

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 REVISED AGENDA

Indigent Defense Commission (IDC)

VIDEOCONFERENCE

Date and Time of Meeting: Friday July 12, 2013, 1:00 p.m.

Place of Meeting:

Carson Supreme Court Library Room 107 201 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 Judges' 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. Review and Approval of Summary of March 22, 2013, Meeting*
- IV. Indigent Defense Data Update
- V. Rural Subcommittee Update
- VI. IDC Mission Statement*
- VII. Review of Plans for Appointment of Council and Revision of Model Plan*
- VIII. *Team and Tracking in Eight Judicial District Court**

IX. Next Meeting Date and Location*

X. 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.

XI. 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. Public comment is welcomed by the Commission 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
- 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; Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: Regional Justice Center, 200 Lewis Avenue, 17th Floor.

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 SUMMARY

Prepared by John McCormick

INDIGENT DEFENSE COMMISSION (IDC)

Friday, March 22, 2012

Videoconference*

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

Attendees

Chief Justice Michael A. Cherry, Chairman
Judge Kevin Higgins
Judge James Todd Russell
Judge Connie Steinheimer
Judge Tom Stockard
Jeremy Bosler
Drew Christensen
David Carroll
Sandra Chereb
Diane Crow
Joni Eastley
Paul Elcano
Matt Fisk
Franny Forsman
Richard Gammick

John Helzer
Karin Kreizenbeck
Chris Lalli
Robert Langford
John Lambrose
Jennifer Lunt
David Schieck
Matt Stermitz
Jeff Wells

AOC Staff

Robin Sweet
Stephanie Heying
Hans Jessup
John McCormick

I. Call to Order

a) Call of Roll and Determination of a Quorum

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

II. Public Comment

There was no public comment.

III. Approval of Minutes of March 22, 2013, Meeting

The summary of the March 22, 2013, meeting was approved as published.

IV. Indigent Defense Data Dictionary Revision and Data Collection Update

Hans Jessup requested that the IDC Data Dictionary be amended to include a clarification regarding the counting of cases at the district court level when counsel was appointed at the justice court before the defendant was bound-over to district court. The proposed change will allow district courts to count these cases as 'new appointments' pursuant to existing language. Mr. Jessup commented that this change will provide more accurate case counts from the rural district courts that utilize the ADS case management system.

Judge Steinheimer questioned as to if this change would require the district courts to capture what is occurring in justice court, and indicated that it could be problematic, and incur additional costs, to do so in the Second Judicial District. Mr. Jessup and Franny Forsman clarified that this change is not designed to impact current practice but to make sure that appointed counsel cases are being counted in the rural districts.

Judge Steinheimer commented that it may be more effective to count the number of cases in which defendants are represented by privately retained counsel, as the vast majority of defendants the district court sees are represented by public counsel.

Mr. Jessup reminded the group that there is no Order mandating the collection of this data and that this project is to capture data in rural Nevada. Jeff Wells mentioned that the data is currently being collected in Clark County by the Public Defender's Office, Special Public Defender's Office, and the Office of Appointed Counsel. Judge Steinheimer indicated that the data is currently being collected in Washoe County in the same fashion.

John Lambrose questioned if this method would provide adequate data for future consideration by the IDC, and Robin Sweet replied that this change will allow the rural counties to provide accurate counts of appointed counsel cases.

Chairman Cherry commented that it appears that this change is a good solution for the counties without a public defender's office, and Mr. Forsman commented that we need to move forward so we can begin reporting statistics to the public.

Matt Stermitz said that he is confident that his Office captures all appointments, including conflict appointments, and that he believes Elko has the same capacity. Diane Crow commented that her office tracks counsel appointed in post-conviction relief appointments.

John Lambrose commented that this method will not provide a weighted case number, as it will count a death penalty case the same as a felony DUI case. Ms. Forsman commented case weighting is a huge undertaking.

Judge Higgins suggested including pre-trials services in Washoe County in the case counting process.

Dick Gammick said that any data that will be collected will be problematic as the definitions and counts will vary across all players in the criminal justice system, and that any count from this commission

should be called a defendant load count. Mr. McCormick commented that the data dictionary exists to define a case in terms of public representation and as long as collection of data is transparent, accurate numbers in terms of public defense will be reported.

Mr. Jessup provided attendees with a report of the data collected in the counties using ADS so far.

Diane Crow commented that there are existing statutory requirements (NRS Ch. 180 and NRS Ch. 260) that require all offices and appointed counsel to report their caseload numbers to their county commissioners and the Legislature each year. The group discussed that this requirement has never been enforced in any meaningful way, and which counties/offices currently comply with the requirements.

Mr. Lambrose commented that he thinks the situation is better now than when the last Rural Subcommittee Report was completed, and that the information will be more forthcoming. The Commission determined to send letters, to the counties for which it has no current data, highlighting the need for such data and the statutory requirements. Chair Cherry charged AOC staff with working on the issue, and Ms. Forsman complimented the staff for all the work they have done over the course of the IDC.

V. Reclaiming Justice – 6th Amendment Center Report on Indigent Defense in Rural Nevada

Chairman Cherry said that David Carroll and 6th Amendment Center have issued a report entitled *Reclaiming Justice* (Report). David Carroll provided background on the genesis of the Report, and commented on the contents of the report including a recommendation for a body to oversee the delivery of indigent defense in the counties, while allowing each county to use the delivery system best suited for its particular situation, absent inappropriate flat-fee contracts.

Mr. Carroll commented that the Report reviews the history of indigent defense in rural Nevada, and that he discovered that Nevada was, in fact, the first State to require the appointment and payment of counsel dating back to 1873, almost 100 years before *Gideon*. He commented that it is now time to fully resort to this principle which was established so early in Nevada's history, and began to devolve in the 1970s.

Mr. Carroll reiterated that the primary recommendation of the report is to establish independent oversight of the public defense function in the rural counties.

A number of attendees praised the Report and commented that the historical analysis in the report is interesting. Mr. Lambrose commented that the Report indicates that another Rural Subcommittee needs to be convened by the IDC to reexamine rural issues and advocate for adequate representation and State payment of indigent defense costs.

Ms. Crow commented that she, contrary to the report's recommendation, thinks that the State Public Defender's Office should remain available as a trial office, in addition to taking over all rural appellate and post-conviction work. She reiterated the requirements for county public defender officers in NRS Ch. 260, and commented on anecdotal information regarding the quality of representation in some rural counties.

Mr. Carroll commented that the provision of indigent representation is a State responsibility, and the State having delegated that responsibility to the counties is not equipped to ensure that each county is providing indigent defense in an adequate and appropriate manner, and this demonstrates the need for a permanent independent oversight body as recommended in the Report.

Mr. Stermitz provided a number of comments on the Report and indicated that the counties that have dedicated and adequate public defender offices thoroughly litigate cases far more often than the contract counties. He also commented that the counties in Nevada's "Mining Belt" have more financial resources than the other counties in the State and can fund public defense more adequately. Mr. Stermitz also indicated that it would be his preference to retain his public defense appellate practice, and that the State Public Defender does a good job and should handle post-conviction work. He added that it may also be a good idea to create a death penalty team in the State Public Defender's Office. He further indicated that he thinks it is important to have local attorneys, who are invested in their communities, representing defendants in those communities, and that public defender independence a key feature.

Mr. Carroll thanked Mr. Stermitz for his comments, and he thinks that an independent oversight entity will back-up offices, like Mr. Stermitz's, that are doing right by their clients.

VI. Draft 6th Amendment Center Consensus Document

Chairman Cherry said that this item will be tabled. Mr. Lambrose concurred, and proposed a new rural subcommittee, co-chaired by Judge Russell and Diane Crow, be created by the IDC to revisit issues in the rural counties in order to inform future discussion on this topic, and make additional recommendations to the full IDC.

Judge Russell indicated that he is interested and commented that a one-size-fits-all approach will not work in every county, and the key to this issue is the availability of data and resources.

Ms. Crow suggested that the subcommittee look at developing a plan to approach the legislature with in 2015.

Chairman Cherry appointed Judge Russell and Ms. Crow as co-chairs and asked that they develop a membership list for the subcommittee. He further commented on the priorities of the current Nevada Supreme Court.

VII. Future of the Nevada State Public Defender's Office

Chairman Cherry commented that this item will be investigated by the rural subcommittee.

VIII. Flat Fee Contracts in Rural Nevada

Chairman Cherry commented that this item will be investigated by the rural subcommittee.

IX. Review of Model Plans for the Provision of Appointed Counsel

Ms. Forsman requested that a small subcommittee be appointed to review issues associated with the amendment and approval of the urban plans.

Chairman Cherry appointed Ms. Forsman, Matt Fisk, and Mr. McCormick to review the current model and urban plans and report back to the IDC at the next meeting.

X. Development of Caseload Standards

Chairman Cherry tabled this item pending further work by the subcommittees.

XI. Future of the Indigent Defense Commission

Chairman Cherry commented that a new mission statement is needed and appointed a subcommittee of Ms. Forsman, Chris Lalli, and John McCormick to work on developing a mission statement for the continued work of the IDC.

XII. Next Meeting Date and Location

Chairman Cherry said that a schedule of quarterly IDC meetings will be set-up and provided to attendees.

XIII. Public Comment

There was no public comment.

XIV. Adjournment

Chief Justice Cherry adjourned the meeting.

**Report on Indigent Defense Caseloads in the State of Nevada From January 2013-Present
as of 07/03/13**

Total Caseload Measures By Court	New Appointments	Re-Activated	Adjudicated/Disposed/Closed	Placed on Inactive Status	End Pending¹	Set for Review¹
Lyon County District Court	22	0	5	4	17	0
Esmeralda County District Court	0	0	0	0	3	0
Mineral County District Court	4	0	0	0	8	0
Nye County District Court	237	49	177	97	216	7
Humboldt County District Court	56	0	22	0	60	2
Lander County District Court	5	0	6	0	12	2
Pershing County District Court	22	1	9	3	19	0
Eureka County District Court	4	3	5	0	2	0
Lincoln County District Court	11	1	8	1	8	0
White Pine County District Court	12	4	10	2	7	0
Clark County Public Defender ^a	16,970		6,705	1,302	12,401	2,692
Churchill County District Court	42	6	33	13	26	5

¹ The number of cases provided on the last reported month.

^a Reactivated counts are unable to be captured.

**Report on Indigent Defense Caseloads in the State of Nevada From January 2013-Present
as of 07/03/13**

Total Caseload Measures by Court and Case Type		New Appointments	Re-Activated	Adjudicated/Disposed/Closed	Placed on Inactive Status	End Pending¹	Set for Review¹
Lyon County District Court	Felony	17	0	3	4	14	0
	Gross Misdemeanor	5	0	2	0	3	0
	Misdemeanor	0	0	0	0	0	0
	Traffic and Parking	0	0	0	0	0	0
	Juvenile	0	0	0	0	0	0
Esmeralda County District Court	Felony	0	0	0	0	2	0
	Gross Misdemeanor	0	0	0	0	1	0
	Misdemeanor	0	0	0	0	0	0
	Traffic and Parking	0	0	0	0	0	0
	Juvenile	0	0	0	0	0	0
Mineral County District Court	Felony	3	0	0	0	7	0
	Gross Misdemeanor	1	0	0	0	1	0
	Misdemeanor	0	0	0	0	0	0
	Traffic and Parking	0	0	0	0	0	0
	Juvenile	0	0	0	0	0	0
Nye County District Court	Felony	190	31	139	61	180	6
	Gross Misdemeanor	28	8	31	4	22	1
	Misdemeanor	0	0	0	0	0	0
	Traffic and Parking	0	0	0	0	0	0
	Juvenile	19	10	7	32	14	0
Humboldt County District Court	Felony	32	0	11	0	33	1
	Gross Misdemeanor	15	0	4	0	16	1
	Misdemeanor	0	0	0	0	0	0
	Traffic and Parking	0	0	0	0	0	0
	Juvenile	9	0	7	0	11	0
Lander County District Court	Felony	4	0	2	0	5	0
	Gross Misdemeanor	1	0	2	0	1	2
	Misdemeanor	0	0	0	0	0	0
	Traffic and Parking	0	0	0	0	0	0
	Juvenile	0	0	2	0	6	0

**Report on Indigent Defense Caseloads in the State of Nevada From January 2013-Present
as of 07/03/13**

Total Caseload Measures by Court and Case Type	New Appointments	Re-Activated	Adjudicated/Disp osed/Closed	Placed on Inactive Status	End Pending¹	Set for Review¹
Pershing County District Court	10	1	0	3	13	0
Felony						
Gross Misdemeanor	1	0	0	0	2	0
Misdemeanor	0	0	0	0	0	0
Traffic and Parking	0	0	0	0	0	0
Juvenile	11	0	9	0	4	0
Eureka County District Court	2	3	3	0	2	0
Felony						
Gross Misdemeanor	0	0	0	0	0	0
Misdemeanor	0	0	0	0	0	0
Traffic and Parking	0	0	0	0	0	0
Juvenile	2	0	2	0	0	0
Lincoln County District Court	6	1	2	1	5	0
Felony						
Gross Misdemeanor	1	0	0	0	1	0
Misdemeanor	0	0	0	0	0	0
Traffic and Parking	0	0	0	0	0	0
Juvenile	4	0	6	0	2	0
White Pine County District Court	2	4	3	2	3	0
Felony						
Gross Misdemeanor	0	0	1	0	0	0
Misdemeanor	0	0	0	0	0	0
Traffic and Parking	0	0	0	0	0	0
Juvenile	10	0	6	0	4	0
Clark County Public Defender ^a	5,659		3,234	971 ^b	8,027	385 ^b
Felony						
Gross Misdemeanor	579		1,403		661	
Misdemeanor	1,680		784	256	2,368	2,034
Juvenile	9,052		1,284	75	1,345	273
Churchill County District Court	31	5	23	10	18	3
Felony						
Gross Misdemeanor	6	1	3	2	3	1
Misdemeanor	0	0	0	0	0	0
Traffic and Parking	0	0	0	0	0	0
Juvenile	5	0	7	1	5	1

¹ The number of cases provided on the last reported month.

^a Reactivated counts are unable to be captured.

^b Over inclusive, includes gross misdemeanor counts.

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADKT 0411

FILED

JUL 08 2013

TRAVIS K. ZINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF APPOINTMENT

WHEREAS, on April 26, 2007, this court established the Indigent Defense Commission and appointed the original members; and

WHEREAS, this court has determined the Indigent Defense Commission's Rural Issues Subcommittee should be reconstituted; accordingly,

IT IS HEREBY ORDERED that the individuals listed in Exhibit A are appointed to the Rural Issues Subcommittee.

DATED this 8th day of July, 2013.

[Signature]
Gibbons, J.

[Signature]
Pickering, C.J.

[Signature]
Hardesty, J.

[Signature]
Parraguirre, J.

[Signature]
Douglas, J.

[Signature]
Cherry, J.

[Signature]
Saitta, J.

cc: Kimberly Farmer, Executive Director, State Bar of Nevada
All Commission Members
Administrative Office of the Courts

**Rural Issues Subcommittee
Updated July 2, 2013**

Hon. James Todd Russell
District Judge
First Judicial District Court
885 East Musser Street
Carson City, Nevada 89701

Diane R. Crow
State Public Defender, Retired
511 E. Robinson Street
Carson City, Nevada 89701

John. C. Lambrose
Deputy Federal Public Defender
411 E. Bonneville Ave. #250
Las Vegas, Nevada 89101

Hon. Nathan Tod Young
District Judge
Ninth Judicial District Court
P.O. Box 218
Minden, Nevada 89423

Hon. Alvin Kacin, District Judge
Fourth Judicial District Court
571 Idaho Street
Elko, Nevada 89801

Hon. Tom Armstrong
Justice of the Peace
Carson City Township
885 East Musser Street, Suite 2007
Carson City, Nevada 89701

Hon. Mike Montero
Sixth Judicial District Court
50 West Fifth Street
Winnemucca, Nevada 89446

Hon. Gary Fairman, District Judge
Seventh Judicial District Court
801 Clark Street
Ely, Nevada 89301

Jim Shirley
Pershing County District Attorney
P.O. Box 299
Lovelock, Nevada 89419

Sean Rowe
Mineral County District Attorney
P.O. Box 1210
Hawthorne, Nevada 89415

Noel Waters
Waters Law Firm LLC
209 North Pratt Avenue
Carson City, Nevada 89701

Frederick Lee
Elko County Public Defender
571 Idaho Street
Elko, Nevada 89801

Michael MacDonald
Humboldt County District Attorney
P.O. Box 909
Winnemucca, Nevada 89445

Karin Kreizenbeck
State Public Defender
511 East Robinson Street
Carson City, Nevada 89701

The Indigent Defense Commission was created by the Supreme Court of Nevada in 2007 for the purpose of studying the issues and concerns with respect to the selection, appointment, compensation, qualifications, performance standards and caseloads of counsel assigned to represent indigent defendants in criminal and juvenile delinquency cases in Nevada. The mission of the Indigent Defense Commission is to provide information, advice and data to the Supreme Court in order to insure that the selection and appointment of counsel for indigent defendants is independent of the judiciary, that the quality of representation is maintained through performance standards, training and caseload standards. The goal of the Commission is to create an independent Commission which will implement and monitor Local Plans for the provision of appointed counsel, oversee caseload and performance standards, insure adequate compensation and training and provide a public forum for the discussion of issues involving indigent defense.

IV.
APPOINTMENT OF THE PUBLIC DEFENDER
(Applicable to courts which are served by a Public Defender)

V.
APPOINTMENT OF PRIVATE ATTORNEYS

A. Contract and Hourly Attorneys

1. Contract Attorneys

...

b. The number of cases assigned under each contract shall be collected and reviewed annually. Collection shall be performed by [Appointed Counsel Administrator, Court Administrator, Individual Contract Attorney]. The number of assignments per attorney shall be submitted along with the Local Plan during periodic review of the Plans. The number of assignments shall be considered in determining the amount of compensation as provided above.

3. Assignment of Cases: Assignment of counsel to a courtroom or to a case may not be performed by the judiciary. Contracts should not be limited to a single courtroom or judge. The assignment shall be made in the following fashion:

5. Termination of contracts: If circumstances arise which suggest that a contract should be suspended or terminated, the Panel Selection Committee shall provide notice to the attorney and an opportunity to be heard and shall hear such other facts as are relevant to a determination of whether the contract should be suspended or terminated. In no event, should the contract be terminated by the judiciary or an agent of the judiciary. Emergency suspension of a contract due to exigent circumstances is not precluded by this section.

PROCEDURES FOR SUBMISSION AND REVIEW OF LOCAL PLANS

1. The Model Plan shall be reviewed at least every 2 years by the Indigent Defense Commission and amendments or changes to the Model Plan shall be made as needed.

2. Local Plans for the Provision of Appointed Counsel shall be reviewed by the originating court and submitted to the Indigent Defense Commission every 3 years (or when the Model Plan is amended) based on a review of the Model Plan and the current circumstances of the court. If a court determines that a plan requires a departure from the Model Plan, the reason for the departure should be explained in the submission.

3. If circumstances warrant an amendment to the Local Plan, the proposed amended plan shall be submitted to the Indigent Defense Commission.

4. When a Local Plan is submitted to the Indigent Defense Commission, the Commission shall review the current Model Plan and the submission made by each affected court and shall report back to the submitting court on its recommendations with regard to the Plan or amendment.

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

May 22, 2008

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

I. STATEMENT OF POLICY

A. Objectives

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

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

II. DEFINITIONS

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

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

III. PROVISION OF REPRESENTATION

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

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

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

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

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

C. When Counsel Shall be Provided

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

D. Number and Qualifications of Counsel in Capital Cases

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

E. Eligibility for Representation

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

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

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

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

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

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

IV. APPOINTMENT OF THE PUBLIC DEFENDER

A. Determination of Conflict of Interest

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

B. Assignment of Attorneys

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

C. Complaints by Clients

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

V. APPOINTMENT OF PRIVATE ATTORNEYS

A. Contract and Hourly Attorneys

1. Contract Attorneys:

a. Compensation of Contract Attorneys

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

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

2. Categories of Assigned Counsel

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

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

3. Assignment of Cases

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

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

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

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

B. Selection of Panel of Attorneys

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

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

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

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

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

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

C. Payment of Fees and Expenses of Private Attorneys

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

VI. MENTORSHIP AND TRAINING

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

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

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

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

VII. DUTIES OF APPOINTED COUNSEL

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

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

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

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

VIII. APPOINTED COUNSEL ADMINISTRATOR

A. Selection

B. Duties