

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: Tuesday, October 30, 2018 @ 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	Nevada Supreme Court Building Conference Room A/B 408 E. Clark Avenue Las Vegas, NV	Second Judicial District Court Room 214 75 Court Street Reno, NV	Seventh Judicial District Court 801 Clark Street Ely, NV	Fourth Judicial District Court 571 Idaho Street Elko, NV
Teleconference Access: Dial-In # 1-408-740-7256 Meeting ID 1110011234				

All participants attending via teleconference should mute their lines when not speaking; it is highly recommended that teleconference attendees use a landline and handset in order to reduce background noise.

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 September 25, 2018 Meeting Summary*
- IV. Clark County Arraignment Process Update - *Mr. Drew Christensen*
- V. Review Process for Submitted Indigent Defense Plans Discussion – *Ms. Franny Forsman*
 - A. Revised Henderson Municipal Court Indigent Defense Plan – *Mr. Bill Zihlmann*
- VI. Caseload Standards Discussion/Update

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- VII. Status Update on ACLU of Nevada - *Ms. Amy Rose*
- VIII. Status Update on Indigent Defense Clark County - *Mr. Drew Christensen, Mr. Phil Kohn, Ms. JoNell Thomas*
- IX. Status Update on Indigent Defense in Washoe County – *Mr. John Arrascada, Mr. Bob Bell, Mr. Marc Picker*
- X. Status Update on the State Public Defender’s Office - *Ms. Karin Kreizenbeck*
- XI. Status Update on the Federal Public Defender’s office - *Ms. Megan Hoffman*
- XII. Update on Eighth Judicial District Court Homicide Case Pilot Project - *Mr. Chris Lalli*
- XIII. Other Business
- XIV. 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
- 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: 408 East Clark Avenue.

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Indigent Defense Commission

Summary Prepared by Jamie Gradick

September 25, 2018

1:30 p.m.

Attendees Present

Justice Michael A. Cherry, Chair
David Anthony
John Arrascada
Bob Bell
Russell Carr
David Carroll
Drew Christensen
Joni Eastley
Judge Gary Fairman
Franny Forsman
Christopher Hicks
Kriston Hill
Dana Hlavac
Judge Al Kacin
Professor Michael Kagan
Karin Kreizenbeck

Chris Lalli
John Lambrose
Judge Michael Montero
Rachelle Resnick
Judge Mason Simons
Dagny Stapleton
JoNell Thomas
Judge Kim Wanker
Jeff Wells
Bill Zihlmann

AOC Staff

Ben Graham
Hans Jessup
John McCormick

- I. Call to order
 - Call of Roll and Determination of a Quorum
 - Mr. John McCormick called roll; a quorum was present.
- II. Public Comment
 - There was no public comment.
- III. Review and Approval of the August 30, 2018 Meeting Summary
 - The summary was approved.
- IV. Las Vegas Municipal Court Mental Health Video Session Concerns (*much of this discussion was inaudible*)
 - Mr. Franny Forsman reported that she met with a group of representatives/stakeholders to discuss possible solutions to the issues.

- Currently, the plea offer is being done in open court with no privacy.
- Mr. Dana Hlavac reported that the City proposes the installation of voice-over, internet phones in more private areas for the attorneys to use.
 - There a few logistical issues with the use of these at the jail but those are being addressed.
 - Implementation is planned for end of November.
 - Balancing defendant rights with the need to keep incarceration time as limited as possible is a priority of the municipal court.
- Ms. Forsman and Mr. David Carroll both agreed that this addresses the privacy concerns.

V. Clark County Arraignment Process Discussion (*much of this discussion was inaudible*)

- Ms. Forsman and Ms. Amy Rose have observed the arraignment court; Ms. Forsman briefly discussed issues with confidentiality clients meeting the lawyer for the first time in this setting.
- Mr. Phil Kohn expressed concern with delays and with plea agreements in justice court not being taken in the district court. This process should be in the district court.
 - Ms. Forsman asked that someone else who is “in the trenches” be tasked with leading the work group.
 - Justice Cherry asked that the work group discuss concerns with the presiding criminal judge (Judge Valani) and with Chief Judge Bell.
 - Justice Cherry asked Drew Christensen, Chris Lalli and Franny Forsman to meet with these judges and be prepared to report back at the next meeting; Mr. Christiansen will take the lead on this.
 - Mr. Chris Lalli commented that 48 hour bind-overs cut down on jail time; this is not a “hill to die on” for the DA office.

VI. Henderson Municipal Court’s Indigent Defense Administrative Plan Discussion

- Ms. Forsman commented that there is a bigger issue regarding what to do with plans.
 - The IDC has never established a process for reviewing plans as they are submitted by the courts.
 - The IDC should be reviewing plans and providing feedback.
- Ms. Forsman has compared the plan submitted by Henderson Municipal Court with the model plan adopted by the IDC and referred attendees to the memo submitted as part of the meeting materials.
- Mr. Bill Zihlmann, as Court Administrator for Henderson Municipal Court, briefly explained how the recently submitted plan was drafted and offered to submit a revised version more closely aligned with the model plan by the October 30 IDC meeting.
 - Concerns were expressed regarding a lack of information on the Nevada Supreme Court’s website; it seems that courts are not updating/submitting plans on a regular basis.
 - Mr. McCormick commented the rural district courts were not required to submit plans; the urban municipal courts submitted their plans in 2009 as part of the ADKT 0411 file but those have not been updated in a meaningful way.

- Justice Cherry asked that Henderson Municipal Court submit a revised plan and that Mr. Zilhmann attend the next meeting to report on changes.
- VII. Payment for Public Defense Services Follow-Up
- Mr. McCormick presented the standards as outlined in the January 2008 ADKT 0411 Order and provided a brief overview of the materials as provided by David Carroll. (*See meeting materials for additional information*)
 - Mr. McCormick suggested the Commission draft a “colloquy” or canvass and a Nevada-specific financial affidavit definition to distribute, with the standards, to the courts. Alternatively, the Commission could request the Nevada Supreme Court to require this and provide the discussed documents as models.
 - Attendees agreed with this proposed course of action.
- VIII. Caseload Standards Discussion (*Parts of this discussion were inaudible*)
- Mr. Hans Jessup provided a brief summary of the information included in the meeting materials and informed attendees that FY18 statistics have been finalized.
 - Consistency between filings and dispositions.
 - Attendees discussed next steps on developing caseload standards.
 - Justice Cherry commented on how caseloads will be impacted if more judges are added to the bench; this will require additional attorneys as well.
 - Justice Cherry asked Mr. Jessup to speak with David Carroll to determine next steps and report back at the next meeting.
 - Mr. John Lambrose commented that the IDC should continue its work on caseload standards.
 - If the RTCC passes, this Commission could be a useful resource.
 - Justice Cherry commented on the issues with accurately counting caseloads in the rural counties and commented that the State and urban counties are the focus in this area right now.
 - Mr. Phil Kohn commented that the municipal courts are not reporting how many cases the contract lawyers are being assigned; we need these numbers.
 - Ms. Forsman commented that different courts are using different definitions of “case.”
 - Mr. Jessup explained that different entities are providing data and, even with a definition, each entity is limited by what the system can and cannot report/track. Courts capture data differently from how public defenders capture/track data.
 - Attendees disused the need for an order to define/require reporting; Mr. Lambrose commented that this is not necessary since the Commission was given the authority to develop caseload standards when empaneled.
 - Discussion was held regarding requiring the courts to report caseloads. Mr. McCormick commented that the system is not set up to allow the courts to track at a specific level; there is no one, uniform way to define or track cases across the state.
 - Judge Kim Wanker expressed concern; rural district court judges and public defenders wear “multiple hats,” must be knowledgeable about many areas, and have limited resources. What exactly are we including in our definition of “caseload”?

- IX. Status Update on ACLU of Nevada
- Ms. Forsman reported that the discovery process continues.
- X. Status Update on Indigent Defense in Clark County
- Ms. JoNell Thomas commented that most attorneys in her office are carrying 15-20 cases; the State is seeking death in a high number of cases.
 - Mr. Drew Christensen reported the increased number of homicide cases is causing challenges but there are also concerns with increasing domestic violence cases.
- XI. Status Update on Indigent Defense in Washoe County
- Mr. John Arrascada will look into caseload numbers and report back at the next meeting.
 - Mr. Bob Bell reported that caseload standards have not been recently studied in his department but he would like to work with David Carroll to look into it.
- XII. Status Update from the State Public Defender's Office
- Ms. Karin Kreizenbeck reported that caseloads have decreased in comparison to last year's data. The case types are more serious but the numbers are dropping; the data dictionary does not capture everything the State office does.
 - Justice Cherry asked that Mr. Jessup address this issue with Mr. Carroll.
- XIII. Status Update on the Federal Public Defender's Office
- Mr. David Anthony reported that caseloads vary with each unit; he will make inquiries and report back with additional data at the next meeting.
- XIV. Update on the Eighth Judicial District Court Homicide Case Pilot Project
- Mr. Lalli commented that the situation would be much worse if this program had not been instituted; caseloads for a homicide attorney are approximately 35-45 cases.
- XV. Other Business
- XVI. Adjournment
- Justice Cherry adjourned the meeting at 2:45 pm.

Justice Cherry –

My apologies again about having to jump off the last IDC call early. I have spoken to a number of people about your desire to keep moving forward on establishing caseload standards and the discussion that occurred on at the IDC meeting. Although I share your concern that public defense caseloads in much of Nevada are excessive, I also believe this is not the best time to be pushing for the court to adopt such standards for the following reasons:

1. Given the recent study and the work of the NRTCC I think it is best for all concerned parties to work toward the legislative adoption of the NRTCC recommendations. In my professional opinion, there is cautious optimism that a consensus can hold on indigent defense reform that spans the traditional hurdles of urban vs. rural, progressives vs. conservatives, etc. No matter where in the sand caseload standards are drawn there will always be advocates on either side saying that they are either: a) set too low and will bankrupt counties, or; b) are set too high so as to undermine effective assistance of counsel. Pushing for caseload standards now threatens the burgeoning consensus that the NRTCC was able to develop.
2. On top of that, it is simply true that the State of Nevada has no infrastructure to monitor or enforce said standards if adopted. The Court does not have the time nor the resources to do so. And, that is the point of the NRTCC recommendations – the state needs: a) to build the infrastructure in which standards are debated and adopted in a consensus manner; b) ensure that counties and practitioners have uniform reporting tools; c) to fund additional lawyers needed to meet standards; and, d) to be able to monitor compliance.

I should note that I have been very impressed with the work group that the Nevada Association of Counties has put together to develop a uniform caseload reporting tool that addresses concerns of small, medium and large counties as well as the concerns of criminal justice stakeholders, policymakers and county management. I suspect that they will be at a point of revealing the tool at the next IDC or NRTCC meeting. The more these concerns can be addressed in a consensus manner at the local level is, in my professional opinion, a very productive step toward the adoption of the broader NRTCC recommendations. I prefer to see this type of consensus work encouraged rather than threatened by a caseload discussion that could potentially send previous adversaries back to old entrenched corners.

Indeed, as we look toward the coming legislative session, the draft BDR and the next NRTCC meeting, I recommend that a small working group start dealing with some of the potential hurdles that still await (e.g., how to best ensure that the state becomes a true partner with the counties in regards to funding the right to counsel).

I am happy to discuss all of this with you when you have a moment. Thank you.

David Carroll, Executive Director

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