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 AGENDA

Indigent Defense Commission

VIDEOCONFERENCE

Date and Time of Meeting: Friday March 22, 2013, 10:00 a.m.

Place of Meeting:

Carson	Clark	Washoe
Supreme Court Library Room 107 201 S. Carson Street Carson City, Nevada	Regional Justice Center AOC Conference Room B 200 Lewis Avenue Las Vegas, Nevada	Second Judicial District Court Room 220B 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 June 22, 2012, Meeting*

IV. Indigent Defense Data Dictionary Revision and Data Collection Update*

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

VI. Draft 6th Amendment Center Consensus Document*

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

VIII. Flat Fee Contracts in Rural Nevada*

Supreme Court Building ♦ 201 South Carson Street, Suite 250 ♦ Carson City, Nevada 89701 ♦ (775) 684-1700 · Fax (775) 684-1723

Regional Justice Center ♦ 200 Lewis Avenue, 17th floor ♦ Las Vegas, Nevada 89101

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

X. Development of Caseload Standards*

XI. Future of the Indigent Defense Commission*

XII. Next Meeting Date and Location*

XIII. 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.

XIV. 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.

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MEETING SUMMARY
Prepared by Erin Miller

INDIGENT DEFENSE COMMISSION (IDC)
Friday, June 22, 2012
Videoconference*
Regional Justice Center, 17th Floor, Room B, Las Vegas
Supreme Court Building, Library Room 104/105, Carson City
2nd Judicial District Courthouse, Room 220B, Reno
10:00 a.m.

Attendees
Chief Justice Michael A. Cherry, Chairman
Judge Max Bunch
Judge Kevin Higgins
Judge Scott Pearson
Judge Jerome Polaha
Judge Jack Schroeder
Robert Bell
John Berkich
Jeremy Bosler
David Carroll
Al Casteneda
Drew Christensen
Diane Crow
Joni Eastley
Paul Elcano
Richard Gammick
John Helzer
Stephanie Heinz
Cassandra Jackson
Phil Kohn
John Lambrose
Jim Lester
Jennifer Lunt
Kay Lyon
John Petty
Katrina Rogers
Jim Shirley
Charles Swift
Steve Tuttle
Jeff Wells

AOC Staff
Stephanie Heying
Hans Jessup
John McCormick
Erin Miller
Robin Sweet

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.

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II. Public Comment

There was no public comment.

III. Approval of Minutes of March 19, 2012, Meeting

The summary of the March 19, 2012, meeting was approved as published.

IV. Reactivation of the Death Penalty Resource Center

Chief Justice Cherry asked the Indigent Defense Commission (IDC) if there was interest in pursuing a Death Penalty Resource Center with the Nevada Legislature. Mr. John Lambrose stated as long as there was a death penalty, there should be a resource center, but he did not know how it would be funded. Mr. David Carroll stated that most states, if they have a resource center, have resource centers as part of the state public defender's system. There have been very few, if any, reactivated Death Penalty Resource Centers that Mr. Carroll was aware of, but he stated a resource center was needed.

Ms. Diane Crow stated that, for the 2013 Legislative session, there were too many other issues so she would be unable to legislative for a resource center, but she supported having it under the Federal Public Defender's Office. Mr. Phil Kohn stated that people needed the support of a resource center. Mr. Jeremy Bosler stated the Washoe County Public Defender's Office would support a resource center, but he needed to know more details to know what Washoe County could do. Mr. Bosler noted a benefit to having a Death Penalty Resource Center would be that it could provide regular training on capital cases. Chief Justice Cherry deferred the reactivation of the Death Penalty Resource Center to the next meeting in order to obtain more information.

V. Indigent Defense Oversight Commission

Mr. Lambrose stated Ms. Franny Forsman wanted to remind the IDC that, a few years ago when the first recommendations were made, the Court approved a continuing indigent defense commission that would oversee indigent defense in the state. The members of the commission would include members of the defense bar, members of the Nevada Legislature, County Commissioners and Managers, and an ex-officio justice or judge from a major metropolitan area. Ms. Crow stated she was asked to pull the request from the 2009 Legislative Session, so it never made it to the Legislative Committee.

Mr. Jeff Wells stated there were issues in the 2009 bill request with the Indigent Defense Oversight Commission having primary oversight and rule making authority during the indigent defense. Mr. Wells stated that, in his opinion, the Supreme Court would have primary oversight of the practice of law. The 2009 request also stated the Oversight Commission would set up performance standards, but the Supreme Court had already set those up. Mr. Wells noted Clark County does not object to an Indigent Defense Oversight Commission, but the Commission needs to remain an advisory commission and not have unelected people spending money out of the Legislature or local governments.

Mr. Bosler stated he would be happy to work with Mr. Wells to draft legislation to present to the 2013 Legislature to address the concerns. Mr. Lambrose suggested including Mr. John Berkich and Ms. Joni Eastley in the discussion about drafted legislation.

Chief Justice Cherry asked that Mr. Bosler, Mr. Wells, Mr. Berkich, and Ms. Eastley meet and work on legislation for an Indigent Defense Oversight Commission.

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VI. Reno Justice Court Mandatory Status Conference Program

Judge Pearson gave an overview of the Reno Justice Court Mandatory Status Conference (MSC) Program and stated there needed to accurate means of measuring the performance of the new procedures. Reno Justice Court was finding ways to ensure the delivery of the police and lab reports could be expedited to the District Attorney's (DA's) Office, who could then provide that information in a timely manner to the Public Defender's Office, who could convey the information to their client. Judge Pearson noted meetings were still being held to find ways to improve the quality of justice and remove any inefficiencies in the delivery of information.

Chief Justice Cherry asked if all the Justices of the Peace at Reno Justice Court were involved in the MSC Program. Judge Pearson stated the entire Reno Justice Court had approved and adopted the new procedures and the MSC Program. Judge Pearson noted the MSC Program occurred 20 years ago in Douglas County. Reno Justice Court, Sparks Justice Court, and Incline Justice Court had a version of the MSC Program for misdemeanors for pre-trial for over 10 years.

Judge Pearson stated the MSC Program became effective Mid-August of 2011. There was immediate impact with the subpoena numbers the DA's Office had to issue, compared with other years. There was no change regarding the resolution of cases, but the meetings between the defense counsel and the defendant were occurring much sooner, so the victims, witnesses, and police officers were not needlessly standing around while the attorneys discussed the case.

Mr. John Helzer stated concerns expressed regarding Early Case Resolution (ECR) might have some application to the MSC Program, and he needed time to look over those concerns along with the MSC Program. Mr. Helzer stated one thing the DA's Office is actively engaged in, even without ECR or the MSC Program, is a strong effort with law enforcement to have more complete reports sent. There has been a progressive stance taken by the DA's Office to address the problem of incomplete reports. Mr. Helzer thought the MSC Program and ECR needed to stay at the local level.

Mr. Robert Bell stated some sort of early case resolution program would be a good thing and save time and money, and the private attorneys he has dealt with were also for some sort of program, whether it be ECR or the MSC Program.

Ms. Jennifer Lundt stated the attorneys at the Alternate Public Defender's Office liked the MSC Program because it got them involved with the clients much quicker and gave them access to offers in an expedited manner. Ms. Lundt stated she supported any system that would help expedite cases through the criminal justice system and protect the rights of clients. In her opinion, the MSC Program does that.

Mr. Bosler stated the Washoe County DA's Office had initiated an E-Discovery process that improved the system. He stated there were concerns with the ECR program and discovery and meaningful advice. Mr. Bosler noted the MSC Program had alleviated those concerns because of the E-filing and E-Discovery processes. He noted the biggest benefit with the MSC Program, compared to ECR, was the fact that a bail hearing could be set one day after the initial MSC hearing, and there could be a separate hearing on bail not connected to negotiations. Mr. Bosler stated, in the abscense of ECR direct filing, the MSC Program has taken its place and is more successful in some sense and more consistent with ADKT 411 and the Model Plan.

Mr. Kohn stated his concern was the thought of getting around a Public Defender when a county is over 100,000 people in population. There were three important cases that occurred that recognized that the

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judicial system was not a system of trials, but a system of pleas, and attorneys have to effective at the time of plea and sentencing. Mr. Kohn stated he supported the MSC Program, but he could not support anything that goes around the Public Defender.

Ms. Katrina Rogers stated she agreed with Mr. Kohn. The MSC Program was program, providing it stays in line with Constitutional standards as it moves forward, the ACLU could support.

Mr. Lambrose stated the MSC Program started in Reno Justice Court should be a template that the rest of the state should follow.

VII. ABA Resolution 101B Re: Discovery

Chief Justice Cherry deferred discussion of ABA Resolution 101B to the next meeting.

VIII. Washoe County ECR Update

Mr. John Berkich stated that the Second Judicial District Court issued an order that an ECR program be instituted in Washoe County. It would be a direct filing program. Mr. Berkich stated the Washoe County Commission would be approached on June 12, 2012, seeking their approval of a contract with Washoe Legal Services (WLS) for an ECR pilot project to commence July 1, 2012, and end in December of 2012. The Washoe County Manager's office stated they also supported the MSC Program and hoped the ECR program and the MSC Program could work together in some way.

Mr. Kohn asked Mr. Berkich which program would cost Washoe County more. Mr. Berkich stated the estimated cost would be $60,000 for the 6 month pilot program.

Mr. Berkich stated the decision was made, when the first pilot program was started in August of 2011, to contract with WLS because the Public Defender's Office could not support and participate in the program due to concerns they had with ECR.

Mr. Paul Elcano explained the MSC Program was 14 days slower than ECR. On jail days alone, ECR would save Washoe County approximately $1.6 million, so there would not be an added layer of cost, there would be cost savings. The savings include having 1,000 cases for 2 lawyers and using $120 per day.

Mr. Elcano stated under the MSC Program, the defendants need to be transported to the court, there needs to a daily calendar, and each lawyer needs to show up for the conference. The ECR program avoids that since the ECR lawyer makes one trip to the jail to see clients. Under the MSC Program, defendants are seen with one week. Under ECR, the defendants are seen within 48 hours. If there is an issue with discovery, the ECR lawyer would not handle the case. Under the MSC Program, different lawyers cut different deals, so there are administrative difficulties. Under ECR, there would be one lawyer at each end and there would be a consistent flow of offers.

Mr. Elcano noted the MSC Program and ECR are not mutually exclusive. ECR was designed to handle two types of cases: court cases being reduced to misdemeanors and people needing drug rehabilitation. Mr. Elcano stated the MSC Program was designed, from the administrative standpoint, to handle cases other than the two types of ECR cases. He was not opposed to the MSC Program and noted that ECR was not designed for all cases. The two types of early case resolution programs were complimentary, and cases not settled in ECR or not designed for ECR could satisfactorily go through the MSC Program.

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Ms. Rogers asked Mr. Elcano if there was going to be data collection and review of post-conviction relief after the pilot program ended to see if there were any issues regarding pleas resolved through ECR. Mr. Elcano stated he did not see any problem with collecting and reviewing that data. He stated the data collection WLS was concerned with was that not every defendant took the plea. WLS planned for a 20 percent mutual rejection rate. If, as a matter of course, the offers changed and got much better, it would be of concern to Mr. Elcano and the ECR lawyer that they may not be receiving full information or making the best decisions for the client if the offers always get sweeter. The District Attorney and WLS have determined they are going to track the cases with rejected pleas to see how they are ultimately resolved to make sure there is no steady pattern where one of the two sides was not living up to its side of the bargain. The post-conviction data could be easily tracked, although in drug court, there is no conviction so there would be no post-conviction relief.

Mr. Kohn stated the problem with any early case resolution was that the need for full discovery. He had concerns with how Mr. Elcano, the District Attorney, and WLS would evaluate the success of ECR.

Mr. Elcano explained that the ECR lawyer would take the plea to the defendant and explain how much information was had at the juncture of the offer and how good the offer was based on the information the lawyer had at that time. It would be on a case by case basis: some cases would need more discovery, and in some cases, based on what the defendant told the lawyer, the deal would be better with less discovery.

Mr. Lambrose reminded the IDC that when Mr. Elcano and Mr. Richard Gammick came to the IDC with the ECR proposal in November of 2011, the IDC stated ECR was a local issue and needed to stay within the Second Judicial District Court, but the IDC felt that the Model Plan would have to be modified if the Second Judicial District wanted ECR.

Mr. Bosler stated he agreed with Mr. Lambrose. The IDC had a vote that if an ECR program was going to be constructed with someone other than the Public Defender, it would require a modification of the Model Plan to be submitted to the IDC and Supreme Court of Nevada. Mr. Bosler stated he did not believe that had been done, and that needed to be the first order of business if the IDC was to discuss ECR further.

Mr. Bosler stated he was unaware the ECR program would be for misdemeanor cases. He was told ECR was only going to be for felony cases. If the ECR program was going to be used for misdemeanor cases, the IDC should know the Washoe County Public Defender's Office staffed the jail every day for misdemeanor cases, so there is no niche of misdemeanor defense the Public Defender's Office could not participate in. The Public Defender's Office also provided representation in Drug Court. Mr. Elcano reiterated the ECR program was for felony cases reduced to misdemeanors.

Mr. Bosler stated he was troubled by Mr. Elcano's statement that there would be two lawyers handling 1,000 cases. If there were cases that had repercussions or could result in people going to prison if they flunked out of Drug Court, one lawyer handling 500 cases was a cause for concern.

Mr. Bosler stated that if the state could provide discovery sufficient to negotiate a case, there was no reason the Public Defender could not be involved. The Public Defender's Office had already done an ECR program in 1997 and improved upon the ECR model with the current MSC Program. Mr. Bosler noted the need for the ECR pilot program had been removed.

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Mr. Berkich stated Judge Hardy did not order Washoe County to fund the ECR program, he simply referred back to Washoe County's original commitment to the contract and funding the ECR pilot program.

Mr. Elcano stated WLS had hired a competent lawyer who had been a prosecutor and a defense lawyer, and Mr. Elcano was criminal lawyer for most of his career, so the criminal defense bar was not having cases stolen from them. Mr. Elcano stated there were private members of the defense bar that supported ECR. He explained Washoe County came to Mr. Elcano to participate in ECR through WLS, so the ECR program was not something he had tried to pursue. However, Mr. Elcano noted he believed in the program and believed it was something Washoe County needed. He hoped WLS and the ECR program received their chance to execute the pilot program so the data could be collected and analyzed and everyone could know if the ECR program failed or succeeded.

Chief Justice Cherry stated the MSC Program and ECR program would exist for now and given a chance, and both programs would be reevaluated and reported on at the next IDC meeting.

IX. Indigent Defense Data Collection Update

Ms. Robin Sweet stated ADS, the software firm that provided the case management system (CMS) many rural counties used, was contact and they can make changes to track many of the indigent defense statistics for a reasonable cost. However, changes to track the conflict cases and specialty cases would be a significant burden and cost because ADS would have to change and rewrite a whole portion of the CMS. Ms. Sweet recommended for the IDC to proceed with the initial changes that could be done for a reasonable cost in a reasonable timeframe and recognize that the statistics would be limited, but it would be more data than is currently being collected.

The Commission agreed with Ms. Sweet's suggestion.

X. Flat Fee Contracts in Rural Nevada

Chief Justice Cherry stated there were two new judges in Elko County, there would be one new judge in Churchill County, and there would be one new judge in Pahrump. He stated he did not know how the new judges would approach flat fee contracts. Chief Justice Cherry asked Mr. John McCormick and Mr. Lambrose to get together with the rural judges and decide where everyone stands on the subject of flat fee contracts.

Mr. Lambrose explained that the IDC primarily wanted to review rural flat fee contracts. The flat fee contracts in Clark County and Washoe County were good flat fee agreements, but they were expensive. However, the flat fee contracts in the rural counties needed to be reviewed and discussed. Mr. Lambrose clarified that he did not know that a bad thing was happening in rural Nevada with regards to flat fee contracts, and he knows there are many people in the rural areas trying to do the best they can under the circumstances they have, but it is time to get the information and figure out solutions if issues that could occur with the flat fee contracts were occurring. The issues of flat fee contract in rural Nevada dovetailed with the issue of case load standards.

Mr. Lambrose suggested having Mr. McCormick get the information regarding the rural flat fee contracts and data on how many flat fee contract cases were going through the system, and the IDC could move forward when they have received all the information. Chief Justice Cherry asked Mr. Lambrose to work with Mr. McCormick to get the information.

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Mr. Jim Shirley asked if Mr. Lambrose was talking about the primary public defender contracts or conflict contracts. Mr. Lambrose stated he was not talking about counties that had an actual county employee who was a Public Defender. Mr. Lambrose stated he wanted information on any flat fee contract, including conflict contracts, that did not have the fail safe clauses the Clark County and Washoe County had in their contracts.

Mr. Jeff Wells stated that 90 percent of the cost of indigent defense was locally driven, not state driven. He stated that Clark County pays $11.8 million just for conflict counsel.

Mr. Berkich stated that for the 2012 fiscal year, Washoe County spent around $11 million for indigent defense plus $600,000 for Mr. Bell's tertiary conflict program.

Mr. Bell stated he was glad to hear there was a distinction being made between rural flat fee contracts and the urban flat fee contracts because they were different.

Mr. Shirley stated that in Pershing County, there was a flat fee contract for conflict counsel. Historically, the conflict counsel earned far above what the statutory rate would be because Pershing County did not have large conflict case loads. There was a clause in the contract for Category A felonies, and all investigative and expert fees were covered. Mr. Shirley stated the problem happened when there was a third conflict because those cases cost the County astronomical amounts of money compared to the conflict contracts. Mr. Shirley stated that flat fee contracts were a local issue that had to be driven by the county commissioners and local judges.

Mr. Lambrose stated he did not want to define a problem with flat fee contracts before the IDC received any data or information. He stated the Commission promised five years ago to revisit the rural flat fee contracts. The flat fee contracts might work well, but flat fee contracts could be problematic if the data was never examined. If the flat fee contracts worked, Mr. Lambrose did not want to change anything, but if there were issues with the contracts, the IDC needed to look at solutions.

XI. Next Meeting Date and Location

The Commission will be notified of the next meeting date.

XII. Public Comment

There was no public comment.

XIII. Adjournment

Chief Justice Cherry adjourned the meeting.

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Indigent Defense Data Dictionary

The Indigent Defense Commission approved and directed the collection of indigent defense data on October 2010. The objective for gathering indigent defense data is to identify and define basic data elements for counting of cases assigned to appointed or indigent defense counsel. Phase I is expected to define those basic cases assigned and disposed categories necessary to begin understanding the caseload of appointed counsel. Future phases will expand data elements to be captured by counsel.

Indigent Defense Case Type Definitions

Felony Case: A subcategory of criminal cases in which a defendant is charged with the violation of a state law(s) that involves an offense punishable by death, or imprisonment in the state prison for more than 1 year.

Gross Misdemeanor Case: A subcategory of criminal cases in which a defendant is charged with the violation of state laws that involve offenses punishable by imprisonment for up to 1 year and(or) a fine of $2,000.

Misdemeanor Non-Traffic Case: A criminal subcategory in which a defendant is charged with the violation of state laws and/or local ordinances that involve offenses punishable by fine or incarceration or both, the upper limits of which are prescribed by statute (NRS 193.120, generally set as no more than 6 months incarceration and/or $1,000 fine).

Misdemeanor Traffic Case: A criminal subcategory for Justice and Municipal Courts in which a defendant is charged with the violation of traffic laws, local ordinances pertaining to traffic, or federal regulations pertaining to traffic.

Juvenile Case: A subcategory of juvenile cases that includes cases involving an act committed by a juvenile, which, if committed by an adult, would result in prosecution in criminal court and over which the juvenile court has been statutorily granted original or concurrent jurisdiction.

Additional Indigent Defense Caseload Statistics

Death Penalty: The number of defendants for which the District Attorney's Office has filed the notice of intent to seek the death penalty, in accordance with Supreme Court Rule 250.

Probation Revocations: The number of defendants for which post-adjudication criminal activity involving a motion to revoke probation due to an alleged violation of one or more conditions of probation (usually from the Department of Parole and Probation) or suspended sentence. The unit of count for revocation hearings is a single defendant, regardless of the number of charges involved. Revocation hearings are counted when the initiating document (e.g., violation report) is received by the court.

Informal Juvenile Hearing (involving a judicial officer): The number of hearings/events involving a juvenile in which no formal charge has been filed with the court. Only record an informal hearing if it is held on a matter that is not a part of an existing case. The court may impose a disposition as a result of the informal hearing.

Juvenile Detention Hearing: The number of hearings requesting a juvenile to be held in detention, or continued to be held in detention, pending further court action(s) within the same jurisdiction or another jurisdiction. Record a detention hearing that is held.

Conflicts: The number of defendants during the reporting period that a lawyer's appointment to case ended because of a conflict that necessitated the transfer of the case to another lawyer.

Specialty Court Cases: A count of cases in which a lawyer represents a defendant in a specialty court program, i.e., drug court or mental health court. This type of case should be counted in this additional category when the defendant appears during a specialty court session within the reporting period or if the indigent defense counsel is assigned to the defendant for specialty court.

Justice Court Felony/Gross Misdemeanor Reductions: A number of defendants for which any felony or gross misdemeanor charge was totally (and only) adjudicated in justice court.

Caseload Inventory

Unit of Count

For felony, gross misdemeanor, and misdemeanor criminal cases, the unit of count is a single defendant on a single charging document (i.e., one defendant on one complaint or information from one or more related incidents on one charging document is one case, regardless of the number of counts)[1]. For juvenile cases, the unit of count is a single juvenile defendant on a single petition regardless of the number of counts. For traffic cases, the unit of count is a single case (by defendant) based on an original charging document from a single incident.

For defendants in cases whereby multiple charges are involved, courts will utilize a hierarchy (described below) when classifying the case for statistical purposes. For example, if a defendant is charged on a single charging document with a felony and a gross misdemeanor, for statistical purposes, the case is counted as a felony.

Felony and gross misdemeanor cases in Justice Court are counted when counsel is appointed to the case by the Court.

Misdemeanor and traffic cases in Justice and Municipal Courts are counted when counsel is appointed to the case by the Court.

Additional charges such as failure to appear or habitual criminal are not counted at this time because those are added after the initial charging document.

Appointment: Any time a lawyer is asked or assigned to act on behalf of a person in a criminal or juvenile matter by a judicial officer. An appointment ends when a lawyer is no longer involved in a case for whatever reason. There can be multiple appointments for a single defendant/case during the duration of the case.

When to Count Filings

Beginning Pending: A count of cases by defendant that, at the start of the reporting period, are awaiting disposition.

New Appointments: A count of cases by defendant that have been assigned counsel for the first time of each new appointment.

District courts should count a case where counsel was appointed at justice court for preliminary proceedings on felony and gross misdemeanor cases as a new appointment when the case has been bound over to district court and indigent defense counsel remains appointed.

Warrant (Placed on Inactive Status): A count of cases in which a warrant for failure to appear has been issued, a diversion program has been ordered, or other similar incident that makes the case inactive.

Returned from Warrant (Re-activated): A count of cases in which a defendant has been arrested on a failure to appear warrant and has appeared before the court, returned from diversion program, or other similar occurrence that makes the case active.

Adjudicated/Disposed/Closed Cases: A count of cases by defendant for which an original entry of adjudication has been entered or for which an appointment has ended.

Ending Pending: A count of cases by defendant that, at the end of the reporting period, are awaiting disposition.

Set for Review: A count of cases that, following an initial Entry of Judgment during the reporting period, are awaiting regularly scheduled reviews involving a hearing before a judicial officer. For example, if a status check hearing is ordered to review post adjudication compliance.

1 This definition varies from the national standard as promulgated by the National Center for State Courts in that it counts a single defendant on a single charging document, while the national standard counts a single defendant with a single incident/transaction. This means that the Nevada measure herein, will under report caseload at times when one defendant is charged with separate crimes from separate incidents that may necessitate indigent defense counsel to treat the appointment as multiple cases. In the event that the capacity to accurately count cases in line with the national model becomes available in Nevada, the intent of the Subcommittee is that this definition be revisited.

Manner of Disposition

Unit of Count

For felony, gross misdemeanor, and misdemeanor criminal cases, the unit of count is a single defendant on a single charging document (i.e., one defendant on one complaint from one or more related incidents is one case, regardless of the number of counts)[2]. A criminal case is considered disposed when final adjudication for that defendant or case occurs. For statistical purposes, final adjudication is defined as the date of sentencing, date of adjudication, or date charges are otherwise disposed, whichever occurs last. A case may be considered closed for an appointed attorney when the appointment ends regardless of adjudicatory status. Counsel should count the case adjudicated or disposed in the same category as it was counted in (felony in, felony out).

2 This definition varies from the national standard as promulgated by the National Center for State Courts in that it counts a single defendant on a single charging document, while the national standard counts a single defendant with a single incident/ transaction. This means that the Nevada measure herein, will under report caseload at times when one defendant is charged with separate crimes from separate incidents that may necessitate indigent defense counsel to treat the appointment as multiple cases. In the event that the capacity to accurately count cases in line with the national model becomes available in Nevada, the intent of the Subcommittee is that this definition be revisited.

Reclaiming Justice

March 2013

SIXTH AMENDMENT CENTER

ensuring fairness & equal access to justice

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The Sixth Amendment Center seeks to ensure that no person faces potential time in jail without first having the aid of a lawyer with the time, ability and resources to present an effective defense, as required under the United States Constitution. We do so by measuring public defense systems against established standards of justice. When shortcomings are identified, we help states and counties make their courts fair again in ways that promote public safety and fiscal responsibility.

Cover photo:
Carson City, Main Street (c. 1870). Nevada Historical Society.

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Sixth Amendment Center
PO Box 15556
Boston, MA 02215

Published in the United States of America in 2013 by the Sixth Amendment Center

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Printed in the United States of America
Publication Number: 2013.001

Reclaiming Justice:

Understanding the History of the Right to Counsel in Nevada so as to Ensure Equal Access to Justice in the Future

March 2013

Prepared for:

The Nevada Supreme Court
Indigent Defense Commission

By:

Sixth Amendment Center
P.O. Box 15556
Boston, MA 02215
www.sixthamendment.org

In response to the Nevada Supreme Court's concerns about the manner in which poor defendants are provided the right to counsel in criminal and juvenile delinquency cases and the quality of services rendered, the Court created the Indigent Defense Commission (IDC) through administrative order ADKT-411, issued on April 26, 2007. The IDC is composed of judges, prosecutors, defense attorneys, county executives and other criminal justice stakeholders and is charged with studying how counties provide services and recommending to the Court appropriate changes.

Preface

Serious problems exist today in rural Nevada when it comes to providing attorneys to poor people who face the potential loss of liberty at the hands of the criminal justice system. The indigent accused may sit in jail for several weeks or even months, waiting to speak to an attorney while witnesses' memories fade and investigative leads go cold. Once the defendant is appointed an attorney, that individual defendant may be one of several hundred who are all vying at the same time for the attention of that single attorney. Worse, the overburdened attorney will often have financial conflicts that pit his ability to put food on his family's dinner table against his ethical duty to zealously advocate solely in the best interests of his client.

In 2007, the Nevada Supreme Court established an Indigent Defense Commission ("Commission") to examine and make recommendations regarding the delivery of constitutionally required indigent defense services in Nevada. The following year, the Commission's Rural Subcommittee went on record that "rural counties are in crisis in terms of indigent defense," noting that one county in particular has an annual public defense attorney caseload of "almost 2,000 per contract lawyer." Not even the most competent lawyer on earth can effectively open, investigate, and dispose of cases at a rate of nearly five and a half cases per day, every single day of the year, weekends and holidays included. If your family member or neighbor or colleague was accused of a crime, would you want them to have an attorney with no time to do anything other than simply pass along whatever plea deal the prosecutor has offered?

Since 2008, numerous Nevada Supreme Court administrative orders have improved the right to counsel in the state's urban centers. This is most notable in Clark County (Las Vegas), where public defender caseloads are now reasonable, the conflict assigned counsel panel is free of undue judicial interference, and attorney contracts do not impose financial incentives for attorneys to do as little work as possible on a case. But fixing the "crisis" in rural Nevada has proven to be more difficult. There are a wide variety of reasons for this, including a lack of attorneys to do the work, the geographic expanse of most rural counties, and limited infrastructure to train and evaluate attorneys. Perhaps most importantly, though, most rural Nevada counties have insufficient resources to keep pace with the United States Supreme Court as it continually clarifies and expands the responsibilities that attorneys owe to their clients under the Sixth Amendment.

In August 2012, Chair of the Commission and then-Chief Justice of the Nevada Supreme Court Michael Cherry asked the Sixth Amend-

ment Center ("6AC") to suggest a consensus approach toward achieving constitutionally required provision of the right to counsel throughout the state, and in the rural counties specifically. The 6AC originally envisioned advocating for the creation of a permanent indigent defense commission to administer right to counsel services in those counties where no public defender office is required under Nevada Revised Statutes 260.010. That is, Clark (Las Vegas) and Washoe (Reno) counties would be exempt from state oversight by a permanent commission, while the remaining counties would be relieved of the burden of financing the state's requirement to provide indigent defendants with effective lawyers in exchange for state supervision of local public defense services. And, though our final recommendations closely align with that projected aim, the reasons why Nevadans should support these recommendations changed significantly as we conducted our work.

The 6AC started out with the intent to place the right to counsel in its historical libertarian context. The argument goes: the Bill of Rights was created to protect the individual from overreaching by big government. Just as the Second Amendment guarantees the individual the right to bear arms to protect liberty and is a check against the potential tyranny of big government, so too does the Sixth Amendment protect an individual's liberty from overreaching by the massive machinery of governmental law enforcement. Our hope was that Nevada criminal justice stakeholders and policymakers would view the right to counsel as something well within Nevada's own uniquely libertarian worldview and support recommended changes.

But a funny thing happened on the way to making that argument. In researching the foundation of Nevada's libertarian culture, the 6AC discovered that the state's judicial and legislative history is rich with a commitment to equal access to justice for poor people in criminal proceedings; a state commitment that far predates any federal action on the issue. Indeed, as early as 1875 to 1879 Nevada was the very first state in the union to authorize the appointment of attorneys in all criminal matters, including misdemeanors, and the required payment of attorneys for the services rendered.

The father of the right to counsel in Nevada, Thomas Wren, epitomizes the rugged individualism that is characteristic of Nevadans. Wren was a self-made man, who rose from abject poverty as an orphan to eventually serve as the state's lone U.S. Congressman from 1877 to 1879. Interestingly, Wren was a prosecutor from Austin, in Lander County, then Nevada's second largest city, before he became a state assemblyman from Eureka. And far from being a bleeding heart, Wren argued on the floor of the Assembly for the expanded use of capital punishment during the same legislative session that he cemented Nevada's commitment to the right to counsel. As Wren demonstrated, being a law-and-order prosecutor does not require one to resist indigent defense improvements.

Nevada also has its own Clarence Earl Gideon. Gideon was the man who challenged a Florida court's decision to deny him an attorney. His travails eventually led the United States Supreme Court, in March of 1963, to hand down the landmark case of *Gideon v. Wainwright* that requires all states to provide competent representation to poor people facing felony charges

in state courts. In Nevada, that man was Shepherd L. Wixom. His story, told in the following pages, did not result in his freedom (as Gideon's story did). However, it did lead the Nevada Supreme Court in 1877 to strengthen the right to counsel law that Wren had introduced two years prior.

The first part of our report, *Reclaiming Justice*, details the history of the right to counsel in Nevada. We believe this story shows that the people of Nevada have always viewed the right to counsel not as a federal mandate to be resisted, but as a bedrock principle upon which the state was founded. Nevadans should embrace this history and this view today.

The report also demonstrates that the serious systemic deficiencies plaguing rural counties, detailed in the second part of the report, are a relatively recent development (beginning in 1975) and a turning away from Nevada's longstanding history of ensuring equal justice to people of insufficient means. We hope the recommendations set out in *Reclaiming Justice* contribute to the restoration of Nevada's deep-rooted commitment to due process and that justice in rural Nevada will – once again – no longer depend on the amount of money one has in his pocket.

Acknowledgements

The Sixth Amendment Center (6AC) acknowledges the Nevada Supreme Court's Rural Courts Coordinator and Court Services Supervisor, John McCormick, for his supervision of this project. Mr. McCormick is one of a number of Nevadans providing significant assistance in the research and writing of this report.

Natacha Faillers, Archives Assistant of the Nevada State Archives, found the original and amended versions of Thomas Wren's Assembly Bill 122 (1875), which authorized payment to appointed counsel, and she unearthed the prison records and pardon requests of Shepherd L. Wixom. She also tracked down biographical information on Thomas Wren contained in the only known copy of a short-lived Virginia City periodical, *Nevada Monthly*, at the Huntington Library in San Marino, California. We would have known little of the motivations of Wren for supporting the right to counsel had not Anita

Lawson Weaver, an Assistant in the Rare Book Department of the Huntington Library, generously copied the periodical for us.

Assembly Bill 122 (1875) took on new significance when the Nevada Supreme Court handed down *In re Wixom* in April of 1877. Paula Doty, Assistant Librarian at the Nevada Supreme Court Library, went through the Court's microfilm records to find the original briefs. Though there is a gap in the microfilm reel, Ms. Doty employed the assistance of Ms. Faillers at the State Archives and diligently found the original paper documents.

Our understanding of the political and social culture in Nevada's early days as the western part of the Utah Territory was greatly aided by materials sent by Michael Maher and Juil Dandini of the Nevada Historical Society. The 6AC is also significantly indebted to historian Michael Makley. Nevada's desire for statehood was in many ways triggered by a longing on the part of the populace of the Carson Valley for a justice system that was neither meted out by vigilance committees nor in the control of Mormon leadership seated some 500 miles away in Salt Lake City. Our knowledge of this dynamic was greatly enhanced by Makley's book, *The Hanging of Lucky Bill* (which he sent to us free of charge).

A 1991 article by Nevada historian Phillip I. Earl led the 6AC to question some of the facts surrounding the trial of Mr. Wixom. Mr. Earl spoke to us at some length about stagecoach and train robberies in 19th century Nevada, and he assisted Mr. Maher of the Nevada Historical Society in tracking down local newspaper accounts of the Wixom trial that confirmed Mr. Earl's earlier work.

Finally, this report simply could not have been written without the support and guidance of former Nevada State Archivist Guy Rocha. Mr. Rocha provided us with key contacts throughout the state and suggested numerous avenues of research for us to trove. Most importantly, he gave generously of his time and energy during numerous phone calls and e-mail exchanges, where he not only acted as an objective sounding board, but also provided needed encouragement enabling the 6AC to connect the dots of what occurred in Lander County over a hundred and forty years ago.

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Wells Fargo Stage (c. 1870). Nevada Historical Society.

Chapter 1
An Arrest in Battle Mountain

On November 7, 1873, a thirty-year-old harness-maker was arrested in Battle Mountain, Nevada.[1] He was wearing a uniquely identifiable coat that was commissioned from a haberdashery in San Francisco, and destined for the Manhattan Silver Mining Company, before it was stolen during one of a series of stagecoach heists conducted over the prior two months.

Shepherd L. Wixom,[2] the man arrested, was no saint. He had already been charged with horse stealing once and spent time in the Nevada State Prison for helping an accused murderer to escape from the Lander County jail. He had the stolen coat. He fit the general description. He was an ex-felon. He was guilty.

This was the height of the Wild West. And, though the October 7, 1873 edition of Virginia City's *Territorial Enterprise* reported that "stage robberies have become so common in Eastern Nevada that they are scarcely worth noticing,"[3] the citizenry of Austin was fed up. Between September 27 and November 1, 1873, the Woodruff & Ennors stagecoach line – the company carting passengers and cargo between such mining towns as White Pine, Eureka, and Virginia City[4] – had been held up five times. Each time, the robbers demanded and broke open the Wells, Fargo & Company "treasure box"[5] that often accompanied the driver of the stage. After the last of the five hold-ups, Wells, Fargo & Company posted a $500 reward for the capture of any "road agent"[6] associated with the thefts.

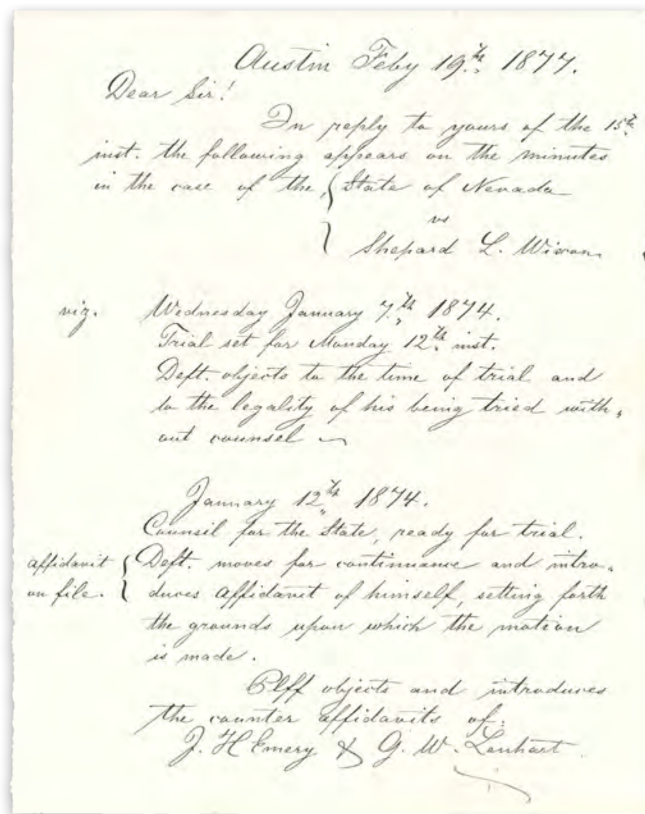
Upon his arrest at Battle Mountain, Wixom demanded to be brought before the nearest committing magistrate for a preliminary examination because he wanted to procure material witnesses that would help

Stagecoach outside the Warm Springs Hotel (c. 1860's). Hotel was used as the Nevada Territorial Capitol in 1861. Courtesy of the Nevada State Library and Archives.

to absolve him of the crime. Sheriff Emery denied his request. Instead, Wixom was brought to Austin and jailed.[7]

In 1873, the Nevada court system was still in its infancy. Less than ten years had elapsed since Nevada was accepted into the United States and had adopted its state constitution, so the Nevada courts were establishing precedent with every passing case. Under the laws of criminal practice of the time, Wixom was entitled to a "speedy and public trial."[8] But these were the days when judges rode circuits by horseback and the thousands of miles of trails connecting the mining towns of eastern Nevada did not lend themselves to the dispensation of justice at anything approaching a rapid pace. Besides, all felony prosecutions in Nevada had to occur by indictment, so there was the need to empanel a grand jury of twenty-four men before Wixom could be arraigned.[9] Accordingly, Wixom sat in jail through Thanksgiving and into the dawn of 1874.

Why would Shepherd Wixom think he had a legal right to an attorney in 1874 Nevada?



Austin Feby 19th 1874.
Dear Sir!
In reply to yours of the 15th inst. the following appears on the minutes in the case of the State of Nevada vs Shepard L. Wixan

viz. Wednesday January 7th 1874.
Trial set for Monday 12th inst.
Deft. objects to the time of trial and to the legality of his being tried without counsel.

January 12th 1874.
Counsel for the State, ready for trial.
(affidavit on file.) Deft. moves for continuance and introduces affidavit of himself, setting forth the grounds upon which the motion is made.
Plff objects and introduces the counter affidavits of J. H. Emery & G. W. Lenhart

Official minutes of the Lander County District Court in the case of *State of Nevada vs. Shepard L. Wixan*. Courtesy of the Nevada State Library and Archives.

On January 7, 1874, Wixom finally got his day in court. He was arraigned on a Wednesday in front of the Honorable DeWitt C. McKenney. The judge scheduled the trial for five days out, on the following Monday. Besides his not guilty plea, Wixom only made one statement: "Defendant objects to the time of trial and to the legality of his being tried without counsel."[10]

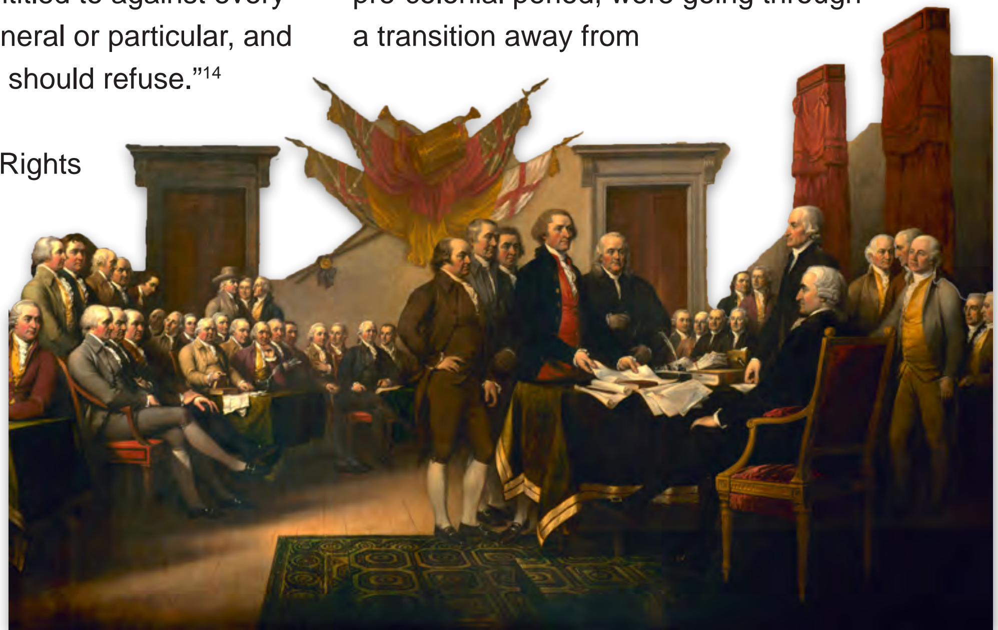
Why would Wixom think he had a legal right to an attorney in 1874 Nevada? It would be nearly 90 years before the United States Supreme Court guaranteed poor people the right to counsel in felony cases, with its landmark decision in *Gideon v. Wainwright*.[11] Answering that question requires an historical understanding of both the Sixth Amendment to the United States Constitution as it was generally understood at the time of Wixom's arraignment and more specifically the state of criminal justice in the 1870's in Nevada.

Chapter 2
The Sixth Amendment to the United States Constitution

For the signers of the Declaration of Independence, liberty was the universal notion that every person should determine their own path to happiness, free from undue governmental control.[12] Patrick Henry preferred death to living without it.[13] In fact, liberty is so central to the idea of American democracy that the framers of our Constitution created a Bill of Rights to protect personal liberty from the tyranny of big government. All people, they argued, should be free to express unpopular opinions or choose their own religion or take up arms to protect their home and family without fear of retaliation from the state. As Thomas Jefferson wrote in 1787, "a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse."[14]

Preeminent in the Bill of Rights is the idea that no one's liberty can ever be taken away without the process being fair. A jury made up of everyday citizens, protection against self-incrimination, and the right to have a lawyer advocating on one's behalf are all American ideas of justice enshrined in the first ten amendments to the United States Constitution that were ratified by the states in 1791. Years earlier, John Adams had risked his reputation for these very ideals by defending in court the British soldiers involved in the Boston Massacre, stating that a defense lawyer ought to be the last thing a person should be without in a free country.[15]

Why did Adams and other patriots believe so fervently in the primacy of the right to counsel to due process? The answer comes from an understanding of the English common law system, out of which most American jurisprudence evolved. England's courts, during the American pre-colonial period, were going through a transition away from



John Trumbull, *The Declaration of Independence, 4 July 1776.* Yale University Art Gallery, Trumbull Collection, 1832.3.

what we today call the inquisitorial model of criminal justice. Still in use in France and elsewhere in Europe today, the inquisitorial model sets about finding the truth behind an alleged crime by having the judge who is in charge of all proceedings directly question the witnesses for both the victim and the defendant. Lawyers, if they were involved at all in English courts during this time, generally played a limited role. For example, there was no person we would recognize today as the prosecutor. Instead, the victim of a crime or his family was permitted to hire a lawyer to act as prosecutor, but few could afford the cost. And so the judge dominated the proceedings.

Under the inquisitorial model, the judge acted as the chief investigator and oversaw the collecting of evidence, determining what was reliable and what was unreliable. And, because the judge made final verdicts based on the evidence he himself collected, there was a presumption of guilt inherent in the trial proceedings. In the pre-colonial English system of justice, therefore, the burden of proof rested with the defendant accused of a crime to establish his own innocence.[16] Making that task harder, defense lawyers were specifically banned in felony cases in England (and would continue to be until 1836).

Because the European people that arrived on the shores of America were, in many instances, those who had been subject to religious persecution in European courts, the presumption of guilt was never going to work here. The Enlightenment was in bloom and people had begun questioning the tyranny of the crown, so the colonial settlers were, perhaps, predisposed to take a more adversarial approach to criminal justice. The people of the new American colonies were suspicious of concentrated power in the hands of a few. An individual's right to liberty was self-evident, and there needed to be a high threshold to allow a court to take away the liberty that the Creator had endowed to each and every individual. The new colonies were not going to set up justice systems that would railroad defendants simply because the accused was ignorant of the law.

A defense lawyer ought to be the last thing a person should be without in a free country

As an example of the degree to which the New World Americans were committed to the right to counsel, the following preamble accompanied the right to counsel law passed on March 11, 1660 in the colony of Rhode Island and Providence Plantations:

> *Whereas it doth appeaere that any person . . . may on good grounds, or through mallice or envie be indicted and accused for matters criminal, wherein the person is so [accused] may be innocent, and yett, may not be accomplished with soe much wisdom and knowledge of the law to plead his own innocencye, & c. Be it therefore inacted . . . that it shall be accounted and owned from henceforth the lawful privilege of any man*

that is indicted, to procure an attorney to plead any point of law that make for clearing of his innocencye.[17]

As defense lawyers became increasingly involved in the early days of American jurisprudence, procedural rules started to be written down and codified. Evidence, including hearsay, could no longer be introduced without restraint. The presumption of guilt was increasingly contested. This was the birth of the adversarial system of justice that we recognize in our own country today.[18] The adversarial justice system is based on the simple notion that the truth will best be made clear through the back and forth debate of opposing perspectives. Indeed, this idea of competition soon became the basis of American capitalism too. So, when the North American colonies revolted from the crown, the right to counsel was quickly enshrined in all but one of the original thirteen state constitutions.[19]

If the right to counsel was state law, why was it important for the federal Congress to incorporate this same right as an amendment to the U.S. Constitution? The citizens of the newly independent republic had created a federal government to administer the union of their respective state governments. Having just liberated the Colonies from what they felt was the tyrannical rule of the British government, the framers of our federal Constitution were loath to create a new tyranny in the form of the Union's central government that could ignore – or worse, could abolish – these protections of personal liberty. Therefore, the Bill of Rights was created to protect the rights of the individual against an overreach of big government. With the ratification of the Bill of Rights, the right to counsel became sacrosanct. The federal government was obligated to enforce it for all time.

At this point in history, the right to counsel was permissive. That is, the accused had the right to have a lawyer present if the accused could afford to hire one or could get one to represent him for free, but a state did not have to appoint an attorney if the accused could not obtain his own. The question of whether to appoint counsel to those of insufficient means was left up to each state. As United States Supreme Court Justice Louis Brandeis wrote in 1932: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."[20] Nevada would become that courageous state in regard to equal justice for the indigent accused.

Map of Oregon and Upper California, from the surveys of John Charles Fremont and other authorities (1948).
Special Collections, University of Nevada, Reno Library.

Chapter 3
Nevada Statehood & Its Emerging System of Justice

Until 1848, the vast area separating the Rocky Mountains and the Sierra Nevada – commonly referred to in the nineteenth century as the "Great Basin" – was claimed by Mexico.[21] Mexico ceded the area to the United States under the terms of the Treaty of Guadalupe Hidalgo that ended the U.S.-Mexican War. The Great Basin was described as the place "filled with what the Lord had left over when He made the world and what the Devil wouldn't take to fix up hell."[22] The combination of a desert terrain surrounded by harsh mountain conditions proved to be inhospitable to all but the Native Americans and a few hearty-souled pioneers. That is, until gold was discovered in California in 1849.

Between 1848 and 1850, the whole of the western United States was officially an unorganized territory. The region had no constitution or provisional government or justice system other than the law of "might makes right."[23] As fortune-seekers flooded into this region by the thousands, two political forces took root that would forever shape criminal justice in Nevada. The first was the military provisional government running California at that time that, for the most part, allowed justice to be meted out by vigilance committees. The other was the group of political refugees known as the Latter Day Saints, or "Mormons," that had settled in and around the Great Salt Lake in 1847. While still technically Mexico territory, the Mormons had claimed most of the Great Basin as their own, calling their new home "Deseret."[24] The Mormons would provide a more structured approach to government, albeit one that detractors claimed simply benefited the church.

The people who had begun to settle on the eastern slope of the Sierra Nevada (in and around present day Carson City) had more in common with California than with the Mormons. Despite this, they found themselves under the rule of the Latter Day Saints when California became a state in 1850 and its official borders stopped short of the eastern slope. The land of what is now northern Nevada was instead included in the newly formed Utah Territory and its people were to be governed by the territorial government seated in Salt Lake City.

Suffice it to say, the Mormons were not, at least in the beginning, all too concerned with the happenings on the eastern slope, by this time referred to as "Washoe" after the local Indian tribe. In the void, "[t]here was little law in the territory," and "treachery seemed to have been the controlling influence."[25] One early settler described Washoe thusly: "All kinds of roguery is going on here; men are doing nothing else but steal horses, cattle, and mules."[26]

In time, the Mormons would exert their authority by setting up various county structures and government systems, including courts. The Mormons named one of their own, Orson Hyde,[27] as the judge of the Carson region, but his authority was never truly recognized in Washoe. A series of failed attempts was made to annex the Carson region to California rather than be under the control of people who owed their allegiance to a religious structure over 500 miles away.[28] This was a time of heightened anti-Mormonism and most of the people of Washoe preferred handling local justice on their own. "Newcomers complained that they were not dealt with fairly under Utah's justice system" and "that the Mormons received favorable treatment."[29] The people of Washoe also felt defenseless in the face of what they believed to be a biased justice system, as Brigham Young – the head of the Mormons – moved settlers into Washoe to "insure election results."[30]

The situation deteriorated in 1856 when an "armed mob of Mormons drove a U.S. District Judge from the territory"[31] and began to defy other United States laws. Believing the Mormons to be in open rebellion, then U.S. President James Buchanan sent troops toward Salt Lake expecting a war. Brigham Young called home all Mormons in anticipation of an epic

Wells, Fargo & Co.'s Express Office, Carson City (1865). Special Collections, University of Nevada, Reno Library.

battle. Though the United States/Mormon war never materialized, it did create a vacuum in how governmental affairs were being conducted. Washoe was again left alone, for the most part, to run its own affairs.

By 1858, a vigilante committee had been set up in the region to dispense justice. The leader of the group was Major Ormsby.[32] Ormsby was instrumental in the movement to free Nevada from the Utah territory. But his desire to take justice into his own hands was opposed by a number of anti-vigilante committees that, in turn, wanted either a more structured and dispassionate system of justice or some as-yet-undefined form of justice that did not give so much power to people like Ormsby. One of these anti-vigilantes was a man named "Lucky Bill" Thorington.[33]

By all accounts, Lucky Bill was a prototype Nevadan: flamboyant, gracious, and hard-working. He earned his nickname by running games of chance and winning almost every time a challenger put big money on the table. He invested his winnings in property, a toll road, cattle, a sawmill, and other endeavors in and around Carson City. One contemporary described Thorington as "both generous and brave and his sympathies were readily aroused in favor of the unfortunate: or which in frontier parlance would be termed 'the under dog in a fight' regardless of the causes that had placed the dog in that position."[34]

Lucky Bill had no problem taking money in games of chance from either horse-thieves or Mormon tithe-collectors, and he opened his house freely to each. "His station was a rendezvous where the weary found rest and the hungry never were turned from his door."[35] Thorington's willingness to befriend Mormons put him at odds with the Ormsby-led vigilante committee that was squarely anti-Mormon. At the same time, more and more of the guests at Thorington's ranch were outlaws from the newly emerging California justice system – a factor that Ormsby's vigilante committee saw as contributing to the lawlessness in the Carson area. For Ormsby, Lucky Bill had become public enemy number one.

So, when Thorington allegedly abetted a murderer by letting him stay at his ranch, and allegedly helped to sell the stolen horse of the murdered man to – again allegedly – fund an assassination attempt on Ormsby's life, the vigilante committee struck.[36] On June 17, 1858, Thorington was arrested by a mob numbering close to a hundred. The mob had already hung one person they mistakenly identified as the alleged murderer, but that did not stop their on-going thirst for vengeful justice. A jury was quickly made up of twelve members of Ormsby's vigilante committee, while others acted as judge, sheriff, and prosecutor. The rest of the vigilante committee could be heard just outside the barn in which Thorington was being tried, constructing a gallows. Lucky Bill was executed shortly after the jury brought back the guilty verdict.

A modern reader cannot review the facts of Thorington's arrest, trial, and sentence without acknowledging the resounding truth of the U.S. Supreme Court's words in *Powell v. Alabama*, the country's first major right to counsel case. "The prompt disposition of criminal cases is to be commended and encouraged. But, in reaching that result, a defendant, charged with

a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice, but to go forward with the haste of the mob."[37]

Though the vigilantes successfully rid themselves of Thorington, the episode firmly turned the people of the Carson Valley against the vigilante committee. "[A]fter Thorington's hanging almost all the vigilantes faded from the scene, while many of his friends remained (some of whose descendants continue to reside in Carson Valley)."[38] Ormsby would die less than two years after Thorington's death, killed while undertaking one last act of vigilantism.[39] Nevada was poised for a different approach to justice.

Meanwhile, on the other side of the country, Abraham Lincoln assumed the office of the President of the United States and the nation was thrown into civil war. As the people of the eastern slope sought to create a system of government free from Mormon influence and free from the rush to judgment so core to the vigilante committees, the federal government desired new states to help ensure Lincoln a second term. Tapping Nevada's natural resources to help fund the war effort was an added benefit, and Nevada was placed on the fast track for statehood.

In 1861, the United States approved creation of a Nevada Territory, essentially splitting the Utah Territory in two. Slightly less than 7,000 people lived in the entire Nevada Territory at that time.[40] Still, in September 1863, approximately, 6,660 votes were cast in the territory in favor of making Nevada a state.[41]

A constitutional convention was called for November of the same year. On the second day, a committee of three people was appointed to work on the state constitution's preamble, the name of the state, the state seal and coat of arms, and the state's Bill of Rights.[42] Though the naming of the state underwent some debate, the right to counsel did not. On November 6, 1863, Section 8 of the Nevada Constitution was proposed and adopted with no debate, ensuring from that day forward that "in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel" and that under no circumstances shall the accused be deprived of "life, liberty, or property, without due process."[43]

There was one small hiccup unrelated to the right to counsel. The voters of Nevada summarily rejected the new constitution because it was thought its taxation plan could negatively affect the mining industry. Tax changes were made in a subsequent convention held in 1864. The voters of the Territory of Nevada approved the Constitution on September 1, 1864, and no changes were made to the right to counsel as it had been written the previous year.

Interestingly, the 1864 Constitution included a new "paramount allegiance to the Federal Government" clause vowing Nevadans support of federal powers "as the same have been or may be defined by the Supreme Court of the United States."[44] This same clause remains in the Nevada Constitution to this day, expressly commit-

Birdseye panoramic of Carson City (c. 1870). Nevada Historical Society.

ting the state to support all right to counsel case law handed down by the U.S. Supreme Court.

Nevada was made a state on October 31, 1864, eight days before the Presidential elections and in time to help re-elect Lincoln. The American Civil War ended just months later, in early May 1865.

So what does all of this have to do with Shepherd L. Wixom? With the still fresh memories of Utah Territory justice that had lacked any semblance of due process, by the 1870s the norm in Nevada appears to have been for the judge to appoint an attorney whenever requested by a defendant facing criminal charges. As a modern state attorney general ethics opinion observed in reflecting upon this tradition, because "an indigent defendant unversed in the law" might be deprived of due process, the Nevada courts "from the beginning" recognized their power to appoint lawyers for the poor.[45] Furthermore, to the extent that Nevadans saw themselves as closely aligned with California, that state had passed a sweeping right to counsel statute on February 14, 1872.[46]

Nevada State Penitentiary under construction (c. 1870). Nevada Historical Society.

There were also some quite practical reasons to appoint counsel. Though it is tempting for a 21st century mind to impose a modern-day notion of criminal justice on the events occurring in Lander County during the nineteenth century, in fact criminal justice then was much different in some very key ways. Criminal proceedings were actually quite rare in the 1870s. Trial judges would ride a circuit around the state, hearing cases in one town one day and the next town when he could get there, and any cases that required the judge's attention would simply have to wait until he next came to town. There were also relatively few attorneys, and those few often rode circuits side-by-side along with judges. So, when a criminal case came up, it was frequently fairly convenient to appoint an attorney rather than have a defendant try to defend his own interests.

Indeed, as will be revealed in a later chapter, when Wixom's case reached the Nevada Supreme Court in 1877, the Court admitted that appointing attorneys for poor people in criminal proceedings was a "common" and "perhaps universal practice" in the state. It is no wonder Shepherd Wixom expected the judge to appoint him an attorney during his arraignment.

Chapter 4
The Right to Counsel in Nevada Established

During Shepherd Wixom's arraignment, Judge McKenney surveyed the courtroom as was the common practice in Nevada to see if any attorneys were present and willing to assist Wixom's defense.[47] But when there were no such attorneys present, Judge McKenney was not about to slow down justice to find one. Instead, he allowed Wixom to work with a non-lawyer to help prepare his defense as best he could.[48]

Five days later, on January 12, 1874 at 5 o'clock in the afternoon, the trial of Shepherd Wixom began. There is little that remains in the historical record about the trial, other than that "justice was swift."[49] We do know Wixom told Judge McKenney that he was not prepared for the trial because he had been denied a lawyer. We also know Wixom asked for the trial to be delayed, claiming as he had at the time of his arrest that there were witnesses who could provide testimony that Wixom was not the notorious road agent who had been terrorizing the stagecoach company. And, Wixom reminded the court again that his witnesses could not be reached because the court denied him counsel.[50]

Judge McKenney was not persuaded. He denied the continuance and proceeded to trial. A jury was empanelled, the trial occurred, and the jury deliberated for all of fifteen minutes before reaching a verdict of guilty – all within a single evening.[51] The main testimony against Wixom came from Sheriff Emery. When the Sheriff examined a second coat ordered by the Manhattan Silver Mining Company and compared it to the coat Wixom was wearing when arrested at Battle Mountain, Sheriff Emery determined that "[t]hey were as like as two eggs."[52] The *Territorial Enterprise* reported that, although Wixom acted as his own defense counsel, he conducted his "case with marked ability, proving himself a perfect success as a cross-examiner, but his cunning availed him not."[53] There could be no conclusion but that Wixom had taken the coat along with other goods and money from the stagecoaches he had robbed.

The next morning the *Sacramento Daily Union* reported that highwayman Wixom was convicted and, rather than face a return to the Nevada State Prison, Wixom attempted to hang himself in his cell using his own socks. "The alarm was given by another prisoner, and officers cut the socks from Wixom's neck in time to save his life."[54] Wixom was promptly sentenced to ten years at hard labor at the state penitentiary.

Under the rules of criminal procedure in 1874 Nevada, "[a]n appeal must be taken within three months after the judgment was rendered."[55] Without a lawyer, Wixom was ignorant of this fact and was not able to challenge the constitu-

tionality of his trial on direct appeal because the deadline lapsed.

Assembly Bill 122 (1875)

While Shepherd Wixom served time in prison without a lawyer, the Nevada legislature was at work in 1875. The Chairman of the Judiciary Committee in the Assembly was Thomas Wren. A self-made man, Wren was orphaned at a young age and what little property that was left to him was swindled away by a lawyer retained to look after his best interests.[56] Rather than ruing his life, Wren set off for California in the gold rush and worked tirelessly in the mines before apprenticing to become a lawyer. He eventually moved to Austin, in Lander County, Nevada, where he was the city attorney and prosecutor from 1864 to 1866. Subsequently, Wren was elected to the Nevada Assembly as the representative from Eureka. He would later serve as the Nevada's lone U.S. Congressman from 1877 to 1879, but in 1875 he was passionately and persuasively arguing in the Nevada Assembly.

Thomas Wren. Nevada Historical Society.

"The love of life is the strongest feeling implanted in the breast of man. The fear of losing it tends to prevent the commission of crime, by bad men, far more powerfully than any other punishment that can be devised. It is certainly far more effective than imprisonment for life."[57] Thomas Wren uttered these words during debate on a bill that sought to curtail the use of the death penalty in favor of lifetime imprisonment. As a former prosecutor, it is not surprising that Wren took such a position in the debate. Wren was one of the day's leading Republicans and widely viewed as an expert on the law. His perspective, that "murders would not be so common if the death penalty, in punishment of the crime, was more certain and frequent," carried the day as the bill to curtail the death penalty was defeated.[58]

What is surprising, however, is that Wren, who was such a staunch proponent of tough criminal sanctions, authored another bill in the very same session to authorize the appointment and payment of defense counsel to assist those accused of crimes who could not afford an attorney. The bill presumed, as was the case, that attorneys were appointed regularly in Nevada and it sought to have them paid for their work. Assembly Bill 122 (1875) stated:

> *Section1. An attorney appointed by a Court to defend a person indicted for any offense, is entitled to receive from the County treasury the following*

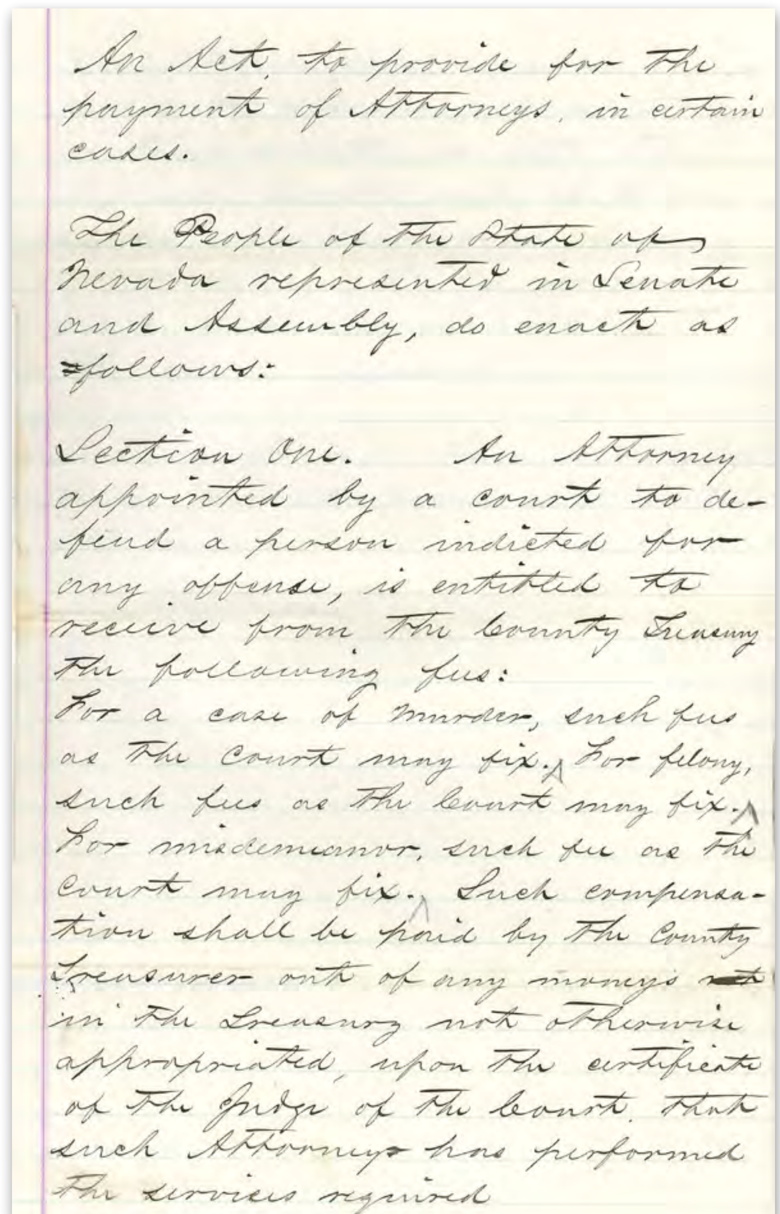
fees: For a case of murder, such fee as the Court may fix, not to exceed fifty dollars; for felony, such fee as the Court may fix, not to exceed fifty dollars; for misdemeanor, such fee as the Court may fix, not to exceed fifty dollars. Such compensation shall be paid by the County Treasurer out of any moneys in the Treasury, not otherwise appropriated, upon the certification of the Judge of the Court, that such attorney has performed the services required.

Section2. An attorney cannot, in such case, be compelled to follow a case to another county or into the Supreme Court, and if he does so, may recover an enlarged compensation, to be graduated on a scale corresponding to the prices allowed.

Section 3. This Act shall take effect from and after its passage.[59]

According to the *Nevada Monthly*, Thomas Wren was one of the most successful and able lawyers in the state. "His honor is untarnished, and throughout the state his word is as good as his bond."[60] Under Wren's leadership, the bill passed the Assembly on a vote of 34 to 3 with 14 abstentions.[61] It passed the Senate on a similarly wide margin.[62]

Did Wren's time as a prosecutor make him understand the importance of a strong defense in an adversarial environment in order to reach the truth? Perhaps it was Wren's own impoverished upbringing or the fact that an unethical lawyer swindled him out of what little money his parents left him that made him want to ensure poor people were treated fairly in the justice systems of Nevada. We cannot be sure, but a passage in a local journal published in 1880 hints that all of Wren's works were toward the goal of securing the rights of poor people: "[Wren's] purse


An Act to provide for the payment of Attorneys in certain cases.

The People of the State of Nevada represented in Senate and Assembly, do enact as follows:

Section One. An Attorney appointed by a court to defend a person indicted for any offense, is entitled to receive from the County Treasury the following fees:
For a case of murder, such fees as the Court may fix. For felony, such fees as the Court may fix. For misdemeanor, such fee as the Court may fix. Such compensation shall be paid by the County Treasurer out of any moneys in the Treasury not otherwise appropriated, upon the certificate of the Judge of the Court, that such Attorneys has performed the services required

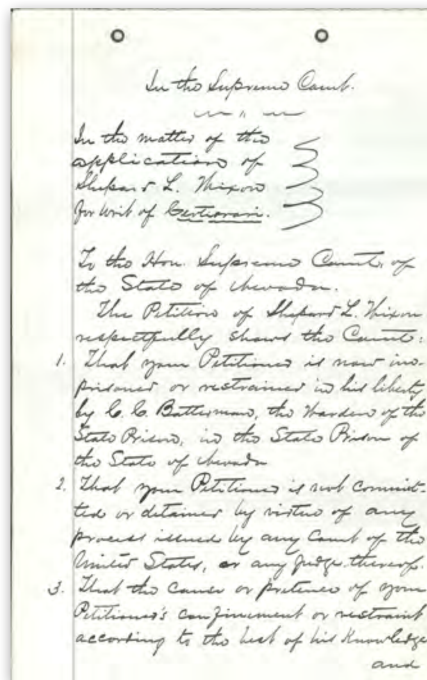
Thomas Wren's Assembly Bill 122 (1875). Courtesy of the Nevada State Library and Archives.

and services have always been at the command of honest poverty and distress, and hundreds of struggling and unfortunate men in this State have been aided and their rights secured through his exertions."[63]

In re Wixom

By the time Shepherd Wixom was able to make arrangements to sell what little property he owned and hire an attorney, the only legal action available to him was to petition the Supreme Court of Nevada for a writ of certiorari – a formal request asking a higher court to review the actions of a lower court in a specific proceeding to determine if there were any irregularities. On April 2, 1877, Wixom's private attorney T.W.W. Davies[64] filed a writ of certiorari with the Nevada Supreme Court.

The petition filed on behalf of Wixom claimed that: a) the trial court "compelled your petitioner to plead to said indictment without the aid of counsel;" b) accommodations were not made to find his material witnesses; and c) the trial court ignored his objection "to proceeding with the trial of said cause without the aid of counsel, as he was totally unlearned in the law and unable to conduct his defense." The petition characterized Judge McKenney's failure to grant Wixom a fair day in court a "gross abuse" of power, stating that "no appeal was taken in said cause for the reason that he was entirely ignorant of his rights as to appeal and the manner of taking an appeal, and that he had no counsel for his assistance or guidance in taking an appeal."[65]


In the Supreme Court.

In the matter of the application of Shepard L. Wixom for Writ of Certiorari.

To the Hon. Supreme Court of the State of Nevada.

The Petition of Shepard L. Wixom respectfully shows the Court:

1. That your Petitioner is now imprisoned or restrained in his liberty by C. C. Batterman, the Warden of the State Prison, in the State Prison of the State of Nevada

2. That your Petitioner is not committed or detained by virtue of any process issued by any Court of the United States, or any Judge thereof.

3. That the Cause or pretence of your Petitioner's confinement or restraint according to the best of his knowledge and

Petition for Certiorari in *In re Wixom* (1877). Courtesy of the Nevada State Library and Archives.

As previously noted, the Nevada courts were still in their infancy and the Nevada Supreme Court was keenly aware that every decision it rendered established precedent for future cases. When Nevada Attorney General John R. Kittrell responded to Wixom's petition, the focus of the case turned to the Nevada Supreme Court's jurisdiction in writ of certiorari cases.[66] Based on Nevada statutes and the Court's own recent opinions, if the lower court had jurisdiction over the case and the person and did not exceed or depart from its jurisdictional authority, then the Supreme Court was without power to disturb its rulings on cert.[67]

There was no doubt that Judge McKenney had jurisdiction over the case and the person of the accused, so the only remaining question was whether the trial judge exceeded or departed from his jurisdiction during Wixom's 1874 trial. In Nevada, it was certainly customary for judges to appoint counsel in just about every criminal matter before them, but at the time of Wixom's arrest and trial there was no statute that required judges to appoint counsel. The Court observed: "If there was any

Capitol Building, Carson City (c. 1870). Special Collections, University of Nevada, Reno Library.

law which expressly required the district judges to assign counsel to the defendant in a criminal action at any particular stage of the proceedings, a failure to do so would be a departure from the forms prescribed to them by law, and would be ground of reversal on certiorari in cases where the remedy is available. But in this state there is no such law."[68] And the Court went on to declare: "In overruling the motion for a continuance, and compelling the petitioner to go to trial without professional counsel, the district judge . . . departed from no express provision of the law."[69] The Nevada Supreme Court found that it lacked authority to overturn Wixom's uncounseled conviction on certiorari, and his petition was dismissed.[70]

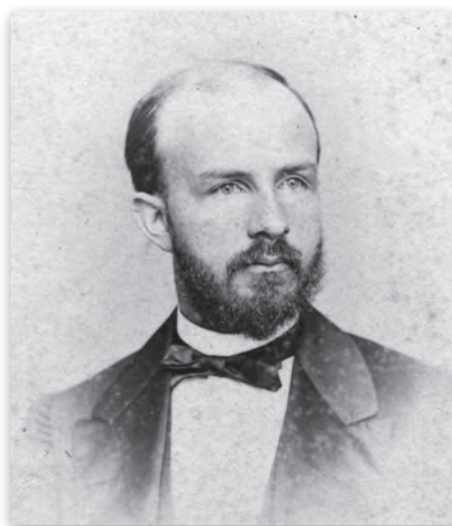
In a sad twist of legal irony, had Wixom been able to retain private counsel within the appellate filing deadline, it is likely his conviction would have been overturned and a new trial ordered. Through dicta in Wixom's case, the Court took pains to say that, in forcing the defendant to go to trial without a lawyer, "the district judge may have erred, and may have abused his discretion . . .. His action may have afforded good grounds for granting the defendant a new trial, or for reversing the judgment on appeal . . .."[71] Wixom, however, had never filed an appeal.

The Court did not stop there. Justice William H. Beatty,[72] writing on behalf of the unanimous three-person bench, foreshadowed the view of the Nevada Supreme Court in cases to come.

Referring to Wren's Assembly Bill 122, the Court concluded in *In re Wixom* that "a statute (Laws of 1875, 142) passed since the trial of this petitioner, has made provision for compensation of attorneys appointed to defend in such cases. Probably since this statute, if not before, a failure to assign professional counsel for a poor defendant would be deemed a fatal error on appeal . . .."[73] It was too late for Wixom, but Wren's 1875 bill and the 1877 Nevada Supreme Court assured that, from that day forward, the failure to appoint counsel to the poor in a criminal case was a valid reason to overturn convictions on direct appeal.

Furthering the Right to Counsel in Nevada

To the extent that Wren's bill could have been construed as merely giving judges the discretion to pay appointed counsel, but without requiring them to do so, the Nevada Supreme Court eliminated any ambiguity two years later in the 1879 case of *Washoe County v. Humboldt County*.[74] The case involved, among other things, the payment of counsel in the controversial death penalty case of J.W. Rover.[75] The Nevada Supreme Court, citing Wren's 1875 law, concluded that it was their duty "to determine the real intention of the legislature." Noting the financial hardship some attorneys endured when representing the indigent accused, the Nevada Supreme Court was "of the opinion that it was not the intention of the legislature to invest the courts with any such discretionary power." Instead, "[w]e are of the opinion that it was the intention of the legislature to provide for the payment of a fee, not exceeding fifty dollars, to every attorney who defends a prisoner charged with crime, under appointment from the court."



Justice William Henry Beatty (c. 1870). Nevada Historical Society.

The right to counsel in Nevada was formally codified in 1909 when the Nevada legislature granted the justices of the Nevada Supreme Court wide authority "to revise, compile, annotate and index the laws of the State of Nevada."[76] For the most part, the Court adopted the California Penal Code.[77] Once revised, Section 10883 of the Nevada code stated: "If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him."[78]

Most right to counsel scholars have marked this 1909 statute as the beginning of the right to appointed counsel for the poor charged with crimes in Nevada, simply because it was the first statute directly so providing. But the law championed by Assemblyman Thomas Wren and recognized by the Nevada Supreme Court in its ruling in the case of Shepherd Wixom firmly established the right in 1877, more than thirty years earlier.

Chapter 5
Would a Competent Attorney have helped Wixom?

It is, of course, impossible to go back in history and see what a competent attorney would have been able to accomplish for Mr. Wixom, but some evidence suggests that a well-qualified lawyer could have made a difference.

Circumstantial Evidence

From the records of the Wells, Fargo & Company detective agency, we know much about the stagecoach robberies in Lander County in 1873.[79] On September 27, 1873, a Woodruff & Ennor's stagecoach was traveling through a canyon near Vick's Station when a masked highwayman aimed his rifle at the stagecoach driver Eugene Burnett and ordered him to "halt." Two other bandits also appeared, one carrying a shotgun and the other holding a revolver. Each of the highwaymen obscured his face. Unlike the stereotypical bandana worn in Hollywood westerns, the would-be robbers' "heads were covered with masks made from barley sacks with eye holes cut out."[80] The gang broke open the treasure box with a hatchet and absconded with about $200.

The coach was transporting two passengers.[81] Neither of the passengers nor the driver could identify the robbers and only gave vague descriptions that the gang was composed of "one tall, one medium-sized and one short robber." We also know that the shortest robber was apparently "in-charge."

Four days later on October 1, 1873, another Woodruff & Ennor's stagecoach was robbed. The driver gave the same general description of three masked men carrying a rifle, a shotgun, and a revolver. "The Wells, Fargo & Company treasure box was demanded and this time it was taken a short distance from the road before being broken open. . . . This time the box was empty so it was expected that the robbers would strike again soon."[82]

The highwaymen waited four weeks before trying again. This time only two robbers were involved. On October 22, 1874, at about the "same point near the Reese River on the Battle Mountain stagecoach route,"[83] two highwaymen ordered driver Bill Monk to halt. Accompanying Monk was an armed guard named Lou Ferot. The appearance of the highwaymen scared the team of horses and the driver could not get the horses under control immediately. Amidst all the excitement, the robbers "simply disappeared into the brush"[84] without further incident. It was the third attempted robbery and the second with nothing to show for it.

Five days later on October 27, a lone road agent stopped another coach. He was carrying a shotgun. This may indicate that it was not

the "leader" – who generally carried a rifle – but one of the other two road agents or, of course, someone entirely different. In any event, the robber stopped the coach, was handed the box, and escaped. The driver was Eugene Burnett, who was also driving when the stagecoach was robbed on September 27. Additionally, there were "six passengers aboard, one atop and five inside, but they were not molested and there was no request for the U.S. mails."[85] None could identify the road agent. "The amount taken from Wells, Fargo & Company's treasure box was not disclosed but it was thought to be a very small amount so it was expected that the road agent would strike again soon."[86]

On November 1, 1873, yet another coach was stopped. This time the lone robber built a barricade with sagebrush covered by a blanket – an entirely different modus operandi from the other attempts. "Mike Kehoe was driving with 'Major' Stonehill and Road Superintendent W. Addington riding on top."[87] All three men reported the "the robber has a decided 'Yankee accent,'" something that was not reported by any of the witnesses in any of the other recent robberies. "There was nothing of value among the contents of the box" and "everything was still in the box when recovered, though it had been thoroughly rifled through."[88] It was at that point that "Wells, Fargo & Company offered a reward of $500 for the capture of the road agents."[89]

Surely a competent lawyer would have had much to say about whether an experienced stagecoach driver would stop to be robbed by a man carrying nothing but a stick.

Perhaps, not coincidently, it was less than a week after the reward was offered that Wixom was arrested. Did someone want the reward money and frame Wixom in a tip to Sheriff Emery? A good lawyer would have demanded to cross-examine whoever the tipster was.

Wixom was only charged in three of the five stagecoach robberies: the last three occurring on October 22, October 27, and November 1. Wixom was not charged in the original September 27 robbery committed by three highwaymen and the only one involving any significant amount of money. Eugene Burnett was the driver on both September 27 and October 27, and surely he would have been able to say if Wixom robbed him both times, so was it the case that Burnett knew Wixom was not involved in the September 27 robbery? After all, the three culprits from the September 27 and October 1 robberies were the most likely suspects for all five of the stagecoach robberies.

And what of the three robberies for which Wixom was arrested? Wells, Fargo & Company fired the two stagecoach employees, Bill Monk and Lou Ferot who were working during the October 22 robbery, for allegedly abetting other stagecoach robberies.[90] Maybe it was Monk or Ferot who pointed the finger at Wixom to hide their own treachery. Had a defense lawyer been present in the Lander County District

Court, perhaps both Monk and Ferot would have been subpoenaed and questioned.[91] The potential of an inside job was mentioned in the *Territorial Enterprise*, as during one of the stagecoach robberies for which Wixom stood accused the road agent did not even carry a gun, but used a stick as if it were a rifle.[92] Surely a competent lawyer would have had much to say about whether an experienced stagecoach driver would stop to be robbed by a man carrying a stick.

During the October 27 robbery, one passenger was riding on top of the stagecoach and surely got a good look at the lone robber. Though no one was able to identify the road agent that day, a defense lawyer would have wanted to question that passenger. After all, the passenger might have testified that Wixom did not resemble the man who robbed the stagecoach on October 27.

An attorney would also likely have taken measures to have the jury hear the testimony of eye-witnesses Kehoe, Stonehill and Addington from the heist on November 1, stating that the highwayman had a decidedly "Yankee accent." From the 1860 United States census, we know that Shepherd L. Wixom was born in 1843 in Canada and was raised in Lexington, Michigan – not necessarily an area known for its "Yankee" accents.

But the richest trove of all for a defense attorney, had Wixom had one to represent him, was probably the evidence about the allegedly stolen coat. The *Sacramento Daily Union* article on Wixom's arrest notes that there were other "suspicious circumstances," but the principle charge was simply that Wixom had the coat.[93]

Wixom had married Gusta Frazier in Utah a short time before his arrest and trial. According to the press of the day, Wixom told "conflicting stories" regarding the coat, "first saying he had bought it in Salt Lake City for his wedding and then said that it had been given to him as a gift."[94] One possibility is that Wixom did indeed purchase or receive the coat for his wedding, as he said.[95] Interestingly, the *Territorial Enterprise* of January 17, 1874 reported the following: "It is too bad that a great, rich and powerful corpora-

Carson Street, Carson City (c. 1865). Special Collections, University of Nevada, Reno Library.

tion like Wells, Fargo & Co. should descend so low as to put up a job on an innocent individual to rob him of his wedding coat."[96] Certainly the local reporter got the impression that the coat in question was Wixom's. The jury might well have reached the same conclusion if guided to it by a defense attorney.

Could it be that Wixom was given the coat by one of the three real bandits or had happened across the coat, but after learning that it was stolen just did not know how to explain that to the jury for fear that it would make him look guilty of the robberies? Again, we do not know, but these were all avenues rich with potential defenses in the hands of an attorney.

Perhaps Wixom's witnesses could have corroborated how he came into ownership of the coat or could have given him an alibi for the time of one or all of the three robberies. We simply do not know because Wixom did not have a lawyer challenging his indictment or questioning witnesses or arguing his defense.

Wixom's Criminal Record

Past behavior is often considered to be a good indicator of future actions. It is easier to believe that someone who has committed crimes in the past is likely to commit them in the future. Wixom was branded in the press as a "notorious highwayman"[97] and an ex-felon. His prior criminal record seemed to make him guilty in the eyes of public opinion.

Here is what is known of Wixom's criminal record. In 1871, Wixom was arrested and jailed on felony charges of horse stealing. While waiting for his trial, he befriended another detainee, Ms. Hattie Funk.[98] Funk was charged with the murder of her husband, James, in Eureka. Wixom was fully acquitted of the horse stealing charge and was released from jail.

Later, Wixom went back to visit Mrs. Funk at the Lander County jail. He took her a package of men's clothing, and Funk proceeded to walk out of the jail's front door. Wixom was soon discovered and arrested, even as Funk fled, but she quickly turned herself in. Though Wixom was convicted of abetting Hattie's escape from jail, he received a full pardon from the Governor of Nevada after serving less than eight months in prison.[99]

Hattie Funk too was eventually acquitted of all the charges she faced. It is purely speculative as to why she was acquitted of murder, but a newspaper account at the time suggested that the death of James Funk was the result of a domestic dispute involving "whiskey" and allegations of "domestic infelicities."[100]

A lawyer might well have been able to prevent people from serving on Wixom's jury who had been influenced by tales of his alleged criminality carried in the newspapers. Even if the jurors had read or knew of the accounts in the press, the lawyer could have reminded the jury that Wixom was not guilty of the horse-stealing charge and thus had no prior conviction other than aiding Funk's escape. And, Hattie Funk may have merely been defending herself against her husband James in what we would today consider to be a case of domestic violence. If so, a good lawyer may have been able to por-

Gravestone of Sheppard Wixon in Tuttle Gulch Cemetery. Courtesy of April Salinas, Redding, California.

tray Shepherd Wixom as an honorable man willing to stand up for a down-trodden innocent woman who should never have been arrested in the first place. In any event, a lawyer would most certainly have told the jury that the Nevada Governor had seen fit to fully pardon Wixom for the crime of abetting Hattie's escape from jail.

A Differing Theory of the Case

While Wixom was in the Nevada State Prison before the Governor pardoned and released him from abetting the Funk escape, 29 other prisoners staged a large-scale escape attempt on September 17, 1871. The prisoners overtook the guards, broke into the armory, and stole weapons. After an "epic gun battle," twenty prisoners made it free.[101]

Some time later after Wixom was released from prison and before his arrest on the stagecoach robberies, Wixom became aware that one of the escapees, Chris Blair, was living in Ogden, Utah, under the alias Charles H. Clark. Wixom told Sheriff Emery where Blair could be found. Blair was captured and returned to Nevada State Prison.[102] In the hands of a competent lawyer, such actions could be used either to demonstrate that Wixom was of good character or, perhaps, to show motive why a true outlaw like Blair may have wanted to set up Wixom as the fall guy for the stagecoach robberies.[103]

Character

Although the Supreme Court decision in *In re Wixom* strengthened Wren's bill and protected the rights of indigent defendants from 1875 onward, it did nothing for Shepherd Wixom personally. Wixom's only available course of action was to petition the Board of Pardons for his release. In numerous pardon requests Wixom insisted on his innocence, reminded the Board that he was denied counsel, that the Nevada Supreme Court had enforced the right to coun-

sel on behalf of future defendants in his name, and that he should be released.[104] Though it is lost to the historical record, Wixom even claimed he had received a letter from Judge McKenney admitting that the judge forced him to trial without a lawyer and that it had been an "injustice" to do so.[105] Judge McKenney did ultimately recommend Wixom for a pardon, but it did no good. Wixom never received a pardon from the Board. Instead, he was released from the Nevada State Prison in 1882 after serving out his sentence and left the state for good. He settled in Shasta County, California, where he died in 1894 at the age of 51.[106]

Wixom is buried at the Tuttle Gulch cemetery.[107] Thanks to the electronic information age in which we now live, a photograph of Wixom's headstone is publicly available. The headstone indicates that Wixom was a Union Civil War veteran. He enlisted in Detroit on February 5, 1863, at the age of 20 and was a private in Company H of the Michigan 9th Cavalry Regiment.[108] Wixom's regiment fought numerous battles with the Confederate Army as they wound their way through Ohio, Kentucky, and on into Tennessee and Georgia. There, Wixom's regiment was one of the few that stayed with General Sherman on his famous march to the sea that many historians credit with breaking the backbone of the Confederacy.

Two months before Robert E. Lee would surrender in April of 1865, Shepherd L. Wixom was wounded in one of the final battles of the Civil War. Rather than abandon the cause, Wixom transferred into the 17th Regiment Veteran's Reserve Corps, also known as the "invalid" corps. Despite their injuries, the men of the Reserve Corps aided the front lines with communication and supplies to the extent possible. Wixom remained in the Reserve Corps until November 1865.

The 9th Michigan Cavalry at Lookout Mountain in Chattanooga, Tennessee (July 1864). Courtesy of Richard Bishop, Michigan.

With a competent attorney, Wixom's military career could have been used during his trial to show his good moral character and to counter the public perception that he was a "notorious highwayman." This might have gone a long way with Wixom's jury, given Nevada's reputation as the "battle born" state that achieved statehood, in part, to help Lincoln win the war effort.

Chapter 6
The Current Indigent Defense Crisis in Rural Nevada

Nevada's commitment to equal justice that began in the 1870s reached its zenith in 1971. The U.S. Supreme Court handed down its *Gideon v. Wainwright* decision in 1963, mandating that states – not counties or local governments – must assure competent counsel to poor people accused of felonies in state courts. In the wake of that decision, in 1970 the National Conference of Commissioners on Uniform State Laws, funded by the U.S. Department of Justice, published a Model Public Defender Act that it recommended all state governments adopt. Following that recommendation, in 1971 the Nevada Legislature created the State Public Defender as an executive branch agency charged with administering the constitutional mandate to provide competent lawyers to the poor in all counties other than Clark (Las Vegas) and Washoe (Reno).

The State Public Defender Act created an independent seven-member commission appointed by a diversity of factions[109] to ensure that no single branch of government could exert undue interference on the work of the agency dedicated to representing poor people. The commission was charged with overseeing the State Public Defender system, hiring and firing the executive of the system, and setting uniform policies for the delivery of indigent defense services. If created today, the State Public Defender Commission of 1971 would meet virtually every national standard related to the independence of the defense function.

The Preeminent Need for Independence of the Defense Function

In 1981, the United States Supreme Court determined in *Polk County v. Dodson* that states have a "constitutional obligation to respect the professional independence of the public defenders whom it engages."[110] Observing that "a defense lawyer best serves the public not by acting on the State's behalf or in concert with it, but rather by advancing the undivided interests of the client," the Court concluded in *Polk County* that a "public defender is not amenable to administrative direction in the same sense as other state employees."[111]

Independence of the defense function is especially necessary to prevent undue judicial interference.[112] As far back as the Scottsboro Boys case (*Powell v. Alabama*[113]), the U.S. Supreme Court questioned the efficacy of judicial oversight and supervision of right to counsel services, asking: "[H]ow can a judge, whose functions are purely judicial, effectively discharge the obligations of counsel for the accused? He can and should see to it that, in the

proceedings before the court, the accused shall be dealt with justly and fairly. He cannot investigate the facts, advise and direct the defense, or participate in those necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional."[114]

National standards of justice reflect the aims of the U.S. Supreme Court. In February 2002, the American Bar Association (ABA), House of Delegates adopted the *Ten Principles of a Public Defense Delivery System*, noting that the *Principles* "constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney."[115] In 2012, the U.S. Attorney General stated that the ABA "literally set the standard"[116] for indigent defense systems with the promulgation of the *Ten Principles*.

Each state has a "constitutional obligation to respect the professional independence of the public defenders whom it engages."

The first of the ABA *Ten Principles* explicitly states that the "public defense function, including the selection, funding, and payment of the defense counsel, is independent."[117] In the commentary to this standard, the ABA explains that the public defense function "should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel," noting specifically that "[r]emoving oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense."[118] Likewise, the public defense function should also "be independent from political influence."[119] To "safeguard independence and to promote the efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems."[120]

Footnotes to ABA *Principle 1* refer to the National Study Commission on Defense Services' (NSC) *Guidelines for Legal Defense Systems in the United States* (1976). The *Guidelines* were created in consultation with the United States Department of Justice (DOJ) under a DOJ Law Enforcement Assistance Administration (LEAA) grant. NSC *Guideline 2.10* (The Defender Commission) states that a "special Defender Commission should be established for every defender system, whether public or private," and that the primary consideration of appointing authorities should be "ensuring the independence of the Defender Director."[121]

Independence of the defense function is the first of the ABA *Principles* because without it most of the other ABA *Principles* are unobtainable. Fearing a loss of their jobs if they do not please either a judge or a county/state executive, defenders are at risk of taking on more cases than they can ethically handle (in violation of *Principle 5*), inappropriately delaying work on

a case (in violation of *Principle 3*), not meeting the requirements of ethical representation as a result of triaging services (*Principle 10*), and agreeing to work under low-bid, flat-fee contracts (*Principle 8*).

About face: Nevada's turn away from its commitment to equal justice

In 1975, only four years after creating the State Public Defender Commission, the Nevada Legislature did away with it and voted instead to make the State Public Defender a direct appointment by the Governor.[122] Chief public defenders who are direct political appointees often take into account what they must do to please the Governor, rather than doing what is solely in the best interest of the defendants as ethics require, or they risk losing their jobs.

Say, for example, that a Governor calls for all executive branch departments to take a 10% cut in their budgets. The problem is that public defenders are constitutionally required to defend all people appointed to them from the court. Unlike other aspects of government, the defense practitioners do not control their own workload. Therefore a 10% budget cut is impossible to implement if it is not met by a 10% cut in workload –- at least it is impossible if one is concerned about providing ethical representation. But, despite the ethical considerations, the public defender that is a direct gubernatorial appointee is likely to cut 10% rather than risk being replaced by someone who will do what the Governor says.

Not surprisingly, the Nevada State Public Defender resigned in 1979, stating that the undue political interference, institutionalized by the Nevada Legislature in 1975, made it impossible to fulfill the agency's mission. A subsequent independent review marked the State Public Defender system as "disorganized and underfunded."[123]

In 1989, the legislature further compromised the ability of the State Public Defender to render effective services by demoting the position from a gubernatorial cabinet-level position to one of several intra-agency positions within the Department of Human Services. This move resulted in the State Public Defender having to argue for adequate budgetary resources amongst several other Human Service agencies. From there, the director of Human Services would have to argue for all of their needs against the needs of all the other executive branch departments.

Without an independent voice to advocate for appropriate resources, the state's commitment to the rural counties deteriorated further. As originally conceived, the state paid for 80% of all public defender costs in the rural counties and the counties funded the other 20%. The state's financial commitment slowly eroded to the point where counties, at first, had to pay the majority of the costs and, eventually, 80% of the entire cost. Counties quickly learned that, by simply opting out of the state system, they could spend less money to provide the services *and* exercise local power over their public defense systems.

Unfortunately for those too poor to hire their own counsel, this movement out of the State

Public Defender system was done with no guidance whatsoever by the state. There were no standards as to how the counties must set up their systems. There were no standards to say what training or experience attorneys must have to take indigent defense cases or what on-going training was required for them to continue to take cases. In most instances, the county governments established systems in which the lowest bidder was contracted to provide representation in an unlimited number of cases for a single flat fee. The attorneys were not reimbursed for overhead or for out-of-pocket case expenses such as mileage, experts, investigators, etc. The more work an attorney did on a case, the less money that attorney would make, giving attorneys a clear financial incentive to do as little work on their cases as possible.

There were no standards guiding Nevada's county governments as to how they must set up their systems.

The impact of this devolution was keenly felt during a survey undertaken by the Nevada Supreme Court Indigent Defense Commission in 2008. Since no state agency was responsible for the representation given to poor defendants in rural Nevada, the commission had to ask each county to self-report information such as indigent defense expenditures and number of cases. Some counties could not or would not provide this basic information to Nevada's highest Court.

Douglas County self-reported that it spent $383,683 in 2007 on primary defender services (or, $191,845 each for two separate attorneys) and $46,661 on conflict counsel, with an additional $23,036 spent on case-related services. Though that may sound like a lot of money, the county reported that in the same year they had 202 felony cases including one murder case, 3,249 misdemeanors, and 341 juvenile delinquency cases.[124] So, on average, there was only $119.56 available on each of these cases to pay the attorney a fee, and to pay the attorney's overhead, and to pay for all of the necessary out-of-pocket expenses in the case. One hundred and forty years ago the Nevada Legislature first set attorney compensation at a rate not to exceed $50 dollars per case. The relative historical value of $50 in 1874 is estimated to be about $12,200 in 2007 dollars,[125] yet Douglas County public defenders in 2007 earned less than 1% of that.

ABA *Principle 5* states that national "caseload standards should in no event be exceeded."[126] National caseload standards were first developed in 1973 under a grant from the United States Department of Justice.[127] They state that no attorney should handle more than 150 felonies in a single year if that is the only type of case handled. Similarly, an attorney handling only misdemeanors should have no more than 400 per year; juvenile delinquency matters no more than 200 per year; and, appellate matters no more than 25 per year.

Using these national standards, Douglas County should have had over eleven full-time

attorneys when, in fact, they operated with just three part-time attorneys. And, the situation is actually far worse. National standards require indigent defense practitioners to have adequate support staff. For example, national standards require indigent defense systems to have one investigator for every three attorneys. A state like Indiana lowers the maximum number of cases a public defense attorney is allowed to handle in a year if the attorney is not provided with the required number of support staff. No such support staff was reported in Douglas County.

Additionally, the part-time conflict attorney handled only those cases where the other two attorneys had conflicts (and, again, Douglas County was unable to provide a simple count of the cases that went to this part-time conflict attorney). We know the conflict attorney was paid only ¼ of the amount paid to each of the other two attorneys, so from that we can reasonably estimate that the conflict attorney received 1 case for every 4 cases that each of the primary attorneys received, or 1 of every 9 cases. This would mean that each of the part-time primary attorneys handled an average mixed caseload of 1,685 cases (or the equivalent of the caseload of nearly five full-time attorneys that would be allowed under national standards). And, this does not include other work the attorneys were required to do under their contracts, such as family court work and parole and probation violations.

Douglas County is not alone. The *Las Vegas Review Journal* investigated the indigent defense system in Lyon County, and they found even more problematic conditions.[128] When a contract defender there was appointed to the bench, his pending cases needed to be transferred to another attorney. A 27-year-old attorney who had only passed the bar exam a few weeks prior inherited the $105,000 contract. He also began day one of his tenure as a public defense attorney with 600 cases, 200 of which were felonies and some of those were murder cases. So a brand new part-time attorney with no experience or training was expected to jump into a caseload that under national standards should have been handled by more than three experienced full-time attorneys.

And, all case-related expenses had to be paid out of that same flat fee. The *Review Journal* article reports that one public defense attorney in Lyon County must "travel 400 to 600 miles a week to courthouses in Fernley and Yerington, travel time that cuts into the time he can spend with clients."[129] With gasoline prices in 2007 at approximately $3.10 a gallon, the attorney was spending at least $4,000 out of that $105,000 flat fee just for gas.[130] Factor in overhead costs (e.g., insurance, bar fees, training, Internet, office space, etc.) and anything needed to properly defend the accused (e.g., experts, investigation, etc.), and it becomes obvious that, under flat fee contracts, public defense attorneys have financial interests to dedicate as little funding to case-related expenses as possible.

For these reasons, ABA *Principle 8* specifically bans flat fee contracts: "Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or

complex cases, and separately fund, expert, investigative and other litigation support functions."[131]

Sorting it all out on appeal

When a defendant is convicted and sentenced in a trial court, he has the right to have the decision reviewed by a higher authority. During this review process, the defendant can claim that his trial lawyer performed so poorly that it negatively and unfairly affected the outcome of the case. These claims are called "ineffective assistance of counsel claims" (IAC claims), and if found meritorious the case will be sent back to the trial courts to be re-tried. Throughout the work of the Supreme Court Indigent Defense Commission, the Court heard that there is no problem in the rural counties because there have been few successful ineffective assistance of counsel claims.

However, upwards of 90% of all criminal cases in the nation are resolved through plea bargains, not trials.[132] Douglas County, for example, self-reported that of the 3,793 indigent defense cases assigned in 2007, only four (4) cases went to trial. This is a trial rate of less than one half of one percent (0.11%). More astonishing still, none of the 3,249 misdemeanor cases were ever brought to trial. And, Nevada limits the issues that can be raised on direct appeal from a guilty plea. Finally, only a tiny fraction of the cases that do go to trial ever move on to the appellate system. Therefore, it is simply unsound to gauge the health of an entire indigent defense system based on but a small fraction of the few cases that do go to trial and are appealed.

In certain circumstances (e.g., if all the facts necessary for an IAC finding are contained in the trial record), an IAC claim can be brought on direct appeal. But, in rural Nevada, the same attorney who represented the defendant at trial is also responsible for handling the direct appeal. What are the chances that overworked, unprepared, financially conflicted, public defense attorneys will ever raise ineffective assistance of counsel claims against themselves in a direct appeal? In 1874, Shepherd L. Wixom may have had no appellate review because of a lack of counsel, but poor defendants in rural Nevada today continue to have no meaningful review because the system is structured so as to, in effect, give them no direct appeal.[133]

What are the chances that overworked, unprepared, financially conflicted, public defense attorneys will ever raise ineffective assistance of counsel claims against themselves in a direct appeal?

The first real chance of raising ineffective assistance of counsel claims occurs at the post-conviction stage of a criminal proceeding, where a defendant may raise new issues about the constitutionality of his conviction beyond what is in the trial record. But, of course, there is no federal right to counsel in post-conviction proceedings, and Nevada only appoints counsel in post-conviction death penalty cases. So, if there is no counsel, there is no investigation, and there is no ability to develop the factual basis for an IAC claim.

Further, to the extent that ineffective assistance of counsel claims are raised on either direct appeal or

post-conviction in cases arising out of rural Nevada courts, they are then typically subjected to an inappropriate standard of review. *Strickland v. Washington*[134] established a two-pronged test for ineffective assistance of counsel, requiring that a defendant prove his trial attorney's actions were outside of the bounds of generally accepted norms of practice and that the failure of the attorney was prejudicial in the outcome of the case. This is most often the test applied by reviewing courts.

On the very same day, the U.S. Supreme Court handed down *United States v. Cronic* as a companion case to *Strickland*.[135] Cronic concluded that the right to the effective assistance of counsel is "the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing." Referencing *Strickland*, the *Cronic* Court noted that when "a true adversarial criminal trial has been conducted -- even if defense counsel may have made demonstrable errors -- the kind of testing envisioned by the Sixth Amendment has occurred."[136] However, the Court continued, "if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated."[137] So, if there is a complete breakdown in the adversarial system, then it is entirely appropriate to "[conclude] that, under these circumstances, the likelihood that counsel could have performed as an effective adversary was so remote as to have made the trial inherently unfair."[138]

The right to the effective assistance of counsel is "the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing."

The *Cronic* Court gave criminal justice stakeholders an example of systemic deficiencies that prevent a meaningful adversarial process – the case of the so-called Scottsboro Boys in *Powell v. Alabama*. Reviewing *Cronic* and *Powell* together, it is clear that the U.S. Supreme Court has defined a meaningful adversarial process as one in which the *system* has *both* appointed an attorney and also given that attorney the time and resources to do an effective job. Reflecting on the lack of advocacy given the Scottsboro Boys, the *Powell* Court said: "from the time of their arraignment until the beginning of their trial, when consultation, thoroughgoing investigation and preparation were vitally important, the defendants did not have the aid of counsel in any real sense." Moreover, "[i]t is vain to give the accused a day in court with no opportunity to prepare for it, or to guarantee him counsel without giving the latter any opportunity to acquaint himself with the facts or law of the case."

Thus, if a defendant is not given an attorney with the time to conduct a thorough investigation, the system is inherently defective. This is true whether the lack of time is caused by being

formally appointed too late in a case or by an excessive caseload that precludes the attorney from spending the appropriate amount of time on a case. When an attorney agrees to handle 1,400 cases in a year, or has 600 cases on his very first day with no prior experience, or is willing to sacrifice zealous advocacy to please a judge or executive, the defense system is no longer capable of subjecting each prosecution to "the crucible of meaningful adversarial testing." The system is inherently deficient.

Conclusion

Was Shepherd L. Wixom guilty of robbing stagecoaches in Lander County in 1873? Did the real perpetrator of the crime remain at large to wreak havoc on public safety in Nevada while an innocent man languished at the state penitentiary for ten long years at tax payer expense? Or, did Wixom receive his just punishment? The simple answer is that no one will ever know for certain because Wixom did not get to subject his indictment to meaningful adversarial testing.

The fact that the criminal courts in rural Nevada today do not, in every instance, provide an adequate right to counsel, means that the same mistakes are still being made that threaten public safety. The state of Nevada must make every effort to restore a meaningful right to counsel to ensure that its criminal courts are doing the very best to convict the guilty while preventing the wrongful conviction of the innocent.

Austin, Nevada (c. 1870). Special Collections, University of Nevada, Reno Library.

Chapter 7
Recommendations

Since January 2008, the Nevada Supreme Court has handed down a number of administrative orders aimed at providing a constitutionally adequate right to counsel. Though the orders have had significant impact on urban Nevada, and in particular Clark County (Las Vegas), the administrative orders have had little impact in rural counties. The reason for this is not very complicated. As the largest county in the state, Clark County has the resources and indigent defense structure to respond to the Court's mandates, whereas rural Nevada does not.

So, for example, when the Court ordered the judiciary to be removed from the oversight and administration of indigent defense services in January 2008, Clark County could easily hire an independent assigned counsel coordinator to run the conflict panel. But the rural counties had no financial ability to hire independent contractors to administer their services. In many rural counties, two or three attorneys provide all right to counsel services, and hiring a fourth to supervise is cost-prohibitive. For this reason, the Court accepted what became known as the "Wagner Compromise," a so-called temporary fix for jurisdictions where there are three or fewer district or limited court judges within a single township. In these jurisdictions under the "Wagner Compromise," appointments and approval of trial-related expenses must be carried out by another judge within the district or by the district judge who has served longest in the district. This temporary fix has become institutionalized over the past four years and, of course, it never remedied that problem of judicial interference exerting undue influence on an appointed lawyer. In other words, this fix is no solution at all.

We begin our recommendations with a simple observation: Nevada's rural counties cannot shoulder the state's financial responsibilities under *Gideon* and its progeny. An examination of U.S. Supreme Court case law on the right to counsel since 1963 reveals that county responsibilities for funding indigent defense in Nevada are only going to expand in future years unless the state steps in. Because the right to counsel is a core foundation of individual liberty, the United States Supreme Court has time after time expanded the right to counsel whenever a question has arisen regarding how, when, and where counsel must be provided to an individual facing a loss of liberty at the hands of government. This has been true regardless of whether the U.S. Supreme Court of the time was viewed as liberal or conservative. The right to counsel established for felony cases in *Gideon* now applies as well to direct appeals,[139] juvenile delinquency proceedings,[140] misdemeanors,[141]

misdemeanors with suspended sentences,[142] and appeals of sentences resulting from guilty pleas.[143]

Although *Gideon* required the "guiding hand of counsel at every step in the proceedings (emphasis added)," it took the Court a number of cases to delineate the specific steps in a case at which the right to counsel must be provided. These steps now include at least police interrogations,[144] post-indictment police line-ups,[145] preliminary hearings,[146] and plea negotiations.[147] It was the Roberts Court in 2008 that extended the right to counsel to its earliest point yet. When a person is arrested on a criminal charge, the accused is brought before a magistrate to be told of the accusation against him and learn whether and under what circumstances he can be released from jail, if at all. This appearance before a magistrate often occurs long before prosecution is formally instituted and often even before any prosecutor is aware that a crime has occurred or that a person has been arrested for it. In *Rothgery v. Gillespie County*, the Roberts Court reaffirmed two earlier decisions of the Court holding "that the right to counsel attaches at the initial appearance before a judicial officer. This first time before a court, also known as the 'preliminary arraignment' or 'arraignment on the complaint,'"[148] said the Court, "marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel."[149] At that point, the state is obliged "to appoint counsel within a reasonable time once a request for assistance is made."[150] The Court made clear that it does not matter "whether the machinery of prosecution was turned on by the local police or the state attorney general,"[151] and it refused to countenance any "distinction between initial arraignment and arraignment on the indictment" even though strongly urged to do so.[152]

The United States Supreme Court has also consistently held that the right to a lawyer means more than just the right to a warm body with a bar card. In *McMann v. Richardson*,[153] the Court declared that "the right to counsel is the right to the effective assistance of counsel." In 2010 in *Padilla v. Kentucky*, the Court said "(i)t is our responsibility under the Constitution to ensure that no criminal defendant—whether a citizen or not—is left to the 'mercies of incompetent counsel.' To satisfy this responsibility, we now hold that counsel must inform her client whether his plea carries a risk of deportation."[154] And in 2012, the Court made clear with two more cases – *Missouri v. Frye* and *Lafler v. Cooper* – that the right to effective assistance of counsel applies not just to trials but also to the plea-bargaining process.[155] The *Frye* and *Cooper* decisions greatly increase the exposure of those governments that are responsible for paying the cost of meritorious ineffective assistance of counsel claims, because the overwhelming majority of cases are resolved through plea deals. Nevada's rural counties just cannot keep up with the cost of this ever-evolving right to counsel case law.

Moreover, the U.S. Department of Justice has begun to enforce the right to counsel. On December 18, 2012, the U.S. Department of Justice announced an agreement with Shelby County (Memphis), Tennessee, to usher in major reforms of the county's juvenile court system and the method for representing children in delinquency proceedings. Sweeping changes are afoot, including systemic safeguards such as independence, reasonable caseloads, attor-

ney performance standards, and training for the juvenile defense function, among others – basically the majority of the standards envisioned by the ABA *Ten Principles*. Should the Department of Justice turn next to rural Nevada, it could become very costly for the counties to try to defend a federal lawsuit.

For all these reasons, the 6AC makes a single recommendation:

Recommendation #1: *A state-funded public defender commission is established to oversee and administer all right to counsel services in every county other than those that are required under Nevada Revised Statutes 260.010 to have a local public defender agency. The commission is authorized to establish and administer rules and standards for the effective and efficient delivery of indigent defense services in those counties that it oversees.*

The Nevada Supreme Court should either make permanent the indigent defense commission envisioned in the January 4, 2008 ADKT-411, but exclude those counties required to have a public defender under Nevada Revised Statutes 260.010 (Clark and Washoe Counties), or the Court should actively engage the legislature to do so. Several states have similar systems. For example, the Oklahoma Indigent Defense Services oversees and administers services in rural counties, while Oklahoma County (Oklahoma City) and Tulsa County (Tulsa) remain outside of the state system. In Kentucky, Jefferson County (Louisville) remains independent of the Kentucky Public Advocate. And in Tennessee, both Davidson County (Nashville) and Shelby County (Memphis) operate independent of the state system, although both receive some state funding.

Though it is always best to have local stakeholders determine the most appropriate make-up of such commissions, we note how two states have set up their Commissions:

a. **Louisiana Public Defender Board:** La R.S. 15 § 146 creates a 15-member commission. Appointing authorities: Governor (2 appointees); Chief Justice (2 appointees: one a juvenile justice expert; one a retired judge with criminal law experience); President of the Senate (1); Speaker of the House (1); Four Deans of accredited law schools (Louisiana State University, Loyola, Southern, and Tulane – 1 appointment each); State Bar Association (2); Louis A Martinet Society (African-American Bar: 1); Louisiana State Law Institute's Children Code Committee (1); and, the Louisiana Interchurch Conference. "Persons appointed to the board shall have significant experience in the defense of criminal proceedings or shall have demonstrated a strong commitment to quality representation in indigent defense matters. No person shall be appointed to the board that has received compensation to be an elected judge, elected official, judicial officer, prosecutor, law enforcement official, indigent defense provider, or employees of all such persons, within a two-year period prior to appointment. No active part-time, full-time, contract or court-appointed indigent defense provider, or active employees of such persons, may be appointed to serve on the board as a voting member."

b. **North Carolina Commission on Indigent Defense Services:** NC G.S. § 7A-498.4 creates a thirteen-member commission. Appointing authorities are as follows: Chief Justice (1 appointment); Governor (1); Senate President (1); Speaker of the House (1); North Carolina Public Defenders Association (1); State Bar (1); North Carolina Bar Association (1); NC Academy of trial lawyers (1); NC Association of Women Lawyers (1); the Commission makes three more appointments. "Persons appointed to the Commission shall have significant experience in the defense of criminal … or shall have demonstrated a strong commitment to quality representation in indigent defense matters. No active prosecutors or law enforcement officials, or active employees of such persons, may be appointed to or serve on the Commission. No active judicial officials, or active employees of such persons, may be appointed to or serve on the Commission, except as provided in subsection (b) of this section. No active public defenders, active employees of public defenders, … may be appointed to or serve on the Commission."

In large geographic areas with relatively small populations, staffed public defender offices are often not the best method for delivering services. The new commission should therefore be authorized to administer, set standards for, and oversee a rural assigned counsel and/or contract attorney system, should the commission deem these to be the most suitable for a particular jurisdiction. This is precisely what Montana does, because the statewide commission determined that most of rural Montana only has enough cases to merit hiring private attorneys to handle the cases on a hourly pay or contract basis. With a coordinated rural system, a single state commission can gauge the ability of private attorneys to appropriately handle cases in more than one county, thus maximizing the efficient use of the relatively few attorneys in rural Nevada who are willing to do this work. Such a commission may even be able to contract with the Clark County Public Defender to provide training for the hourly or contract attorneys, so as not to reinvent the wheel nor have duplicative services in a state where most of the cases arise from a single jurisdiction.

The problem, of course, is what should be done with the current State Public Defender office. The 6AC recommends that the State Public Defender office be brought under the auspices of the new commission and turned into a rural appellate office. In this way, Nevada can ensure that every indigent client receives a new and independent attorney to handle the direct appeal. This location can likewise serve as the central administrative office for the entirety of the rural trial and appellate system. A central staff can pay vouchers, administer contracts, handle attorney-qualification certifications, provide supervision, be a state defender help desk, etc.

Endnotes

1. Hume, James B. and John N. Thacker. *Wells, Fargo & Co. Stagecoach and Train Robberies, 1870-1884: The Corporate Report of 1885 with Additional Facts about the Crimes and their Perpetrators*. Revised Edition. Edited and expanded by R. Michael Wilson. McFarland & Company, Inc. Jefferson, North Carolina. 2010. Pages 234-237. This report relies for the most part on the Wells, Fargo & Company reports for the facts surrounding the arrest of Shepherd L. Wixom and the stagecoach robberies he is alleged to have committed. The 6AC notes original source materials – like newspapers of the day – whenever the narrative deviates from the Wells, Fargo & Company reports.

2. Shepherd L. Wixom is the official name on the Nevada Supreme Court petition for certiorari entered in 1877 and is the one used throughout this report. However, as is typical with reporting of the day, Mr. Wixom's name is not spelled consistently throughout the historical record. The Wells, Fargo & Company records list him as "Shep Wixon." His first name is spelled at times as "Sheppard" or "Shepard," and his last name is spelled as "Wixon," "Wixam," and "Wixson." The 6AC researched genealogical records trying to see if Shepherd Wixom was related to one of Austin's leading families of the day. After all, in a mining town quite small by today's standards, how many Wixom families could there be? William Wallace Wixom was the town doctor for Austin and the father of Nevada's first worldwide celebrity, Emma Nevada – an opera singer who played for many of the crowned heads of Europe. However, we were not able to make that connection and now believe that Shepherd L. Wixom is "Sheppard Wixon" of Lexington, Michigan, who was born in 1843.

3. *Territorial Enterprise*. October 7, 1873.

4. See generally: Beito, David T. and Linda Royster Beito. *Rival Road Builders: Private Toll Roads in Nevada, 1852-1880.* Nevada Historical Society Quarterly. Volume 41, Number 2. Summer 1998. Available at: http://history.ua.edu/html/faculty/beitorivalroadbuilders.pdf.

5. The famous green Wells, Fargo & Company "treasure boxes" were made of "sturdy Ponderosa pine, oak and iron" and were "prized by highway bandits" because they often carried "gold dust, gold bars, gold coins, legal papers, checks and drafts." Though they were difficult to break open, "the real security of the treasure boxes came from who was guarding them – the Wells Fargo shotgun messengers." "If thieves were foolhardy enough to try and steal a treasure box in transit, they would find themselves staring down the barrel of a sawed-off shotgun, loaded with 00 buckshot, and possibly held by Wyatt Earp himself." Information on Wells, Fargo & Company treasure boxes comes from the Wells Fargo website at: www.wellsfargo.com/about/history/stagecoach/treasure_box.

6. A "road agent" was a common term used in the 1870s for a "highwayman," "bandit," or "robber." The terms are used interchangeably throughout the report.

7. That Wixom requested to be brought to a committing magistrate, and the subsequent denial of that request, was not part of the record in the Wells, Fargo & Company records. This information is contained in Wixom's petition for certiorari submitted to the Nevada Supreme Court on April 2, 1877 by his privately retained attorney, T.W.W. Davies of Carson City.

8. For all questions related to criminal procedure in Nevada at the time of Wixom's trail, the 6AC used *The Compiled Laws of Nevada in force from 1861 to 1900 (inclusive): with annotations from Volumes I to XXV of the Decisions of the Supreme Court of Nevada*. The laws were compiled and annotated by Henry C. Cutting of the Nevada Bar. Printed by Andrew Maute, Superintendent of State Printing, 1900.

9. Ibid.

10. In preparation for submitting the writ of certiorari, Wixom's lawyer T.W.W. Davies requested the official minutes of the Lander County District Court in the case of *State of Nevada vs. Shepard L. Wixan*. On February 19, 1877, the District Court responded to the request. It is included in the submission to the Court

and now resides in the Nevada State Archives.

11. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

12. This section borrows language from the afterward drafted by 6AC Executive Director David Carroll for the forthcoming book *Chasing Gideon: The Elusive Quest for Poor People's Justice* by Karen Houppert. To be published March 18, 2013 by New Press, New York, New York.

13. Henry, Patrick. *Speech before the Virginia House of Burgesses at St. John's Church*. March 23, 1775: "Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! -- I know not what course others may take; but as for me, give me liberty or give me death!"

14. Jefferson, Thomas. *A Letter from Thomas Jefferson to James Madison*. December 20, 1787. The Thomas Jefferson Papers Series 1. General Correspondence. 1651-1827. Available at: http://memory.loc.gov/cgi-bin/ampage?collId=mtj1&fileName=mtj1page008.db&recNum=726.

15. Adams, John. *The Works of John Adams, Second President of the United States: with a Life of the Author, Notes and Illustrations*, by his grandson Charles Francis Adams (Boston: Little, Brown and Co., 1856). 10 volumes. Volume II: *Diary, Notes of Debate, and Autobiography*.

16. Randolph N. Jonakait, *The Rise of the American Adversary System: America Before England* (July 2009), as published in Widener Law Review. Available at: http://widenerlawreview.org/files/2009/06/01-jonakait-final-323-356.pdf. See also: http://broomerslaw12.weebly.com/uploads/6/2/8/1/6281119/the_adversarial_and_inquisitorial_trial_system1.pdf; http://mercantilelaws.blogspot.com/2012/07/difference-between-adversarial-and.html; and http://www.lawcom.govt.nz/sites/default/files/adversarial_and_inquisitorial_systems_2.pdf.

17. II *Rhode Island Colonial Records 1664-77* (Bartlett, 1857), p. 239. [As noted in William M. Beaney, *The Right to Counsel in American Courts* (U. of Mich. Press, 1955), at note 47, pp. 17-18.]

18. Randolph N. Jonakait, *The Rise of the American Adversary System: America Before England* (July 2009), as published in Widener Law Review. Available at: http://widenerlawreview.org/files/2009/06/01-jonakait-final-323-356.pdf.

19. Virginia was the lone state without the right to counsel in its constitution. See Beaney, pp. 14-26.

20. Dissent of Justice Louis Brandeis. *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932). Available at: http://supreme.justia.com/cases/federal/us/285/262/case.html.

21. Much of the history in this section takes its information from two sources: (1) Rocha, Guy Louis. *Nevada's Emergence in the American Great Basin: Territory and State*. Nevada Historical Society Quarterly. Volume 38, Number 4. Winter 1995. Pages 255- 280; and (2) Heller, Dean, Secretary of State of Nevada. *Political History of Nevada, 2006 (11th Edition)*. Edited by Renee Parker and Steve George. State Printing Office, Carson City, Nevada (2006).

22. Makley, Michael J. *The Hanging of Lucky Bill*. Eastern Sierra Press. Woodsfords, California. 1993. Page 17.

23. Ibid. Page 18.

24. Heller. *Political History of Nevada, 2006 (11th Edition)*. Page 66-68.

25. Makley. *The Hanging of Lucky Bill*. Page 18.

26. Ibid. Page 18.

27. Orson Hyde was one of 12 apostles of the Mormon Church. Heller. *Political History of Nevada, 2006 (11th Edition)*. Page 79.

28. Ibid. Page 87-88.

29. Makley. *The Hanging of Lucky Bill*. Page 47.

30. Ibid. Page 47.

31. Ibid. Page 47.

32. Ibid. Page 55.

33. Ibid. Page 55.

34. Ibid. Page 22.

35. Ibid. Page 22.

36. The facts of Lucky Bill's arrest and trial are compiled from Makley's book, *The Hanging of Lucky Bill*, Pages 90-94.

37. *Powell v. Alabama*, 287 U.S. 45 (1932).

38. Makley. *The Hanging of Lucky Bill*. Page 55.

39. Ormsby died gearing up one last vigilante committee to attack a Paiute tribe that had killed five white men while rescuing two kidnapped Paiute children.

40. United States Census Bureau. See: http://www.census.gov/dmd/www/resapport/states/nevada.pdf.

41. Heller. *Political History of Nevada*. Page 102.

42. All information on the Constitutional Convention of 1863 is taken from the following: Marsh, Andrew J., and Samuel L. Clemens (Mark Twain). *Reports of the 1863 Constitutional Convention of the Territory of Nevada*. Edited by William C. Miller and Eleanore Bushnell. Published by Legislative Counsel Bureau, State of Nevada.

43. Ibid. Page 30-31.

44. Section 2 of the Constitution of the State of Nevada.

45. Dickerson, Harvey, Attorney General State of Nevada. *Official Opinions of the Attorney General - 1964*. Available at: http://ag.state.nv.us/publications/ago/archive/1964_AGO.pdf

46. *California Penal Code of 1872*, Section 987: "If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him." Enacted February 14, 1872.

47. Nevada Supreme Court. *In re Wixom*. (Number 842 ½, April 1877). Pages 219-224.

48. Ibid.

49. Hume, James B. and John N. Thacker. *Wells, Fargo & Co. Stagecoach and Train Robberies, 1870-1884*. Pages 234-237.

50. Minutes of the Lander County District Court in the case of *State of Nevada vs. Shepard L. Wixan*. February 19, 1877. Submitted in petition of Shepherd L. Wixom in *In re Wixom*. Available at the Nevada State Archives.

51. Hume, James B. and John N. Thacker. *Wells, Fargo & Co. Stagecoach and Train Robberies, 1870-1884*. Pages 234-237.

52. *Sacramento Daily Union*. Volume 46, Number 7056. November 14, 1873.

53. *Territorial Enterprise*, January 17, 1874. Page 2.

54. *Sacramento Daily Union*. January 14, 1874.

55. *The Compiled Laws of Nevada in force from 1861 to 1900 (inclusive): with annotations from Volumes I to XXV of the Decisions of the Supreme Court of Nevada*. The laws were compiled and annotated by Henry C. Cutting of the Nevada Bar. Printed by Andrew Maute, Superintendent of State Printing, 1900.

56. All biographical information on Thomas Wren is from *The Nevada Monthly*. Volume 2, Number 1.

September 1880. Page 46-47.

57. *Journal of the Assembly for the State of Nevada, 1875*. Page 48.

58. Ibid.

59. Ibid. Wren's original bill did not limit attorney compensation. The Nevada Senate amended Wren's bill to add the $50 caps.

60. *The Nevada Monthly: A Book of Reference and Information, Devoted to the Mining, Agriculture, and Industrial Interests of the State and Literature*. Volume 2, Number 1. September 1880. Page 39. Available at the Huntington Library, Rare Books Department, in San Marino, California.

61. *Journal of the Assembly for the State of Nevada, 1875*.

62. *Journal of the Senate for the State of Nevada, 1875*.

63. Ibid.

64. Tamerlane William Whiting Davies was a graduate of the United States Naval Academy before becoming a high-ranking military officer in the Army of the Confederate States of America. He moved to Carson City two years after the end of the Civil War and became a highly acclaimed lawyer. Biographical material on T.W.W. Davies available at: http://autaugaatwar.multiply.com/journal/item/186/Lt.-Col.-T.W.W.-Davieshttp://daviesofpebbleton.org/bios/HamDavies.htm.

65. *Petition of Shepherd L. Wixom for Writ of Certiorari*. April 2, 1877.

66. *Response of the Attorney General to Petition for Certiorari on Behalf of Shepherd L. Wixom*. Available at the Nevada State Archives.

67. Nevada Supreme Court. *In re Wixom*. (Number 842 ½, April 1877). Page 223.

68. Ibid. Page 224.

69. Ibid.

70. Ibid.

71. Ibid.

72. Justice William H. Beatty most assuredly knew of Wren and his work. Wren took over the office of the City Attorney in Austin upon Beatty being appointed to the District Court bench in White Pine.

73. Nevada Supreme Court. *In re Wixom*. (Number 842 ½, April 1877). Page 224.

74. *Washoe County v. Humboldt County*, 14 Nev. 123, 133 (1879).

75. J.W. Rover was tried for murder in Humboldt County, but twice had his convictions overturned on appeal by the Nevada Supreme Court. A change of venue to Washoe County was needed for the third (and fourth) trials because of a depleted jury pool. The question in *Washoe County v. Humboldt County* was which county had to pay for all the associated costs of the third trial. For an excellent history of the trials, see: Rocha, Guy, *True Confessions: The J.W. Rover Case* at http://nsla.nevadaculture.org/index.php?option=com_content&task=view&id=805&Itemid=418.

76. Nevada Stats 1909, 330-33.

77. That Nevada turned to California for assistance in revising the Criminal Code is not surprising given the history of the two states. It is worth noting that Justice William H. Beatty, having ascended to be Chief Justice of Nevada Supreme Court, later stepped down and moved to Sacramento to be with his family. Beatty would go on to serve as Chief Justice for the State of California for 25 years.

78. Nevada Stats 1909, 330-33.

79. Hume, James B. and John N. Thacker. *Wells, Fargo & Co. Stagecoach and Train Robberies, 1870-1884: The Corporate Report of 1885 with Additional Facts about the Crimes and their Perpetrators*. Revised

Edition. Edited and expanded by R. Michael Wilson. McFarland & Company, Inc. Jefferson, North Carolina. 2010. Pages 234-237.

80. Ibid.

81. Ibid. The passengers were "Mrs. Soule of Virginia City and Charles Sutherland of Palisade."

82. Ibid.

83. Ibid.

84. Ibid.

85. Ibid.

86. Ibid.

87. Ibid.

88. Ibid.

89. Ibid.

90. Earl, Phillip I. *This was Nevada: Perils of the Stagecoach in Nevada Reviewed*. Henderson Home News. March 28, 1991. Available at: http://digitalcollections.mypubliclibrary.com/digital/11/4100/1/24.pdf

91. Ibid.

92. *Territorial Enterprise*, January 17, 1874.

93. Ibid.

94. *Sacramento Daily Union*. Volume 46, Number 7056. November 14, 1873.

95. In Nevada's earliest days, the vast majority of the population were male, as prospecting or mine working was a very tough life. Most expected to strike it rich and then return to their native state to settle down. Shepherd Wixom was different in that he was married at the time of his arrest. That does not, of course, prove anything other than he did not fit the stereotype of an outlaw.

96. *Territorial Enterprise*, January 17, 1874

97. *Sacramento Daily Union*. January 14, 1874.

98. The Wells, Fargo & Company report identifies the defendant as "Hattie Frank." Newspaper accounts referenced later in the report confirm her name as "Hattie Funk."

99. *Records of Pardons Granted in 1871-72*. These records are available at the Nevada State Archives. Wixom was committed to the Nevada State Prison on July 15, 1871. He was pardoned on February 2, 1872. See records of the Nevada Board of Pardons available at the Nevada State Archives.

100. *Sacramento Daily Union*. Volume 41, Number 7155. April 19, 1871.

101. This information is a synopsis of the escape described in http://www.historynevada.com/tw/1871+Nevada+State+Prison+Escape. For a fuller understanding of the prison escape, see: Delaney, Richard. *Quest for Freedom: Historical Account of the Daring 1871 Nevada State Prison Escape*. Talahi Media Arts. Prather, California. 2007. Available at: http://www.questforfreedom.net/Quest-for-Freedom.pdf.

102. *Territorial Enterprise*. January 21, 1874.

103. Indeed, maybe the thought of returning to prison with a history of being a snitch and knowing Blair was there was the real reason Wixom attempted suicide after his conviction.

104. Pardon applications of Shepherd L. Wixom available at the Nevada State Archives.

105. Ibid.

106. Shasta County genealogy and historical records. Available at: http://www.cagenweb.com/shasta/cem-

etery/tuttlcem.html

107. That the person buried in Tuttle Gulch is indeed Shepherd L. Wixom was confirmed through Shasta County voting records available through geneology.com. The voting records have Wixom arriving after his release from Nevada State Prison and record the same exact physical descriptions that are contained in the Wells Fargo crime records. That is, Wixom's age, height, hair color, eye color, and complexion all match.

108. Wixom's military records were recovered through geneology.com.

109. The State Public Defender Commission as originally created had three appointments by the governor, three by the State Bar of Nevada, and one by the Chief Justice (1).

110. *Polk County v. Dodson*, 454 U.S. 312 (1981). Available at: http://www.oyez.org/cases/1980-1989/1981/1981_80_824.

111. Ibid.

112. Much of this section is taken from a June 20, 2012 letter to the Nevada Supreme Court written by Sixth Amendment Center Executive Director David Carroll, in reference to the Washoe County early case resolution program.

113. *Powell v. Alabama*, 287 U.S. 45 (1932). Available at: http://www.oyez.org/cases/1901-1939/1932/1932_98.

114. Ibid.

115. American Bar Association. *Ten Principles of a Public Defense Delivery System*. February 2002. Available at: http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf.

116. Holder, Eric, United States Attorney General. *Speech before the American Bar Association National Indigent Defense Summit*. New Orleans, Louisiana. February 4, 2012. Speech available at: http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-120204.html.

117. ABA. *Ten Principles*. February 2002.

118. Ibid.

119. Ibid.

120. Ibid.

121. The *Guidelines* are available at: https://www.ncjrs.gov/App/publications/Abstract.aspx?id=41494.

122. This section is a synopsis of the work of the Nevada Supreme Court Indigent Defense Commission, Rural Subcommittee. Its report and recommendations are available at: http://www.nevadajudiciary.us/index.php/indigentdefensecommission.

123. Ibid.

124. Ibid.

125. Historical currency conversion was done on the following website: http://www.measuringworth.com/ppowerus/.

126. ABA. *Ten Principles*. February 2002.

127. Available at: http://www.nlada.org/Defender/Defender_Standards/Standards_For_The_Defense.

128. This section relies on the following article: Maimon, Alan. "Lyon County Attorney Handles Massive Indigent Defense Caseload". *Las Vegas Review Journal*. August 25, 2007. Available at: http://www.lvrj.com/news/9370346.html.

129. Ibid.

130. The calculation is based on the attorney driving an average of 500 miles a week in a car that gets

20 miles to the gallon. That would be an average of 25 gallons of gas per week. At $3.10 per gallon, that is $77.5 per week. At 52 weeks per year, that is $4,030.

131. ABA. *Ten Principles*. 2002.

132. Ostrom, Brian J. and Roger A. Hanson. *Efficiency, Timeliness, & Quality: A New Perspective from Nine State Criminal Trial Courts*. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. June 2000. Available at: https://www.ncjrs.gov/pdffiles1/nij/181942.pdf.

133. Perhaps the most compelling argument against using ineffective assistance of counsel claims as the measure of the adequacy of a right to counsel system comes from a September 2010 report by the Innocence Project. That report states that one out of every five people exonerated through DNA evidence had filed IAC claims against their lawyers, and yet the reviewing courts rejected 81% of those claims. If factually innocent people cannot win IAC claims, what chance does that leave everyone else who has no chance of DNA evidence coming to their rescue?

134. *Strickland v. Washington*, 466 U.S. 668 (1984). Available at: http://www.oyez.org/cases/1980-1989/1983/1983_82_1554.

135. *United States v. Cronic*, 466 U.S. 648 (1984). Available at: http://supreme.justia.com/cases/federal/us/466/648/.

136. Ibid.

137. Ibid.

138. Ibid.

139. On the same day that *Gideon* was decided, the Warren Court also mandated, in *Douglas v. California*, 372 U.S. 353 (1963), that states must provide lawyers during the first stage of the appeals process – the court hearing where a defendant may ask a court to set aside a trial verdict or imposed sentence - noting that "there can be no equal justice where the kind of an appeal a man enjoys depends on the amount of money he has."

140. Four years after *Gideon*, the Court again picked up the theme of potential government tyranny, this time in relation to children facing juvenile delinquency charges. "Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise," the Court asserted in *In re Gault*, 387 U.S. 1 (1967), determining that children too were entitled to a lawyer. To underscore the point that children needed more protections than adults, not less, the Court famously added; "[u]nder our Constitution, the condition of being a boy does not justify a kangaroo court."

141. The 1972 decision in *Argersinger v. Hamlin*, 407 U.S. 25 (1972), may have had the greatest impact on criminal justice systems in America. The Court's *Gideon* decision had only expressly applied to felony cases. Because of the utterly massive volume of misdemeanor cases charged every year, the lower trial courts hearing those cases had developed "an obsession for speedy dispositions, regardless of the fairness of the result." And without publicly available lawyers to assist accused persons in their defense, misdemeanor courts became places of "futility and failure" rather than justice. "We are by no means convinced that legal and constitutional questions involved in a case that actually leads to imprisonment even for a brief period are any less complex than when a person can be sent off for six months or more," the Court declared in *Argersinger* as it expressly extended the right to counsel to misdemeanor cases.

142. Rather than spend public funds on attorneys in misdemeanor cases, many jurisdictions throughout the country America decided that the *Argersinger* mandate could be avoided. If the threat of jail time were not made imminent, perhaps the Sixth Amendment right to counsel no longer applied. A "suspended sentence" is a jail term that a judge delays imposing upon a guilty defendant, while ordering the defendant to serve a period of probation or fulfill some set of conditions. The defendant only goes to jail if they fail to meet the terms of the probation or conditions. Some jurisdictions would tell defendants they were only facing a suspended sentence and thus were not entitled to a lawyer. Of course without the aid of counsel, the conditions of probation were often so restrictive as to make it almost impossible to comply. So in 2002, the U.S. Supreme Court took up the issue of, "Where the State provides no counsel to an indigent defendant, does the Sixth Amendment

permit activation of a suspended sentence upon the defendant's violation of the terms of probation?" The Court concluded in *Shelton v. Alabama*, 535 U.S. 645 (2002), that it does not and required that states provide access to effective representation even in those cases where the trial judge does not intend to impose a jail sentence right away.

143. By far the largest majority of criminal cases will never make it to trial, and instead they will be resolved much earlier through pleas. But in the plea-bargaining process, the judge is not bound to impose the sentence negotiated between the prosecution and defense. For many years, states and counties would not provide lawyers to poor people who pled guilty to a crime but who then wanted to appeal the judge's sentence imposed pursuant to that guilty plea. In *Halbert v. Michigan*, 545 U.S. 605 (2005), the Roberts Court determined that to be improper. Recognizing that the majority of people facing criminal charges are indigent and that most people in prison are undereducated, mentally-ill, or both, the Court reasoned that "[n]avigating the appellate process without a lawyer's assistance is a perilous endeavor for a layperson, and well beyond the competence of individuals, like Halbert, who have little education, learning disabilities, and mental impairments."

144. Most people familiar with crime dramas know that when you are arrested you have the right to remain silent and to have counsel appointed for police interrogations. These are your so-called "Miranda" rights established in the landmark 1966 case of *Miranda v. Arizona*, 384 U.S. 436 (1966).

145. A year after *Miranda*, the Court also made attorneys available to those in police line-ups in *United States v. Wade*, 388 U.S. 218 (1967).

146. A "preliminary hearing" is the point when the prosecution must establish probable cause that a crime has likely been committed and that the defendant likely did it. In 1970, the U.S. Supreme Court made clear that a defendant has the right to public counsel at preliminary hearings in *Coleman v. Alabama*, 399 U.S. 1 (1970).

147. Usually plea negotiations occur to determine whether the case can be settled without a trial. *Brady v. United States*, 397 U.S. 742, 748 (1970), established the right to an attorney during plea negotiations.

148. *Rothgery v. Gillespie County*, 554 U.S. 191, ___; 07-440, at p.6 (2008).

149. Id. at p.20.

150. Id, at pp. 5-6.

151. Id. at p.15.

152. Id. at p.9.

153. *McMann v. Richardson*, 397 U.S. 759 (1970).

154. 30 U.S. 1473 (2010).

155. *Missouri v. Frye*, 10-444, 566 U.S. ___ (03/21/2012); *Lafler v. Cooper*, 10-209, 566 U.S. ___ (03/21/2012).

SIXTH
AMENDMENT
CENTER

www.sixthamendment.org

Nevada Consensus Document
on Indigent Defense Reform

Nevada Supreme Court Indigent Defense Commission
March 22, 2013

A. The Constitution of the United States of America

Whereas, the United States Bill of Rights was created to protect individual liberty from the tyranny of big government; and

Whereas, the Sixth Amendment of the United States Constitution requires that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, and to have the assistance of counsel for his defense; and

Whereas, the Fourteenth Amendment of the United States Constitution requires that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, prohibits states from depriving defendants of life, liberty, or property, without due process of law, and forbids states from denying to any person within its jurisdiction the equal protection of the laws; and

B. The Constitution of the State of Nevada

Whereas, Section 1 of the Constitution of the State of Nevada determines that all men are by nature free and equal and have certain inalienable rights among which are the right to defend life and liberty; and

Whereas, Section 8 of the Constitution of the State of Nevada states that no person shall be deprived of life or liberty without due process of law; and

Whereas, Section 2 of the Constitution of the State of Nevada states that the paramount allegiance of every citizen is to the federal government in the exercise of its constitutional powers as the same have been or may be defined by the Supreme Court of the United States; and

C. United States Supreme Court Case law

Whereas, the United States Supreme Court has determined that due process requires that all people have a right to an attorney in criminal proceedings under the Sixth Amendment and that states, under the Fourteenth Amendment, must provide attorneys to people who cannot otherwise afford a lawyer and who are facing potential loss of life or liberty in a criminal proceeding, including: felonies (*Gideon v. Wainwright*), direct appeals (*Douglas v. California*), misdemeanors

(*Argersinger v. Alabama*), misdemeanors with suspended sentences (*Shelton v. Alabama*), and, appeals of sentencing resulting from a guilty plea (*Halbert v. Michigan*); and

Whereas, the United States Supreme Court determined that children facing delinquency proceedings are entitled to a lawyer despite the quasi-civil nature of the proceedings (*In re Gault*); and

Whereas, the United States Supreme Court determined in *Gideon* that Sixth Amendment right to counsel requires the guiding hand of counsel at every step in the proceedings, which have been further delineated to include: police interrogations (*Miranda v. Arizona*); post-indictment police line-ups (*United States v. Wade*); preliminary hearings (*Coleman v. Alabama*); plea negotiations (*Brady v. United States*); and, initial appearance before a judicial officer where the defendant learns the charge against him and his liberty is subject to restriction (*Rothgery v. Gillespie County*); and

Whereas, the United States Supreme Court determined that the Sixth Amendment right to an attorney is the right to an effective attorney (*Strickland v. Washington*) and that if certain systemic deficiencies exist that cause even the most competent counsel to entirely fail to subject the prosecution's case to meaningful adversarial testing then the adversary process itself is presumptively unreliable (*Cronic v. United States*); and

Whereas, the United States Supreme Court determined that the Sixth Amendment right to effective assistance of counsel requires attorneys to inform defendants of potential immigration collateral consequences (*Padilla v. Kentucky*) and extends to plea negotiations (*Missouri v. Frye*; *Lafler v. Cooper*); and

D. Indigent Defense in the State of Nevada

Whereas, Nevada is the very first state in the union to require the appointment of attorneys in all criminal matters, including misdemeanors, and the payment of attorneys for services rendered; and

Whereas, the state of Nevada has chosen to delegate its Fourteenth Amendment obligation to provide Sixth Amendment right to counsel services to its counties; and

Whereas, the delegation of constitutional mandates to counties does not end a state's obligation because a state must ensure that a local division of government can provide the necessary services or step in; and

Whereas, the Nevada Legislature took initial steps for the state to fund and oversee the various right to counsel obligations in 1971, by creating a statewide commission to oversee services in the rural counties; and

Whereas, the Nevada Legislature, however, disbanded the state's commission in 1975, marking a long slow devolution of right to counsel services in rural Nevada;

It is Therefore Resolved that judicial, legislative, and executive action is needed to restore Nevada's deep-rooted commitment to equal justice to the poor who face a loss of liberty in criminal proceedings, by working jointly to implement the following recommendation:

Recommendation #1: A state-funded public defender commission is established to oversee and administer all right to counsel services in every county other than those that are required under Nevada Revised Statutes 260.010 to have a local public defender agency. The commission is authorized to establish and administer rules and standards for the effective and efficient delivery of indigent defense services in those counties that it oversees.

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK
201 South Carson Street
Carson City, Nevada 89701-4702

RECEIPT FOR DOCUMENTS

May 5, 2008

To: Connie J. Steinheimer, Chief District Judge

Re: ADKT 411

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

Date	
5/5/08	Filed the Second Judicial District Court – Indigent Defense Report

Tracie K. Lindeman
Clerk of Court
TKL:lc

FILED

MAY 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY CHIEF DEPUTY CLERK

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 DELINQUENCY CASES. /

ADKT No. 411

THE SECOND JUDICIAL DISTRICT COURT – INDIGENT DEFENSE REPORT

Administrative plan for the Second Judicial District Court to meet the requirements set forth in the order entered by the Supreme Court of Nevada on January 4, 2008, in ADKT 411.

1. OBJECTIVE

A. This plan has taken into account all aspects of and acknowledges the statement of policy presented in the Model Plan developed by the Supreme Court Sub-committee to formulate a Model Plan for Indigent Representation in Nevada.

B. This plan relates to the appointment of trial counsel, appellate counsel in appeals not subject to the provisions of Nevada Rules of Appellate Procedure 3C, counsel in Post-Conviction matters, counsel in Juvenile matters, and counsel in certain Family Division matters; the approval of expert witness fees, investigation fees, and attorney fees; and the determination of Indigency in the Courts within the Second Judicial District Court, including the District Court and all Washoe County Justice Courts where applicable.

II. DEFINITIONS:

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

B. "Appointed attorney" includes private attorneys, both contracted and hourly, Public Defender, Alternate Public Defender, and staff attorneys of the Public Defender and Alternate Public Defender's offices in Washoe County.

III. PROVISION OF REPRESENTATION

A. Mandatory Appointment

Representation shall be provided for any financially eligible person who:

1. is charged with a felony;
2. is charged with a gross misdemeanor in which the prosecution is seeking jail time (incarceration);
3. is alleged to have violated probation or other supervision and a jail or prison 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 United States Constitution or any provision of the Nevada Constitution, or when due process requires the appointment of counsel, or the Court is likely in impose jail or prison 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 has requested counsel.

B. Discretionary Appointment

Whenever a court determines that the interests of justice so require, representation shall 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 and 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. any other case in which the court determines in the interest of justice appointment of counsel is appropriate.

C. Timing of Appointment of Counsel

Counsel shall be provided to eligible persons:

1. within 72 hours of formal charges being filed against the person held in custody or as soon as feasible;
2. when they appear before a judge;
3. when they are formally charged or notified of charges, if formal charges are sealed; or
4. when a District Judge or Justice of the Peace otherwise considers appointment of counsel appropriate.

D. Number and Qualifications of Appointed Counsel

1. one attorney shall be appointed consistent with Section IV and V herein, except in Capital Cases;

2. two attorneys shall be appointed consistent with Section IV and V herein, as soon as possible in all open murder cases which are reasonably believed to result in a Capital Case;

3. at least one of the two attorneys appointed to represent defendants charged in Capital Cases must meet the minimum standard for lead counsel pursuant to Nevada Supreme Court Rule 250 and both attorneys appointed must conform to the performance guidelines or standards as adopted by the Nevada Supreme Court for Capital Cases.

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E. Eligibility for Appointed Representation

1. All persons found indigent shall be financially eligible for appointed representation:

    a. 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;
    b. "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;
    c. a person 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;
    d. persons not falling below the presumptive threshold for indigency will be subject 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 required to retain private counsel.

2. Screening for Eligibility:

    a. The Pretrial Services Division of the Second Judicial District Court shall conduct the screening for financial eligibility of all persons who:

        1. due to the nature of their charges in the Second Judicial District Court or a Washoe County Justice Court, if indigent, are mandated to have counsel appointed at public expense;
        2. due to their indigency are requesting investigative fees, expert fees, or other services, be paid at public expense for a case pending in the Second Judicial District Court or a Washoe County Justice Court; or
        3. when a District Court Judge or Washoe County Justice of the Peace requests a screening by Pretrial Services to determine whether a person is indigent.

    b. Pretrial Services shall provide notification to the Court having jurisdiction over a person's case of the results of Pretrial Services screening with regard to financial eligibility for

representation at public expense.

c. 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:

a. If a court determines that a person is able to afford counsel or has actually retained counsel but cannot be effectively represented due to inability to pay for necessary services such as investigators, experts or other services, the court shall order that these services be provided at public expense;

b. The extent and cost of these services shall be approved by the Appointed Counsel Administrator;

c. The determination of the extent and approval of the amounts made by the Appointed Counsel Administrator may be appealed to the Washoe County Manager or their designee;

d. Appeals from the determination of the County Manager or their designee, as to the extent and amount allowable for these fees, may be made to the Chief Judge of the Second Judicial District Court.

4. Disclosure of Change in Eligibility:

a. Counsel shall advise the Chief Judge of the Second Judicial District for matters pending in the District Court or the Administrative Judge for matters pending in a Washoe County Justice Court of the change in their clients' eligibility for public payment for representation;

1. 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
2. the source of the attorney's information is not protected as privileged communication.

5. Reimbursement:

a. Adult Matters:

the Court having jurisdiction over the matter may order the reimbursement to Washoe County for all or part of the representation at public expense of a person for services provided by the Public Defender, Alternate Public Defender, contract, hourly or capital case appointed counsel.

b. Juvenile Matters:

the Second Judicial District Court Family Division Juvenile Judge may order the parents of a juvenile to reimburse the county for the reasonable attorney fees and costs of the juvenile's representation, whether provided by the Public Defender, Alternate Public Defender, contract, or hourly appointed counsel (NRS 62E.300).

IV. APPOINTMENT OF THE PUBLIC DEFENDER

A. Initial Appointment:

1. the District Court Judge or Justice of the Peace having jurisdiction over a case that is pending in Washoe County shall appoint the Washoe County Public Defender to represent a party if:
   a. the person has requested representation;
   b. the case is of the nature described above as mandating appointment of counsel;
   c. the person has been found eligible by Pretrial Services for representation at public expense;
   d. the case is not a post conviction proceeding.
2. The District Court Judge or Justice of the Peace having jurisdiction over a case that is pending in Washoe County may appoint the Washoe County Public Defender to represent a party if:
   a. the person has requested representation;
   b. the case is of the nature described above as being discretionary as to appointment of representation at public expense;
   c. the person has been found eligible by Pretrial Services for representation at public expense;
   d. the case is not a post conviction proceeding.

3. Unless there is a valid, Court approved, written waiver from co-defendants, the Public Defender shall not be appointed to represent co-defendants in a case.

B. Determination of Conflict of Interest:

1. 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 client.

2. If such a conflict is determined by the Public Defender to exist, such fact shall be brought to the attention of the Alternate Public Defender as soon as possible.

3. The Alternate Public Defender shall undertake representation in all cases which are in Justice Court unless a conflict check determines that there exists a conflict of interest which would prevent representation of the party:

   a. if such a conflict is determined by the Alternate Public Defender to exist, such fact shall be brought to the attention of the Appointed Counsel Administrator, as soon as practicable; and

   b. the Appointed Counsel Administrator shall select counsel from the contract, hourly or capital case appointed counsel lists to take over the representation.

4. If the Alternate Public Defender is notified that continued representation of a party would create a conflict for the Public Defender in cases which are in District Court, the Alternate Public Defendant shall file a written Substitution of Counsel replacing the Public Defender's office, unless:

   a. the Alternate Public Defender determines that representation would create a conflict of interest:

      1. the Alternative Public Defender shall notify the Appointed Counsel Administrator as soon as reasonable, include in that notification enough information for the Appointed Counsel Administrator to determine if a contract, hourly, or capital case qualified attorney should be selected to replace the Alternate Public Defender;

         (a) upon notification, the Appointed Counsel Administrator shall:

(1) select an attorney(s) pursuant to Section V, which is appropriate for appointed representation in the case;

(2) prepare a written Substitution of Counsel substituting in the selected attorney in place of the Alternate Public Defender, indicating whether it is pursuant to an indigent appointment contract, hourly or capital case list attorney; and

(3) cause the Substitution of Counsel to be filed in the District Court prior to the first appearance by new counsel.

b. the Alternate Public Defender requests a hearing in District Court regarding the Public Defender conflict prior to accepting the appointment of representation.

1. If the Court approves the Public Defender request for relief from representation, the Alternate Public Defender shall file a substitution of counsel and undertake representation;

2. if the Court does not approve the Public Defender request for relief from representation, the Public Defender will continue representation until relief is granted.

C. Assignment of Attorneys

1. The determination of assignment of which attorney within the office of the Public Defender or Alternate Public Defender will represent an indigent person rest solely within the discretion of the Public Defender and/or Alternate Public Defender.
2. The determination of which contract, hourly or capital case attorney(s) is substituted in for the Alternate Public Defender shall rest within the Appointed Counsel Administrator in accordance with this plan and specifically Section V, herein.

D. Complaints by Clients

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

2. The Appointed Counsel Administrator shall maintain a system for receipt and review of written complaints made by clients.

1
2 V. APPOINTMENT OF PRIVATE ATTORNEYS

3 A. Selection of Panel of Attorneys

4 1. The Second Judicial District Court - Court Administrator shall establish
5 the Appointed Counsel Selection Committee within fifteen (15) days of
6 May 5, 2008;

7 a. the Appointed Counsel Selection Committee shall be made up of five (5) attorneys who:

8 (1) have no pecuniary interest in the outcome of the
9 attorney selection or performance evaluation process;

10 (2) have no legal, financial or familial relationship to any attorney whose qualification or performance will be
11 evaluated;

12 (3) are not directly related to the judiciary or any prosecution function; and

13 (4) have an interest in the variety of types of cases that are
14 represented by the appointed counsel lists to be selected by the Committee.

15 2. The Appointed Counsel Selection Committee shall establish within
16 thirty (30) days of its establishment, the minimum qualifications for all appointed counsel lists, taking into effect the additional qualifications
17 required for exceptionally difficult cases involving life penalties and capital cases, and unique case types such as juvenile and
18 dependency cases.

19 3. The Appointed Counsel Selection Committee shall create the
20 Appointed Counsel lists (contract, hourly and capital) and sub-lists as the committee deems appropriate within sixty (60) days of its
21 establishment.

22 4. Attorneys may be selected for inclusion on multiple lists and sub-lists.

23 5. On an ongoing basis, the Appointed Counsel Selection Committee shall:

24 a. review the lists created and modify membership as the
25 Committee deems appropriate;

26 b. annually review the performance and qualifications of attorneys on the Appointed Counsel lists including:

27 (1) annually solicit input from Judges, and others familiar
28 with the practice of criminal defense, juvenile and family law where appointed counsel are utilized;

(2) review any complaints from clients;

(3) review the history of participation in training of each new applicant and each contract, hourly and capital case list attorney receiving appointments; and

(4) determine eligibility and selection of appointed counsel for new or continued participation.

B. Contract, Hourly and Capital Case Attorneys:

1. Contract Attorneys:

a. Washoe County shall contract for appointment of counsel;

b. Washoe County contract attorney compensation may be based either on an hourly basis, a flat fee basis, or a combination of both;

(1) if the contract is based on a flat fee basis, the contract should consider, but not be limited to, the following factors:

(a) the average overhead for criminal defense practitioners in the locality;

(b) the number of assignments expected under the contract;

(c) the hourly rate paid for all appointed counsel; and

(d) the ability of the appointed attorney to comply with the Performance Standards for Appointed Counsel as adopted.

(2) Washoe County shall contract with attorneys as appointed counsel only after the attorney has been qualified to enter into such a contract by the Appointed Counsel Selection Committee; and

(3) the contract must be subject to termination annually or sooner, if determined by the Appointed Counsel Selection Committee that a contract attorney is not abiding by the standard guidelines for qualification of appointed counsel; and

(4) the payment of fees and expenses of contracted appointed counsel by Washoe County shall be governed by contract between counsel and Washoe County subject to appeal as described in III. E. 3. b., c., and d.; and

(5). the contract shall exclude appointment in cases with the potential of a life sentence and capital cases.

c. In all cases which cannot be handled by the Public Defender or the Alternate Public Defender, an attorney from the contract attorney list will be assigned by the Appointed Counsel Administrator, except in cases carrying a penalty of life imprisonment, death, post conviction or when the court, or the Appointed Counsel Administrator determines the complexity of the case or the severity of the penalty are such as to necessitate the appointment of an hourly attorney.

d. Contract Appointed Counsel shall be selected in consecutive order from the Contract attorney list by the Appointed Counsel Administrator.

2. Hourly and Capital Case Attorneys:

a. If the Washoe County Public Defender, Alternative Public Defender and contract counsel can not handle the case; or the Appointed Counsel Administrator determines the case is not appropriate for contract counsel to handle, alternative counsel will be selected by the Appointed Counsel Administrator as follows:

(1) the Appointed Counsel Administrator shall select this alternative appointed counsel, in consecutive order, from the "Hourly" list; except

(2) if the nature of the case requires lead counsel be selected from the "Capital Case" list, the Appointed Counsel Administrator, in consecutive order, shall select from the "Capital Case" list;

(3) the Appointed Counsel Administrator shall select "Second Chair" counsel for a capital case: counsel may be selected next in order from the "Hourly" list, if the attorney qualifies under Supreme Court Rule 250 for "second chair" selection, or the "Capital Case" list.

b. The payment of fees and expenses of "Hourly" and "Capital Case" appointed attorneys shall be approved by the Appointed Counsel Administrator subject to appeal in the same way as discussed in Section III. E. 3. b., c., and d.

3. Delegation of Responsibilities:

a. Appointed counsel cannot delegate responsibilities for representation to another attorney.

b. Appointed counsel may receive assistance from associate attorneys, mentees, or other Selection Committee qualified attorneys, in carrying out his/her responsibilities.

c. All substantive court appearances must be made by an attorney who has been determined to be qualified by the Selection Committee to handle the type of case counsel has been appointed to handle.

C. Post Conviction:

1. The Chief Judge of the District shall determine eligibility, using the same standards as discussed herein for determination of indigency, in forma pauperis applications filed in the District Court for post conviction cases and notify the Appointed Counsel Administrator, if application is granted.

2. In mandatory appointment cases:

   a. the Appointed Counsel Administrator shall select, in consecutive order, counsel from the "Hourly Post Conviction" list; and

   b. prepare an Order for Appointment for the assigned District Judge's signature.

3. In non-mandatory appointment cases, the assigned District Judge shall notify the Appointed Counsel Administrator, if the Judge's decision is to appoint counsel.

   a. the Appointed Counsel Administrator shall select, in consecutive order, counsel from the "Hourly Post Conviction" list; and

   b. prepare an Order for Appointment for the assigned District Judge's signature.

4. All attorney fees and investigation, expert or other fees shall be approved by the Appointed Counsel Administrator for payment by the State Public Defender.

5. Appeals from these fee determinations by the Appointed Counsel Administrator shall be made to the Chief Judge of the District.

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

must be established to insure that the inexperienced attorney will be provided supervision and mentoring from an experienced attorney. In no instance shall an attorney who has not tried at least one felony jury trial be permitted to try a felony case without an experienced criminal defense attorney sitting as "second chair."

B. Annual Training:

An intensive training program shall be conducted for all private attorneys who receive appointments to cases. The program shall include training in bail and release, motion practice, search and seizure, evidentiary issues and trial practice, appeal, post-conviction practice, juvenile, and family law, as deemed appropriate. All contract, hourly and capital case appointed attorneys will be encouraged to attend.

C. Periodic Training:

Periodic training events will be conducted on issues of interest to appointed counsel.

D. Creation and Coordination of Training:

The Public Defender, Alternate Public Defender and the Appointed Counsel Administrator 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 to 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, or as the same may be amended.

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 appeal and post-conviction matters.

VIII. APPOINTED COUNSEL ADMINISTRATOR

A. Selection:

1. Washoe County will contract with a lawyer on or before July 1, 2008, to serve as the Appointed Counsel Administrator. The terms of this contract will be determined by this plan, Washoe County and the Appointed Counsel Administrator, but in no event will this Appointed Counsel Administrator be directly involved in direct representation in appointed counsel cases.

B. Duties:

1. The Appointed Counsel Administrator shall have all the duties and responsibilities stated in the various sections of this plan.
2. The Appointed Counsel Administrator shall maintain the list of all attorneys approved by the screening committee for contract, hourly and capital case appointment. In addition, the Appointed Counsel Administrator shall maintain appropriate records to reflect the cases and dates to which each attorney has been appointed.
3. When notified of the need for representation, the Appointed Counsel Administrator, shall select, in order and as more fully described herein, the next available attorney from the list of those attorneys qualified to provide representation as approved by the screening committee.

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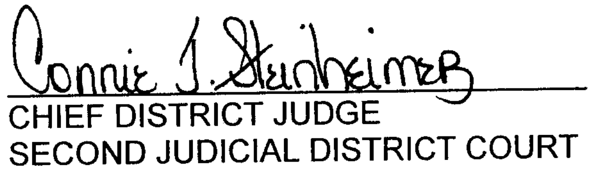
4. The Appointed Counsel Administrator shall be responsible for approving the claim for payment of each attorney and any expert or other service fees at the conclusion of appointed counsel's representation or, if appropriate, periodically during appointed counsel's representation, as specifically discussed herein.

Dated: May 1, 2008.



CHIEF DISTRICT JUDGE
SECOND JUDICIAL DISTRICT COURT

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK
201 South Carson Street
Carson City, Nevada 89701-4702

RECEIPT FOR DOCUMENTS

May 5, 2008

To: Kathy Hardcastle, Chief Judge
Jeffry M. Wells
Drew R. Christensen

Re: ADKT 411

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

Date

5/1/08 Filed Clark County's Administrative Plan for Appointment of Counsel

Tracie K. Lindeman
Clerk of Court
TKL:lc

RECEIVED
Las Vegas Drop Box
2008 APR 30 AM 11:16

1 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 DELINQUENCY CASES.

ADKT No. 411

FILED
MAY 01 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY CHIEF DEPUTY CLERK

CLARK COUNTY'S ADMINISTRATIVE PLAN FOR APPOINTMENT OF COUNSEL

COMES NOW Clark County, Nevada, by and through THE HONORABLE KATHY A. HARDCASTLE, Chief Judge of the Eighth Judicial District; JEFFREY M. WELLS, Clark County Assistant County Manager; DREW R. CHRISTENSEN, Clark County Director of the Office of Appointed Counsel, and moves this Honorable Court for an Order approving the attached Clark County Administrative Plan for Appointment of Counsel.

Respectfully submitted,

By: ______________________
THE HONORABLE KATHY HARDCASTLE
Chief Judge for the Eighth
Judicial District Court - Dept IV
200 Lewis Avenue
Las Vegas, NV 89155

By: ______________________
JEFFRY M. WELLS
Clark County Assistant County Manager
500 S Grand Central Pky
Las Vegas, NV 89155

By: ______________________
DREW R. CHRISTENSEN
Clark County Director Office of Appointed Counsel
500 S Grand Central Pky
Las Vegas, NV 89155

RECEIVED
MAY 01 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

JDC
03/22/2015

CLARK COUNTY'S ADMINISTRATIVE PLAN FOR APPOINTMENT OF COUNSEL

Effective Date July 1, 2008

OVERVIEW

Clark County, Nevada provides indigent individuals legal counsel at all phases of serious criminal proceedings. In furtherance thereof, Clark County established the Office of the Public Defender for the purpose of providing all necessary legal counsel to indigent individuals accused of criminal activity. Clark County established the Office of the Special Public Defender to provide all necessary legal counsel to individuals charged with the offense of Open Murder that the Public Defender is unable to represent. The Office of the Special Public Defender also provides legal counsel to indigent parents facing termination of their parental rights. Clark County now has established The Office of Appointed Counsel (OAC) as an independent department, separate from the Judges, Court Administration, the Public Defender's Office, and the Office of the Special Public Defender. The OAC develops and administers programs that effect the legal representation of indigent individuals criminally accused in Clark County, Nevada that cannot be represented by either the Office of the Public Defender and/or the Office of the Special Public Defender. The OAC also develops and administers programs that effect the legal representation in parental termination cases where the Office of the Special Public Defender is unable to provide representation.

OFFICE OF APPOINTED COUNSEL'S STATEMENT OF POLICY

Objectives - The Office of Appointed Counsel's objective is to assure quality legal representation of indigent persons without waste of public resources. The OAC shall administer this Plan 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. It is the goal of the OAC to maintain a panel of attorneys, who are available and well qualified to provide high quality, dedicated, effective, efficient legal representation to those individuals financially unable to employ counsel in adult criminal cases, juvenile criminal cases, and parental termination cases where the Office of the Public Defender and the Office of the Special Public Defender are unable to do so. This panel of attorneys shall become known as the Indigent Defense Panel (IDP). It is the OAC's responsibility to insure that all individuals who qualify for appointments outside of the Public Defender and Special Public Defender receive timely and competent legal representation from the IDP and that appointments are allocated in a manner that is fair, neutral and nondiscriminatory. The OAC may amend this Plan as necessary to continue to provide high quality criminal defense services.

The further objective of the OAC is to implement the requirements set forth in the Order entered by the Supreme Court of Nevada on January 4, 2008 in ADKT 411, or as same may be amended.

DEFINITIONS

Administrative Attorney – is the head of the OAC who is responsible for overseeing the operations of the case management process, assignment of attorneys outside of the Public Defender and Special Public Defender to indigent defense cases, administering contracts, authorizing expenditures, and providing policy analysis on criminal justice issues to the County Administration.

Appointed Attorney – includes private attorneys, both contracted and hourly.

Ancillary Services - are defense services paid for in addition to attorney's fees including investigator services, expert services and mitigation specialist fees, where necessary and appropriate.

Case Specific Costs - are expenses authorized by the OAC on a case-by-case basis when reasonably necessary to provide an appropriate defense. Such costs include expert witness fees, transcription, photocopying and related expenses, where necessary and appropriate.

Clark County Guidelines – refers to the documents prepared by the OAC and approved by the Administrative Attorney setting forth the rules for authorizing expenditures and processing requests for payment.

Expert Witness - is a person qualified by knowledge, skill, experience, training, or education to render an opinion on scientific, technical, or other specialized matters.

Investigator – is a person licensed by the State of Nevada who is qualified to secure evidence and/or subpoena witnesses to be used in the preparation and trial of criminal cases.

Mitigation Specialist – is a person qualified by knowledge, skill, experience, or other training as a mental health or sociology professional to investigate, evaluate and present psychosocial and other mitigation evidence in cases where the state is seeking the death penalty.

Representation – includes counsel and investigative, expert and other services

PROVISIONS OF REPRESENTATION

Mandatory - Representation shall be provided for any financially eligible person who:

1. Is charged with a felony or gross misdemeanor;
2. Is charged with a misdemeanor where jail time is mandatory or the prosecutor is seeking jail time;
3. Is alleged to have violated probation or other supervision and custody time may be imposed;
4. Is a juvenile alleged to have committed an act of delinquency;
5. Is subject to commitment pursuant to NRS 433A.310
6. Is seeking relief from a sentence of death 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, or the judge is likely to impose jail time;
9. Is charged with criminal contempt who faces loss of liberty;
10. Faces loss of liberty in a case and Nevada law requires the appointment of counsel;
11. Has received notice that a grand jury is considering charges against him/her and a request for counsel has been made to, and approved by, the Court.

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. Is a Party to a dependency case in which termination of parental rights is a possibility;
5. 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;
6. Any other case in which the interest of justice requires appointment of counsel.

When Counsel Shall be Provided - Counsel shall be provided to eligible persons within 72 hours or as soon as feasible after they appear before a judge, when they are formally charged or notified of charges if formal charges are sealed, or when a Justice of the Peace, Hearing Master, or District Judge otherwise considers appointment of counsel appropriate.

DETERMINING INDIGENCY

Financial Eligibility - Consistent with Nevada Supreme Court Order ADKT 411: "a person will 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. 'Substanital 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. Defendants not falling below the presumptive threshold will be subject 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."

Screening for Eligibility - Court Administration, through Pretrial Services, may conduct 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 above. Appointed Counsel may assist in providing information during the screening but shall not be asked to make a recommendation with regard to eligibility.

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 require the defendant to retain counsel but shall order that those ancillary services be provided at no cost to the defendant.

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.

Reimbursement –

Adult: In adult matters, where the court determines that an individual does not meet the indigence standards, but the court acknowleges that a hardship exists to retain private counsel, the court may order the individual to reimburse the county for a portion of the reasonable attorney fees, whether public defender, contract, or appointed counsel.

Juvenile: 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.

SYSTEM OF SELECTION FOR COURT APPOINTED COUNSEL

Annually, Clark County will recruit attorneys to provide indigent defense services on a contract basis. The County will place attorneys into categories based on qualifications and interest: (1) Track assignments with hourly appointments for life and multiple defendant cases (excluding murder and sexual crimes); (2) Hourly capital murder cases; (3) Hourly non-capital murder, sexual assault/lewdness, highly complex, multiple defendant, and other cases/charges carrying a potential life sentence; (4) Hourly capital appeal/habeas cases; (5) Hourly non-capital appeal/habeas cases; (6) Juvenile delinquency; and (7) Parental termination/abuse and neglect cases.

Attorneys interested in the above stated positions will provide applications to the OAC for consideration. Attorneys may apply in one or more of the different categories based on qualifications and interest. Recruitment for appointed counsel will take place during the spring of each year, with annual contracts beginning July 1st of each fiscal year. The OAC may amend these time frames in the future to allow for longer contract terms.

The administrative attorney of the OAC will chair the newly created Indigent Defense Selection and Appointment Committee (IDSAC). The IDSAC will be composed of members from a variety of stakeholders concerned with the integrity of indigent criminal defense. Various organizations such as the Public Defender's Office, the Special Public Defender's Office, the Federal Public Defender's Office, Nevada Attorneys for Criminal Justice, the State Bar, the Clark County Bar, the various minority Bar organizations, Nevada Legal Aid, and possible others, may be invited to designate an individual to become a member of the IDSAC. No member of the IDSAC 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. Additionally, no prosecutors or judges shall be members of the IDSAC. The IDSAC will determine if the applicants meet the required qualifications. Only attorneys who meet the required qualifications will be placed on the qualified attorney lists for the various indigent defense categories.

The IDSAC 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, along with the OAC, eligibility and continuing participation.

The IDSAC will select the top interested and qualified candidates to fill the available track appointment positions annually, as well as the top candidates to fill the juvenile delinquency appointments. A list of qualified alternates will be maintained to fill any positions that may become available throughout the fiscal year.

Qualified attorney lists will be developed for each of the other categories of indigent defense work. The list of qualified attorneys will be revised annually. Attorneys already under contract with the OAC for a specific defense area, unless otherwise notified, need not reapply, but need only submit their intent to renew by the deadline.

Complaints from clients, judges, or the public about representation by appointed counsel shall be transmitted to the OAC for consideration by IDSAC and OAC in evaluation of appointed counsel.

ASSIGNMENTS AND PROCEDURES FOR APPOINTMENT OF COUNSEL

The IDSAC will assign the selected track attorneys to the various adult and juvenile tracks. In Clark County there are currently twelve (12) different adult track assignments – nine (9) in Las Vegas, two (2) in North Las Vegas, and one (1) in Henderson/outlying jurisdictions. The juvenile system currently has two tracks utilizing eight (8) attorneys.

From the selected applicants, each will be assigned to a specific track annually. The assignment process will take into account the interest of the various applicants, previous track assignments, and the collective wisdom of the IDSAC and the OAC. Typically, no attorney should serve on the same track for more than two consecutive years.

Once all the track attorneys have been assigned to the various departments and all of the lists for the other specific categories have been approved, the appointment of attorneys to specific cases will take place as follows:

Track Assignments – Each Judicial department will rotate appointments among the track attorneys assigned to their particular court with the objective of allocating the workload appoximately equally.

Juvenile Delinquency – Each Hearing Master and/or Juvenile Court Judge will rotate appointments among the track attorneys assigned to their particualar court with the objective of allocating the workload approximately equally.

Parental Termination – Each Hearing Master and/or District Court Judge will rotate appointments among the list of qualified attorneys with the objective of allocating the workload approximately equally.

Criminal Hourly Cases - The OAC will assign counsel for the court to appoint where appropriate for all murder, sexual assault/lewdness, appeal, multiple defendant, and complex cases from the various approved lists generated by the IDSAC. Each Court, when the occasion arises where appointment of counsel is appropriate, will contact the OAC for the next available qualified attorney. The Court will pass the case until the next appropriate judicial court date for confirmation of counsel. The OAC will be tasked with rotating all appointments through the variety of approved lists equally.

MENTORSHIP AND TRAINING

Mentorship Program - The OAC will form and administer a mentorship program. Mentors will include attorneys who have: (1) at least five years criminal defense experience in adult court, juvenile court, appellate work or parental termination work; (2) participated in at least two non capital murder trials and/or sexual assault/lewdness trials; or (3) are Rule 250 qualified.

The OAC will pair all qualifed mentors with a mentee to allow the mentee to enhance their professional development and improve their level of qualifications as counsel via experience. On a case by case basis, the OAC and mentor will navigate which cases the mentee will be assigned and what particular duties the mentee will be assigned. Neither mentors nor mentees will receive additional compensation for participating in the program. 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 (mentor) sitting as "second chair".

Annual Training – A training program shall be conducted for all private attorneys who receive appointments to criminal cases. The program will include training in bail and release, motions practice, juvenile delinquency matters, search and seizure, evidentiary issues and trial practice, appeals/post conviction practice, and parental termination issues. All contract and hourly appointed attorneys will be encouraged to attend.

Periodic Training - Peroidic training events will be conducted on issues of interest to appointed counsel.

Creation and Coordination of Training - The Public Defender and the OAC shall be responsible for coordinating, scheduling and creating the training events described above.

STANDARDS FOR COURT APPOINTED COUNSEL

GENERAL QUALIFICATIONS:

Eligibility -The attorney shall be familiar with the practice and procedure of the criminal courts of Nevada and shall be a member in good standing of the State Bar of Nevada. The attorney shall have an office location in Clark County.

Compliance with Ethical Standards - All attorneys shall comply with the Nevada Rules of Professional Conduct and shall require that all investigators, experts and others working for or under the direction of the attorney shall also comply with all appropriate ethical standards.

Evidentiary Matters - The attorney shall be familiar with the Nevada Rules of Evidence and shall have knowledge of the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence.

Co-Counsel - Whether to appoint co-counsel in any non-death penalty offense and the qualifications of such counsel, shall be at the discretion of the OAC and/or the court. The OAC will supply the court with an attorney from the variety of apporoved lists for appointment.

Continuing Education - To maintain eligibility to receive appointed cases, each attorney must certify that he/she is Nevada CLE compliant and complete a minimum of six (6) hours of training approved by the OAC in criminal law, evidence or trial practice during each fiscal contract year. (See Mentorship and Training above) Proof of compliance must be provided annually along with the annual application or notice of intent. A failure to present the affidavit shall cause an attorney to be subject to removal from the lists of attorneys eligible for appointment.

Re-Certification - An attorney shall file either a new application or notice of intent to renew by May 1st of each year to remain on the list(s).

Removal from List - The OAC may remove an attorney from consideration for appointments if the attorney does not fulfill duties required by law, attorney's creed, canons, local rules, or the provisions of this plan. An attorney removed from the list(s) will be given notice and the reasons for the removal, but will have no recourse to challenge the decision of the OAC.

QUALIFICATIONS FOR SPECIFIC LISTS:

Death Penalty Cases - Two lawyers must be appointed as soon as possible in all open murder cases which are reasonably believed to likely result in a capital charge. In order to serve as lead counsel in a capital case where the State of Nevada is seeking a death sentence, an attorney must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases and must:

1. Be Nevada Supreme Court Rule 250 compliant;
2. Have acted as lead counsel in at least five (5) felony trials, including one murder trial tried to completion (i.e., to a verdict or a hung jury);
3. Have acted as defense co-counsel in at least one death penalty trial tried to completion;
4. Have been licensed to practice law for at least three years; and
5. Participate, at least every two (2) years, in continuing legal education courses relating to death penalty defense/mitigation.

Any attorney appointed as second chair in a capital case shall exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases.

Appointment of attorneys in capital cases shall be as further guided by Nevada Supreme Court Order ADKT 411, or as the same may be amended, attached hereto as Exhibit A.

Non Death Penalty Murder and Sexual Crime Cases Where Life in Prison is a Possible Punishment - Any attorney appointed to represent a defendant as lead counsel in such cases must exhibit proficiency and commitment to providing quality representation to defendant and must:

1. Have acted as lead counsel in at least five (5) felony trials;
2. Have been licensed to practice law for at least three (3) years;
3. Have significant experience in Clark County with felony cases from appointment in Justice Court to District Court jury trial and sentencings;
4. Be familiar with substantive criminal law and criminal procedure and its application in the courts of Nevada;
5. Stay abreast of changes and developments in the law by remaining compliant with continuing legal education requirements set forth above under General Requirements.
6. Individual exceptions to these qualifications may be made by the IDSAC and OAC.

Appointment of attorneys in non-death murder and sexual crime cases shall be further guided by Nevada Supreme Court Order ADKT 411, or as the same may be amended, attached hereto as Exhibit A.

All other Felonies and Gross Misdemeanors - Any attorney appointed as lead counsel to represent a defendant in any other felony or gross misdemeanor case not listed above, must exhibit proficiency and commitment to provide quality representation to defendants and must:

1. Have at least one (1) year experience in criminal litigation;
2. Have at least one (1) felony jury trial tried to completion as either first or second chair;
3. Have been lead counsel in at least five (5) preliminary hearings and/or misdemeanor trials;
4. Have demonstrated to the court and the OAC the ability to investigate, prepare, and competently present a case to the court or jury .
5. Be available to prepare and try cases on a timely basis. Attorneys who fail to appear in court or demonstrate an inability to timely investigate, prepare and try cases will not be considered qualified for the Clark County IDP. Attorneys accepted for the Clark County IDP, who no longer meet this criteria, will be removed from the list by the OAC.
6. Individual exceptions to these qualifications may be made by the IDSAC and OAC.

Appointment of attorneys in felony and gross misdemeanor cases shall be further guided by Nevada Supreme Court Order ADKT 411, or as the same may be amended, attached hereto as Exhibit A.

Death Penalty Appellate Counsel – both Direct and Post Conviction - Any attorney appointed as counsel to represent a defendant who has received a sentence of death in a direct appeal or post conviction proceedings, must exhibit proficiency and commitment to provide quality representation to defendant's and must:

1. Be Nevada Supreme Court Rule 250 compliant;
2. Have at least three (3) years of experience in criminal litigation;

3. Have acted as lead counsel in at least two (2) appeals or post conviction proceedings of felony convictions; and
4. Have on at least two (2) occasions filed briefs and/or argued in the Nevada Supreme Court, Ninth Circuit Court of Appeals or the United States Supreme Court.
5. Individual exceptions to these qualifications may be made by the IDSAC and OAC.

Appointment of appellate, either direct or post conviction, counsel in death penalty cases shall be further guided by Nevada Supreme Court Order ADKT 411,or as the same may be amended, attached hereto as Exhibit A.

Non- Death Penalty Appellate Counsel – both Direct and Post Conviction - Any attorney appointed as counsel in a non-death penalty direct appeal or post conviction proceedings, must exhibit proficiency and commitment to provide quality representation to defendant's and must:

1. Have at least two (2) years of experience in criminal litigation;
2. Have acted as lead counsel in at least one (1) appeal or post conviction proceeding of a felony and/or gross misdemeanor conviction; and
3. Have on at least one (1) occassion filed briefs and/or argued in the Nevada Supreme Court, Ninth Circuit Court of Appeals or the United States Supreme Court.
4. Individual exceptions to theses qualifications may be made by the IDSAC and OAC.

Appointment of appellate, either direct or post conviction, counsel shall be further guided by Nevada Supreme Court Order ADKT 411, or as the same may be amended, attached hereto as Exhibit A.

Juvenile Delinquency Cases - Any attorney appointed as counsel in a juvenile delinquency case must exhibit proficiency and commitment to provide quality representation to defendant's and must:

1. Have at least one (1) year of experience in criminal and/or juvenile delinquency litigation;
2. Have litigated at least one (1) criminal jury trial as either first or second chair;
3. Have full understanding and familiarity of NRS Title 5 – Juvenile Justice;
4. Have a minimum of four (4) CLE credits annually in juvenile delinquency issues and provide proof thereof to the OAC annually with the application or notice of intent.
5. Individual exceptions to theses qualifications may be made by the IDSAC and OAC.

Appointment of juvenile deliquency counsel shall be further guided by Nevada Supreme Court Order ADKT 411, or as the same may be amended, attached hereto as Exhibit A.

Parental Termination Cases - Any attorney appointed as counsel in a parental termination case must exhibit proficiency and commitment to provide quality representation to defendant's and must:

1. Have at least one (1) year of experience in parental termination cases;
2. Have a minimum of three (3) CLE credits annually in parental termination issues and provide proof thereof to the OAC annually with application or notice of intent.
3. Individual exceptions to these qualifications may be made by the IDSAC and OAC.

DUTIES OF COURT APPOINTED COUNSEL

Standards – In addition to the information listed in the Standards section above, the services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed. Representation shall be provided in compliance with the Performance Standards for Representation of Indigent Defendants adopted by the Nevda Supreme Court, January 4, 2008, or as the same may be amended.

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.

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.

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. Additionally, subject only to withdrawal or substitution permitted under the Nevada Rules of Criminal Procedure and the OAC, attorney's representation shall be from the date of appointment through every stage of the legal proceedings, including the processing of a notice of appeal and filing of a Fast Track Supreme Court brief or until the charges are terminated, and shall include any status checks, probation revocation proceedings or other hearings set at or subsequent to sentencing. If requested by Client, attorney shall file a Notice of Appeal and Designation of Record in all circumstances where the Client has a legal right to appeal. Also if counsel was appointed to a track, counsel shall be obligated to conclude all cases assigned to him/her on the track even if such case or cases extend beyond the time period of the contract or if counsel is assigned to a different track. Once the contract has expired or has been terminated, no additional monthly compensation will be provided; however, hourly compensation will be paid to counsel for actual trial time, provided the trial case was appointed to counsel during the contract period.

Responsbility Cannot be Delegated – While appointed counsel may receive assistance from associate attorneys, mentees, or other IDSAC approved attorneys in carrying out his/her responsibilities, appointed counsel cannot delegate responsibilities for representation to another attorney. In the case of scheduling conflicts, vacations or other short-term unavailability of appointed attorney, appointed attorney may arrange for substitute representation by a competent, duly licensed attorney (as stated above) at no additional cost to the county. Said substitute representation SHALL be limited to initial arraignments, status checks, continuances, set time certain hearings, and other similar proceedings. Any critical court appearances - i.e. preliminary hearings, motion hearings, evidentiary hearings, sentencings, probation revocation hearings, trials, etc., MUST be handled by appointed attorney who contracted with county. If appointed attorney cannot be available for any critical court appearance that cannot otherwise be continued for appointed counsel's presence, prior approval for representation by substitute counsel must be received through the OAC.

Contact Information - Appointed counsel must be available to receive communications by telephone, answering service, pager, or voice mail from 8:00 am to 5:00 PM on workdays. Counsel shall also maintain a FAX and/or Email address for receiving notices, motions, appointments, etc. from the OAC 24 hours a day, 7 days a week. Difficulty communicating with counsel by court, court staff, clients or the OAC will be potential grounds for removing counsel from the approved list.

COMPENSATION OF COURT APPOINTED COUNSEL

The following schedule is adopted pursuant to NRS 7.125 and the Clark County Board of County Commissioners, with the intent to provide reasonable compensation to court appointed counsel for time spent performing the reasonable and necessary services representing client, taking into consideration, but not limited to, the following factors: the time and skill required, complexity of the case, experience and ability of appointed counsel, the reasonable and necessary overhead costs of attorneys in the area generally, the number of assignments expected under the contract, the hourly rate paid for all appointed counsel; and the ability of the appointed attorney to comply with the Performance Standards adopted by the Nevada Supreme Court, or as the same may be amended. This schedule may be amended form time to time as necessary and appropriate to insure counsel are reasonably compensated.

Track Cases (Except Death and Life Cases), Gross Misdemeanors and Misdeameanors -

Monthly fee **$4500.00/mth**
Trial Time in Court **$100.00/hr**
(does not include time spent in trial preparation)

Habitual Offender cases - Hourly compensation for any work directly related to the habitual sentencing issues shall be paid at **$100.00/hr** commencing upon the filing of any notice that a sentence of life imprisonment will be sought under NRS 207.010. The balance of the case will be considered compensated as part of the monthly fee for the underlying track contract.

Highly Complex or "Extraordinary Cases"- Hourly compensation shall be paid at **$100.00/hr** on any case that either the OAC or court determines is a case, not normally covered by hourly compensation, yet has such highly complex issues that hourly compensation is appropriate.

If pursuant to NRAP Rule 3C (b) the track attorney is required to file a Notice of Appeal, rough draft transcript request form, and fast track statement, said track attorney shall be appointed by the Court and compensated at the hourly rate set forth in NRS 7.125 as well as being reimbursed for any costs or expenses incurred.

Juvenile Deliquency Cases -

Monthly fee **$4000.00/mth**

Death Penalty Cases -

Hourly fee **$125.00/hr**

Non-Death, Life Cases and Multiple Defendant/Juvenile Cases not covered by Track and Non-Death Appeals and Post Conviction Cases

Hourly fee **$100.00/hr**

Parental Termination Case

Hourly fee **$100.00/hr**

INVESTIGATION EXPENSES AND EXPERT WITNESS FEES

The defendant has the right to proper investigation of his/her case and for appointment of expert witnesses when necessary for reasonable defense of his/her case. Requests for funds for investigators or expert witnesses shall be made through the OAC. Investigation expenses will be compensated based on the usual and normal charges for such investigations in the Eighth Judicial District. This amount may be amended from time to time as necessary and appropriate to insure investigators are reasonably compensated without waste of public resources. Travel time from the investigator's office to the courthouse, jail and lawyer's office is not compensatble. Mitigation, mental health, ballistics, forensics, fingerprint, DNA experts necessary for the defense of the accused shall be compensated based on the usual and normal charges for such experts in the Eighth Judicial District.

A denial of a request for investigations or witness expense by the OAC, may be reviewed by the Court.

Incurring frivolous, unnecessary or improper investigation and/or expert expenses may be a basis for removal of the attorney from the list of qualified attorneys.

REQUESTS FOR PAYMENT OF ATTORNEY FEES AND EXPENSES

Payment requests for attorney services will be processed as follows -

All invoices for attorney's services and cost reimbursement under statute or county contract must be submitted directly to the OAC on a Payment Request Form, supported by appropriate documentation.

Compensation shall be subject to the limits of NRS 7.125. Requests for fees in excess of the statutory amount may be made through the OAC. If a request is denied, excess fees may be requested pursuant to NRS 7.125. Fees exceeding the maximum statutory rate will be reduced to the statutory rate unless accompanied by prior written OAC authorization or Court authorization.

The OAC is responsible for reviewing and verifying all bills and back-up documentation, and may request additional back-up documentation or explanation from the attorney or court, if neccessary to fairly and apppropriately process the request for payment.

A sampling of bills and back-up documentation and/or questionable bills will be forwarded to the Indigent Defense Bill and Review Committee (IDBRC) for recommendations to the OAC. Members of the IDBRC will be made up of members from the Clark County Public Defender,

Special Public Defender, and private criminal bar. No member of the IDBRC shall have a pecuniary interest in the outcome of an attorney's bill or be in any way legally or financially related to any attorney whose bills are being reviewed.

Appointed counsel must wait until all responsibilities in relation to the case appointment have been completed before submitting a Payment Request, except in either capital cases or "extraordinary" cases where interim billing is authorized.

All Payment Requests shall be submitted to the OAC no later than 30 days after termination of the attorney's responsibiities in the case. The County will reject any claims received more than 60 days from the conclusion of a case. Any requests for indigent attorney fees or expenses not timely submitted will be considered waived, and the services considered being performed pro bono.

A denial of a payment request for attorney services by the OAC, may be reviewed by the Court.

Payment requests for ancillary services and case-specific costs will be processed as follows - All invoices for ancillary services and case-specific costs must be submitted to the OAC on a Payment Request Form with appropriate documentation.

All invoices for ancillary services and case-specific costs must be signed by the contract attorney on the case who verifies that the services/items were provided and were necessary to present an adequate defense.

Compensation shall be subject to the limits of NRS 7.135. Requests for fees in excess of the statutory amount may be made through the OAC. If a request is denied, excess fees may be requested pursuant to NRS 7.135. Fees exceeding the maximum statutory rate will be reduced to the statutory rate unless accompanied by prior written OAC authorization or Court authorization.

OAC is responsible for reviewing and verifying all invoices and back-up documentation, and may request additional back-up documentation or explanation from the attorney, ancillary service provider, or court, if neccessary to fairly and apppropriately process the request for payment.

A sampling of invoices and back-up documentation and/or questionable invoices will be forwarded to the Indigent Defense Bill and Review Committee (IDBRC) for recommendations to the OAC. Members of the IDBRC will be made up of members from the Clark County Public Defender, Special Public Defender, and private criminal bar. No member of the IDBRC shall have a pecuniary interest in the outcome of ancillary service provider's bill or be in any way legally or financially related to any ancillary service provider whose invoices are being reviewed.

All invoices must wait until all responsibilities in relation to the case appointment have been completed before submitting a Payment Request, except in either capital cases or "extraordinary" cases where interim billing is authorized.

All Payment Requests shall be submitted to OAC no later than 30 days after termination of the case. The County will reject any claims received more than 60 days from the conclusion of a case. Any requests for expenses not timely submitted will be considered waived.

A denial of a payment request for any ancillary services or case specific costs by the OAC, may be reviewed by the Court.

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK
201 South Carson Street
Carson City, Nevada 89701-4702

RECEIPT FOR DOCUMENTS

April 30, 2008

To: Paul S. Hickman, Administrative Judge

Re: ADKT 411

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

Date	
04/30/08	Filed Reno Municipal Court Plan for Indigent Defense submitted by Paul Hickman, Administrative Judge

Tracie K. Lindeman
Clerk of Court
TKL:lc

RENO MUNICIPAL COURT
PAUL STEWART HICKMAN, JUDGE

RENO, NEVADA

April 29, 2008

FILED

APR 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

Nevada Supreme Court
Indigent Defense Commission
201 South Carson Street
Carson City, NV 89701

RE: ADKT NO. 411

RENO MUNICIPAL COURT
PLAN FOR INDIGENT DEFENSE

This plan represents a reworking of the current plan which has been in place at the Reno Municipal Court for more than 12 years. The plan has worked well for us and will work even better, we believe, in this modified form.

The Reno Municipal Court (RMC) is a high volume court which adjudicates criminal misdemeanors such as traffic (including DUI 1st and 2nd), Domestic Battery and related offenses, TPO violations, petty theft and other public offenses such as being in possession of an open container of alcohol in public, urinating in public, trespassing and the like.

The Municipal Court Judges routinely appoint the Legal Defender (a group of four contracted indigent counsel) to represent all indigent persons charged with municipal code violations when conviction of the violation carries a possible jail sentence.

Such violations include:

- Domestic Battery
- Harassment
- Disturbing the Peace (if domestic-related)
- Trespassing (if domestic-related)
- Destruction of Property (if domestic-related)
- Stalking
- TPO Violations
- Petty Theft (if prior convictions or significant criminal record)
- Embezzlement
- Obtaining money/goods/services under False Pretenses
- Driving Under the Influence 1st and 2nd offenses
- Possession of Drug Paraphernalia
- NRS 211A Probation violations
- Contempt of Court

P. O. BOX 1900 RENO, NEVADA 89505 • 775-334-2297 • e-mail: hickmanp@ci.reno.nv.us
www.renomunicipalcourt.com

The preceding list is not meant to be exclusive, as individual judges have discretion to appoint counsel on any case as circumstances require.

The judges have chosen to provide counsel for all defendants appearing in prisoner arraignments, irrespective of indigence and of the offense charged, and when a defendant enters a plea of not guilty at arraignment, the court appoints the Legal Defender to represent that defendant at trial if he or she meets the qualifications (indigence and seriousness of charge).

INITIAL SELECTION OF CONTRACT COUNSEL

The RMC judges have selected four defense counsel (Legal Defenders) based on their qualifications and relevant work experience. The contracts set forth that each attorney is required to cover a fixed number of court appearances per week (trial dockets and prisoner arraignments) and maintain minimum office hours devoted to indigents. The contracts allow for annual renewal, and may be terminated by either party upon 30 days notice. The attorneys are required to maintain a $1,000,000.00 Errors and Omissions insurance policy. The judges may select additional or replacement counsel from time to time as circumstances dictate.

EXECUTION OF CONTRACTS

After selecting the attorneys, the judges remove themselves from the process. The City Manager's Office will then negotiate and execute the contracts.

ADMINISTRATION OF CONTRACTS

The office of the City Manager will oversee all matters concerning drafting of the contracts, compensation, yearly increases and contract disputes.

APPOINTMENT OF COUNSEL TO INDIVIDUAL CASES

The four contract attorneys will decide among themselves which attorney will cover which court appearance. This has been and will continue to be at the discretion of the contract attorneys, without input from the judges or the court. If an attorney cannot represent a defendant because of a conflict, that attorney then has the responsibility to obtain alternate coverage either by retaining substitute counsel, or by trading coverage with a colleague.

DETERMINATION OF INDIGENCE

The court advises all defendants charged with public offenses of their constitutional rights at arraignment, including the right to counsel. The defendant is then required to fill out and submit an application as soon as possible before the trial date. The application is reviewed by an employee in the office of the Court Clerk who is (or will be) trained to apply the federal poverty guidelines properly, and from that review determine whether or not the defendant is indigent. That employee will also determine if a conviction for the charged offense exposes the defendant to a possible jail sentence. If both questions are answered in the affirmative, counsel is appointed to represent that person at no cost. (Some applicants who qualify for court-appointed counsel have some disposable income over and above monthly expenses. If so, those

applicants will be assessed a flat fee to reimburse the court partially for the cost of representation.)

Once an application has been approved, the court notifies the defendant by sending an order containing the attorney's name and phone number and instructing the defendant to contact the attorney to discuss the case and to prepare a defense.

REQUESTS FOR INVESTIGATIVE OR EXPERT WITNESS FEES

When a contract attorney determines that a case requires further investigation and/or expert witness, the attorney informs the trial judge. The judge hearing the case sends that request to the Administrative Judge for determination of the request. The Administrative Judge reviews the request, authorizes the expenditure of funds, then sends the case back to the trial judge. If the Administrative Judge is the trial judge, the request for fees is sent to another judge for determination.

Respectfully submitted,

Paul S. Hickman
Administrative Judge
Reno Municipal Court

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK
201 South Carson Street
Carson City, Nevada 89701-4702

RECEIPT FOR DOCUMENTS

May 5, 2008

To: Barbara S. McCarthy, Administrative Judge

Re: ADKT 411

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

Date	
05/05/08	Filed Sparks Municipal Court Administrative Plan Regarding Appointment of Counsel, Approval of Fees and Determination of Indigency

Tracie K. Lindeman
Clerk of Court
TKL:lc

SPARKS MUNICIPAL COURT

HON. BARBARA S. MC CARTHY
Department One

HON. JAMES SPOO
Department Two

Nevada Supreme Court
Indigent Defense Commission
201 South Carson Street
Carson City, NV 89701

April 29, 2008

FILED

MAY 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

Re: ADKT 411

SPARKS MUNICIPAL COURT
ADMINISTRATIVE PLAN REGARDING
APPOINTMENT OF COUNSEL, APPROVAL OF FEES
AND DETERMINATION OF INDIGENCY

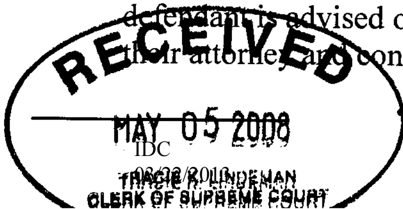
The Sparks Municipal Court has constantly strived to insure equality before the law for all persons accused of a crime. We believe our current policies and practices regarding the appointment of counsel for indigent defendants reflect that commitment. That being said, we have reviewed and considered the proposed MODEL PLAN FOR THE PROVISION OF APPOINTED COUNSEL FOR URBAN COURTS IN NEVADA (April 18, 2008) and welcome the opportunity to both modify and enhance our current practices to reflect our ongoing commitment and that of the Indigent Defense Commission to insuring those defendants who are financially unable to pay for adequate representation receive adequate representation through appointed counsel.

To that end, we respectfully submit the following plan.

PROVISION OF REPRESENTATION

There are presently two judges that adjudicate approximately 10,813 (2007) criminal misdemeanor cases per year. Both judges routinely appoint counsel to represent indigent persons charged with misdemeanors when a conviction carries a mandatory jail sentence, possible jail sentence, or possible suspended jail sentence. Both judges also appoint counsel to represent indigent persons on a discretionary basis when the interests of justice so require.

Counsel is also appointed for all defendants regardless of financial means if the defendant remains incarcerated at the time of their arraignment. If the defendant pleads not guilty at arraignment, counsel will be appointed to represent the defendant for all remaining stages of the proceedings if they qualify based on a financial application they execute at the time of arraignment. The decision to grant or deny the defendant's request for court appointed counsel is made at that time or immediately following the conclusion of the arraignment session and the defendant is advised of the decision immediately. If granted, the defendant is given the name of their attorney and contact information.



Telephone 775-353-2374 • Fax 775-353-2400 • www.ci.sparks.nv.us •
1450 C Street, Sparks NV 89431

ELIGIBILITY FOR REPRESENTATION

Financial Eligibility and Screening: At arraignment all defendants are advised of their right to counsel including their right to court-appointed counsel if they want the assistance of counsel, cannot financially afford counsel, and are facing jail time or suspended jail time. All defendants are encouraged to ask the court if they are eligible for court-appointed counsel if they are uncertain whether or not they qualify.

If the defendant wishes to request court-appointed counsel, they must execute an Application and Affidavit for Court-Appointed Counsel. Heretofore the judge who is conducting the arraignment or who is assigned to the case would make the decision whether to grant or deny (with explanation) the defendant's request. Commencing immediately, the court administrator or her designated court clerk, will review the revised Application and Affidavit for Court-Appointed Counsel (which now includes the federal poverty guidelines) to determine whether or not the defendant qualifies for court-appointed counsel. At the conclusion of the case a determination will be made by the court administrator or her designated court clerk (heretofore the judge who was assigned to the case) whether or not there has been a change in the defendant's financial circumstances since the filing of the Application and Affidavit for Court-Appointed Counsel. After reviewing the defendant's current financial circumstances, she will further determine what, if any, fees may be assessed to the defendant for the appointment of counsel pursuant to NRS 7.165.

COURT-APPOINTED COUNSEL

The Sparks Municipal Court currently has a multi-year indigent legal services contract with one defense attorney who, with the approval of the judges, sub-contracts with three additional attorneys.

Compensation is a fixed annual fee.

The contract sets forth the expectation of number of cases to be handled, which includes representation at all stages of criminal proceedings from in-custody video arraignments to all appeals to the Second Judicial District Court of indigent defendants regardless of whether or not the defendant was originally represented by the contract attorney.

The contract attorney determines which attorney will cover which court appearances and how cases are assigned without input from the judges.

If an attorney cannot represent a defendant because of a conflict, that attorney has the responsibility to obtain substitute counsel.

ADMINISTRATION OF THE CONTRACT

The administration of the contract is overseen by the City Manager's Office.

The City initially solicited proposals for the contract by public notice. The judges screened the proposals for minimum qualifications, education and relevant work experience. The City Council makes the ultimate determination to whom the contract will be awarded. The judges are available to the City Council at public hearing for any questions that may arise.

The contract allows for bi-annual renewal and may be terminated with sixty days notice by either party.

Complaints by clients or others about the representation by appointed counsel are received by the Court Administrator for consideration in the evaluation of the appointed counsel.

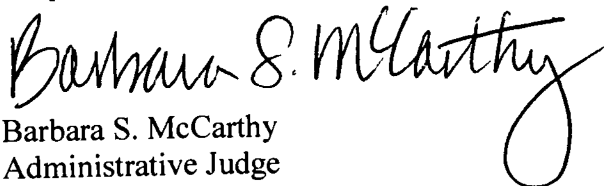
The contract provides for the application for appointment of, and compensation to, expert witnesses, investigators, interpreters, etc. through the assigned judge.

The contract provides for proof of malpractice insurance and compliance with relevant CLE.

If the Committee is desirous, the Court can provide for their review The City of Sparks Indigent Defense Legal Contract, the Application and Affidavit For Court-Appointed Counsel, the Order Granting Court-Appointed Counsel as well as the Order Denying Court-Appointed Counsel.

Please advise if the Committee is in need of any further information.

Respectfully submitted,



Barbara S. McCarthy
Administrative Judge
Sparks Municipal Court

Las Vegas Municipal Court
At the Regional Justice Center

P.O. Box 3960 • Las Vegas, Nevada 89127-3960 • Main 702-229-6509 • Fax 702-385-5510 • TTY 702-384-3253

April 24, 2008

Judiciary
Judge Bert Brown
Chief Judge
Department 4

Judge Cynthia S. Leung
Department 1

Judge Elizabeth B. Kolkoski
Department 2

Judge George Assad
Department 3

Judge Cedric A. Kerns
Department 5

Judge Martin D. Hastings
Department 6

Court Administration
James P. Carmany
Court Administrator

Chief Justice Mark Gibbons
Nevada Supreme Court
201 South Carson St
Carson City, NV 89701-4702

Dear Chief Justice Gibbons:

Pursuant to ADKT 411, "*In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*", the following Administrative Plan is submitted by the Las Vegas Municipal Court for the review and approval by the Nevada Supreme Court.

It is the intent of the Las Vegas Municipal Court to implement the attached plan within six months of receiving the Court's approval.

Should the justices have any questions regarding this Administrative Plan, both myself and/or our Court Administrator, James Carmany, would be pleased to address them with the court. We can be contacted at 702-229-4673.

Sincerely,

Bert Brown
Chief Judge

jc
docs/admin/minutes/Indigent/Supreme Court Cover Ltr 4-08
Enclosures
Cc: Municipal Court Judges
James Carmany
Municipal Court Indigent Defense Admin Plan Committee

In Memorium
The Honorable Seymore H. Brown
September 2, 1929 - June 16, 2000

Mission Statement
To provide efficient and ethical proceedings through quality service, alternative sentencing, and innovative use of technology.

Las Vegas Municipal Court

In response to the Supreme Court Order dated January 4, 2008 titled, "IN THE MATTER OF THE REVIEW OF ISSUES CONCERNING REPRESENTATION OF INDIGENT DEFENDANTS IN CRIMINAL AND JUVENILE DELINQUENCY CASES"

The Las Vegas Municipal Court (LVMC) hereby submits the following Administrative Plan for the selection of attorneys to represent Indigent Misdemeanor Defendants and the process for the determination of a Defendant's Indigence:

Indigent Defense Administrative Plan

1. The City of Las Vegas Finance & Business Services Purchasing & Contracts Division (Purchasing) in conjunction with City of Las Vegas Human Resources (HR) Department will issue a Request for Proposal (RFP) for the representation of indigent defendants for all matters before the Las Vegas Municipal Court (LCMC).
   a) Public Attorney Contracts will be offered for each LVMC department with no limitation on the number of contracts an individual applicant may apply for or be awarded.
      (1) Contract will be awarded at a fixed annual price as determined by the City of Las Vegas City Council.

2. Independent Selection Committee will determine who is awarded the individual Public Attorney contracts. Selection Committee will be comprised of 5 members who will make the final determination relative to the awarding of any Municipal Court Indigent Representation contracts, including "mid-cycle" replacements should a vacancy occur.
   a) Committee will include representatives from: The Federal Public Defender office, County Public Defender office, Nevada State Bar, Criminal Justice Association (attorney group) and the City of Las Vegas City Manager's office.
   b) Court/judicial input relative to potential conflicts of interest, may be provided prior to the selection committee's review, however, no judicial pre-empt and/or veto of any selection is permitted.
   c) Committee to be constituted by July 1, 2008, with first order of business to establish their "rules".

3. City of Las Vegas Purchasing & HR to have responsibility for all Administrative functions including:
   a) Establishing the Scope of Work and Issuing the Request for Proposals.
   b) Conducting initial review/interview of all applicant firms to ensure they meet all basic criteria (as established by the Supreme Court Order and LVMC) before submitting all qualified applicants to the independent "Selection Committee".

c) Writing and Issuing Public Attorney contract(s) and ensuring that all mandated licenses, proof of insurance, etc., are obtained.

d) Ensuring that all individual indigent defense attorneys employed by the firm(s) awarded a Public Attorney contract meet all LVMC and Supreme Court Order eligibility criteria both at contract issuance and throughout term of contract.

e) Conducting periodic "audits" to ensure contract compliance.

f) Payment.

4. Minimum Qualifications for Attorneys/Firms awarded a contract:

   a) 1M Liability/Malpractice Insurance.

   b) Experience- Three (3) years or more of criminal experience required for all attorneys supporting the contract.

   c) Administrative plan to be submitted as part of application process detailing how the Public Attorney will provide appropriate service levels to the department(s) they are awarded, including how they will fill attorney staff vacancies (vacation, illness, etc.).

   d) List of all attorneys who will practice in the courtroom submitted and approved by the selection committee as part of application process.

   e) Changes to approved attorney list supporting the contract must be approved by the Selection Committee prior to practicing in the courtroom.

      (1) Emergency attorney substitution- name must be submitted within a reasonable period of time.

5. Scope of Work to be included in the Request for Proposal will:

   a) Be developed by a committee appointed by the Las Vegas Municipal Court and the Las Vegas City Manager's Office.

   b) Include full professional defense for all defendants entitled to indigent representation

   c) Include Traffic Court indigent representation as appropriate

   d) Include Appeals

   e) Assure compliance with all Supreme Court Orders and Performance Standards relative to the representation of indigent defendants

Las Vegas Municipal Court Plan for the Determination of Indigence*

1. Defendant not in custody:
   a) The defendant appears in the courtroom, is facing jail time and states that they cannot afford legal counsel for their defense.
   b) The defendant completes the Declaration, and the Public Attorney determines from the Declaration that the defendant qualifies under the Presumptive Threshold Standard, accepts the case and represents the defendant.
   c) If the Public Attorney requests a more rigorous screening, the completed Declaration is forwarded within 2 business days by the Public Attorney to the Las Vegas Municipal Court Judicial Enforcement Unit (JEU) for processing.
   d) If the defendant disputes a finding of non-qualification for indigent status and court appointed counsel, or the Declaration has discretionary aspects that cannot be resolved by a more rigorous review.
   e) The case may be continued for a hearing or other action as determined by the court.

2. Defendant in custody:
   a) Defendants are presumed to be indigent if they are in custody.

*Determination of Indigence Exhibits A & B attached:

Case/History No.______________ **Exhibit A**

LAS VEGAS MUNICIPAL COURT

****

DECLARATION AND APPLICATION FOR COURT-APPOINTED COUNSEL

YOUR NAME: ______________________________ Social Security Number ____________

YOUR ADDRESS: ___________________________ Do you live in Public Housing? _____
Where you live? Are you serving a sentence? _____

____
City/State/Zip Code

HOME PHONE (___) _______________ CELL PHONE (___) _________________

WORK PHONE (__)_____________

PERSONAL INFORMATION

Number of children or others you are legally responsible for: _____

Where do you work? ____

How much do you make monthly before taxes and anything else is taken out of your pay check: $________

Other monthly Income (Wife/Husband, Partner, Co-habitant, other):______________________________

How much are all of your bills each month (rent, mortgage, utilities, credit cards, loans, car payment)
$________________

I and/or my family am currently receiving the following:

AFDC $ ______________ Unemployment $ _____________ Worker's Comp $ _______
Food Stamps $ ______________ SSI $ _________ Medicaid $________
Other Public Assistance Type ____ $________

I, ____, am saying that I cannot afford to hire an attorney. If a crime is charged against me and the City Attorney is seeking for me to serve time in jail and I cannot afford to hire an attorney, the court may appoint an attorney only under certain circumstances.

I have given the above information to see if an attorney can be appointed by the court to represent me in court. I understand that this information may be used to see if I can pay for an attorney to represent me in court. I am giving my permission to contact any credit bureau, review my credit report from any credit bureau, investigative agency or any other source. I authorize the Las Vegas Municipal Court to verify any statements made and information provided and obtain any other information needed. **I declare under penalty of perjury** that the information that has been given is true and correct. I understand that I might have to pay back all or a part of the attorney fees if it is found that I can pay.

____ Date__________
SIGN YOUR NAME

2008 HHS Poverty Guidelines **Exhibit B**

Persons in Family or Household	Poverty Guidelines	Poverty Guidelines at 200%
1	$10,400	$20,800
2	14,000	$28,000
3	17,600	$35,200
4	21,200	$42,400
5	24,800	$49,600
6	28,400	$56,800
7	32,000	$64,000
8	35,600	$71,200
For each additional person, add	3,600	$7,200

SOURCE: *Federal Register*, Vol. 73, No. 15, January 23, 2008, pp. 3971–3972

A defendant is considered indigent if all gross income is less than the Poverty Guidelines above.

Copy

North Las Vegas Municipal Court
2332 Las Vegas Boulevard North, Suite 100
North Las Vegas, Nevada 89030
(702) 633-1130 • Fax (702) 399-6296

Warren VanLandschoot
Judge
Department 1

Sean Hoeffgen
Judge
Department 2

Debbie Miller
Court Administrator

June 10, 2008

Chief Justice Mark Gibbons
Nevada Supreme Court
210 South Carson Street
Carson City, NV 89701

Re: ADKT NO. 411

Dear Chief Justice Gibbons:

In response to the Supreme Court Order dated January 4, 2008 titled "IN THE MATTER OF THE REVIEW OF ISSUES CONCERNING REPRESENTATION OF INDIGENT DEFENDANTS IN CRIMINAL AND JUVENILE DELINQUENCY CASES", we are submitting the following plan for your review and approval by the Nevada Supreme Court.

Our plan is a representation of what we have been following for the last 14 years and the changes that we plan to incorporate into our new plan.

Should you have any questions regarding this Administrative Plan, please contact myself and/or Chief Judge Warren VanLandschoot at 702-633-1148.

Respectfully,

Debbie Miller

Debbie Miller
Municipal Court Administrator

Enclosure

Cc: Municipal Court Judges

North Las Vegas Municipal Court

Indigent Defense Plan

Objective

The objective is to provide qualified private legal counsel for representation of indigent misdemeanor defendants.

Selection of Contracted Counsel

The City of North Las Vegas currently has a list of six (6) qualified attorneys contracted to provide legal representation of indigent defendants who have been charged with a misdemeanor in the North Las Vegas Municipal Court. The six (6) attorneys currently on the list were selected throughout various years by submitting a resume along with a letter of interest. The City Council makes the final contract approval, see enclosed contract. The majority of the attorneys on the list has been under contract for over five years and has proven to provide quality representation. We have found that six attorneys is a sufficient number of attorneys to handle our caseload.

Future Selection of Contract Counsel

An Independent Selection Committee will determine who will be awarded a contract should a vacancy occur. The Committee will be comprised of: the North Las Vegas Municipal Court Administrator, the City of North Las Vegas City Attorney, and the City of North Las Vegas Human Resources Director. They will review/interview all applicants to ensure they meet all of the desired qualifications of the North Las Vegas Municipal Court and the Supreme Court Order.

Assignment of Cases

At the time a defendant is approved for a court-appointed attorney, Court Administration assigns cases to the attorneys on a rotation. All cases are logged and assigned to an attorney. The attorney, as well as the defendant, is notified and given each other's contact information. The only exception to this process is during the in custody pre-trial hearings. Defendants who are in custody are presumed to be indigent, therefore, rather than delaying representation, we will assign one of the six (6) contracted attorneys to be present during those hearings. The assigned attorney will be assigned any defendants needing representation. We will rotate on a monthly basis.

Payment

Attorneys shall submit all claims for payment to the Court Administrator's Office within fourteen (14) days after sentencing on original complaint(s), at which time the attorney shall be removed from the case. The City will compensate the attorney the sum of Two Hundred Fifty Dollars ($250.00) per appointment for representation. The Court may reappoint the attorney for review periods or an appeal from court level if circumstances warrant it. In the event the attorney is reappointed or is assigned to an appeal to District Court, the attorney shall submit all claims for payment relative to the review or appeal to the Court Administrator's Office within thirty (30) days of termination of the case or termination of appointment, whichever is sooner. In the event an attorney is assigned to an appeal to District Court by the Court, the attorney will be compensated Two Hundred Dollars ($200) for representation at the District Court appeal level.

Determination of Indigence

Defendants in custody:

> Defendants are presumed to be indigent if they are in custody.

Defendants not in custody:

> The court advises all defendants who are charged with a misdemeanor who faces a possibility of jail time, their right to counsel. The defendant is then required to fill out an application and return it within five (5) working days. Court Administration will review and determine if the defendant qualifies under the Presumptive Threshold Standard. If approved, an attorney will be assigned and the defendant is notified.

AGREEMENT FOR PROFESSIONAL SERVICES
- INDIGENT DEFENDANT LEGAL REPRESENTATION-

This agreement is made by and among the City of North Las Vegas (**CITY**), a municipal corporation of the State of Nevada, the North Las Vegas Municipal Court (**COURT**) and ____________________, Esq., Attorney at Law (**ATTORNEY**), effective the ____ day of ____________, 200__.

CITY and **COURT**, pursuant to Nevada Revised Statutes (NRS) 171.188, will provide private legal counsel (an attorney) for representation of indigent misdemeanor defendants in the **COURT** instead of the Clark County Public Defender's Office. Any attorney provided must be a member in good standing of the State Bar of Nevada. **ATTORNEY** is a member in good standing of the State Bar of Nevada and is willing to provide legal representation to indigent defendants who have been charged with one or more misdemeanor public offenses within the **CITY**. During the term of this agreement, **COURT** may appoint **ATTORNEY** to represent any number of indigent defendants. **ATTORNEY** is not the only member of the State Bar of Nevada who will be assigned cases by the **COURT**.

The cases assigned to **ATTORNEY** are for the representation of defendants in criminal proceedings originating in the **COURT**. In certain instances, the District Court may require the **COURT** to appoint counsel on appeals from the **COURT**. In that event, the **COURT** may appoint **ATTORNEY** to represent a defendant on an appeal or to request that the **ATTORNEY** continue to represent a defendant through his/her appeal from the **COURT**.

I. ASSIGNMENT OF CASES.

1.1 Cases will be assigned by the **COURT**.

1.2 **ATTORNEY** may reject any three (3) cases during a calendar year for no cause. Such rejection must be made within seven (7) judicial days of the appointment. In the event of an attorney-client conflict a request to reject may be made at a later time when **ATTORNEY** becomes aware of the conflict. Rejections for no cause may be in writing to **COURT** or made orally to the **COURT**'s Court Administrator. Requests for rejection because of a conflict must be made in writing, with the basis of the conflict stated, and approved by the **COURT**.

1.3 **ATTORNEY** will be notified within three (3) judicial days of the appointment by facsimile transmission or verbally by the **COURT**'s Court Administrator.

II. REPRESENTATION.

2.1 **ATTORNEY** is required to consult with an assigned in-custody defendant within five (5) judicial days and with an assigned out-of-custody defendant within fourteen (14) judicial days after notification of the appointment has been made.

2.2 **ATTORNEY** is required to contact the City Attorney's Office, Criminal Division, prior to the scheduled trial date or time of pre-trial.

2.3 **ATTORNEY** is responsible for all court proceedings which are required to provide effective representation to the assigned defendant.

2.4 **ATTORNEY** is responsible to provide for personal consultation with each assigned defendant.

2.5 **ATTORNEY** is required to maintain personal contact with each defendant assigned for representation at the **COURT** level until the case is terminated at the **COURT** level, and is required to use reasonable diligence in notifying each assigned defendant of necessary court appearances, as well as of any court action resulting from the defendant's non-appearance.

2.6 **ATTORNEY** is required to maintain personal contact with each defendant assigned for representation at the District Court appeal level until the appeal is terminated, and is required to use reasonable diligence in notifying each assigned defendant of necessary court appearances, as well as of any court action resulting from the defendant's non-appearance.

2.7 **ATTORNEY** is responsible for the interviewing of each assigned defendant and all witnesses in each assigned case.

2.8 **ATTORNEY** will complete the appropriate forms, as provided by the **COURT**, for each court appointment.

III. REDETERMINATION OF INDIGENCE.

If **ATTORNEY** requests a redetermination of the indigence of any person he/she represents and **ATTORNEY** is allowed to withdraw by the **COURT** based thereupon, **ATTORNEY** agrees he/she will not represent that person in that case for a fee without prior approval of the Judge of the **COURT**. **ATTORNEY** shall not accept compensation for a case assigned under this agreement outside of that contemplated by this agreement without full disclosure of the terms of this agreement to the client, notification to the **COURT** of the arrangements made for compensation, and approval of the Judge of the **COURT**. Under no circumstances may **ATTORNEY** solicit such outside compensation.

IV. AMENDMENTS/ENTIRE AGREEMENT.

Amendments to this agreement may be made only upon mutual consent in writing, executed by the parties hereto with the same formality attending this agreement. This executed agreement, together with any attachments, contains the entire agreement between the parties relating to the rights granted and obligations assumed by the parties hereto. Any prior agreements, promises, negotiations or representations, either oral or written, relating to the subject matter of this agreement are of no force or effect.

V. TERMINATION.

5.1 The **COURT** may terminate this agreement without cause with thirty (30) days written notice to **ATTORNEY**.

5.2 **ATTORNEY** may terminate this agreement with thirty (30) days written notice to the Court Administrator.

5.3 In the event **COURT** or **ATTORNEY** elect to terminate this agreement pursuant

to 5.1 or 5.2 above, **COURT** will report such to **CITY** within fifteen (15) days of receiving notice of said termination.

5.4 Unless sooner terminated, the term of this agreement shall be two (2) years.

VI. SUBSTITUTE REPRESENTATION.

The parties contemplate that some of the services required to be provided by the terms of this agreement shall be performed by members in good standing of the State Bar of Nevada who are acting as the agents or employees of **ATTORNEY**. **ATTORNEY** agrees to provide substitute representation in **COURT** when he or she is ill, on vacation, or when he or she is unable to appear at any court proceeding for any reason. Substituting attorneys must meet the minimal requirements necessary for the attorney who has entered this agreement. **ATTORNEY** agrees that **CITY** is only responsible for compensating **ATTORNEY** and not his/her substitute. Any substitute attorney shall look to **ATTORNEY** for any compensation which may be due him or her.

VII. PAYMENT.

7.1 **ATTORNEY** shall submit all claims for payment to the Court Administrator's Office within fourteen (14) days after sentencing on original complaint(s), at which time **ATTORNEY** shall be removed from the case. **ATTORNEY** shall not be required to represent such defendant on any appeal, whether based upon a preliminary matter or final judgment.

7.2 The **COURT** may reappoint **ATTORNEY** for review periods or an appeal from **COURT** level if circumstances warrant it. In the event **ATTORNEY** is reappointed or is assigned to an appeal to District Court by **COURT**, **ATTORNEY** shall submit all claims for payment relative to the review or appeal to the Court Administrator's Office within thirty (30) days of termination of the case or termination of appointment, whichever is sooner.

7.3 In accordance with NRS 7.125(1), **CITY** will compensate **ATTORNEY** the sum of TWO HUNDRED FIFTY DOLLARS ($250.00) per appointment for representation at the **COURT** level.

7.4 In the event **ATTORNEY** is assigned to an appeal to District Court by **COURT**, **ATTORNEY** will be compensated TWO HUNDRED DOLLARS ($200.00) for representation at the District Court appeal level.

7.5 **ATTORNEY** will submit billings for court appointed representations utilizing the forms provided by the **COURT**.

VIII. REIMBURSEMENT OF COSTS.

Before incurring any expenditure in an assigned case **ATTORNEY** must apply to **COURT** for permission to expend monies for any cost items believed to be necessary for proper representation. If prior permission is not sought, the monies expended may not be reimbursed. The costs and expenses are reviewable by the **COURT** at the time of billing. The amount of reimbursement may not exceed the limit for costs set forth in NRS 171.188(4). At the effective

May 22, 2008

Chief Justice Mark Gibbons
Nevada Supreme Court
201 South Carson Street
Carson City, Nevada 89701-4702

RE: ADKT No. 411
Henderson Municipal Court
Plan for Indigent Defense

Dear Chief Justice Gibbons:

Pursuant to ADKT 411, the following Administrative Plan is submitted by the Henderson Municipal Court for the review and approval by the Nevada Supreme Court. It is the intent of the Henderson Municipal Court to implement the plan within six months of receiving the Court's approval.

INDIGENT DEFENSE ADMINISTRATIVE PLAN

1. The City of Henderson Finance Department will issue a Request for Proposal (RFP) for Public Defender Services. The Public Defender contracted through the RFP process will be responsible to provide representation of indigent defendants for all matters before the Henderson Municipal Court (HMC). The Public Defender will subcontract to qualified attorneys. There will be one Public Defender working in each HMC Department. The Public Defender Contract will be awarded at a fixed annual price as determined by the City of Henderson City Council.
2. An Independent Selection Committee (ISC) will recommend a Public Defender to the City Council based on the responses to the RFP. The ISC will consist of the 3 members or their designees as follows: the HMC Court Administrator, the City of Henderson City Attorney and the City of Henderson City Manager. The HMC Judges will no longer be involved in the RFP selection process.
3. The HMC Court Administrator will continue to approve claims for payment and will be responsible for all administrative functions relating to the Public Defender.
4. The minimum qualifications for HMC Public Defenders awarded a contract include:
    a) $1.0 M Liability/Malpractice Insurance
    b) Commercial General Liability and Automotive Liability - $1.0 M per occurrence for bodily injury, personal injury and property damage
    c) Workers Compensation in a form acceptable to the Insurance Commissioner, State of Nevada, statutory limits and Employer's Liability of $1.0 M per occurrence, per accident for bodily injury or disease.
    d) Licensed to practice Law in Nevada

e) A member in good standing of the State Bar of Nevada
f) Three years of criminal law trial experience
g) Possession of a valid Nevada driver's license
h) Possession of a City of Henderson business license for each attorney

5. Scope of Work in the Request for Proposal will:
   a) be developed by the ISC
   b) Include full professional defense for all defendants entitled to indigent representation
   c) Include Traffic Court indigent representation as appropriate
   d) Include Appeals
   e) Assure compliance with all Supreme Court Orders and Performance Standards relative to the representation of indigent defendants
6. If the Public Defender has a conflict in a case a Conflict Attorney will be appointed through the Henderson Municipal Court Conflict attorney Appointment Policy (attached).

PLAN FOR THE DETERMINATION OF INDIGENCE

1. Defendant not in custody or in custody:
   a) The defendant appears in the courtroom, is facing jail time and states that they cannot afford legal counsel for their defense.
   b) The defendant completes the Application for Public Defender form, the Presiding Judge determines from the Application that the defendant qualifies under the Presumptive Threshold Standard, and appoints the Public Defender to represent the defendant in the case.
   c) If the defendant disputes a finding of non-qualification for indigent status and court appointed counsel the case may be continued for a hearing or other action as determined by the court.

Should the Justices have any questions regarding the Administrative Plan, both myself and/or Chief Judge Diana Hampton, would be pleased to address them with the Court. We can be contacted at 702-267-3359.

Sincerely,

David Hayward
Municipal Court Administrator
Henderson Municipal Court

Enclosure
Cc: Municipal Court Judges
File