

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

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State Court Administrator

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Deputy Director  
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**Indigent Defense Commission**

Summary Prepared by Raquel Rodriguez  
August 11, 2014 2:00p.m. – 3:30 p.m.  
Video and Teleconference

**Members Present**

Justice Michael A. Cherry, Chair  
Judge James Todd Russell  
Judge Kevin Higgins  
Judge Nathan Todd Young  
Judge Tom Armstrong  
Diane Crow  
John Lambrose  
Jeff Wells  
Joni Eastley  
Jeff Fontaine  
Noel Waters  
Vanessa Spinazola  
Chris Hicks  
Teri McCarthy  
Cassie Jackson  
Bob Bell

David Schiek  
Meagan Laurie  
David Caroll  
Franny Forsman  
Jeremy Bosler  
Dana Hlavac  
Philip Kohn  
Karin Kreizenbeck

**Guests**

Paul Elcano  
Justice James Hardesty

**AOC Staff**

John McCormick  
Jamie Gradick  
Raquel Rodriguez

- I. Call to Order  
Call of Roll and Determination of a Quorum  
Chair Cherry called the meeting to order at 2:00 p.m., and it was determined there was a quorum
- II. Public Comment  
It was determined there was no public comment.
- III. Review and Approval of Summary of January 10, 2014, Meeting\*  
The meeting summary from the January 10, 2014, meeting was unanimously approved.
- IV. State Public Defender/Carson City
  - Ms. Karen Kriezenbeck reported to the Commission there had not been a plan put in place for the 2015 legislative session regarding the Public Defender's Office. There had been conversations with the Board of Supervisors to justify the cost for running the office which had become more difficult since the state had shifted the burden of funding to the counties. Ms. Kriezenbeck stated the office had been monitoring the counties they currently assist and had plans to lobby influential individuals to receive more funding until they are able to come to an agreement with the state to pay for more of the share, unfortunately at the moment no one wants to pay for Indigent Defense.

Ms. Kriezenbeck believes the state should fund Indigent Defense but until that happens there would be a need to provide the service at lower cost and lesser quality.

- Chair Cherry thanked Judge Wilson and Judge Todd Russell for supporting the state Public Defenders Office. Chair Cherry noted the latest statistics for Nevada include; 3rd place in unemployment, 5th in foreclosures, and 50<sup>th</sup> in education. Mr. John McCormick added Nevada has the 2<sup>nd</sup> highest per-capita in violent crimes Corrections are still important in Nevada and in order to have corrections there must be Indigent Defense representation.
- Judge Todd Young asked how long it had been since the State Public Defenders office had lost counties. Ms. Kriezenbeck stated the last time a county had been lost had been five years ago and the office had maintained four counties since then.

## V. Rural Subcommittee Report and Discussion

- Judge Russell thanked Ms. Diane Crow and Mr. John Lambrose for their work on the Rural Subcommittee report. The information provided to the Commission was the best information that could be gathered on the subject, information changed as the research continued. Judge Russell reported Douglas County had added a fourth contract counsel, therefore information would change. The Subcommittee had come to the conclusion that counties were frustrated with cost and expense providing Indigent Defense, since they believe the programs should be state funded. Counties have been forced to pick up more of the cost for Indigent Defense. The reality of Indigent Defense is that there has been a standstill with the models currently in place. Washoe, Clark, Winnemucca, Elko, and Lovelock had left Public Defenders for many reasons including the need for local involvement and local attorneys.
- Judge Russell reported the rural counties were doing the best they could to fund the programs. Upon reviewing stats, Judge Russell reported the case flow would be as good as it could get. There was concern regarding fixed fee contracts in the rural counties, a recommendation would be to arrange a uniform contract that could be used to opt out of death penalty cases, to get additional funds in the event a case becomes complex, and to provide additional fees and expenses for investigations. Until the State of Nevada could provide additional funds, through the State Legislature, to provide a uniform program, the issues would remain.
- Ms. Crow stated she had written a letter to Chair Cherry and the Commission regarding added comments in relation to a uniform contract and funding. Implementing a constitutional uniform contract would be essential and would need to address performance and caseload standards and limits so that in the event contract attorneys become overburdened, they know they have options. The attorneys have limits and cannot take on every case which could be unconstitutional. Douglas County may have been pursued by running the numbers as requested for the rural subcommittee report and hired their fourth attorney as a solution. Judge Young addressed Ms. Crow's letter and stated Douglas County had plans put in place to hire the fourth contract attorney before any numbers were run. Judge Young noted, in the letter, Ms. Crow referred to the constitutionality of the contract, there was no evidence to support the contracts were unconstitutional or that cases had been turned down. The notion that contract attorneys operate under different rules of ethics was insulting to Judge Young. Chair Cherry stated the problem with the contracts was in regards to case load standards and stated the Committee must act as a team to make progress.
- Mr. John Lambrose had asked to add the Rural Subcommittee Report to the agenda. The report would be relevant and show how the Commission had supported two concepts which had been made and endorsed. The first concept showed the Commission had supported, for the past six years, that funding for rural indigent defense should be borne exclusively from the state of Nevada. The second concept supported any model implemented should include county control in the selection process for indigent defense. Mr. Lambrose referenced page 145 in the materials which highlighted Judge Wagner's opinion which stated, under Nevada law there were two ways that indigent defense could be provided in rural counties; either by the state Public Defenders office, or if they each went on their own as others have done. Independent contracts by counties for Indigent Defense may not be legal.

- Mr. Lambrose referenced the materials and mentioned language in previous Meeting Summaries, it was clear which recommendations had been made regarding Indigent Defense and unanimously approved by the Commission in the beginning. Mr. Lambrose discussed recommendations for funding of Indigent Defense in the rural counties in conjunction with the Nevada State Public Defenders Office, considering the models the Commission had to work with. Contractual models currently in place in rural counties had modified flat fee contracts. Mr. Lambrose stated contracts should not be flat fee contracts because they would be in violation of amendments. Mr. Lambrose agreed that the counties should not be trapped with an unfunded mandate and rebuilding a strong State Public Defenders Office would be essential to move forward. He stated the recommendations were made and approved and the report had been created in 2008 and the Commission would need to review it.
- Mr. David Carroll stated the 14<sup>th</sup> Amendment holds the state responsible for the counties Constitutional issues but the state would have no way to provide oversight regarding the counties. The Constitutional issues are that flat fee contracts provide a conflict of interest. There should be an agency that provides the sort of supervision that is required. Mr. Carroll referenced the *Wilder vs. Mount Vernon* case which was a prime example of what is wrong with flat fee contracts. There needs to be caseload control, oversight and supervision to ensure no violation to the 14<sup>th</sup> amendment, but there would still be a question of who would control that. Chair Cherry agreed with implementing a statewide commission and noted there would need to be someone to carry the water on these issues. Chair Cherry stated the Commission had made history when implementing performance standards, the Commission would need to decide on recommendations.
- Mr. Lambrose stated he was in favor of Ms. Karen Kriezenbeck and Mr. Jeff Fontaine creating a Bill Draft resolution. The decisions that were made, whether through legislation or litigation, would need to be fairer. Some states have already eliminated flat fee contracts; it is time for Nevada to move forward. Mr. Carroll stated the clearest way to catch legislative attention would be to present the recommendation as an ADKT. Judge Young agreed to have the state fund Indigent Defense and stated the court could appoint an attorney according to state statute as a third option for funding. Chair Cherry agreed to move the recommendation forward as an ADKT and would work with Mr. John McCormick to set up an ADKT to present the Rural Subcommittee Report to the Court.
- Mr. Fontaine stated he would oppose any ban on flat fee contracts. The problem with politics on the issues would be that counties would be stuck with another unfunded mandate which would lead the counties into bankruptcy. Mr. Fontaine would like to find another way to address the indigent defense funding issue, similar to previous Bill Draft Requests, or to explore other forms of additional funding. Chair Cherry stated the Commission would need guidance from the Court to find ways to modify contracts to be constitutionally acceptable. Judge Russell asked the Commission to review recommendation number 2 in the materials which recommended a uniform contract for the counties. Chair Cherry asked the Commission to make a motion to continue on with an ADKT presented to the court including the Rural Subcommittee report and the recommendations which include a modified contract resolution. Ms. Franny Forsman moved to approve the ADKT. Mr. Lambrose asked to add the 2008 report into the motion to get consensus from the Court before the legislature meets.
- Ms. Crow moved to approve the motion with the added amendment. Chair Cherry reiterated the motion would be to present both reports to the Court regarding Indigent Defense funding and discuss the recommendation for a statewide commission. The Commission unanimously approved the motion.

## VI. The Future of Fast Track

- Mr. Lambrose suggested growing a panel of appellate lawyers who would be willing to take the fast track appeals from the fast track trial lawyers that do not desire to execute the appeals at no additional cost to the county. Mr. Bell agreed with the suggestion made by Mr. Lambrose regarding

Fast Track cases. The draft modifying the Fast Track rule was still in draft and would be distributed to the courts upon completion. There was consensus that it was not in the best interests to have someone take on the cases who would not do a decent job.

## VII. Court of Appeals

- Justice James W. Hardesty thanked the Commission for their service and contribution to the creation of a Court of Appeals. Justice Hardesty identified the adjudication of cases as a primary Constitutional responsibility, which had become a hurdle to overcome timely disposing of the numerous cases currently in the system; therefore, the matters that affect the Administration of Justice become delayed due to too much work for the Supreme Court to process in order to effectively decide cases. Justice Hardesty stated the provision on the ballot embodied a specific business plan which Justice Hardesty had drafted in 2007. The draft not only empowered the legislature to create a Court of Appeals, but also specifically prescribed what the Court of Appeals would consist of.
- The Court of Appeals would initially be composed of 3 Judges appointed by the Governor following the Judicial Selection Commission interrogation and review of applications, as well as their 3 secretaries, and 6 law clerks. The Court of Appeals would begin in January 2015, if approved, and located in the Regional Justice Center in existing offices, using an existing courtroom, therefore, there would be no capital cost associated with the proposal. The docket of the Supreme Court would be determined by rule adopted by the Supreme Court which would be a push down model. The Supreme Court would use its existing Case Management System and would identify cases within the system which would be less likely to be presidential and could most likely be resolved on appeal without need for a published opinion, those cases would be pushed down to the Court of Appeals. Cases such as administrative proceedings, petitions for judicial review of driver's license revocations, inmate disputes, etc., would be pushed down to the Court of Appeals.
- Justice Hardesty noted the important factor for the Indigent Defense Commission to understand would be that this would give the court the opportunity to revisit the criminal fast track system, which had been operated over the past 20 years, to change the mechanism and place of adjudication for cases. Legitimate questions had been raised regarding the effectiveness, completeness, and thoroughness of criminal cases which have been through the fast track system; this provides the court a unique opportunity to revisit the process. Justice Hardesty noted anyone who would be aggrieved by a Court of Appeals decision would be able to seek discretionary tertiary review by the Supreme Court which would be predicated on the same construct that has been used for en banc reconsideration. The standard of review would limit the number of cases that would be heard by the Supreme Court once adjudicated by the Court of Appeals.
- Justice Hardesty noted the operating cost consists of staff and office expenses for the Court of Appeals which had been built into a budget that the legislature had approved since the beginning of the last six months of the biennium. Much of the operating cost had been mitigated by reversions that the Supreme Court had been returning to the state general fund since 2009 which totals approximately 6.5 million dollars over the past 5 years. The measure has been unanimously endorsed by the 2013 legislature. Judges and lawyers in Nevada are provided a change in the way business is handled and is a great opportunity to effectuate major improvements in the administration, in decisions on appellate cases, and provide an opportunity for the Supreme Court to expand jurisprudence in the state.
- 2,270 cases are resolved each year, which is the highest number of cases resolved by a state Supreme Court in the United States, but because of the work load only about 4% of the cases are published opinions. The measure has received financial support from the legal and business communities, although, there would need to be more funding established to initiate a meaningful media campaign. Every Chamber of Commerce and most Labor in the state had considered a request for endorsement. Presentations would be made anywhere possible to promote the measure and continue on as an ongoing effort. Justice Hardesty stated the difference between success and

failure would stand out when the lawyers, business community and labor community effectively communicate their support through their contact lists and emails during early and regular voting in October and November.

- Justice Hardesty stated Chief Justice Mark Gibbons, Justice Michael Douglas, Justice Kristina Pickering and he had been working on rules to be used for the push down model, the draft would hopefully be ready by late September or early October 2014. If the measure passes, the draft rules would be disbursed among the Bar, which would weigh in on the rules before adopting them. Mr. Bob Bell asked how Justice Hardesty anticipated the direction of the measure and in which ways, other than assisting in funding, could individual lawyers help. Justice Hardesty noted the measure had failed by merely 3 points statewide in 2010 and failed due to a lack of funding. All funding contributed in 2010 went toward the Merit Selection Constitutional Amendment which failed by 15 points. Specifically in relation to Washoe County, the measure could pass or fail as a direct result of what happens in Carson, Reno, Sparks and Douglas County; those four locations could decide the fate of the Court of Appeals. If the Bar Associations and practicing lawyers in those jurisdictions could be aggressive in their letter writing campaigns to newspapers or contact requests to family, friends, and clients, the measure would have a chance of success. Lawyers would need to be insistent in soliciting support, such as insurance agencies or accountants with large client basis, would be beneficial to the measure. There were no further questions or comments from the Commission regarding the Court of Appeals.

VIII. Next Meeting Date and Location\*

- Chair Cherry discussed the Rules of Criminal Procedure Committee headed by Justice Douglas which would work on Nevada rules of criminal procedures; anyone interested in serving on the Committee was encouraged to contact Justice Douglas via email. Chair Cherry would meet with Chief Justice Gibbons and Mr. McCormick to set the ADKT.

IX. Public Comment

It was determined there was no public comment.

X. Adjournment

The meeting was adjourned at 03:30 p.m.