF WORKERS COMPENSATION  
COVERAGE.....GC-3**

**3. STANDARD OF CARE.....GC-4**

**4. COUNTY REPRESENTATIVE .....GC-5**

**5. CHANGES TO SCOPE OF WORK .....GC-5**

**6. COUNTY COOPERATION .....GC-6**

**7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES GC-6**

**8. CONSTRUCTION AND INTERPRETATION OF CONTRACT .....GC-6**

**9. DISPUTE RESOLUTION.....GC-6**

**10. TERMINATION OF CONTRACT .....GC-7**

**11. NO DAMAGES FOR DELAY.....GC-9**

**12. INSURANCE .....GC-9**

**13. FISCAL CONTINGENCY .....GC-11**

**14. RETENTIONS .....GC-12**

**15. COMPLIANCE WITH APPLICABLE LAWS .....GC-12**

**16. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING.....GC-13**

**17. COUNTY INSPECTION OF CONTRACT MATERIALS .....GC-14**

**18. DISPOSITION OF CONTRACT MATERIALS .....GC-14**

**19. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS .....GC-14**

**20. INDEMNIFICATION.....GC-15**

**21. FINAL ACCEPTANCE .....GC-15**

**22. TAXES.....GC-15**

**23. NON-WAIVER OF TERMS AND CONDITIONS.....GC-15**  
**24. RIGHTS AND REMEDIES .....GC-15**  
**25. PROHIBITED INTERESTS .....GC-16**  
**26. THIRD PARTY INTERESTS AND LIABILITIES.....GC-16**  
**27. SURVIVAL OF RIGHTS AND OBLIGATIONS .....GC-16**  
**28. SEVERABILITY .....GC-16**  
**29. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT.....GC-16**

**1. DEFINITIONS.** Unless otherwise required by the context, "Contractor" includes any of the Contractor's consultants, subconsultants, contractors, and subcontractors

Unless otherwise required by the context or unless no County Representative is designated under General Condition ¶ 4 of this agreement, "County" means the person designated under General Condition ¶ 4 of this agreement.

**2. INDEPENDENT CONTRACTOR STATUS AND PROVISION OF WORKERS COMPENSATION COVERAGE.** The parties agree that Contractor shall have the status of and shall perform all work under this contract as an independent contractor, maintaining control over all its consultants, subconsultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the County and Contractor, and nothing in this contract shall create any contractual relationship between the County and Contractor's consultants, subconsultants, contractors, or subcontractors. The parties also agree that this contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 284.713, as necessarily adapted, to the parties, including that Contractor is not a County employee and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the independent contractor or the County to the public employees retirement system;
- (5) Accumulation of vacation leave or sick leave provided by the County;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

If applicable (and Contractor bears the sole responsibility for producing proof satisfactory to the County that these provisions are not applicable to Contractor), Contractor further agrees, as a precondition to the performance of any work under this contract and as a precondition to any obligation of the County to make any payment under this contract, to provide the County with a work certificate and/or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor also agrees, prior to commencing any work under the contract, to complete and to provide the following written request to the qualified insurer:

Earnest, Gibson & Kuehn has entered into a contract with Nye County to perform work from July 1, 2006 to June 30, 2009 and requests that the qualified insurer provide to Nye County 1) a certificate of coverage and 2) notice of any lapse in coverage or nonpayment of coverage that the contractor is required to maintain. The certificate and notice should be mailed to:

Nye County Purchasing  
Post Office Box 1592  
Tonopah, Nevada 89049

Contractor agrees to maintain required workers compensation coverage throughout the entire term of the contract. If Contractor does not maintain coverage throughout the entire term of the contract, Contractor agrees that County may, at any time the coverage is not maintained by Contractor, immediately order the Contractor to stop work and may immediately suspend or terminate the contract. For each six month period this contract is in effect, Contractor agrees, prior to the expiration of the six month period, to provide another written request to a qualified insurer for the provision of a certificate and notice of lapse

in or nonpayment of coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six month period, Contractor agrees that County may order the Contractor to immediately stop work and may immediately suspend or terminate the contract. In the event of an immediate suspension or termination under this provision, Contractor is entitled to receive all amounts due and not previously paid to Contractor for work satisfactorily completed in accordance with the contract prior to the date of the suspension or termination. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. In addition, the provisions of ¶ 10 shall apply in the case of a suspension or termination in accordance with this paragraph.

Contractor may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that the Contractor is a sole proprietor and that:

1. In accordance with the provisions of NRS 616B.659, has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and
2. Is otherwise in compliance with those terms, conditions and provisions.

3. **STANDARD OF CARE.** Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Contractor warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment which are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Contractor to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the County may have, Contractor shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Contractor's failure to perform in accordance with this standard of care. Any approval by the County of any services furnished or used by Contractor shall not in any way relieve Contractor of the responsibility for professional and technical accuracy and adequacy of its work. County review, approval, or acceptance of, or payment for any of Contractor's work under this contract shall not operate as a waiver of any of the County's rights or causes of action under this contract, and Contractor shall be and remain liable in accordance with the terms of the contract and applicable law.

Contractor shall furnish competent and skilled personnel to perform the work under this contract. The County reserves the right to approve key personnel assigned by Contractor to perform work under this contract. Approved key personnel shall not be taken off of the project by Contractor without the prior written approval of the County, except in the event of termination of employment. Contractor shall, if requested to do so by the County, remove from the job any personnel whom the County determines to be incompetent, dishonest, or uncooperative.

4. **COUNTY REPRESENTATIVE.** The County may designate a County representative for this contract. If designated, all notices, requests by Contractor, invoices, and any other communication about the contract shall be addressed or be delivered to the County Representative.

5. **CHANGES TO SCOPE OF WORK.** The County may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Contractor's performance under

the contract. Contractor shall provide to the County within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the County to be able to adequately analyze the proposal. The County will then determine in writing if Contractor should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Contractor's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Contractor for adjustment under this clause shall be asserted in writing within 30 days of the date the County notified Contractor of the change.

When changes are sought by Contractor, Contractor shall, before any work commences, estimate their effect on the cost of the contract and on its schedule and notify the County in writing of the estimate. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the County to be able to adequately analyze the proposal. The County will then determine in writing if Contractor should proceed with any or all of the proposed change.

Except as provided in this paragraph, no change shall be implemented by Contractor unless the change is approved by the County in writing. Unless otherwise agreed to in writing, the provisions of this contract shall apply to all changes. Verbal approval of a change may be provided by the County when the County, in its sole discretion, determines that time is critical or public health and safety are of concern. Any verbal approval shall be confirmed in writing as soon as practicable. Any change undertaken without prior County approval shall not be compensated and is, at the County's election, sufficient reason for contract termination.

**6. COUNTY COOPERATION.** The County agrees that its personnel will cooperate with Contractor in the performance of its work under this contract and that such personnel will be available to Contractor for consultation at reasonable times and after being given sufficient advance notice that will prevent conflict with their other responsibilities. The County also agrees to provide Contractor with access to County records in a reasonable time and manner and to schedule items which require action by the Board of County Commissioners in a timely manner. The County and Contractor also agree to attend all meetings called by the County or Contractor to discuss the work under the Contract, and that Contractor may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the County.

**7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES.** Contractor warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the County in writing, and has concluded that the County's resolution of each matter is satisfactory to Contractor. All future questions Contractor may have concerning interpretation or clarification of this contract shall be submitted in writing to the County within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Contractor's question or position. The County representative shall render a decision within 15 calendar days. The County's decision on the matter is final and accepted by Contractor as final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Contractor prior to having received the County's resolution shall be at Contractor's risk and expense. At all times, Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the County. Contractor is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

**8. CONSTRUCTION AND INTERPRETATION OF CONTRACT.** This contract shall be construed and interpreted according to the laws of the State of Nevada.

**9. DISPUTE RESOLUTION.** Any dispute not within the scope of ¶ 7 shall be resolved under this paragraph. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the County Representative and a Contractor representative. At all times, Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the County. If the dispute is not resolved within 30 days, either party may request that the dispute be submitted to the County Manager for final resolution. The decision of the County Manager shall be final and binding on the parties. If either party is dissatisfied with the decision of the County Manager, that party may immediately terminate the contract under this paragraph, with Contractor being entitled to compensation for work actually and satisfactorily performed up to the time of the termination and the County being entitled to all contract materials in accordance with ¶ 21 and compensation for any additional damages or expenses incurred in completing the work under the contract, including, without limitation, the costs of securing the services of other independent contractors.

**10. TERMINATION OF CONTRACT.**

**A. TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL.** The County, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the County chooses to terminate, abandon, or suspend all or part of the project, it shall provide Contractor 10 days written notice of its intent to do so.

If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, Contractor shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the County to resume performance.

In the event of a termination, abandonment, or suspension at will, Contractor shall receive all amounts due and not previously paid to Contractor for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit or costs on unperformed services or other unperformed work.

**B. TERMINATION FOR CAUSE.** This agreement may be terminated by the County on 10 calendar days written notice to Contractor in the event of a failure by Contractor to adhere to all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the County, pursue the project or to complete work in a timely and professional manner. Contractor shall be given an opportunity for consultation with the County prior to the effective date of the termination. Contractor may terminate the contract on 10 calendar days written notice if, through no fault of Contractor, the

County fails to pay Contractor for 30 days after the date of approval of any submitted invoices.

In the event of a termination for cause, Contractor shall receive all amounts due and not previously paid to Contractor for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the County by reasons of Contractor's failure. Contractor shall not be relieved of liability to the County for damages sustained from the failure, and the County may withhold any payment to the Contractor until such time as the exact amount of damages due to the County is determined. All claims for payment by the Contractor must be submitted to the County within 30 days of the effective date of the notice of termination.

If after termination for the failure of Contractor to adhere to all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the County, pursue the project or to complete work in a timely and professional manner, it is determined that Contractor had not so failed, the termination shall be deemed to have been a termination at will. In that event, an equitable adjustment in the compensation paid to Contractor shall be made by the County. The adjustment shall include a reasonable profit for services or other work performed up to the effective date of termination less all previous payments.

**C. GENERAL PROVISIONS FOR TERMINATION.** Upon termination of the contract, the County may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Contractor shall cease conducting business, the County shall have the right to solicit applications for employment from any employee of the Contractor assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Contractor's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Contractor's control.

**11. NO DAMAGES FOR DELAY.** Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Contractor for damages because of hindrances or delays in the progress of the work from any cause, and Contractor agrees to accept in full satisfaction of such hindrances and delays any extension of time which the County may provide.

**12. INSURANCE.** Contractor shall carry and maintain in effect during the performance of services under this contract worker's compensation and employer's liability insurance covering the Contractor's employees in accordance with statutory requirements, professional liability insurance, general liability insurance, and such other insurance coverage normally carried by Contractor insuring against the injury, loss, or damage to persons and property caused by Contractor's activities. Any additional insurance as may be required shall be as set forth below. Contractor shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers and forms of policy satisfactory to the County, acceptance of which shall not be unreasonably withheld. None of the requirements as to types, limits, and approval of insurance coverage to be maintained by Contractor are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the contract. Unless specifically set forth below, the County shall not maintain any

insurance on behalf of Contractor.

Contractor will provide the County with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within 10 calendar days after the notice to proceed is issued by the County. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer and who is licensed by the State of Nevada.

A. Each insurance company's rating as shown in the latest Best's Key rating guide shall be fully disclosed and entered on the required certificate of insurance. The adequacy of the insurance supplied by Contractor, including the rating and financial health of each insurance company providing coverage, is subject to the approval of the County.

B. The County and its officers and employees must be expressly covered as additional insureds, except on workers compensation coverage.

C. Contractor's insurance shall be primary as respects the County and its officers and employees.

D. Contractor's general liability insurance policies shall provide coverage for Contractor's contractual liability to the County. The parties further agree that Contractor or its insurance carrier shall provide the County with 30 days advance notice of cancellation of the policies.

E. All deductibles and self-insured retentions shall be fully disclosed in the certificates of insurance.

F. If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, the Contractor must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.

G. Contractor shall obtain and maintain, for the duration of this contract, general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under this contract by Contractor or its agents, representatives, or employees. No separate payment shall be made by the County for the cost of such insurance.

H. General liability coverage shall be on a "per occurrence" basis only and not "claims made." The coverage must be provided either on a Commercial General Liability Form A or a Broad Form Comprehensive General Liability form. The parties agree that no exceptions will be permitted to the coverage provided in such forms. Policies must include, but need not be limited to, coverage for bodily injury, personal injury, broad form property damage, premises operations, severability of interest, products and completed operations, contractual and independent contractors. General liability insurance policies shall be endorsed to include the County as an additional insured. Subject to ¶ F of this section, Contractor shall maintain limits of no less than \$1,000,000 combined single limit per occurrence for bodily injury (including death), personal injury, and property damages.

I. Contractor shall obtain and maintain, for the duration of this contract, automobile



coverage which must include, but need not be limited to, coverage against claims for injuries to persons or damages to property which may arise from or in connection with the use of any automobile in the performance of work under this contract by Contractor or its agents, representatives, or employees. Subject to ¶ F of this section, Contractor shall maintain limits of no less than \$1,000,000 combined single limit "per occurrence" for bodily injury and property damage.

J. Contractor shall obtain and maintain professional liability coverage in a form acceptable to the County in an amount of \$500,000 per claim, \$500,000 annual aggregate. If Contractor's retention or deductible is greater than \$25,000, Contractor shall demonstrate upon request of the County to the County's satisfaction Contractor's ability to fund the retention or deductible.

K. If contractor fails to maintain any of the required insurance coverage, then the County will have the option to declare Contractor in breach and terminate the contract, or the County may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverage is maintained. Contractor is responsible for any payments made by the County to obtain or maintain such insurance, and the County may collect the same from Contractor or deduct the amount paid from any sums due Contractor under this contract.

L. The specified insurance requirements do not relieve Contractor of its responsibility or limit the amount of its liability to the County or other persons, and Contractor is encouraged to purchase such additional insurance as it deems necessary.

M. Contractor is responsible for and required to remedy all damage or loss to any property, including property of the County, caused in whole or in part by Contractor or anyone employed, directed, or supervised by Contractor.

13. **FISCAL CONTINGENCY.** All payments under this contract are contingent upon the availability to the County of the necessary funds. In accordance with NRS 354.626, NRS 244.320, and any other applicable provision of law, the financial obligations under this contract between the parties shall not exceed those monies appropriated and approved by the County for this contract for the then current fiscal year under the Local Government Budget Act. This contract shall terminate and the County's obligations under it shall be extinguished at the end of any fiscal year in which the county fails to appropriate monies for the ensuing fiscal year sufficient for the performance of this contract.

Nothing in this contract shall be construed to provide Contractor with a right of payment over any other entity. Any funds obligated by the County under this contract that are not paid to Contractor shall automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the agreement. The County shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Contractor. Contractor shall have no claim of any sort to the unexpended funds.

14. **COMPLIANCE WITH APPLICABLE LAWS.** Contractor, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Contractor shall, throughout the period services are to be

performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the County in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

**15. NONDISCRIMINATION.** If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Contractor agrees to the following terms. Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for employment which the employee or applicant for employment is qualified. Contractor agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

Contractor acknowledges that it is aware of and is fully informed of Contractor's obligations under Executive Order 11,246 and, where applicable, shall comply with the requirements of the Order and all other orders, rules, and regulations promulgated under the Order unless exempted from therefrom.

Without limitation of the foregoing, Contractor's attention is directed to 41 C.F.R. § 60-1.4, and the clause entitled "Equal Opportunity Clause" which, by reference, is incorporated into this contract, to 41 C.F.R. § 60-250 et seq. and the clause entitled "Affirmative Action Obligations of Contractors and Subcontractor for Disabled Veterans and Veterans of the Vietnam Era," which, by reference, is incorporated in this contract, and to 41 C.F.R. § 60-471 and the clause entitled "Affirmative Action Obligations of Contractors and Subcontractors for Handicapped Workers," which, by this reference, is incorporated in this contract.

Contractor agrees to assist disadvantaged business enterprises in obtaining business opportunities by identifying and encouraging disadvantaged suppliers, consultants, and subconsultants to participate to the extent possible, consistent with their qualification, quality of work, and obligation of Contractor under this contract.

In connection with the performance of work under this contract, Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, or age. This agreement includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The failure to comply with NRS 338.130 shall render this contract void.

Contractor agrees, if applicable, to insert these provisions in all subcontracts, except for subcontracts for standard commercial supplies or raw materials. Any violation of any applicable provision by Contractor shall constitute a material breach of the contract.

**16. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING.** Contractor shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the County. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the County is void. Any consent of the County to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written

consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

**17. COUNTY INSPECTION OF CONTRACT MATERIALS.** The books, records, documents and accounting procedures and practices of Contractor related to this contract shall be subject to inspection, examination and audit by the County, including, but not limited to, the contracting agency, the County Manager, the District Attorney, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

**18. DISPOSITION OF CONTRACT MATERIALS.** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Contractor in the performance of its obligations under this contract shall be the exclusive property of the County and all such materials shall be remitted and delivered, at Contractor's expense, by Contractor to the County upon completion, termination, or cancellation of this contract. Alternatively, if the County provides its written approval to Contractor, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Contractor in the performance of its obligations under this contract must be retained by Contractor for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the County, in writing, requests any or all of the materials, then Contractor shall promptly remit and deliver the materials, at Contractor's expense, to the County. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the County.

**19. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS.** Contractor expressly agrees that all documents ever submitted, filed, or deposited with the County by Contractor (including those remitted to the County by Contractor pursuant to ¶ 21), unless designated as confidential by a specific statute of the State of Nevada, shall be treated as public records pursuant to NRS ch. 239 and shall be available for inspection and copying by any person, as defined in NRS 0.039, or any governmental entity.

No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Contractor in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Contractor. The County shall have the right to reproduce any such materials.

Contractor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the County or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Contractor agrees to indemnify, to defend, and to hold harmless the County, its representatives, and employees from any claim or action seeking to impose liability, costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or

supplied to Contractor infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Contractor infringes any patent.

Contractor shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

**20. INDEMNIFICATION.** Regardless of the coverage provided by any insurance, Contractor agrees to indemnify and save and hold the County, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this contract by Contractor or Contractor's agents or employees. Contractor hereby indemnifies and shall defend and hold harmless the County, its officials, employees, and authorized representatives and their employees from and against any and all suits, actions, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature, including those arising out of injury to or death of Contractor's employees, whether arising before or after completion of the work under this contract and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Contractor's indemnity, defense, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, of the party indemnified to the fullest extent permitted by law, but in no event shall they apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

**21. FINAL ACCEPTANCE.** Upon completion of all work under the contract, Contractor shall notify the County in writing of the date of the completion of the work and request confirmation of the completion from the County. Upon receipt of the notice, the County shall confirm to Contractor in writing that the whole of the work was completed on the date indicated in the notice or provide Contractor with a written list of work not completed. With respect to work listed by the County as incomplete, Contractor shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the County shall be the date upon which the Nye County Board of County Commissioners accepts and approves the notice of completion.

**22. TAXES.** Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Contractor hereby indemnifies and holds harmless the County from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

**23. NON-WAIVER OF TERMS AND CONDITIONS.** None of the terms and conditions of this contract shall be considered waived by the County. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the County in a written waiver.

**24. RIGHTS AND REMEDIES.** The duties and obligations imposed by the contract and the rights

and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

**25. PROHIBITED INTERESTS.** Contractor shall not allow any officer or employee of the County to have any indirect or direct interest in this contract or the proceeds of this contract. Contractor warrants that no officer or employee of the County has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of Contractor. If any such interest comes to the attention of Contractor at any time, a full and complete disclosure of the interest shall be immediately made in writing to the County. Contractor also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Contractor further warrants that no person having such an interest shall be employed in the performance of this contract. If County determines that a conflict exists and was not disclosed to the County, it may terminate the contract at will or for cause in accordance with ¶ 10.

In the event Contractor (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or in connection with the procurement of work to be done or payments to be made under this contract, County may terminate the contract at will or for cause in accordance with ¶ 10. Upon termination, Contractor shall refund to the County any profits realized under this contract, and Contractor shall be liable to the County for any costs incurred by the County in completing the work described in this contract. At the discretion of the County, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

Contractor warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Contractor to any officer or employee of the County with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract. If County determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with ¶ 10.

The rights and remedies of this section shall in no way be considered for be construed as a waiver of any other rights or remedies available to the County under this contract or at law.

**26. THIRD PARTY INTERESTS AND LIABILITIES.** The County and Contractor, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party, and this agreement is entered into for the exclusive benefit of the County and Contractor.

**27. SURVIVAL OF RIGHTS AND OBLIGATIONS.** The rights and obligations of the parties which by their nature survive termination or completion of this contract shall remain in full force and effect.

**28. SEVERABILITY.** In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the Nevada legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

**29. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT.** This contract, the original

## Exhibit E

**Request For Qualifications and the response submitted by the Contractor constitutes the entire contract between the County and Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.**

**Exhibit B  
Scope of Services**

**The scope of work is as outlined in the bid documents of Request For Qualifications #2006-12. The Contractor will provide the County with Public Defender Services throughout Nye County.**

- **The firm will provide competent legal representation, without charge, to each indigent person who is determined by a court of competent jurisdiction in Nye County, to be entitled to legal representation without cost (NRS 62.085, 171.188 or 431B.420) except when an attorney is found to be disqualified (NRS 7.115) or when an attorney's representation of an indigent person is proscribed by Nevada's ethics rules for attorneys.**
- **When designated to represent an indigent person, the attorney shall represent that person at all stages of the proceedings.**
- **Attorney/firm to make a detailed semi-annual report of activities to the Board of County Commissioners.**
- **Attorney/firm may appoint deputies, assistant attorneys, clerks and other employees as deemed necessary.**
- **Term of the contract to be for three years.**

**Exhibit C  
Fee Schedule**

**FEE SCHEDULE**

**Compensation for any and all services rendered in performance by attorney, assistants and other employees, including allowance for office space, furniture, equipment and supplies.**

**Price \$490,000.00/Year**