

# Board of Indigent Defense Services

## Approved 10/06/2021

### ELKO COUNTY PLAN FOR DELIVERING INDIGENT DEFENSE SERVICES

#### **I. STATEMENT OF POLICY**

##### **A. Objectives:**

1. Achieving equality before the law for all persons. Elko County shall administer this Plan so those eligible for services of appointed counsel receive counsel and any other services necessary for adequate representation without waste of public resources.
2. Supplying the necessary resources for reunifying families; rehabilitating people to promote community safety, personal responsibility, and county fiscal accountability; diverting defendants from incarceration; and diverting minors away from the adult criminal justice system.
3. Meeting the constitutional requirements of providing appointed counsel while not creating any economic disincentive or impairing the ability of appointed counsel to provide effective representation.
4. Promoting the integrity of the relationship between an appointed attorney and a client. Elko County shall administer this plan in a manner that ensures the Elko County Public Defender's Office and other appointed counsel are free from political and undue budgetary influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.
5. Implementing the requirements of appointed counsel deriving from the U.S. and Nevada Constitutions, Nevada Revised Statutes, Nevada and 4<sup>th</sup> Judicial District Court Rules, Nevada Rules of Criminal Procedure, and any regulations promulgated by the Nevada Department of Indigent Defense Services.

#### **II. DEFINITIONS**

- A. Appointed Attorney/Counsel: Includes the Elko County Public Defender and staff attorneys of the Elko County Public Defender office and appointed private attorneys, both contracted and hourly.
- B. Appointed Counsel Program Coordinator (or designee): Performs such duties and responsibilities as assigned by the county manager as are reasonably necessary to oversee the program including assigning cases on a rotating basis among the contract Attorneys to ensure an equitable distribution; monitoring case reporting requirements from attorneys; approving of and overseeing the use of substitute attorneys; all other properly related matters. As the Department of Indigent Defense's designee, this position will work in coordination with the Department of Indigent Defense Services to ensure requested data is provided to the Department.
- C. Ancillary Services: Defense services paid for in addition to attorney's fees: (1) investigator services, (2) expert services, (3) and any other expenses that appointed attorney can reasonably justify as needed for effective assistance of counsel.
- D. Expert Witness: A person qualified by knowledge, skill, experience, training, or education to render an opinion on scientific, technical, or other specialized matters.

- E. Indigent: A person who is unable, without substantial hardship to himself/herself or his/her dependents, to obtain competent, qualified legal counsel on his or her own.
- F. Investigator: A person licensed by the State of Nevada who is qualified to secure evidence and subpoena witnesses.
- G. Representation: Includes counsel, investigative, expert, and other services that appointed attorney can reasonably justify as needed for effective assistance of counsel.
- H. Qualified Attorney: An attorney approved by the Department to provide indigent defense services within certain categories of cases as set forth in the Regulations.
- I. Appointing Authority: The Judge, Justice, or Master presiding over a case arising in a court of law within Elko County.
- J. Eligible Client: An indigent person whom an Appointing Authority has determined to be eligible for the services of a public defender.

### **III. PROVISIONS OF REPRESENTATION**

#### **A. Mandatory:**

Elko County shall provide representation for any financially eligible person who:

1. is confined and entitled to a prompt, counseled, adversarial bail hearing.
2. is charged with a felony or gross misdemeanor.
3. is charged with a misdemeanor with a minimum jail sentence.
4. is charged with a misdemeanor where the prosecution is seeking jail time (incarceration).
5. is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed.
6. is a juvenile alleged to have committed an act of juvenile delinquency or alleged to be a child in need of supervision;
7. is in custody as a material witness.
8. is entitled to appointment of counsel under the Sixth Amendment to the U.S. Constitution or any provision of the Nevada Constitution, or when due process requires the appointment of counsel, or the judge is likely to impose jail time.
9. faces loss of liberty in a case and Nevada law requires the appointment of counsel.
10. faces loss of liberty for criminal contempt.
11. has received notice that a grand jury is considering charges against him or her and requests appointment of counsel.

#### **B. Discretionary:**

Whenever a court determines that the interests of justice so require, Elko County may provide representation for any financially eligible person who:

1. is charged with a misdemeanor, infraction, or code violation that a sentence of confinement is authorized.
2. has been called as a witness before a grand jury, a court, or any agency that 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 criminal contempt proceeding, or faces a potential loss of liberty.
3. faces any other case where the interest of justice requires appointment of counsel.

C. Timing of Appointment of Counsel; When Elko County Shall Provide Counsel:  
Elko County shall provide an appointed attorney at an indigent person's first appearance before a judge or at least within seventy-two (72) hours after being confined thru June 30, 2022. Effective July 1, 2022, forty-eight (48) hours after being confined, when they are formally charged or notified of charges if formal charges are sealed, or when a Justice of the Peace, Municipal Judge, or District Judge otherwise considers appointment of counsel appropriate.

D. Number and Qualifications of Counsel in Capital Cases:

1. One (1) lawyer shall be appointed consistent with Section 4, if no attorneys are death qualified then appointment pursuant to Section 5 herein applies,
2. Two (2) lawyers shall be appointed consistent with Section 4, if no attorneys are death qualified then appointments pursuant to Section 5 herein applies, as soon as possible in all open murder cases that are reasonably believed to result in a capital charge.
3. At least one of the two lawyers 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 lawyers appointed must conform to the performance guidelines or standards as adopted by the Nevada Supreme Court for Capital Cases

E. Financial Eligibility for Representation:

1. Indigency Determination: An indigent person is entitled to appointed counsel.
  - "Indigency" means the inability of a defendant, without causing the defendant or any of his or her dependents to have substantial hardship, to obtain competent, qualified legal counsel on his or her own.
  - "Substantial hardship" is presumptively determined to include all defendants who receive public assistance, as that term is defined in NRS 422A.065; reside in public housing, as the term is defined in NRS 315.021; has a household income that is less than 200 percent of the Federal Poverty Guideline.
  - A defendant is presumed to have a substantial hardship if he or she is currently serving a sentence in a correctional institution or housed in a mental health facility or is a minor.
  - Defendants not falling below the presumptive threshold are subject to a more rigorous screening process to decide if his/her circumstances would result in a substantial hardship if he/she sought retaining private counsel. Those circumstances include the seriousness of charges being faced, monthly expenses, and local private counsel rates.
2. Screening for Eligibility: The Elko County Sheriff's Office or any other law enforcement officer responsible for booking a criminal defendant shall provide an initial screening within 48 hours including nonjudicial days, for financial eligibility and provide a recommendation to the court with regard to the eligibility of the defendant for appointed counsel based upon the provisions herein. This initial screening is forwarded to the applicable Justice, Municipal, or District Court before the person booked is seen by a judge. A court receiving the initial screening shall further investigate the application for attorney and refer to the Appointed Counsel Program Coordinator to appoint based on the criteria in section III (E)(1) of this plan and as otherwise required by law. Appointed Counsel may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility.

3. Partial Eligibility:  
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 each jurisdiction for the approval and payment of fees and expenses.
4. Disclosure of Change in Eligibility: If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as privileged communication, counsel shall advise the court. The Court shall order the person appointed counsel to reimburse the services provided.
5. Automatic Eligibility: A minor alleged to have committed an act of juvenile delinquency or alleged to be a child in need of supervision is automatically eligible for appointed counsel because the presumption of indigency always accompanies any charges filed against a minor.

#### **IV. APPOINTMENT OF ELKO COUNTY PUBLIC DEFENDER**

- A. Local Control: Elko County gives no authority to the State Public Defender to deliver indigent defense services for death penalty cases, direct appeals, or any other matter. Therefore, the Elko County Public Defender's office will handle all cases where a court appoints an indigent person an attorney unless the Elko County Public Defender's office has a conflict of interest in the case.
- B. Capital Case: In the event of a capital case, the Elko County Public Defender shall be appointed unless the Elko County Public Defender is unable to take the case. In such a situation, Appointed Counsel Program Coordinator shall appoint a Qualified Attorney authorized to serve as lead counsel under Supreme Court Rule 250 and shall pay reasonable compensation for such services. The Elko County Public Defender's Office and/or other Qualified Attorneys may be assigned as co-counsel, as determined by the Appointed Counsel Program Coordinator.
- C. Conflict of Interest Checks: The Elko County Public Defender's Office shall, as soon as practicable, upon appointment, conduct a conflict check determining if any conflict of interest exists that would prevent representation of the defendant.
  1. If the Public Defender determines that such a conflict exists, the Public Defender shall bring this information, as soon as possible, to the relevant court for the referral to the Appointed Counsel Program Coordinator or designee for appointment of counsel.
    - a. Upon notice of the conflict, the relevant court shall do a referral to the Appointed Counsel Program Coordinator or designee to select counsel from the appropriate panel list to assume representation. Cases shall be distributed using a rotation system insofar as practicable, but the Appointed Counsel Program Coordinator or designee shall ultimately have discretion to make assignments on any legitimate basis, including, without limitation, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from Eligible Clients, feedback from Elko County officials, and capacity to take on work.

- b. A Qualified Attorney contacted by the Appointed Counsel Program Coordinator or designee for an assignment may accept or reject the assignment. If the Qualified Attorney (or staff duly authorized to accept assignments on the Qualified Attorney's behalf) is not available during normal business hours when contacted by the Appointed Counsel Program Coordinator or designee, the assignment shall be deemed rejected. The Appointed Counsel Program Coordinator or designee shall contact other Qualified Attorneys until it obtains acceptance from a sufficient number of Qualified Attorneys to represent all Eligible Clients.
  - c. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Appointed Counsel Program Coordinator or designee shall provide prompt notice and a proposed order confirming selection of counsel to the Appointing Authority—i.e., the Judge, Justice, or Master presiding over the court in which the Eligible Client's charges are pending.
  - d. The Public Defender will remain counsel of record until such time as the relevant court enters an Order granting withdrawal.
- 2. In no instance, shall the Public Defender be appointed to represent co-defendants in a case.
- 3. The Elko County District Attorney's office shall have no authority to determine or recommend whether or not the Elko County Public Defender's office has a conflict of interest.
- D. Counsel at Initial Appearance/Arraignment:
  - 1. The Public Defender will provide counsel at first appearance and be prepared to address appropriate release conditions in accordance with relevant statutes, rules of criminal procedure, and caselaw. The Public Defender shall be present at all other critical stages, whether in or out of court.
  - 2. If it has been determined that there is a conflict for the Public Defender to appear at the initial arraignment, the case shall be assigned promptly to assigned counsel in a manner which allows assigned counsel to appear at the first appearance. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant.
- E. Assigning Attorneys: The Elko County Public Defender and Elko County Chief Deputy Public Defenders shall have exclusive control in assigning an attorney within the office to any case the Elko County Public Defender's office is appointed to.
- F. Case Related Expenses: Elko County shall maintain a budget within the Office of the Public Defender for payment of investigator and expert witness fees.
- G. Complaints by Clients: The Public Defender shall maintain a system for receipt and review of written complaints made by clients. The Elko County Public Defender's office shall make publicly available the policy and procedure for receiving and reviewing written complaints. This system shall not interfere with a person's ability to avail themselves of the complaint process provided by the Nevada Department of Indigent Defense Services (DIDS) or Nevada State Bar.
  - [https://dids.nv.gov/Complaints/Complaints\\_or\\_Recommendations](https://dids.nv.gov/Complaints/Complaints_or_Recommendations)
  - <https://nvbar.org/file-a-complaint-2/>

## **V. APPOINTMENT OF PRIVATE ATTORNEYS**

- A. Appointment of Private Counsel: Elko County shall not appoint any private attorney to represent an indigent person unless either:
1. the Elko County Public Defender's Office has a conflict of interest that requires withdraw from representation; or
  2. the requirements of NSCR 250 require appointing counsel outside the Elko County Public Defender's Office.
- B. Qualifications: Elko County shall only appoint private counsel listed within the Nevada Department of Indigent Defense Services (DIDS) List of Qualified Appointed Counsel it maintains per NRS 180.430.
- C. Compensation: Elko County shall compensate private attorneys appointed to represent indigent clients in a manner consistent with the Stipulated Consent Judgment from Davis v. State, No. 170C02271B (Nev. 1st J. Dist. Ct. Aug. 20, 2020).
1. Attorney's Fees: All compensation and fees are to be filed with the Appointed Counsel Program Administrator. Counsel appointed under NRS 7.115 will be compensated pursuant to NRS 7.25 through 9/30/2021. Effective 10/1/2021 AB480 changes from the 81<sup>st</sup> legislative session will be implemented. Expenses will be paid pursuant to NRS 7.135. A separate budget has been developed and is administered by the Appointed Court Program Coordinator for payment of compensation and expenses.
    - a. Appointed counsel must receive prompt compensation. Reasonable activities outside of court appearances including, but not limited to, directing investigation, negotiating, or tactical planning are equally important to quality representation and shall be included in appointed counsel's compensation.
    - b. Qualified Attorneys providing services to Eligible Clients within Elko County in exchange for an hourly rate shall submit monthly invoices to the Appointed Counsel Program Administrator. Such invoices shall be submitted on the Requests for Attorney's Fees form attached hereto as Appendix B, with appropriate backup, no later than ten (10) days after the end of the month in which the services were rendered. The backup shall contain time entries rounded to the nearest one-tenth (1/10<sup>th</sup>) of an hour, describing with specificity the work performed and identifying the attorney who performed it.<sup>1</sup>
    - c. The Counsel Program Administrator shall approve for payment all reasonable attorney's fees reflected on the Requests for Attorneys' Fees and backup. In reviewing for reasonableness, the Appointed Counsel Program Administrator may consider factors such as: (i) average case times as determined by workload analysis; (ii) time and skill required; (iii) complexity of the case; and (iv) experience and ability of the Qualified Attorney(s). The Appointed Counsel Program Administrator may request additional information or explanation where necessary. In the event the Appointed Counsel Program Administrator denies or modifies a Request for Attorneys' Fees, it shall provide an explanation to the Qualified Attorney, with a copy to the Elko County Manager and the Department of Indigent Defense Services, as to why the denied portion was not reasonable. Such denials shall be subject judicial review pursuant to NRS 7.135.

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<sup>1</sup> For invoicing purposes, Qualified Attorneys are encouraged to use LegalServer for invoice backup. An example of a time slip generated through LegalServer with sufficient detail is included with Appendix B. If a Qualified Attorney does not wish to use LegalServer, the Qualified Attorney may submit an alternative form of backup provided it contains a breakdown of services rendered in comparable detail.

- d. Payment for all approved attorneys' fees shall be issued by the Elko County Fiscal Affairs Office. The Appointed Counsel Program Administrator shall notify the Fiscal Affairs Office of all approved Requests for Attorneys' Fees, attaching a copy of the invoice and backup. Payment shall be issued within thirty (30) days of receipt.
- e. Capped hourly rates and flat fee payment schemes are prohibited unless carefully designed to minimize disincentives and provide compensation reasonably expected to yield an hourly rate of compensation equivalent to the required minimum rate.
- f. At a minimum, hourly rates should be used in capital cases, cases in which the penalty may be life imprisonment, and cases in which a notice pursuant to NRS 207.010 is filed. Complex or voluminous financial fraud cases should also be considered for hourly rates.

2. Case-Related Expenses:

- a. Appointed counsel should be promptly reimbursed for their reasonable out-of-pocket, case-related expenses such as the use of investigators and expert witness fees.
- b. Elko County shall establish a case-related expense budget independent of the judiciary for its counsel appointed on an individual case basis which is administrated by the Appointed Counsel Program Administrator. They may likewise designate an independent administrator. Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:
  - 1. Pre-Authorization: Case-Related Expenses expected to exceed two thousand five hundred dollars (\$2,500) shall be submitted to the Appointed Counsel Program Administrator for pre-authorization before they are incurred. The Qualified Attorney shall submit the request for pre-authorization by email. The request shall include an explanation of why the expense is reasonably necessary to provide Representational Services.
  - 2. Reasonableness Review: All Case-Related Expenses, whether or not they are subject to pre-authorization, are subject to the Appointed Counsel Program Administrator's review for reasonableness. Invoices for Case-Related Expenses shall be submitted to the Appointed Counsel Program Administrator for such review no later than thirty (30) days following the termination of the representation. Any requests for expenses not timely submitted shall be waived. The Appointed Counsel Program Administrator shall approve all reasonable and necessary Case-Related Expenses, and shall notify the Elko County Fiscal Affairs Office of all approved expenses and provide a copy of the invoice.
  - 3. Payment: The Elko County Fiscal Affairs Office shall issue payment for all approved Case-Related Expenses within thirty (30) days of receipt of notice of the Appointed Counsel Program Administrator's approval and a copy of the invoice.

- D. Attorneys must demonstrate compliance with the standards and regulations of the Board of Indigent Defense Services pertaining to training, education, and qualifications by submitting an application to the Department of Indigent Defense Services.



- E. The Appointed Counsel Program Coordinator shall review the list of attorneys that have filed an application with the Department of Indigent Services for contract or hourly appointments, to review the list of attorneys from which appoint.
- F. Conflict of Interest Checks: Appointed Counsel shall, as soon as practicable, upon appointment, conduct a conflict check determining if any conflict of interest exists that would prevent representation of the defendant. If appointed counsel determines that such a conflict exists, the appointed counsel shall bring this information as soon as possible to the relevant court. In no instance, shall a single attorney or law firm be appointed to represent co-defendants in a case. The Elko County District Attorney's office shall have no authority to determine or recommend whether or not appointed counsel has a conflict of interest.
- a. Upon notice of a conflict, the relevant court shall do a referral to the Appointed Counsel Program Coordinator or designee to select counsel from the appropriate panel list to assume representation. Cases shall be distributed to appointed counsel
  - b. using a rotation system insofar as practicable, but the Appointed Counsel Program Coordinator or designee shall ultimately have discretion to make assignments on any legitimate basis, including, without limitation, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from Eligible Clients, feedback from Elko County officials, and capacity to take on work.
  - c. A Qualified Attorney contacted by the Counsel Program Coordinator or designee for an assignment may accept or reject the assignment. If the Qualified Attorney (or staff duly authorized to accept assignments on the Qualified Attorney's behalf) is not available during normal business hours when contacted by the Appointed Counsel Program Coordinator or designee, the assignment shall be deemed rejected. The Appointed Counsel Program Coordinator or designee shall contact other Qualified Attorneys until it obtains acceptance from a sufficient number of Qualified Attorneys to represent all Eligible Clients.
  - d. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Appointed Counsel Program Coordinator or designee shall provide prompt notice and a proposed order confirming selection of counsel to the Appointing Authority—i.e., the Judge, Justice, or Master presiding over the court in which the Eligible Client's charges are pending.
  - e. The Appointed Counsel will remain counsel of record until such time as the relevant court enters an Order granting withdrawal.
- G. Contract Attorneys:
- a. Elko County may contract for appointment of counsel.
  - b. Elko County contract attorney's compensation may be based on an hourly basis, a flat fee basis, or a combination of both.
  - c. If the contract is based on a flat fee basis, the contract should consider, but not be limited to, the following factors:
    - i. the average overhead for criminal defense practitioner's in the locality.
    - ii. the number of assignments expected under the contract.
    - iii. the hourly rate paid for all appointed counsel; and
    - iv. the ability of the appointed attorney to comply with the Performance Standards for Appointed Counsel as adopted and amended by the Nevada Supreme Court
  - d. Elko County may contract with attorneys as appointed counsel only after the attorney has been qualified to enter into such a contract by the Department of Indigent Defense.



- e. The contract must be subject to termination annually or sooner, if determined by the Department of Indigent Defense that a contract attorney is not abiding by the standard guidelines for qualifications of appointed counsel; and
- f. The payment of fees and expenses of contracted appointed counsel by Elko County shall be governed by contract between counsel and Elko County.
- g. The contract shall exclude appointment in cases with the potential of a capital cases unless qualified.

#### H. Complaints by Clients:

Appointed Counsel shall maintain a system for receipt and review of written complaints made by clients. Appointed Counsel shall make publicly available the policy and procedure for receiving and reviewing written complaints. This system shall not interfere with a person's ability to avail themselves of the complaint process provided by the Nevada Department of Indigent Defense Services (DIDS) or Nevada State Bar.

- [https://dids.nv.gov/Complaints/Complaints\\_or\\_Recommendations](https://dids.nv.gov/Complaints/Complaints_or_Recommendations)

- <https://nvbar.org/file-a-complaint-2/>

## VI. TRAINING

- A. Elko County Public Defender: The Elko County Public Defender shall use the following tiered training program to provide competent counsel for indigent clients.
  - 1. Priority 1—In-house training: The Elko County Public Defender's office shall develop and maintain a training program for all new attorneys in its office. The Training plan shall also include continuing training for all other staff attorneys. This training program will provide benchmarks for Elko County's yearly employee performance appraisals.
  - 2. Priority 2—Free or low-cost training: The Elko County Public Defender's office shall use the services of the Nevada Department of Indigent Defense Services (DIDS), Nevada State Bar, Washoe County Public Defender, Clark County Public Defender, and Nevada State Public Defender to obtain free or low-cost training opportunities for both attorneys and support staff.
  - 3. Priority 3—Specialized training: The Elko County Public Defender's office shall use the training opportunities of the National Criminal Defense College, National Association of Public Defense, National Association of Criminal Defense Lawyers, or any other reputable training organization to provide specialized training as required by the Nevada State Bar, Nevada Rules of Professional Conduct, and any other Nevada law governing the training, experience, or qualification of an attorney.
- B. Private Counsel: Private must meet all requirements for training and experience as promulgated in the Nevada Department of Indigent Defense Services (DIDS) regulations.

## VII. DUTIES OF INDIGENT DEFENSE COUNSEL

- A. Standards of Performance: Services rendered by appointed counsel shall be commensurate with those rendered if counsel privately employed by a person. Representation shall be provided in a professional, skilled manner guided by applicable regulations; laws; Nevada Rules of Professional Conduct; and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2008 Nevada Supreme Court Order in Administrative Docket 411, or the same as may be amended. Additionally, attorneys must advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless doing so is the client's best interest. Attorneys

must make all reasonable efforts to meet with the client within seven days following the assignment of the case and every thirty days thereafter unless there are no significant updates in the client's case.

- B. Continuity in Representation: Elko County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants so that the same attorney represents a defendant through every state of the case without delegating the representation to others, except that administrative and other tasks that do not affect the rights of the defendant.
- C. Workload Standard: The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence, or representation of clients.
  - 1. Elko County will provide maximum workload guidelines to attorneys who provide indigent defense services as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.
  - 2. Additionally, Elko County shall ensure that the Elko County Public Defender's office is staffed with adequate numbers of attorneys and support staff to deliver indigent defense services that meet the Standards of Performance detailed in this plan. Elko County shall use the data and recommendations from National Center for State Courts' *Nevada Indigent Defense Weighted Workload Study* and the Board on Indigent Defense's workload standard to determine adequate numbers of attorneys and support staff.
  - 3. To the extent required by the Department's Board, Attorneys providing indigent defense services under this plan shall maintain caseload data and track time spent providing indigent defense services in accordance with the Regulations of the Board on Indigent Defense Services.
- D. 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.
- E. Private Practice of Law: The Elko County Public Defender and any staff attorney with that office is prohibited from simultaneously engaging in the private practice of law. This Sections does not eliminate the private employment outside the practice of law so allowed by the Collective Bargaining Agreements of the Elko County Public Attorney's Association or the Chief Deputy Public Attorney's Association. Interpreting any conflict or ambiguity between this Plan and those Collective Bargaining Agreements shall be construed in a manner that gives effect to the Collective Bargaining Agreements provisions.
- F. Use of Client Surveys. The Elko County Public Defender and appointed counsel shall ensure that any client surveys authorized by the Board of Indigent Defense Services are provided to clients at the conclusion of his or her representation by an attorney.

#### **VIII. PRIVILEGED COMMUNICATIONS**

County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or otherwise privileged communications between indigent criminal defense client and appointed counsel.

**IX. APPOINTED COUNSEL PROGRAM COORDINATOR**

- A. Selection: Elko County will contract with a lawyer to serve as the Appointed Counsel Program Coordinator. The terms of this contract will be determined by this plan, Elko County and the Appointed Counsel Program Coordinator, but in no event will this Appointed Counsel Program Coordinator be directly involved in direct representation in appointed counsel cases.
- B. Duties:
- a. The Appointed Counsel Program Coordinator shall have all the duties and responsibilities stated in the various sections of this plan.
  - b. The Appointed Counsel Program Coordinator shall maintain the list of all attorneys approved by the Department of Indigent Defense Services for contract, hourly, and capital case appointment. In addition, the Appointed Counsel Program Coordinator shall maintain appropriate records to reflect the cases and dates to which each attorney has been appointed
  - c. When notified of the need for representation, the Appointed Counsel Program Coordinator, 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 careening committee.
  - d. The Appointed Counsel Program Coordinator 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 counsels' representation, as specifically discussed herein.

**X. PLAN ADMINISTRATOR AND CONTACT**

The County Manager shall be the administrator of this plan and the contracts for the provision of indigent defense services. The County Manager shall report material breaches or other significant matters to the Board of County Commissioners. The Board of County Commissioners may take any lawful, situationally-appropriate action with respect to any contract.

Questions about the administration of this plan may be directed to the Elko County Manager.

**XI. EFFECTIVE DATE**

The Elko County Plan for the Provision of Indigent Defense Services is approved on this the 1<sup>st</sup> day of September 2021 and is effective on July 1, 2021.

