

Board of Indigent Defense Services  
Approved 10/06/2021

**Pershing County Amended Plan for the  
Provision of Indigent Defense Services**

**I. STATEMENT OF POLICY**

A. OBJECTIVES

1. The objective of this Plan is to implement the model plan required by the Regulations implemented by the Board of Indigent Defense Services (BIDS). The Plan is proposed and submitted in protest because the Board did not consider the actual needs of Pershing County in relation to the criminal justice system. The Board enacted regulations without taking into consideration the needs of the indigent defendants that come before the Courts in Pershing County. The Board essentially created solutions for areas where there were no problems. The Board failed to recognize the real needs in Pershing County do not center on a deficiency in the conduct of attorneys providing services to indigent defendants, the system of delivery of services, and/or the methodology of judges appointing counsel and approving fees. Rather, the primary problem centers on services following a defendant's conviction for crimes that they have admitted to committing. Such a dearth of services includes the lack of mental health counseling, substance abuse counseling, job skills enhancements, and other necessary services (including a more robust and fully staffed Parole and Probation).
2. The County has significant concerns if a State Agency were to maintain the power to authorize the expenditure of county funds or dictate or override the autonomy of the elected or appointed officials in Pershing County. As such, this plan is not intended to authorize any expenditures of county funds that are not authorized by elected or appointed persons in Pershing County. It is not the desire of the Board to authorize a state agency to expend county monies.

3. Ultimately, the other objective of this plan is to continue to provide a system of appointment and selection of counsel that provides competent representation of individuals charged with a crime or a delinquent act.

## II. SCOPE OF RULES

### A. PAYMENT OF NEW OR ADDITIONAL COSTS CAUSED BY PLAN:

The County anticipates that funding will be approved for this plan by the State. ~~Portions of this plan are contingent upon the State of Nevada paying for the increases in the budgetary amounts caused by the adoption of this plan. In the event that the State of Nevada by and through the Board of Indigent Defense Services (BIDS) does not authorize the increase in expenditures, the portion of the plan identified as requiring additional funds will be eliminated and the provision of services shall be undertaken without such funds. Until the funding is available, the Counsel Administrator provisions do not take effect.~~

### B. PRIOR TO FUNDING

Prior to the State providing funding for any of the items herein, the business of the Court will be conducted in a manner consistent with existing law. The County is electing to have its own Counsel Administrator to select counsel for appointment and to authorize expenditures by non-Public Defender positions.

## III. DEFINITIONS

A. **"APPOINTED ATTORNEY"** means and includes private attorneys, the public defender, and the conflict public defender.

B. **"CONFLICT PUBLIC DEFENDER"** means the attorney contracted with Pershing County to provide conflict defense of indigent defendants. The conflict public defender should be appointed any time the public defender is required to withdraw

from the case or has a conflict of interest that prevents the appointment of the public defender. The attorney may be a first or second tier appointment. The selection of Conflict Public Defender to the position of Conflict Public Defender shall require that the attorney meet the standards set forth by DIDS.

**C. “COUNSEL ADMINISTRATOR”** means the individual(s) who provide services to screen defendants for indigency and make recommendations to the court who should be appointed. It is anticipated that the position will be provided by the State. If funding is not provided, the County may need to adjust its funding to accomplish this objective.

**D. “COURT”** means the court that is presiding over the case (i.e. the justices court presides over misdemeanors and over felonies and gross misdemeanors prior to the completion of the preliminary hearing; the District Court presides over all felonies and gross misdemeanors after the “bind over” and all juvenile cases).

**E. “JUDGE”** means the judge of the court as defined above.

**F. “PRIVATE ATTORNEY”** means an attorney appointed from a panel of attorneys that has contracts with Pershing County to provide services. The selection of a private attorney to the panel of Private Attorneys shall require that the attorney meet the standards set forth by DIDS.

**G. “PUBLIC DEFENDER”** means an attorney employed to serve as the public defender in a county office as a public defender. The public defender should be the first appointed counsel on a criminal case unless there is a conflict or other impediment to the appointment. The selection of the public defender shall require that the attorney meet the standards set forth by DIDS.

#### **IV. PROVISIONS OF REPRESENTATION**

**A. Mandatory:** Representation shall be provided for any financially eligible person who:

1. Is charged with a felony or gross misdemeanor crime;
2. Is charged with a misdemeanor that requires incarceration or which the prosecution is likely to seek incarceration in the Pershing County Law Enforcement Center;
3. Is alleged to have committed a delinquent act;
4. Is in custody as a material witness;
5. Is seeking a post-conviction habeas corpus writ involving an underlying death penalty;
6. Is entitled to appointment of counsel under the Sixth Amendment of the United States Constitution or any provision of the Nevada Constitution; and
7. Nevada law requires 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:

1. Is charged with a misdemeanor and the Court determines that appointment is in the interests of justice;
2. Is seeking a post-conviction habeas corpus writ and the Court determines that there is good cause for the appointment;
3. Is charged with civil contempt that may result in a loss of liberty; and
4. Is a witness and there is reason to believe that the testimony given by the person may subject the person to criminal prosecution.

**C. When counsel shall be provided:** Counsel shall be appointed at the first appearance<sup>1</sup> after the Defendant has made an application for the services of counsel and has been properly screened for financial eligibility.

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<sup>1</sup> In the urban model plan, it provides that "Counsel shall be provided to eligible persons within 72 hours or as soon as feasible after their first appearance before a judge, 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. Financial Eligibility Requirements**

1. *Financial Eligibility:* Financial Eligibility: 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. "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 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 will be subjected 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:* The Counsel Administrator shall conduct the 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 in subsection (1) above. The Counsel Administer shall provide written notification to the defendant of the right to have counsel appointed. The Counsel Administer shall discuss the right to have counsel appointed. The Counsel Administer shall ensure that the defendant is provided with a financial affidavit for appointment of counsel that shall be signed by the defendant. If the affidavit is not executed, the Counsel Administrator shall recommend no appointment.
3. *Recommendation Regarding Appointment of Counsel:* If the Counsel Administrator determines that a defendant is eligible for appointment of legal counsel, the Counsel Administrator shall submit a written recommendation to

the Court to appoint counsel. In submitting the recommendation, the Counsel Administrator shall include the executed financial affidavit submitted by the defendant. The Counsel Administrator shall indicate the basis for the appointment within the Recommendation (i.e. 200% of federal poverty guideline, some other presumptive guideline, or the finding after a vigorous screening). In making the recommendation to appoint counsel, the recommendation to appoint counsel shall make appropriate findings as to why certain counsel is appointed, and shall be governed, as follows:

- a. Unless a conflict exists, the Pershing County Public Defender shall be recommended for appointment;
- b. If the Pershing County Public Defender determines there is a conflict or the counsel administrator determines there are two or more defendants charged with a crime due to a mutual course of conduct, the Pershing County First Tier Conflict Public Defender shall be recommended for appointment;
- c. If the Pershing County Public Defender and the Pershing County First Tier Conflict Public Defender determine there is a conflict or the counsel administrator determines there are three defendants charged with a crime due to a mutual course of conduct, the Pershing County Second Tier Conflict Public Defender shall be recommended for appointment;
- d. If the Pershing County Public Defender, the Pershing County First Tier Conflict Public Defender, and the Pershing County Second Tier Conflict Public Defender determine there is a conflict or the counsel administrator determines there are four or more defendants charged with a crime due to a mutual course of conduct, the Pershing County Third Tier Conflict Public Defender shall be recommended for appointment; and

- e. If the Pershing County Public Defender, the Pershing County First Tier Conflict Public Defender, the Pershing County Second Tier Conflict Public Defender, and the Pershing County Third Tier Conflict Public Defender determines there is a conflict or the Counsel Administrator determines that there are five or more defendants charged with a crime due to a mutual course of conduct, the appointment shall be governed by section VII below.

4. *Time for Eligibility Recommendations*

- a. In-Custody Defendants: If an individual remains in a custodial status, the eligibility screening shall occur within 48 hours from the individual's arrest and will be ready for appointment at the bail hearing. If a defendant bails out of jail or is otherwise released before filling out the paperwork to request counsel, there is no requirement to make an eligibility determination or an appointment until the person is charged with a crime.
  - b. Out-Of-Custody Defendants: If an individual is discharged from custody prior to the 48 hours and/or the Defendant has not applied for counsel, the individual may apply to the Justices Court for counsel at the time of the first hearing.<sup>2</sup>
5. *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.
6. *Appointment of Counsel in Juvenile Matters*: 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

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<sup>2</sup> The "48 hours" requires the Counsel Administrator be available.

reasonable attorney fees, whether Public Defender, contract, or appointed counsel (NRS 62E.300) based on the parent's ability to pay. Selection of counsel shall be made in the same order as set forth above.

**E. Appointment of Counsel:** Based upon the recommendation of the Counsel administrator, the judge shall determine if the defendant is eligible and determine if the counsel recommended by the Counsel Administrator will provide adequate representation. If the judge determines that the defendant is not eligible, the judge shall deny appointment or may set the matter for a hearing to clarify any concerns that the judge has as to eligibility. If the judge determines that the attorney recommended to be appointed is not suitable for the particular case, the judge may contact the Counsel Administrator and determine which attorney would be next in the rotation of the attorneys on the panel. The judge may then refer the appointment to the counsel administrator. The Counsel Administrator will ensure that the panel attorney that was not appointed is moved in order to be appointed next.

**F. NUMBER AND QUALIFICATIONS OF COUNSEL:** The Counsel Administrator shall recommend appointment as follows:

1. One attorney shall be recommended for appointment except in Capital Cases;
2. Two attorneys shall be appointed in Open Murder cases which are reasonably believed to result in a Capital Case; and
3. At least two attorneys should be appointed to represent a defendant charged in a Capital Case in accordance with Nevada Supreme Court Rule 250.

**G. First Appearance:** The public defender shall provide representation to an unrepresented indigent defendant at the first appearance. To avoid a potential conflict of interest, the attorney should provide, to the



extent possible, representation that does not pertain to matters beyond the First Appearance. The counsel appearing with the Defendant at the First Appearance must be prepared to address appropriate conditions of release in accordance with relevant legal precedence. Courts should be circumspect about any delays caused by the determination of indigence of the defendant.

**H. Vertical Representation:** Other than potentially having the public defender at the First Appearance, representation should be vertical.

**v. APPOINTMENT OF PUBLIC DEFENDER<sup>3</sup>**

A. Appointment

The Public Defender shall be appointed to criminal cases.

B. Determination Of Conflict Of Interest

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 defendant. If such a conflict is determined to exist by the Public Defender to exist, such fact shall be brought to the attention of the court as soon as possible by a written motion. If the Court determines the Motion has merit, the Court shall then refer the matter to the Counsel Administrator for appointment of the First Tier Conflict Public Defender. In no instance, shall the Public Defender be appointed to represent co-defendants in a case unless such appointment comports with the Rules of Professional Conduct (RPC 1.7).

C. Complaints By Clients

The public defender will track complaints by clients and document the resolution of the complaints.

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<sup>3</sup> Pershing County only has one public defender in its public defender office.

D. Description Of Resources And Accommodations For Confidential Client Communications

The courthouse has two meeting rooms that are available to any attorney who has an ongoing case. The jail has a room to allow visits between counsel and their clients in the jail.

E. DIDS Complaint And Recommendation Process Made Available

An instruction sheet will be given to the Defendant at the first appearance before the Justice's Court.

F. Payment Of Public Defender

The Public Defender is compensated through the County's employee payment process.

G. Payment Of Expert and Investigative Fees

The Public Defender has a line item within his Budget for the fees that follows the normal vouchering process for departments within county government.

H. Assignment Of Cases Within Office Of Public Defender

Currently the Office of Public Defender has one attorney. Assignment would be to that attorney. If the Office has an increase in cases that merit the hiring of another attorney for the office, the Office shall develop procedures for assigning cases.

I. Selection Of Public Defender

The person who will fill the position of Public Defender shall be selected by the County Commissioners in consultation with the Counsel Administrator.

**VI. APPOINTMENT OF FIRST TIER CONFLICT PUBLIC DEFENDER**

A. Appointment Of First Tier Conflict Public Defender

Upon determination by the Public Defender of a conflict or where two individuals are alleged to have acted in concert in a criminal action, the Conflict Public Defender shall be appointed.

B. Determination Of Conflict Of Interest

The First Tier Conflict 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 defendant. If such a conflict is determined by the First Tier Conflict Public Defender to exist, such fact shall be brought to the attention of the court as soon as possible through a written motion. If the Court determines the Motion has merit and the Court will refer the matter to the Counsel administrator for the appointment the Second Tier Conflict Public Defender. In no instance, shall the First Tier Conflict Public Defender be appointed to represent co-defendants in a case unless such appointment comports with the Rules of Professional Conduct (RPC 1.7).

C. Complaints By Clients

The First Tier Conflict Public Defender will track complaints by clients and document the resolution of the complaints.

D. Description Of Resources And Accommodations For Confidential Client Communications

The courthouse has two meeting rooms in the lower floor that are available to any attorney who has an ongoing case. The jail has a meeting room.

E. DIDS Complaint And Recommendation Process Made Available

An instruction sheet will be given to the Defendant at the first appearance before the Justice's Court.

F. Payment Of Conflict Public Defender

The First Tier Conflict Public Defender is compensated through rate set by the County Commissioners.

G. Payment Of Expert and Investigative Fees

The First Tier Conflict Public Defender will submit a request for payment to the Counsel Administrator who will then recommend approval or denial of the request to the county through the county vouchering process.

H. Assignment Of Cases Within First Tier Office Of Conflict Public Defender

Currently the Office of First Tier Conflict Public Defender has one attorney. Assignment would be to that attorney. If the Office has an increase in cases that merit the hiring of another attorney for the office or a new Conflict Public Defender is employed, the Office shall develop written procedures for assigning cases.

I. Selection Of First Tier Conflict Public Defender

The person who will fill the position of Conflict Public Defender shall be selected by the County Commissioners in consultation with the Counsel Administrator.

**VII. APPOINTMENT OF SECOND TIER CONFLICT PUBLIC DEFENDER**

A. Appointment Of Second Tier Conflict Public Defender

Upon determination by the Public Defender and First Tier Conflict Public Defender of a conflict or where two individuals are alleged to have acted in concert in a criminal action, the Second Tier Conflict Public Defender shall be appointed.

B. Determination Of Conflict Of Interest

The Second Tier Conflict 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 defendant. If such a conflict is determined by the Second Tier Conflict Public Defender to exist, such fact shall be brought to the attention of the court as soon as possible by filing a written Motion. If the Court determines the

Motion has merit, the Court the Court will refer the matter to the Counsel administrator for the appointment of the Third Tier Conflict Public Defender. In no instance, shall the Second Tier Conflict Public Defender be appointed to represent co-defendants in a case unless such appointment comports with the Rules of Professional Conduct (RPC 1.7).

C. Complaints By Clients

The Second Tier Conflict Public Defender will track complaints by clients and document the resolution of the complaints.

D. Description Of Resources And Accommodations For Confidential Client Communications

The courthouse has two meeting rooms in the lower floor that are available to any attorney who has an ongoing case. The jail has a meeting room.

E. DIDS Complaint And Recommendation Process Made Available

An instruction sheet will be given to the Defendant at the first appearance before the Justice's Court.

F. Payment Of Second Tier Conflict Public Defender

The Second Tier Conflict Public Defender is compensated through rate set by the County Commissioners.

G. Payment Of Expert and Investigative Fees

The Second Tier Conflict Public Defender will submit a request for payment to the Counsel Administrator who will then recommend approval or denial of the request to the county through the county vouchering process.

H. Assignment Of Cases Within Office Of Second Tier Conflict Public Defender

Currently the Office of Second Tier Conflict Public Defender has one attorney. Assignment would be to that attorney. If the Office has an increase in cases that merit the hiring of another attorney for the office or a new Second Tier Conflict Public

Defender is employed, the Office shall develop written procedures for assigning cases.

I. Selection Of Second Tier Conflict Public Defender

The person who will fill the position of Conflict Public Defender shall be selected by the County Commissioners in consultation with the Counsel Administrator. The appointment may be for a term of years and may be renewed from time to time.

**VIII. APPOINTMENT OF THIRD TIER CONFLICT PUBLIC DEFENDER**

J. Appointment Of Third Tier Conflict Public Defender

Upon determination by the Public Defender, First Tier Conflict Public Defender, and Second Tier Conflict Public Defender of a conflict or where two individuals are alleged to have acted in concert in a criminal action, the Third Tier Conflict Public Defender shall be appointed.

K. Determination Of Conflict Of Interest

The Third Tier Conflict 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 defendant. If such a conflict is determined by the Third Tier Conflict Public Defender to exist, such fact shall be brought to the attention of the court as soon as possible by filing a written Motion. If the Court determines the Motion has merit, the Court the Court will refer the matter to the Counsel administrator for the appointment of a Panel Attorney. In no instance, shall the Third Tier Conflict Public Defender be appointed to represent co-defendants in a case unless such appointment comports with the Rules of Professional Conduct (RPC 1.7).

L. Complaints By Clients

The Third Tier Conflict Public Defender will track complaints by clients and document the resolution of the complaints.

M. Description Of Resources And Accommodations For Confidential Client Communications

The courthouse has two meeting rooms in the lower floor that are available to any attorney who has an ongoing case. The jail has a meeting room.

N. DIDS Complaint And Recommendation Process Made Available

An instruction sheet will be given to the Defendant at the first appearance before the Justice's Court.

O. Payment Of Third Tier Conflict Public Defender

The Third Tier Conflict Public Defender is compensated through rate set by the County Commissioners.

P. Payment Of Expert and Investigative Fees

The Third Tier Conflict Public Defender will submit a request for payment to the Counsel Administrator who will then recommend approval or denial of the request to the county through the county vouchering process.

Q. Assignment Of Cases Within Office Of Third Tier Conflict Public Defender

Currently the Office of Third Tier Conflict Public Defender has one attorney. Assignment would be to that attorney. If the Office has an increase in cases that merit the hiring of another attorney for the office or a new Second Tier Conflict Public Defender is employed, the Office shall develop written procedures for assigning cases.

R. Selection Of Third Tier Conflict Public Defender

The person who will fill the position of Public Defender shall be selected by the County Commissioners in consultation with the Counsel Administrator. The appointment may be for a term of years and may be renewed from time to time.

## **VIII. APPOINTMENT OF PANEL ATTORNEYS**

### **A. Appointment of Counsel**

A panel attorney shall be appointed when the Public Defender, the First Tier Conflict Public Defender, the Second Tier Conflict Public Defender, and the Third Tier Conflict Public Defender are conflicted off a case or there are multiple defendants requiring the appointment of a panel attorney.

### **B. Determination Of Conflict Of Interest**

The Panel Attorney assigned and appointed to a case 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 defendant. If such a conflict is determined by the Panel Attorney to exist, such fact shall be brought to the attention of the court as soon as possible through a written motion. If the Court determines the Motion has merit, the Court shall refer the matter the Counsel Administrator for a to select conflict counsel. In no instance, shall a Panel Attorney be appointed to represent co-defendants in a case unless such appointment comports with the Rules of Professional Conduct (RPC 1.7).

### **C. Complaints By Clients**

The panel attorney will track all complaints by clients regarding the panel attorney's representation and document the resolution of the each complaint.

### **D. Description Of Resources And Accommodations For Confidential Client Communications**

The courthouse has two meeting rooms that are available to any attorney who has an ongoing case.

### **E. DIDS Complaint And Recommendation Process Made Available**

An instruction sheet will be given to the Defendant at the first appearance before the Justice's Court.



S. Payment Of Panel Attorney

The panel attorney is compensated at the statutory rate through the County's standard vouchering process. The Attorney will submit the request for reimbursement on a monthly basis to the Counsel Administrator. The Court Administrator will then recommend approval or denial of the request to the County Administrator. If there is a dispute, the Court will determine if the voucher should be paid.

T. Rate of Pay of Panel Attorneys

Panel Attorneys shall be paid at the statutory rate.

U. Payment Of Expert and Investigative Fees

The panel attorney will submit a request for payment to the Counsel Administrator who will then recommend approval or denial of the request to the county through the county vouchering process.

V. Assignment Of Cases Within Office of Panel Attorney

If the panel attorney has more than one attorney, the Office shall develop written procedures for assigning cases.

W. Selection Of Panel Attorneys

The person who will fill the position of Public Defender shall be selected by the County Commissioners in consultation with the Counsel Administrator.

**IX. TRAINING AND MENTORING**

A. Mentoring Programs: If an attorney wishes to become qualified for one of the categories of cases, the Counsel Administrator shall contact DIDS for suggestions as to possible mentors for the attorney.

B. Annual Training: The attorneys working as indigent defense counsel shall receive the recommend amount of indigent defense training by DIDS. Such training shall be tracked by DIDS.

## **X. DUTIES OF INDIGENT DEFENSE COUNSEL**

A. Standards Of Performance Services rendered to an indigent defendant by appointed counsel shall be commensurate with those rendered if were counsel employed privately. Representation shall be provided in a professional skilled manner in accordance with Strickland. Attorneys are required to comply with the Rules of Professional Conduct. To the extent governed by a statute, Attorneys must conform their conduct to the requirements of the statute. An attorney should follow appropriate regulations and ADKT 411's performance standards to the extent that the standards do not conflict with the aforementioned provisions. An attorney should refrain from recommending that a client waive a substantial right unless the attorney believes that the client's interests are served by the waiver. Attorneys should make efforts to meet with a client within seven (7) days after appointment to a case and should make efforts to meet with the client at a minimum every thirty (30) days thereafter unless there are no significant updates in the client's matter. The meeting can be in person or through other telephonic/audio means.

B. Continuity In Representation: The system designed in Pershing County is currently premised on continuity of representation by a single attorney at all stages of the representation.

C. Workload Standards: The County recognizes that DIDS is studying the caseload standards in the rural counties. In the absence of hard numbers, the Court encourages and requires that appointed counsel ensure that they have sufficient time to give to each client the time and effort necessary to ensure effective representation. Any attorney who shall decline representation of a client if the attorney believes the attorney's caseload would interfere with the attorney's competence, diligence and/or representation of the client. The County finds and determines that current caseloads for the Public Defender and Conflict Public Defender are not excessive as set forth above. Historically, the Nevada State Public Defender only assigned a part-time person (2-3 days per week) to the caseload in Lovelock. Currently the Pershing County Public

Defender is employed full-time. Furthermore, the Pershing County Conflict Public Defender has a small caseload. Furthermore, the caseload placed upon Panel Attorneys by the appointments in Pershing County should not in and of itself cause an attorney to violate any portion of this rule. This section cannot be used as a basis to allege a claim for ineffective assistance of counsel.

D. No Receipt Of Other Payment: Appointed counsel shall not request, require or accept any payment or promise to pay or any other valuable consideration for representation under the appointment unless such payment is approved by order of the Court. No appointed counsel shall engage in sexual conduct with any client.

E. Private Practice Of Law: For the Pershing County Public Defender, this topic is governed by the Pershing County Code in addition to statutory permissions. For all other counsel, unless otherwise prohibited by law, private practice of law is expected.

F. Use Of Client Surveys: At the conclusion of representation, counsel will provide the client with a copy of the client survey authorized by BIDS. The client will be provided the address of DIDS and encouraged to send the survey to DIDS or the attorney may assist with the survey being sent.

## **XI. APPOINTED COUNSEL ADMINISTRATOR<sup>i</sup>**

A. System of Counsel Administrators: A system of counsel administrator(s) shall be created. The counsel administrator(s) will be overseen by the Pershing County Public Defender. The Counsel Administrators shall be employed to determine eligibility (screening), appointment of particular attorneys in conjunction with hierarchy of appointments (i.e. 1. Public Defender; 2. Conflict Public Defenders; and 3. Panel Attorney (based upon a rotation of attorneys down the list of panel attorneys)) and expenses.

B. Selection of Counsel Administrators: The Counsel Administrator shall be selected by an advertising and application process by the Public Defender and the Court Administrator. Preference will be given based upon qualifications and knowledge of

the legal system. The requirements would favor a candidate who is either a lawyer or a paralegal.

C. The Specific Duties: The duties would be the following:

*Appointment of Counsel:*

- i. Within 48 hours screen the defendant for eligibility and make a recommendation regarding appointment;
- ii. Screen defendants for eligibility;
- iii. Obtain the defendant's financial affidavit;
- iv. Maintain a list of panel attorneys who could serve on certain types of cases;
- v. Determining if an attorney should be appointed in accordance with the hierarchy of appointment and type of case;
- vi. Recommend the Appointment of Counsel to the Court;

*Approval of Expert Witness Fees*

- i. Received the request for costs for an expert witness (including initial costs and additional costs);
- ii. Determination if the attorney has provided sufficient basis for the appointment of the particular expert (This may require an evaluation of the type of expert witness and if the expert witness is appropriate based upon the facts of the case);
- iii. Recommend approval of a sum certain cost for the expert witness;
- i. Submit the Recommendation to the County for payment in accordance with the County's voucher process.
- iv. If the Counsel Administrator denies the request, the request may be submitted to the Court for approval.

*Approval of Investigative Fees*

- ii. Received the request for costs for an expert witness (including initial costs and additional costs);
- iii. Determination if the attorney has provided sufficient justification for the investigator;
- iv. Recommend approval of a sum certain cost for the expert witness;
- v. Submit the Recommendation to the for payment in accordance with the County's voucher process.
- vi. — If the Counsel Administrator denies the request, the request may be submitted to the Court for approval.

*Approval of Attorney Fees*

- i. Received the request for a panel attorney, which sets for the basis for the attorney fees (with six minute increments) through an affidavit signed by counsel setting forth the hours worked;
- ii. Determination if the fees are reasonable and if the fees exceed statutory amounts for the case type;
- iii. Recommend approval of a sum certain cost for the attorney fees;
- iv. — Submit the recommendation to the County for payment in accordance with the County's voucher process. If the Counsel Administrator denies or modifies the request, the request may be submitted to the Court for approval.

*Maintain a record of activities.*

The Counsel Administrator shall maintain a record of the activities listed above.

*Use Standardized Forms.*

The Counsel Administrator shall use the established forms for the action taken.

**XII. BAIL HEARINGS**

The Justice of the Peace shall make arrangements to include counsel at the first appearance for purposes of bail determinations. Counsel will be required to clear calendars to appear before the Justice of the Peace. Weekend Appearances may be required. The bail hearing aspect of the First Appearance may be held telephonically to allow counsel to appear.

**XIII. RECORDS**

Providers of indigent services shall maintain data through the data collection and case management services provided by the Department at State expense for caseload and time reporting. Costs for keeping such records shall also be kept by the providers to seek reimbursement from the State. Such reporting shall be kept in accordance with the Temporary Regulations of the BIDS.

**XIV. POINT OF CONTACT**

The point of contact for this plan shall be the Counsel Administrator.

**XV. GOALS AND HOPES**

Although the County has a current system that meets the goals and hopes of the Plan, the Plan is being adopted. The following will be the goals for the Plan:

1. The County's Plan for the provision of indigent defense services ensures that an indigent defense attorney has the resources to conduct an independent investigation and retain an investigator if one is needed, and, if needed, request the assistance of experts to assist with preparation of a defense;
2. The County has created in its annual budget a line item the public defender and the Conflict public defenders/panel attorneys;
3. Beginning in 2022, the County will create a budget for investigators and experts for the public defender.

Expenditures shall be at the sole discretion of the public defender;

4. In 2022, the County will create an additional budget line item for the other attorneys for the same expenditures that will be for the other attorneys; and
5. Disbursements shall be made by the County through the vouchering process.

**XVI. EFFECTIVE DATE**

This plan shall become effective on October 1, 2021 if expenses are approved by the BIDS/DIDS. The plan and any amendments shall be subsequently submitted by May 1 of each year.

**XVII. COSTS**

The projected costs for Indigent Defense in Pershing County:

Public Defender's Office	\$270,000.00
Conflict Public Defender's Office	\$54,000.00
Second Tier Conflict Public Defenders	\$15,000.00
Third Tier Conflict Public Defender	\$5,000.00
Panel Attorneys	\$5,000.00
Counsel Administrator	\$50,000.00
Expenses	<u>\$20,000.00</u>
	\$419,000.00

Executed on the 1<sup>st</sup> day of September, 2021.

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Larry Rackley  
Chairman

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Carol Shank  
Commissioner

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Shayla Hudson  
Commissioner

Certified by: \_\_\_\_\_

Lacey Donaldson  
County Clerk

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<sup>i</sup> These provisions are contingent upon the DIDS approving funding for the service. If DIDS does not approve funding for the service, the County will take interim steps to ameliorate any shortfalls in funding.