

Board of Indigent Defense Services

Approved 10/06/2021



Nye County

Plan for the Provision of Indigent Defense Services



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Document and Contact Information

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Requirements for Document acceptance and changes:	Acceptance of, and changes to this document must be reviewed and approved by the Nye County Assistant County Manager and subsequently the Nye County Board of County Commissioners (BOCC).

History of Revision

Date	Version	Comments
August 17, 2021	1-2021	Approved and accepted by BOCC



1. STATEMENT OF POLICY

A. Objectives

- i. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered 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.
- ii. The further objective of this Plan is to implement the requirements set forth in the Order entered by the Supreme Court of Nevada on January 4, 2008 in ADKT 411: "In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases."

2. DEFINITIONS

- A. "Appointed Attorney" includes private attorneys, both contracted and hourly.
- B. "Appointed Counsel Program Coordinator" performs such duties and responsibilities as assigned by the Assistant 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 for the contract Attorneys, and; all other properly related matters. This position will work in coordination with the Department of Indigent Defense Services to ensure requested data is provided to the Department.
- C. "Representation" includes counsel and investigative, expert and other services.

3. PROVISIONS OF REPRESENTATION

- A. Mandatory: Nye County shall provide representation for any financially eligible person who:
 - i. is charged with a felony or gross misdemeanor;
 - ii. is charged with a misdemeanor where jail time is mandatory or the prosecutor is seeking jail time;
 - iii. is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;



- iv. is a juvenile alleged to have committed an act of delinquency or alleged to be a child in need of supervision;
 - v. is in custody as a material witness;
 - vi. 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;
 - vii. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
 - viii. faces loss of liberty for criminal contempt;
 - ix. 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, representation may be provided for any financially eligible person who:
- i. is charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized;
 - ii. 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;
 - iii. 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:
- i. within 72 hours;
 - ii. at their first appearance before a judge;
 - iii. when they are formally charged or notified of charges if formal charges are sealed; or
 - iv. when a Justice of the Peace or District Judge otherwise considers appointment of counsel appropriate.
- D. Number and Qualifications of Appointed Counsel:



- i. one attorney shall be appointed consistent with Section 4 and 5 herein, except Capital Cases;
- ii. two attorneys shall be appointed consistent with Section 4 and 5 herein, as soon as possible in all open murder cases which are reasonably believed to result in a Capital Case;
- iii. 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.

E. Eligibility for Appointed Representation:

- i. Financial Eligibility:
 - 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 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;
 - d. defendants not falling below the presumptive threshold for indigency will be subject to a more rigorous screening process to determine if his or her 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.
- ii. Screening for Eligibility: Appointed Counsel Program Coordinator, or Court Administration when applicable, may conduct screening no later than 48 hours after arrest 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 supplying information during the screening but shall not be asked to decide or recommend eligibility. After screening and upon



a judge or master finding that a defendant is eligible for appointed counsel in accordance with subsection 3 of NRS 171.188, counsel will be appointed promptly. The matter will be referred to the Appointed Counsel Program Coordinator for selection of appointed counsel.

- iii. Automatic Eligibility: A minor alleged to have committed a crime, 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.

4. APPOINTMENT OF PRIVATE ATTORNEYS

A. System of Selection for Court Appointed Counsel Attorneys

- i. Annually, Nye County will recruit attorneys to provide indigent defense services on a contract basis.
- ii. Recruitment will take place during the spring of each year, with annual contracts beginning July 1st of each fiscal year.
- iii. Attorneys interested in providing indigent defense services on a contract basis will provide Letters of Interest for consideration.
- iv. Attorneys will be responsible for the performance of all the obligations under contract in conformance with the Nevada State Bar Association Rules of Professional Conduct, the ABA Model Rules of Professional Conduct and 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.
- v. The Appointed Counsel Program Coordinator shall establish an Appointed Counsel Selection Committee to review the qualifications of applicants for contract or hourly appointments, to review the list of attorneys from which appointments are made in hourly cases, to determine which attorneys shall be recommended for appointments.
- vi. The Committee shall be made up of five (5) members who:
 - a. have no pecuniary interest in the outcome of the attorney selection or performance evaluation process;
 - b. have no legal, financial or familial relationship to any attorney whose qualification or performance will be evaluated;



- c. are not directly related to the judiciary or any prosecution function; and
 - d. have an interest in the variety of types of cases that are represented by the appointed counsel lists to be selected by the Committee.
- vii. On an ongoing basis, the Committee shall:
- a. meet at least once a year and shall solicit input from judges, and others familiar with the practice of criminal defense, juvenile and family law where appointed counsel are utilized;
 - b. review any complaints from clients;
 - c. review the history of participation in training of each applicant and each contract or hourly attorney receiving appointments; and
 - d. determine eligibility and recommendation of appointed counsel for new and continued participation.
- viii. While appointed counsel may receive assistance from associate attorneys, participants in a mentorship program, or other attorneys deemed qualified by the Committee, in carrying out his/her responsibilities, appointed counsel cannot delegate responsibilities for representation to another attorney. All substantive court appearances must be made by an attorney who has been determined to be qualified by the Committee.
- ix. Complaints from clients, judges or the public about representation by appointed counsel shall be transmitted to the Appointed Counsel Program Coordinator for consideration by the Committee in evaluation of appointed counsel.

B. Contract Attorneys

- i. Nye County shall contract for appointment of counsel;
- ii. Nye County contract attorney compensation may be based on an hourly basis, a modified flat fee basis, or a combination of both.

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 and amended by the Nevada Supreme Court.
- iii. Nye County shall contract with attorneys as appointed counsel only after the attorney has been qualified to enter into such a contract by the Committee; and
 - iv. the contract must be subject to termination annually or sooner, if determined by the Committee that a contract attorney is not abiding by the standard guidelines for qualification of appointed counsel; and
 - v. the payment of fees and expenses of contracted appointed counsel by Nye County shall be governed by contract between counsel and Nye County.
 - vi. the contract shall exclude appointment in cases with the potential of a life sentence and capital cases.
- C. Hourly and Capital Case Attorneys:
- i. Appointed counsel will be selected by the Appointed Counsel Program Coordinator as follows:
 - a. the Appointed Counsel Program Coordinator shall select the appointed counsel, in consecutive order, from the Appointed Contract Counsel list, except
 - b. if the nature of the case requires lead counsel be selected from the Capital Case list, the Appointed Counsel Program Coordinator, in consecutive order, shall select from the Capital Case list;
 - c. the Appointed Counsel Program Coordinator shall select Second Chair counsel for a capital case: counsel may be selected next in order from the Appointed Contract Counsel list, if the attorney qualifies under Supreme Court Rule 250 for second chair selection, or the Capital Case list.
 - ii. The payment of fees and expenses of Hourly and Capital Case appointed attorneys shall be approved by the Appointed Counsel Program Coordinator.
 - a. Such invoices shall be submitted on the Requests for Attorneys 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 (1/10th) of an hour, describing with specificity the work performed and identifying the attorney who performed it.¹

- b. The Coordinator shall approve for payment all reasonable attorney's fees reflected on the Requests for Attorneys' Fees and backup. In reviewing for reasonableness, the Coordinator 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 Coordinator may request additional information or explanation where necessary. In the event the Coordinator denies or modifies a Request for Attorneys' Fees, it shall provide an explanation to the Qualified Attorney, with a copy to the Nye County Manager and the Department, as to why the denied portion was not reasonable. Such denials shall be subject to judicial review pursuant to NRS 7.135.
 - c. Payment for all approved attorneys' fees shall be issued by the Nye County Comptroller's Office. The Coordinator shall notify the Comptroller's Office of all approved Requests for Attorneys' Fees, attaching a copy of the invoice and backup. The Comptroller's Office shall issue payment within ten (10) days of receipt.
- iii. If contract counsel cannot handle the case; or the Appointed Counsel Program Coordinator determines the case is not appropriate for contract counsel to handle, alternative counsel will be selected by the Appointed Counsel Program Coordinator as follows:
- a. the Appointed Counsel Program Coordinator shall select the alternative appointed counsel, in consecutive order, from the hourly list, except
 - b. if the nature of the case requires lead counsel be selected from the Capital Case list, the Appointed Counsel Program Coordinator, in consecutive order, shall select from the Capital Case list;

¹ 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.



- c. the Appointed Counsel Program Coordinator 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.
 - iv. The payment of fees and expenses of Hourly and Capital Case appointed attorneys shall be approved by the Appointed Counsel Program Coordinator.
- C. Compensation of Court Appointed Counsel:

Nye County agrees to pay contract attorneys and/or panels of private attorneys up to the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) per year. The County will make the payment to contract attorneys and/or panels of private attorneys on a quarterly basis in advance on the first day of July, October, January and April.
- D. 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 Nye County District Attorney's office shall have no authority to determine or recommend whether or not the appointed counsel has a conflict of interest. Conflict assignment is handled in accordance with Section 4 of this Plan.
- E. Payment of Fees and Expenses of Appointed Counsel:

Nye County agrees to budget for case-related expenses in the amount of \$100,000. Attorneys may secure reimbursement for extraordinary investigative costs, expert witness fees or other necessary services if so approved by the Appointed Counsel Program Coordinator. Any payment for extraordinary costs or fees shall be paid only when submitted and approved by the Appointed Counsel Program Coordinator.

 - i. 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 Coordinator for pre-authorization before they are incurred. The Qualified Attorney shall submit the request for pre-authorization to the



Coordinator by email at ZZZZZZZ@ZZZZZ.com. 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 Coordinator's review for reasonableness. Invoices for Case-Related Expenses shall be submitted to the Department 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 Coordinator shall approve all reasonable and necessary Case-Related Expenses, and shall notify the Nye County Comptroller's Office of all approved expenses and provide a copy of the invoice.
3. Payment: The Nye County Comptroller's Office shall issue payment for all approved Case-Related Expenses within ten (10) days of receipt of notice of the Coordinator's approval and a copy of the invoice.

F. 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.

- i. Within the Ian Deutch Government Complex in Pahrump, the Ante Room which is a room off the vestibule to the courtroom, is reserved for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.
- ii. Within the William P. Beko Government Complex in Tonopah, the Administration Conference Room which is in the Administration Office, is reserved for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.
- iii. Within the Beatty Courthouse in Beatty, the secured Court Room, is reserved for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.

G. 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 Department of Indigent Defense Services (DIDS) or Nevada State Bar.

5. TRAINING

Appointed Counsel must meet all requirements for training and experience as promulgated in the Nevada Department of Indigent Defense Services regulations.

6. 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, Appointed Counsel 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. Appointed Counsel must make all reasonable efforts to meet with the client within 72 hours, at client's first appearance before a judge, 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 of Representation:** Nye County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants so that the same Appointed Counsel represents a defendant through every stage of the case without delegating the representation to others, except that administrative and other tasks that do not affect the rights of the defendant may be delegated.
- C. **Workload Standard:** The workload of an Appointed Counsel must allow the Appointed Counsel to give each client the time and effort necessary to ensure effective representation. Any Appointed Counsel who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the Appointed Counsel's competence, diligence, or representation of clients. Nye County will also provide the maximum workload guidelines as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.



- D. **In Custody Arraignments:** The Appointed Counsel Program Coordinator shall provide Representational Services for all Eligible Clients who are in custody and require a bail hearing. The coordinator or other attorney must be present at initial appearances and arraignments and be prepared to address appropriate release conditions in accordance with relevant statute, rules of criminal procedure and caselaw. The Coordinator should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant. This plan ensures the presence of counsel at all other critical stages, whether in or out of court.
- E. **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.
- F. **Private Practice of Law:** Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to the contract.
- G. **Use of Client Surveys:** Appointed Counsel shall maintain a system for providing Client Surveys to their clients. Appointed Counsel shall make publicly available the policy and procedure for providing surveys. This system shall not interfere with a person's ability to avail themselves of the Client Survey form provided by the Department of Indigent Defense Services (DIDS).
- H. **Caseload Reporting:** Appointed Counsel shall report caseload data and time as promulgated in the Nevada Department of Indigent Defense Services regulations.

7. APPOINTED COUNSEL PROGRAM COORDINATOR

A. Selection:

Nye 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, Nye 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:

- i. The Appointed Counsel Program Coordinator shall have all the duties and responsibilities stated in the various sections of this plan.
- ii. The Appointed Counsel Program Coordinator shall maintain the list of all attorneys approved by the Committee 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.
- iii. 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 Committee in accordance with Section 4 of this Plan. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Appointed Counsel Program Coordinator 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.
- iv. 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 counsel's representation, as specifically discussed herein.
- v. The Appointed Counsel Program Coordinator will work with the Department of Indigent Defense Services to provide any information requested.

8. EFFECTIVE DATE

The Nye County Plan for the Provision of Indigent Defense Services is approved on this the 17th day of August, 2021 and is effective on the 1st day of September 2021.