

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



RICHARD A. STEFANI
Deputy Director
Information Technology

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

VERISE V. CAMPBELL
Deputy Director
Foreclosure Mediation

MEETING NOTICE AND AGENDA

Indigent Defense Commission (IDC)

VIDEOCONFERENCE

Date and Time of Meeting: Monday, November 23, 2015 @ 1:30 p.m.

Place of Meeting:

Carson City	Las Vegas	Washoe	Ely	Winnemucca
Supreme Court Library Room 107 201 S. Carson Street Carson City, Nevada	Regional Justice Center Conference Room A 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	Humboldt County District Court 50 West 5th St, Winnemucca, 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 July 13, 2015 Meeting Summary
- IV. Stauts Update on Local Plan Review Subcommittee - *Ms. Franny Forsman*
- V. Caseload Standards - *Mr. Hans Jessup*

- VI. Status Update on Rural Subcommittee - *Ms. Diane Roth, Mr. John Lambrose, Judge James Russell*
- 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 on Indigent Defense in Rural Nevada - *All rural jurisdiction judges in attendance*
- X. Status Update from State Public Defender's Office - *Ms. Karin Kreizenbeck*
- XI. Report on Fast Track - *Justice Michael Cherry*
- XII. Other Business
- XIII. Adjournment

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

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Indigent Defense Commission

Summary Prepared by Raquel Rodriguez

July 13, 2015

1:30p.m. – 3:00 p.m.

Video and Teleconference

Members Present

Chairman Justice Michael A. Cherry
Judge Tom Armstrong
Judge Gary Fairman
Judge Kevin Higgins
Judge James Todd Russell
Judge Nathan T. Young
Bob Bell
Jeremy T. Bosler
Patrick Caddick
David Carroll
Drew Christensen
Joni Eastley
Franny A. Forsman
Joey Orduna Hastings
Chris Hicks
Dana Hlavac
Megan Hoffman

Philip J. Kohn
Karin Kriezenbeck
Christopher Lalli
Jennifer J. Lunt
Randy Pike
Edward Popovici
Amy Rose
Diane Roth
Vanessa Spinazola
Dague Stapleton
Michael Viets
Noel Waters
Jeff Wells

AOC Staff

John McCormick
Hans Jessup
Raquel Rodriguez

- I. Call to Order
- II. Call of Roll and Determination of a Quorum
- III. Public Comment
 - Chairman Justice Michael Cherry determined there was no public comment.
- IV. Review and Approval of Summary of August 11, 2014, Meeting*
 - The meeting summary from the August 11, 2014, meeting was unanimously approved.
- V. Status Update on SB 451
 - Chair Cherry asked Mr. Ben Graham to update the Indigent Defense Commission (Commission) on Senate Bill (SB) 451. Mr. Graham reported SB 451 gathered support from presentations made by Justice Cherry and others. Mr. Graham discussed there would not be major legislative changes which would arise from SB 451. Chair Cherry asked Ms. Franny Forsman to comment regarding

testimony she presented in support of SB 451. Ms. Forsman stated many counties perceive everything being fine when there is a problem that needs to be fixed. Chair Cherry thanked the Commission members for their support and involvement and shared there was only one testimony in opposition of SB 451. Mr. David Carroll added SB 451 was a strong bill with many contributions from Clark County, which faced high hurdles to get through legislation, but was worth the effort. Mr. Carroll suggested review for banning flat fee contracts in order to effect change. Chair Cherry stated he would meet with colleagues on July 23, 2015 concerning the Rural Subcommittee Report. Possible recommendations had been proposed by the Rural Subcommittee. The first recommendation stated the state of Nevada should fully fund indigent defense in the rural counties, the Supreme Court would take no action on this recommendation and would be discussed at the July 23, 2015 meeting. The second recommendation states the rural counties should use the Nevada Public Defender's Office, establish a County Public Defender's Office or continue to use the Contract Counsel method as a docket. The third recommendation states the State Public Defender's Office should handle all death penalty cases and appeals in the rural counties; that has been adopted by the Supreme Court, except the counties may provide counsel on a non-contract-fee basis. The fourth recommendation states there should be an Indigent Defense Board created. The Supreme Court would endorse the concept, which would be implemented by either the Executive or Legislative Branch in Nevada. The fifth recommendation states the Indigent Defense Commission (IDC) provide legislative support to Nevada State Public Defender's Office and the counties to rebalance the cost of indigent defense back to the state and away from the rural counties. The Supreme Court adopted that provision. The list of recommendations would be presented before the Supreme Court Justices on July 23, 2015, as a result of SB 451 and the Rural Subcommittee Report. Chair Cherry asked the Commission for questions or comments, there were no additional questions or comments.

VI. Status Update on Indigent Defense in Washoe County

- Chair Cherry asked Mr. Jeremy Bosler, Ms. Jennifer Lunt, and Mr. Bob Bell to provide a status report on indigent defense in Washoe County. Chair Cherry thanked Washoe County for the help they have extended to the public defender, the alternate public defender, and contract attorneys in Washoe County. Mr. Bob Bell, appointed conflict attorney administrator, stated the most significant change was based on conflict cases; what stays with the public defenders and alternate public defenders in Washoe County. Last year there were about 1000 cases handed out and currently it was about 40% of that, the numbers were decreasing. Mr. Bell added the number of cases that had been conflicted to them remained at about 1000 orders per year for the courts, including orders for; expert fees, witness fees, and investigative fees. Mr. Bell asked if there were questions. Judge James Todd Russell asked if it was accurate that there had been a significant decrease of number of cases in Washoe County. Mr. Bell stated the question would be best answered by the district attorney. The District Attorney stated the number of cases remained about the same; there had been no reported dramatic drop in numbers.

Mr. Bosler compared statistics from fiscal years 2013-2014 to 2014-2015, the Public Defender's Office had added about 800 more cases. The Public Defender's Office had seen increases in juvenile cases, misdemeanor cases, and the largest increase in involuntary commitment cases. Mr. Bosler stated the county and county management had been responsive to the Public Defender's Office needs, funding had been approved for one attorney and four support staff positions. Mr. Bosler reported on ongoing litigation regarding the wait list for restorative treatments for individuals at Lakes Crossing. Between 11 and 13 individuals from Washoe County were currently on the wait list for Lakes Crossing. There has been an agreement between the sheriff's office and Lakes Crossing to institute a protocol that would allow individuals to receive some restorative treatment while in custody of Washoe County Jail. Mr. Bosler reported

an Opiate Court, which would allow for medically assisted treatment for opiate offenders, had been established, due to efforts by the District Court. There were three individuals currently in that court. Mr. Bosler stated he hoped the medically assisted treatment for opiate addiction would be considered best practice and could be a way to get the individuals out of the criminal justice system. Mr. Bosler added Washoe County had the National Institute of Corrections (NIC) appraise their pretrial release practices, the NIC report had been forwarded to Commission members. The NIC recommended Washoe County adopt a validated risk assessment to determine their release of individuals arrested for criminal offenses in Washoe County and move away from a cash bail system. There was a question regarding the number of staff at the Public Defender's Office, Mr. Bosler stated there are 55 total staff members which include, 34 attorneys, but does not include the 4 support staff that would be hired. Ms. Forsman asked if there were plans in place to implement the recommendations from the pretrial report. Mr. Bosler stated there were parallel processes taking place; the Reno Justice Court had been in contact with Ohio State University to establish a risk assessment process. The NIC report had strictly been a District Court effort, the next step would be to gain support from the Commission or the Nevada Supreme Court to get the risk assessment purchased, validated, and implemented. Mr. John McCormick stated the Nevada Supreme Court was in process of putting together a Pretrial Risk Assessment Commission to review the issue and find a research-based solution, or recommendation, for the entire state. Mr. Bell asked for the Commission to keep Washoe County in mind for the developing statewide Pretrial Risk Assessment Commission. Mr. Jeff Wells asked for the Commission to add staff from County Management into the developing statewide commission when the time comes. Judge Russell asked to have a copy of the Juvenile Risk Assessment sent out to the Commission, Chair Cherry would ask Ms. Jamie Gradick to forward the report to the Commission. Ms. Jennifer Lunt reported there would be a meeting regarding the risk assessment; Judge Sattler would be another possible candidate to add to the Pretrial Risk Assessment Commission.

Ms. Lunt reported the Alternate Public Defender's Office (APD's) and the Public Defender's Office had initiated new conflict policies, as a result, there has been a shift in the caseloads; there have been fewer criminal court cases and more family court cases. Within the last year written conflict policies and transfer of case policies had been finalized. The APD's Office would continue work on policies in which the Public Defender's Office declares unavailability. Due to the change in conflict policies, caseload numbers are about 600 fewer than the previous fiscal year. Family Court cases are about 180 fewer than the previous fiscal year. Chair Cherry asked how many attorneys were currently at the APD's; Ms. Jennifer stated there were 9 total attorneys. Chair Cherry asked the Commission if there were additional questions or comments; the Commission had no further questions or comments.

VII. Status Update on Indigent Defense in Clark County

- Chair Cherry asked for a status update regarding indigent defense in Clark County. Mr. Phil Kohn reported a significant problem with overcrowding in the jails. Clark County had paid about 22 million dollars in overtime pay which affected all of Clark County. Mr. Kohn stated a risk assessment tool would be crucial in Clark County; he also thanked Mr. Jeff Wells for his support to the Clark County Public Defender's Office. Mr. Kohn stated it is time the Supreme Court considers a case load limit for death penalty cases; currently the numbers of cases are just too many. Chair Cherry asked for the number of staff at the Clark County Public Defender's Office, Mr. Kohn stated there were 115 lawyers and 200 parole staff. Chair Cherry asked for suggestions to address the death penalty case load situation in Clark County; Mr. Kohn suggested having the District Attorney's Office (DA) reevaluate how many cases they present to limit the number of cases sent to the Clark County Public Defender's Office. Chair Cherry asked Mr. David Carroll if he had suggestions for Mr. Kohn, Mr. Randy Pike, and Mr. David Schieck regarding the death penalty case issue. Mr. Carroll stated the ABA Death Penalty Guidelines based on the number or hours

state no attorney should handle more than three to four death penalty cases at one time. Ms. Forsman suggested the Commission could review what is being done in other jurisdictions regarding death penalty case loads. Finding a solution for limiting death penalty caseloads should not only include institutional defenders, but private practice attorneys as well.

Mr. Drew Christensen reported a screening committee made up of various partners recommends qualified attorneys to represent death penalty cases based on Rule 250. Currently the Private Bar had 23 death penalty cases set for trial; each attorney's case load was about 2-3 cases. Mr. Christensen reported a variety of case contracts which were currently being worked on which include juvenile, appellate, consequence, and complex trial case contracts. Mr. Chris Hicks asked what assurances prosecutors had that conflict attorneys were being included on life sentences. Mr. Christensen noted County Management would be notified of the issue and make appropriate decisions regarding the cases. Chair Cherry added Chief Justice James W. Hardesty had spoken about abolishing fast track as soon as possible. Mr. Bell stated there are attorneys that would take on fast track cases in the future.

Mr. Randy Pike from the Clark County Specialty Public Defender's Office reported there were a total of 51 active death penalty cases in Clark County. The Specialty Public Defender's Office reportedly had 10 trial attorneys, 1 appellate attorney, 6 family defense attorneys, and 1 forensic social worker. Mr. Pike and Mr. Schieck maintain a full case load of 4-5 death penalty trials and consistently try the most trials in the department. The numbers remain constant in death penalty cases. The Commission discussed concern regarding older death penalty cases being returned to the county 20-30 years later. Ms. Amy Rose from the American Civil Liberties Union (ACLU) stated it was very informative for her to gain knowledge of the issues that the counties currently face. Chair Cherry welcomed Ms. Rose to the Commission.

VIII. Status Update on Indigent Defense in Rural Nevada

- Judge Gary Fairman updated the Commission on the private contract for indigent defense in White Pine and Eureka counties which had been established earlier in the year. The State Public Defender's Office had provided defense services for both counties as well as Lincoln County, for approximately 25 years prior to the private contracts. Two years ago Lincoln County had established a private contract with a law firm which would provide defense services for the area. Although White Pine and Eureka counties had just begun their private contracts, Judge Fairman reported representation had been effective and transitioning from the State Public Defender's Office had been smooth. Chair Cherry asked if the private contracts were flat fee contracts; Judge Fairman stated the contracts for capital cases were not flat fee, otherwise it would be a flat fee contract for each attorney in respect to their obligations. Chair Cherry asked Judge Fairman what would happen if the order banning flat fee contracts was implemented. Judge Fairman stated when the time came to make that decision, it would be discussed.

Judge Russell updated the Commission on indigent defense for the First Judicial District. Judge Russell stated they had chosen to remain utilizing services through the State Public Defender's Office; the services provided by the State PD include free conflict counsels. The numbers in cases had decreased, currently the First Judicial District had no death penalty cases pending and there had been an increase in voluntary commitments. Judge Russell noted there was no surprise regarding to the legislative action taken in regards to conflict counsels.

Judge Nathan T. Young reported the Ninth Judicial District had added a fourth contract attorney and the case numbers remain in low numbers. There is one murder case, not death penalty case, pending for trial in Douglas County.

Ms. Joni Eastley added the worst thing that could happen for Nye County would be the abolishment of flat fee contracts. Nye County currently had five indigent defense attorneys which are paid a flat fee of \$125,000 per year. Ms. Eastley reported Nye County was in bad shape, economically.

IX. Status Update from State Public Defender's Office

- Ms. Karin Kreizenbeck reported White Pine and Eureka counties opted out of the next biennium and decided to contract independent attorneys. The State Public Defender's Office would continue to provide services to Storey County and Carson City. Ms. Kreizenbeck acknowledged it would be difficult for the State PD's Office to compete with independent contracts due to the difficult economic circumstances the counties currently face, without legislative or Supreme Court support it would be difficult for the State PD's Office to expand services to other counties. Chair Cherry asked if the State PD's Office would be willing to process appeals, Ms. Kreizenbeck stated the State PD's Office would be willing to take on appeals, petitions for habeas corpus, and other avenues to expand services to other counties. Chair Cherry asked for an update of staff for the State PD's Office, Ms. Kreizenbeck reported there were 8 attorneys consisting of 5 trial attorneys, 1 juvenile attorney, and 2 appellate attorneys. The State PD's Office also had 2 investigators and 4 support staff. Chair Cherry asked the Commission if there were additional questions or comments; the Commission had no further questions or comments.

X. Develop Local Plan Review Process

- Ms. Forsman reported the local plans were an integral part of the original order. In 2008 the requirements were that the urban counties must provide a plan to offer indigent defense. From 2009 to 2011 local plans remained on the agenda and were reviewed in 2011, unfortunately no plans were approved by the court. Ms. Forsman suggested appointing a subcommittee to create a procedure for submission and review of local plans for the court to approve, depending on the implementation of the order. Chair Cherry asked Ms. Forsman to chair the subcommittee and inform the Commission on who would form part of the subcommittee.

XI. Status Update on Caseload Data

- Ms. Diane Crow reported there were two changes in the rural counties; Douglas County had added a fourth attorney, decreasing their case loads per attorney, and White Pine and Eureka counties had discontinued utilizing services from the State Public Defender's Office. Ms. Crow discussed concern regarding all rural counties contracts in regards to private practice. Ms. Crow stated the biggest problem with contract attorneys is that they would also have their private practice caseload on the side. The Commission discussed executing a way to track whether or not an attorney requested an investigator for their case; Chair Cherry suggested beginning in Clark County to gather information. Chair Cherry also asked Judge Young to find a way to track information for investigators; Judge Young said he would also begin to track the information for future cases, which would be easier. Ms. Forsman suggested adding a way to track use of investigators to the local plans.

XII. Other Business

- There was no other business to discuss. Chair Cherry thanked the Commission and advised the next meeting would be in the fall.

XIII. Public Comment

- Determined there was no public comment.

XIV. Adjournment

- The meeting was adjourned at 3:00 p.m.