

MODEL PLAN FOR COUNTIES USING PANELS OF PRIVATE ATTORNEYS

I. AUTHORITY

Under NRS Chapter 180 and 260, the County of _____ adopts this plan, as approved by the Board of Indigent Defense Services (hereinafter “Board”), for furnishing representation in state court for any person financially unable to obtain representation.

II. STATEMENT OF POLICY

A. Objectives

The objective of this Plan are:

1. to attain the goal of equal justice under the law for all persons;
2. to provide all eligible persons with timely indigent defense services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and
3. to particularize the requirements of NRS 180.300 – 180.460 and the regulations of the Board in a way that meets the needs of the jurisdiction.

The Plan must therefore be administered so that those accused of crime , or otherwise eligible for indigent defense services, will not be deprived of the right to counsel or any element of representation necessary to an adequate defense, due to lack of financial resources.

III. DEFINITIONS

- A. Generally, the terms used herein have the meaning ascribed to them in NAC _____ through _____, unless otherwise specified.
- B. “Department” means the Department of Indigent Defense Services.
- C. “Other Litigation Expenses” means those expenses which are not part of a contract between a county and attorney, and includes investigations, expert witness services, language translators, laboratory analysis, and other forensic services.
- D. “Plan” means the county’s plan for the provision of indigent defense services as described in NRS 260.070.

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IV. DETERMINATION OF ELIGIBILITY FOR APPOINTMENT OF COUNSEL; TIMING OF APPOINTMENT; FIRST APPEARANCE OF COUNSEL

A. Subject-matter eligibility

1. Mandatory

a. Counsel shall be appointed for any financially eligible person in those cases described in NAC _____ (1) and (2).

2. Discretionary

a. Counsel may be appointed for any financially eligible person in those cases described in NAC _____ (3) whenever a court determines that the interest of justice so require.

B. Financial eligibility

1. Determination of Indigency

a. Consistent with the Nevada Supreme Court Order ADKT 0411, “a person will be deemed indigent who is unable, without substantial hardship to themselves or their dependents, to obtain competent, qualified legal counsel on his or her own. ‘Substantial hardship’ is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in public housing, or earn less than 200 percent of the Federal Poverty Guideline. A defendant is presumed to have a substantial hardship if they are 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.”

2. Screening for Eligibility

a. For in-custody defendants, the [*Court, Pretrial Services, Department of Alternative Sentencing, Court Administrator, or other administrative agency*] shall conduct any screening within 48 hours, excluding nonjudicial days, for financial eligibility and provide a recommendation to the court with regard to the eligibility of the defendant for appointment of counsel based upon the provisions of Section IV(B)(1)(a), *supra*. Counsel at first appearances, 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 the court determines that a defendant is able to afford counsel but cannot be effectively represented due to inability to pay for appropriate services such as investigators, experts or other services, the court shall order reasonably necessary services be provided at no cost to the defendant, subject to the procedures established in NRS 7.135 and by the Department.

4. Juvenile Delinquency Matters

a. In Juvenile Delinquency matters filed with the court, the juvenile should be presumed indigent and counsel appointed pursuant to NRS 62D.030.

C. When Counsel Shall be Provided

1. Counsel, other than counsel designated as counsel for first appearances pursuant to Section IV(D)(1), *infra*, shall be selected within 72 hours after arrest or, in case of a conflict, as soon as feasible after the initial appearance/arraignment.

D. Counsel at Initial Appearance/Arraignment

1. Whether a county uses contract-for service providers or attorneys appointed on an individual case basis, each plan shall provide for counsel at first appearance as provided by NAC _____. Counsel at first appearances may be accomplished by designation of an attorney or by contract or contract provision for such a service. Workloads of any assigned “duty” attorney for initial appearances, no matter the delivery method, should be adjusted proportionally with the Board’s workload standard.

V. PROVISION OF INDIGENT DEFENSE SERVICES

A. Use of Private Counsel

1. This Plan provides for the provision of indigent defense services by appointment and compensation of private counsel selected from a roster maintained by the Department in cases authorized under NRS Chapters 180 and 260.

B. Administration

1. Selection of the panel of private attorneys and their compensation is determined by the board of county commissioners pursuant to NRS Chapter 260, subject to NAC _____ to _____.

2. Administration of the roster of attorneys eligible to provide indigent defense services, as provided in this Plan, is the duty of the Department pursuant to NRS 180.430. Additionally, the Department, pursuant to NRS 180.400 – 180.460 is responsible for:

- a. Determining whether attorneys are eligible to provide indigent defense service in accordance with the regulations of the Board;
- b. Identifying and encouraging the use of best practices for delivering the most effective indigent defense services;
- c. Monitoring caseloads and compensation of attorneys providing indigent defense services;
- d. Determining whether the regulations established by the Board are being followed;
- e. Determining whether court rules regarding the provision of indigent defense services are being followed;
- f. Determining whether indigent defendants are being asked to provide reimbursement for indigent defense services; and
- g. Determining whether indigent defense services are being provided in an effective manner.

C. Number of Counsel

1. More than one attorney may be appointed in any case determined extremely difficult or complex. Where indigent defense services are provided by contract or counsel appointed on a case-by-case basis, the court shall determine whether the case is sufficiently difficult or complex to justify the appointment of multiple counsel pursuant to NRS 260.070. Selection of counsel shall follow Section VI(E)(2) and (3), *infra*.

D. Number and Qualifications of Counsel in Capital Cases

1. Two lawyers must be appointed as soon as possible in all open murder case which are reasonably believed to result in a capital charge.
2. Appointment of attorneys to represent defendants charged in capital cases shall comport with SCR 250 and ADKT 0411.

VI. PANELS OF PRIVATE ATTORNEYS

A. Use of the Department's Roster of Eligible Attorneys

1. Pursuant to NRS 180.430, the Department will establish and maintain a roster of attorneys that meet the requirements of the Board and are otherwise eligible to provide indigent defense services. To meet this statutory obligation, the Department will:

a. Examine the qualifications for membership on the roster and approve those attorneys meeting the qualification standards of the Board and reject applications of those deemed unqualified.

b. Engage in recruitment efforts to establish a diverse roster and ensure that all qualified attorneys are encouraged to participate in the furnishing of indigent defense services.

c. Remove any roster member who fails to satisfactorily fulfill the requirements of roster membership during their term of service, including failure to provide quality representation to clients and has engaged in other conduct such that continued participation on the panel is inappropriate.

d. Provide training for roster members on substantive and procedural matters affecting representation of indigent defense clients.

B. Establishing Local Panels

1. *[Utilize this section to describe the selection process for a county's contract-for-service or case-by-case appointment panels.]* The board of county commissioners will establish the local panel of indigent defense providers. To achieve political and judicial independence, boards of county commissioners should establish a Selection Committee that includes the Department and its roster of eligible attorneys, local practitioners, and members of the judiciary to inform the selection of local panels. The judiciary may provide opinion regarding competence and performance of candidates for local panels, but such opinion should not be the sole consideration for inclusion in a local panel. Members of the prosecutorial agency shall not be part of a Selection Committee.

2. *[Utilize this section to describe how the panel are set up, and the consistency of the panels.]* Where a public defender office is not the primary provider in the jurisdiction, local panels may consist of one or more primary providers depending upon the local jurisdiction's needs and/or caseload. Local panels should also provide for a panel of conflict providers for use where the primary provider(s) has a conflict of interest in the representation. The local jurisdiction's needs and/or caseload shall determine the size of the conflict panel.

3. Eligibility

a. Applicants for a local panel must meet the qualifications requirements provided in NAC _____ through _____ and on the Department's roster of attorneys eligible to provide indigent defense services.

b. Applicants must maintain a primary, satellite, or shared office in the local jurisdiction.

c. Applicants must possess strong litigation skills and demonstrate a commitment to the defense of people who lack financial means to hire an attorney.

d. In accordance with NAC _____ through _____, applicants who do not possess the qualifications or experience described but believe they have equivalent other experience above are encouraged to apply and provide in writing the details of that experience for the Department's consideration.

4. Review of Applications and Continuing Eligibility

a. After use of the selection process described in Section VII(B)(1), the board of county commissioners will select or re-select attorneys to the local panel.

b. The Department will notify the panel members, prior to the expiration of the current term, of the need to apply for reappointment to the local panel. A member of the local panel who wishes to be considered for reappointment must apply for appointment to an additional term at least three months prior to the expiration of the current term.

c. The Department will solicit input concerning the quality of representation provided by lawyers seeking reappointment for the board of county commissioner's consideration.

d. To the extent that the panel consists of individual appointments, the Department will also solicit how many cases the panel member has accepted and declined during the period, whether the panel member has been the subject of complaints, and whether the panel member continues to meet the prerequisites and obligations of panel members as provided by the Boards standards and regulations.

C. Use of Contracts-for-Service and Related Requirements

1. The use of contracts-for-service by a delivery system shall follow the requirements of NAC _____ and utilize the model contract approved by the Board.

2. Each board of county commissioners shall cooperate with the Board and Department in the solicitation, deliberation, and selection of contract-for-service attorneys.

D. Appointment and Selection of Panel Attorney

[Local jurisdictions should include an outline of procedures for appointment of the primary provider of indigent services, selection of the attorney, and appointment and selection of other counsel in event of conflict.]

1. Initial Appointment of Panel Attorney

a. Mandatory Appointment. The District Court Judge or Justice of the Peace having jurisdiction over a case that is pending in _____ County shall appoint a panel attorney to represent a party if:

- i. the person requests representation,
- ii. the case is of the nature described in NAC _____ as requiring appointment of counsel,
- iii. the person is financially eligible for indigent defense counsel, and
- iv. the case is not a post-conviction proceeding.

b. Discretionary Appointment. The District Court Judge or Justice of the Peace having jurisdiction over a case that is pending in _____ County may appoint a panel attorney to represent a party if:

- i. the person requests representation,
- ii. the case is of the nature described in NAC _____ as discretionary appointment of counsel,
- iii. the person is financially eligible for indigent defense counsel, and
- iv. the case is not a post-conviction proceeding.

2. Selection of Counsel in Contract-for-Service Panels

a. *[If a panel consists of more than one contract-for-service provider, use this section to describe how an attorney is selected from that panel.]* Cases shall be assigned on a rotational basis. Cases may be assigned outside of the normal rotation where the matter is difficult or complex to ensure counsel is sufficiently experienced, there is a conflict of interest, or where there is a need to consolidate a case with other pending cases of the same client.

b. The plan may assign the selection of attorneys to the Department. The judiciary may select counsel provided that as a part of this plan, it certifies that selection of counsel is made upon a rotational basis in accordance with subsection (a).

3. Selection of Counsel in Panels Appointing Counsel on Case-by-Case Basis

a. *[If a panel consists of attorney appointed on a case-by-case basis compensated pursuant to statutory rates, use this section to describe how an attorney is selected from that panel.]* Cases shall be assigned on a rotational basis. Cases may be assigned outside of the normal rotation where the matter is difficult or complex to ensure counsel is sufficiently experienced, there is a conflict of interest, or where there is a need to consolidate a case with other pending cases of the same client.

b. The plan may assign the selection of attorneys to the Department. The judiciary may select counsel provided that as a part of this plan, it certifies that selection of counsel is made upon a rotational basis in accordance with subsection (a).

c. Depending upon the composition of the panel and designated method of payment, it may be necessary to maintain multiple panels where cases are appointed on an individual basis. For instance, multiple panels may be needed for varying levels of experience and qualification or hourly vs. non-hourly representation.

4. Appointment of More Than One Panel Attorney in a Case

a. Pursuant to NRS 260.060, a magistrate or district judge may, on its own motion or upon the motion of the panel attorney or the indigent defendant, appoint and compensate out of county funds an attorney in addition to the selected panel attorney to represent an indigent defendant for cause shown. Cause may be the complexity of the matter, the seriousness of the offense, the time necessary to provide an adequate defense, or other special circumstances. *See* NRS 7.125(4).

5. Determination of Conflict of Interest

[This section should detail the delivery system's procedure for conflicts of interest. Sample language is provided below. Depending upon the panels are arranged within the jurisdiction (for example, a consortium of primary providers followed by a conflict panel), this section may have more than one section.]

a. The selected attorney shall screen all cases for conflict upon assignment and throughout the discovery process to determine whether any conflict of interest exists which would prevent representation of a defendant. If such a conflict is determined by the selected attorney to exist, such a fact shall be brought to the court, pursuant to NRS 7.115, as soon as possible. In no instance shall the selected attorney be appointed to represent co-defendants in a case.

E. Payment of Fees and Case-Related Expenses

[Local jurisdictions should utilize this section to describe the procedure for payment of fee and case-related expenses where appointment and compensation is made pursuant to NRS Chapter 7, subject to the following requirements from NAC _____.]

1. Fees for Compensation Where Counsel is Appointed and Selected on a Case-by-Case Basis.

a. Compensation shall be paid according to the hourly rates established in NRS 7.125 and paid from the county treasury in accordance with NRS 7.155.

b. Claims for compensation must not be paid unless it is submitted to the [Administrator/Department] within 60 days of the termination of representation. The claim shall be submitted to the [Administrator/Department] on the form approved by the Board. Reasonable out-of-court activities including, but not limited to directing investigation, negotiating, or tactical planning shall be included in claims for compensation. Compensation claims shall be reviewed, and the [Administrator/Department]'s recommendation of approval or modification provided to the Court promptly. The [Administrator/Department]'s recommendation is not binding upon the Court but should be viewed as persuasive.

2. Other Litigation Expenses

a. The defendant has the right to proper investigation of their case and for the appointment of expert witnesses when necessary for a reasonable defense of their case. Other litigation expenses should be based upon the usual and normal charges for such services in the State of Nevada. Incurring frivolous, unnecessary or improper other litigation expenses may be the basis for removal of the attorney from the roster of qualified attorneys.

b. Requests for investigative, expert, or other litigation expenses as may be necessary for an adequate defense shall be submitted to the [Administrator/Department]. If the application for other litigation expenses is denied, the request may be submitted to the magistrate or district court for review.

F. Supervision of Panel Attorneys

1. Independent Contractor Status

a. Contract-for-service providers and providers accepting appointments on a case-by-case basis are independent contractors subject to the terms of their respective agreements. Nothing in this plan should be construed as granting _____ County the power or right to control the means by which the provider provides legal services under their respective agreements.

2. Oversight by the Department

a. Pursuant to NRS Chapter 180, the Department shall:

i. Determine whether attorneys are eligible to provide indigent defense service in accordance with the regulations of the Board;

ii. Identify and encourage the use of best practices for delivering the most effective indigent defense services;

iii. Monitor caseloads and compensation of attorneys providing indigent defense services;

iv. Determine whether the regulations established by the Board are being followed;

v. Determine whether court rules regarding the provision of indigent defense services are being followed;

vi. Determine whether indigent defendants are being asked to provide reimbursement for indigent defense services; and

vii. Determine whether indigent defense services are being provided in an effective manner.

G. Duties of Panel of Private Attorneys

1. Standards

a. The panel attorney must provide representation consistent with the standards of the Board, the Nevada Supreme Court's Administrative Order in ADKT 0411, best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. *See Polk County v. Dodson*, 454 U.S. 312, 318 (1981) ("Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.").

2. Workload

a. The Department will continually monitor the workloads of panel attorneys to ensure quality representation for all clients. The standards of the Board shall be used to determine workloads of attorneys providing indigent defense services in accordance with NRS 180.320(2)(d)(4).

3. Professional Conduct

a. A panel attorney must conform to the Nevada Rules of Professional Conduct.

4. No Receipt of Other Payment

a. A panel attorney may not require, request, or accept any other 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.

5. Continuing Representation

a. 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 ensure 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, the attorney's representation shall be from the date of appointment through every stage of legal proceedings including the processing of a notice of appeal and filing of a Fast Track Appellate Court brief or until charges are terminated, and shall include any status checks, probation revocation proceedings or other hearings set subsequent to sentencing. If requested by the client, attorney shall file a Notice of Appeal and Designation of Record in all circumstances where the client has a legal right to appeal. Once the contract has expired or 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.

6. Continuity of Representation

a. While appointed counsel may receive assistance from associate attorneys, mentees, or other approved attorneys in carrying out his/her responsibilities, appointed counsel shall ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others, except that administrative or other tasks which do not affect the rights of the defendant may be delegated.

b. Nothing in this section shall preclude a county from utilizing a single attorney or rotation of attorneys to provide representation at initial appearance/arraignments; however, care should be taken to discuss only matters pertaining to an initial appearance/arraignment to avoid creating a conflict of interest.

c. 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 at no additional cost to the county. Substitute representation is limited to those appearances which do not affect the rights of the defendant.

7. Private Practice of Law

a. The private workload of a local panel attorney must be considered in determining the panel attorney's indigent defense services workload to ensure quality representation for all clients. The workload of any panel attorney also

engaged in the private practice of law shall be proportionally adjusted to conform with the Board's standards and regulations pertaining to workloads.

8. Contact Information

a. Panel attorneys must be available to receive communications by telephone, answering service or voicemail from 8:00 a.m. to 5:00 p.m. on workdays. Counsel shall also maintain a fax and/or email address for receiving notices, motions, appointments, etc. from the [administrator/Department/court] 24 hours per day, seven (7) days per week. Difficulty communicating with counsel by court, court staff, clients, or the Department will be potential grounds for removing counsel from the approved list.

VII. DEATH PENALTY AND DIRECT APPEALS

[If a county has elected to transfer death penalty cases and direct appeals to the State in accordance with the provisions of NAC _____, this section should include the procedures for notification, assignment, and/or transfer of the case to the State Public Defender.]

A. Death Penalty Cases

1. The State Public Defender shall be appointed as soon as possible in all open murder cases which are reasonably believed to result in a capital case.

2. To ensure local counsel may achieve qualification under SCR 250, local counsel shall be used as co-counsel under the requirements of SCR 250 to the extent reasonably practicable and after consideration of workload standards.

B. Direct Appeals

1. As soon as reasonably possible, the attorney of record should notify the State Public Defender of the appeal. The attorney of record shall file the Notice of Appeal and the appropriate Request for Transcripts with the district court having jurisdiction over the matter. Likewise, trial counsel shall file any motion to stay imposition of the sentence, if appropriate.

2. The attorney of record shall transmit the file, along with a concise statement of potential issues on appeal and list of exhibits marked and/or admitted in the district court, to the State Public Defender within 20 days of the entry of appealable order.

3. Upon receipt of the file, the State Public Defender will file a substitution of counsel with the appropriate appellate court. A copy of the substitution will be served upon the previous attorney.

4. Prior counsel shall make him/herself reasonably available to appellate counsel to discuss matters pertaining to the appeal.

VIII. MENTORSHIP, TRAINING AND REVIEW

A. Client Surveys/Complaints

1. Plans should include a procedure for providing the Board's client survey to the client at the conclusion of the representation. Surveys returned to the attorney or defender office should be sent to the Department for review. Likewise, plans should include a procedure for providing client complaints, and any reasonable resolution performed by the office or attorney, to the Department.

B. Annual Training

1. Pursuant to its obligation under NRS 180.430 and available resources, the Department will organize an annual training conference for providers of indigent defense. To the extent allowable by available resources, the Department will pay the costs of travel, lodging, per diem, and training course consistent with state policies. The Department reserves the right to set limitations on availability of funds to attend the conference to ensure those providers without allotted training funds can attend without individual cost.

C. Periodic Training

1. Periodic trainings will be made available throughout a given year on issues pertaining to the provision of indigent defense. Any streaming or audio/video courses shall be provided through the Department's website. Any notice of in-person periodic trainings will likewise be posted on the Department's website. Applicable procedures for reimbursement of travel and/or lodging costs for in-person periodic training will likewise be posted through the notice.

D. Coordination of Training

1. Attorneys providing indigent defense services are encouraged to submit training needs or recommendations through the Department's comment form at dids.nv.gov/Complaints/Complaints_or_Recommendations.