

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET  
Director and  
State Court Administrator



JOHN MCCORMICK  
Assistant Court Administrator  
Judicial Programs and Services

RICHARD A. STEFANI  
Deputy Director  
Information Technology

**MEETING NOTICE AND AGENDA**

**Indigent Defense Commission (IDC)  
VIDEOCONFERENCE**

**Date and Time of Meeting:** Monday, December 12, 2016 @ 1:30 p.m.

**Place of Meeting:**

Carson City	Las Vegas	Washoe	Ely	Elko
Supreme Court Library Room 107 201 S. Carson Street Carson City, Nevada	Regional Justice Center Conference Room B 200 Lewis Avenue Las Vegas, Nevada	Second Judicial District Court Room 220B 75 Court Street Reno, NV	White Pine County District Court 801 Clark Street Ely, NV	Elko County District Court 571 Idaho Street, Elko, NV
Teleconference Access: Dial-In # 1-877-336-1829 Access Code 2469586				

**AGENDA**

- I. Call to Order
  - a. Call of Roll
  - b. Determination of a Quorum
- II. Public Comment  
*Because of time considerations, the period for public comment by each speaker may be limited. Speakers are urged to avoid repetition of comments already made by previous speakers.*
- III. Review and Approval of the August 15, 2016 Meeting Summary\*
- IV. Legislative Session 2017 - BDR Discussion/Update - *Mr. John Lambrose and Mr. David Carroll*
- V. Caseload Standards Task Force Discussion
- VI. Rural Subcommittee Report/Status Update - *Mr. John Lambrose*
- VII. Status Update on Indigent Defense Clark County - *Mr. Phil Kohn, Mr. David Schieck, Mr. Drew Christensen*

VIII. Status Update on Indigent Defense in Washoe County - *Mr. Jeremy Bosler, Ms. Jennifer Lunt, Mr. Bob Bell*

IX. Status Update from State Public Defender's Office - *Ms. Karin Kreizenbeck*

X. Other Business

XI. Adjournment

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

Summary Prepared by Raquel Espinoza

August 15, 2016

1:00p.m. – 3:00 p.m.

Video and Teleconference

<p><b><u>Members Present</u></b> Justice Michael A. Cherry, Chair Judge Tom Armstrong Bob Bell Jeremy Bosler Drew Christensen Joni Eastley Judge Fairman Chris Hicks Dana Hlavac Alina Kilpatrick Philip J. Kohn Karin Kreizenbeck Christopher Lalli John Lambrose Jennifer J. Lunt Amy Rose Diane Roth</p>	<p>Judge Nathan T. Young</p> <p><b><u>Guests</u></b> David Carroll Judge Flanagan John Petty Randy Pike Holly Welborn</p> <p><b><u>AOC Staff</u></b> Raquel Espinoza Jamie Gradick Hans Jessup John McCormick</p>
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- I. Call to Order
- II. Call of Roll and Determination of a Quorum
  - A quorum was present.
- III. Public Comment
  - Chairman Justice Michael Cherry determined there was no public comment.
- IV. Review and Approval of Summary of June 2, 2016, Meeting\*
  - The meeting summary from the June 2, 2016 meeting was unanimously approved.
- V. Rural Subcommittee Report
  - Mr. John Lambrose provided a history summary of the Rural Subcommittee. The court had asked the Commission to look into the serious problems in regards to Indigent Defense in the rural counties.
  - The Subcommittee made recommendation to the Commission which were later approved by the Supreme Court. The recommendations included that the State of Nevada should fund all

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indigent defense in the rural counties and that the Nevada State's Public Defender's Office be independent from the Governor and be fully funded by the state of Nevada.

- A few years after the recommendations were made and approved the Commission asked the Subcommittee to look into how counties were paying for counsel. Judge Todd Russell, Ms. Diane Crowe, and Mr. Lambrose endeavored to gather information with Mr. David Carol's help and made a recommendation to the Commission that the court endorse a rule that would hold that there would not be a flat fee contract in indigent defense representation and that there should be an escape clause to allow counsel to petition for additional funds if necessary. The court approved that recommendation.
- In January 2016 the Commission asked the Subcommittee to look into funding for indigent defense in light of the no-flat-fee-contracts order and in light of Utah and Idaho moving to systems in which funding for indigent defense was provided exclusively from the state and an independent Indigent Defense Commission.
- Mr. Lambrose summarized the information received from the contract lawyers to the Commission.
- Mr. Lambrose stated no information was received from the White Pine contracting lawyers and it was uncertain if Ms. Kelly Brown from Eureka had received the letter requesting information therefore there was no information to provide from Eureka.
- Nye County had independent contracts with 3 lawyers who each receive \$150,000 per year. Attorney Earnest's caseload was 270 cases and 85 of those cases were felony cases, he did not have any trials in the last fiscal year and he did not ask for an expert or investigator in the last fiscal year through the 270 cases.
- Attorney Gent's caseload was 475, 159 of those cases were felony cases. He had 6 felony trials and asked for an expert 9 times and asked for an investigator 7 times and asked for additional fees 7 times.
- Attorney Brainerd's caseload was 433, 122 of those cases were felony cases. Attorney Brainerd went to trial once and asked for 10 experts and 5 investigators but did not ask for additional attorney fees in the last fiscal year.
- Nye County had modified their contracts to allow discretionary fees at the court's discretion.
- Douglas County had 4 contract lawyers that receive \$195,000 per year. Mr. Lambrose stated he believed Douglas County had a really good request for extraordinary fees clause in their contract and suggested other rural counties should look at the clause.
- Douglas County's Attorney Brown had 274 total cases, 93 of those cases were felony cases. Brown did not go to trial, asked for an investigator twice and expert witnesses 31 times and never asked for additional attorney fees.
- Douglas County's Attorney Pence had 220 cases, 63 of those cases were felony cases. Attorney Pence went to trial once, asked for an expert 11 times and asked for an investigator 2 times.
- Mr. Lambrose had not received information for the other 2 contract attorneys for Douglas County.
- David Neidert of Churchill County received \$120,000 per year and had a caseload of 365 cases, 135 of those cases were felony cases, and he did not go to trial and did not ask for an expert. Attorney Neidert asked for an investigator 9 times and he asked for additional fees one time.
- There was not enough information from Esmeralda County to provide a report.
- Attorney John Oates of Mineral County had a caseload of 234 cases, a clause for his contract in regards to extraordinary fees was different from other counties which states extraordinary fees are given if the cases is a capital case or if he goes to trial and the trial lasts more than 3 days. Attorney Oats received \$80,000 per year and did not go to trial and he had 122 felony cases.
- Mr. Lambrose stated the Subcommittee's goals would be to accomplish its goals through litigation or legislation but the Governor's Office had not been helpful with regard to changing the ration of funding.

- Mr. Lambrose suggested removing the State Public Defender's Office from the Governor's Office, have the State Public Defender's Office receive independent state funding and make the State Public Defender's Office answer to an independent indigent defense commission. He would advocate that any county which enters into a contract with a contracting lawyer would have to be subject to the approval of and processed by the Indigent Defense Commission and remove the judges from that process.
- Mr. David Carol stated Michigan, Idaho, and Utah were working towards Indigent Defense Reform and New York was on the cusp of reform as well.
- The key elements to the reforms would be for the counties to be in compliance with standards that each county puts into place.
- Mr. Carol mentioned that Nevada may not make progress unless the Executive and Legislative branches become involved in indigent defense reform and he would recommend a taskforce be established before the 2017 Legislative Session.
- Judge Fairman stated he agreed it would be important to establish the task force in order to move forward with the indigent defense reform process and funding.
- Ms. Karen Kreizenbeck stated she would speak to the Executive Branch's Budget Office to see if there is interest in assisting the Commission to get things done.
- Justice Cherry stated he hoped Mr. Lambrose's Subcommittee would be able to identify a way to resolve the issues.
- Justice Cherry stated Ms. Jamie Gradick would set up a meeting in December to go over details for the 2017 Legislative Session.
- Mr. Lambrose added that one Lyon County attorney received \$165,000 per year, there were 220 total cases, 97 felony cases, and the attorney attended 1 jury trial. This attorney utilized 2 investigators and 3 experts.
- Ms. Holly Wellborn from the ACLU of Nevada stated she would like to be involved in the effort to bring a BDR to support Mr. Kohn's efforts in developing the task force.

#### VI. Status on Appointment of Counsel for Full Briefing

- Mr. Drew Christensen stated it would be too new to see a significant expansion. There has always been policy and practice in place prior to the change.
- Justice Cherry asked Mr. Christensen to keep him up to date on progress relating to the Counsel for Full Briefing.
- Mr. Phil Kohn stated he was concerned about how this would impact the Clark County Public Defender's Office's caseload.
- Mr. Kohn stated the biggest problem is that a lot of private attorneys do not know they can get out of a case, over time this may change.

#### VII. Status Update on Indigent Defense in Clark County

- Mr. Jeremy Bosler stated business was good in Washoe County. They were completing a

#### VIII. Status Update on Indigent Defense in Washoe County

- Mr. Jeremy Bosler stated when the new rule came out in Washoe County, there was training for all contract attorneys so that they knew there was a change in the rule and they could withdrawal. There have not been many cases.
- A pilot program had been implemented with the help of Chief Judge Flanagan to track the cases.
- Mr. John Petty stated there had not been a rise in the number of cases yet but it was suspected that there is a delay in time from when a person files a notice of appeal and it is processed to the Supreme Court and then the Court sends an order for the appointment of counsel. At some point the non-fast track cases will begin to be assigned and they would be handled at that time.

- The idea was that they would work with the Chief Judge so that when contract attorneys or private defense attorneys want to withdraw after sentencing they would be able to draft the full withdrawal motion that needs to be filed within the judicial district and add information that they were explained their appellate rights, they either acknowledge that there is not intent to appeal voiced by the defendant at that time, and a certification statement is made part of the motion of withdrawal. That would be the point to track the number of cases and they would know when people file a motion to withdrawal prior to the appellate time they could track those to the Court.
- Ms. Jennifer Lunt stated the Washoe County Alternate Public Defender's (APD's) Office would not expect to receive a huge increase in cases.
- Mr. Bob Bell stated he would be working with Mr. Christensen and would try to do similar things in regards to appointed counsel contract attorneys.
- Mr. Bell said they would explore the possibility of having a separate group of attorneys to be the appellate attorneys if conflicts come through, Mr. Bell and Mr. Christensen would be working on that together.
- Justice Cherry asked the Commission to refer to Mr. Christensen in case anyone ran into problems.
- The Public Defender has turned over specialty courts to the APD's Office which was working with the county and since they have handled more Category A cases, they added additional money to the project for expert witnesses and investigations. After the current fiscal year there may be an idea to see trends to verify if there would be a need for more staff or more funds.

#### IX. Status Update from State Public Defender's Office

- Ms. Karen Kreizenbeck stated everything was status quo at the State Public Defender's (SPD's) Office. The SPD's Office was handling all specialty courts, criminal appointments, and some post-conviction in Carson and Washoe.
- Ms. Karen Kreizenbeck had spoken to Judge Young to possibly begin taking some post-conviction cases from Douglas County.
- There were plans for the 2017 Legislative Session in regard to the SPD's Office but the plans were not fully developed for discussion.
- Justice Cherry asked Commission members to involve Mr. Ben Graham in any discussions and plans in regards to the 2017 Legislative Session which pertain to Indigent Defense.

#### X. Other Business

- There has been a change in the Special Public Defender's Office.
- The Special Public Defender's Office moved family defense cases to appointed contract attorneys. This decision was made by Mr. Jeff Wells and the Office of Indigent Counsel and approved by the County Commission.
- Ms. Lunt expressed concern regarding the shortage in habeas lawyers in Washoe County, Clark County, and possibly throughout the state that would be at a critical mass in a fairly short order. Justice Cherry stated it may be a good idea to reach out to the Federal Public Defender to set up training for younger lawyers who would begin their practice. Mr. Bell stated having new lawyers in that arena may not do it justice.
- Mr. John Lambrose stated he worked with Boyd Law School in the creation of an Appellate Habeas Advisory Training Committee to serve as mentoring assistants for the Appellate and Habeas panel of the federal courts in the south. This was in response to serious complaints from the Ninth Circuit regarding court appointed panel lawyer practice. This was working well in the south. Justice Cherry asked Mr. Lambrose, Mr. Bell, Mr. Christensen and Ms. Karen Kreizenbeck to come up with a workable solution for the shortage of habeas lawyers in Washoe and Clark Counties.

XI. Adjournment

- The meeting was adjourned at 2:28 p.m. The next meeting would be held in December.