

Board of Indigent Defense Services
Approved 10/06/2021

FILED

FEB 06 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE REVIEW
OF ISSUES CONCERNING REPRESENTATION
OF INDIGENT DEFENDANTS IN CRIMINAL,
JUVENILE DELINQUENCY AND FAMILY
DEPENDENCY CASES

ADKT 411

THE SECOND JUDICIAL DISTRICT COURT - INDIGENT DEFENSE REPORT
AMENDED MODEL PLAN 2019

Amended administrative plan for the Second Judicial District Court to meet the requirements set forth in the order entered by the Supreme Court of Nevada on January 4, 2008, in ADKT 411, and as amended periodically thereafter.

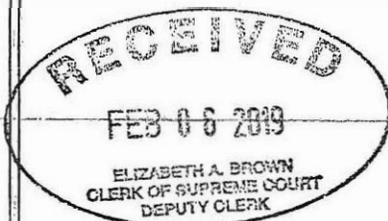
I. OBJECTIVE

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

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

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II. DEFINITIONS

"Representation" includes by counsel and investigative, expert and other services assisting counsel.

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

III. PROVISION OF REPRESENTATION

A. Mandatory Appointment

Representation shall be provided for any financially eligible person who:

1. is charged with a felony;
2. is charged with a gross misdemeanor in which the prosecution is seeking jail confinement (incarceration);
3. is alleged to have violated probation or other supervision and a jail or prison sentence of confinement may be imposed;
4. is a juvenile alleged to have committed an act of juvenile delinquency;
5. is subject to commitment pursuant to NRS 433A.310;
6. is seeking relief from a death sentence pursuant to NRS 34.724(1);
7. is in custody as a material witness;
8. is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or any provision of the Nevada Constitution, or when due process requires the appointment of counsel, or the court is likely to impose jail or prison confinement;
9. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
10. faces loss of liberty for criminal contempt;

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11. received notice that a grand jury is considering charges against him/her and has requested counsel.

B. Discretionary Appointment

Whenever a Court determines the interests of justice so require, representation shall be provided for any financially eligible person who:

1. is charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized;

2. is seeking post-conviction relief, other than from a default sentence, pursuant to NRS 34.724(1);

3. is charged with civil contempt and faces loss of liberty;

4. has been called as a witness before a grand jury, a committee of any agency which has the power to compel testimony, and there is reason to believe that either prior to or during testimony, the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

5. any other case in which the Court determines in the interest of justice appointment of counsel is appropriate.

C. Timing of Appointment of Counsel

Counsel shall be provided to eligible persons:

1. within 72 hours of arrest or as soon as feasible;

2. when they appear before a judge;

3. when they are formally charged or notified of charges and criminal charges are sealed; or

4. when a District Judge or Justice of the Peace otherwise determines appointment of counsel appropriate.

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D. Number and Qualifications of Appointed Counsel

1. One attorney shall be appointed consistent with Section IV and V herein, except in Capital Cases;
2. Two attorneys shall be appointed consistent with Section IV and V herein, as soon as feasible in all open murder cases which are reasonably believed to result in a Capital Case;
3. At least one of the two attorneys appointed to represent defendants charged in Capital Cases must meet the minimum standard for lead counsel pursuant to Nevada Supreme Court Rule 250 and both attorneys appointed must conform to the performance guidelines or standards as adopted by the Nevada Supreme Court for Capital Cases.

E. Eligibility for Appointed Representation

1. All persons found indigent shall be financially eligible for appointed representation:
 - a. a person shall be deemed "indigent" who is unable, without "substantial hardship" to himself or herself or his or her dependents, to obtain competent, qualified legal counsel on his or her own;
 - b. "substantial hardship" presumptively includes 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 amount;
 - c. a person is presumed to have a "substantial hardship" if he or she is currently serving a sentence in a correctional institution or is housed in a mental health facility or is a minor;

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1 d. a person not falling below the presumptive threshold for
2 indigency will be subject to a more rigorous screening process to determine if
3 his/her particular circumstances, including seriousness of charges being faced,
4 monthly expenses, and local private counsel rates, would result in a "substantial
5 hardship" if required to retain private counsel.

6 2. Screening for Eligibility

7 a. The Pretrial Services Division ("Pretrial Services") of the Second
8 Judicial District Court shall conduct screening for financial eligibility of each
9 person who:

10 1. due to the nature of the charges in the Second Judicial
11 District Court or a Washoe County Justice Court, if indigent, are
12 mandated to have counsel appointed at public expense;

13 2. due to indigency is requesting payment of investigative
14 fees, expert fees, or other services, at public expense for a case pending
15 in the Second Judicial District Court or Washoe County Justice Court; or

16 3. when a District Judge or a Washoe County Justice of the
17 Peace requests screening by Pretrial Services to determine whether a
18 person is indigent.

19 b. Pretrial Services shall notify the Court with jurisdiction over a
20 person's case of the screening results with regard to financial eligibility for
21 representation at public expense.

22 c. Appointed counsel may provide information during the screening
23 but shall not be asked to make a recommendation regarding eligibility.

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3. Partial Eligibility

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

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

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

d. The determination of the Washoe County Manager or his/her designee, as to the extent and amount allowable for these fees, may be appealed to the Chief Judge of the Second Judicial District Court.

4. Disclosure of Change in Eligibility

a. Counsel shall advise the Chief Judge of the Second Judicial District Court for matters pending in the district court or the Administrative Judge of a Washoe County justice court for matters pending in a Washoe County justice court of any change in a client(s) eligibility for public payment for representation;

1. if, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation; and

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

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B. Determination of Conflict of Interest

1. The Public Defender shall, as soon as practicable, upon appointment, conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the client.

2. If the Public Defender determines a conflict exists, the Alternate Public Defender shall be notified as soon as possible.

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

a. if the Alternate Public Defender determines a conflict exists, the Appointed Counsel Administrator shall be notified by the Alternate Public Defender as soon as practicable; and

b. the Appointed Counsel Administrator shall select counsel from the Appointed Counsel Selection Committee ("ACSC") Appointed Counsel list to provide representation.

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

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

1. the Alternate Public Defender shall notify the Appointed Counsel Administrator as soon as reasonable and provide sufficient information for the Appointed Counsel Administrator to determine which ASCS Appointed Counsel sub-list (see section V herein) should

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be utilized to select a qualified attorney to replace the Alternate Public Defender:

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

- (1) select attorney(s) pursuant to Section V, appropriate for appointed representation in the case;
- (2) prepare a written Substitution of Counsel substituting the selected attorney in place of the Alternate Public Defender, indicating whether the Appointed Counsel appointment is on contract, hourly or capital case basis; and
- (3) cause the Substitution of Counsel to be filed in the District Court prior to the first appearance by Appointed Counsel.

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

- 1. if the Court approves the Public Defender's request for relief from representation, the Alternate Public Defender shall file a Substitution of Counsel and undertake representation;
- 2. if the Court does not approve the Public Defender's request for relief from representation, the Public Defender will continue representation until and unless relief is granted.

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C. Assignment of Attorneys

1. The assignment of a case to an attorney within the office of the Public Defender or Alternate Public Defender rests solely within the discretion of the Public Defender and/or Alternate Public Defender, respectively.

2. The assignment of an Appointed Counsel shall be within the Appointed Counsel Administrator's discretion so long as her/she acts in accordance with this plan and specifically Section V, herein.

D. Complaints by Clients

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

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

V. APPOINTMENT OF PRIVATE ATTORNEYS TO SERVE AS APPOINTED COUNSEL

A. Selection of Appointed Counsel Attorneys

1. The Second Judicial District Court - Court Administrator shall establish the ACSC. The Court Administrator shall, on an annual basis, appoint members to serve one year terms. The Court Administrator may reappoint members to successive terms. The Court Administrator may fill unexpired terms at any time when members no longer are able or willing to serve:

a. The ACSC shall be comprised of a minimum of five (5) and a maximum of seven (7) attorneys licensed to practice law in Nevada who:

1. have no pecuniary interest in the outcome of the attorney selection or performance evaluation process;

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2. have no legal, financial or familial relationship to any attorney whose qualification or performance will be evaluated;

3. are not directly related to any member of the judiciary or prosecution who may be involved in the outcome of any case that would be assigned to the Public Defender, Alternate Public Defender or Appointed Counsel Administrator.

2. The ACSC shall establish the minimum qualifications for all Appointed Counsel, taking into account the additional qualifications required for exceptionally difficult cases with potential life and capital penalties, as well as, unique case types such as juvenile and dependency.

3. The ACSC shall create the Appointed Counsel list with sub-lists including but not limited to, contract, hourly, capital, juvenile and dependency as the ACSC deems appropriate.

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

5. On an ongoing basis, the ACSC shall:

a. review the Appointed Counsel list and modify membership as the Committee deems appropriate;

b. complete annual performance and qualification reviews of attorneys on the Appointed Counsel list including:

1. annually solicit input from judges, and others familiar with criminal, juvenile and family law matters in which Appointed Counsel are utilized;

2. review any complaints from clients;

3. review the history of participation in continuing legal education and training of all attorney's on the ACSC list making a

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determination as to the attorneys continued participation as Appointed Counsel; and

4. review the history of participation in continuing legal education, among other criteria as identified by the ACSC, when determining the eligibility for and selection of new applicants to be included on the Appointed Counsel list.

B. Contract, Hourly and Capital Case Appointed Counsel Sub-Lists

1. Appointed Counsel on Contract

a. Washoe County shall contract for appointment of counsel.

b. Washoe County Appointed Counsel contract compensation may be based either on an hourly basis, a flat fee basis, or a combination of both. The Nevada Supreme Court has determined that flat-fee only contracts are prohibited, and flat fee compensation must include the opportunity to request additional fees in other than normal circumstances and for expert and investigative expenses:

1. if part of the contract is based on a flat fee, 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 Counsel to comply with the Performance Standards of Appointed Counsel, as adopted.

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2. Washoe County shall contract with Appointed Counsel only after the attorney has been qualified to enter into such a contract by the ACSC; and

3. the contract must be subject to termination after one year or sooner, if determined by the ACSC that an Appointed Counsel is not abiding by the standard guidelines for qualification of Appointed Counsel; and

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

5. the contract shall exclude appointment in cases with the potential of a life or capital penalty.

c. In all cases which cannot be handled by the Public Defender or the Alternate Public Defender, an attorney from the ACSC contract sub-list will be assigned by the Appointed Counsel Administrator, except in cases carrying a potential penalty of life imprisonment or death, post-conviction, or when the Court, or the Appointed Counsel Administrator determines the complexity of the case or the potential penalty necessitates the appointment of an attorney from the ACSC hourly sub-list.

d. contract Appointed Counsel shall be selected in consecutive order from the Appointed Counsel Sub-list by the Appointed Counsel Administrator.

2. Appointed Counsel on hourly and capital case appointments

a. If the Washoe County Public Defender, Alternative Public Defender and contract Appointed Counsel cannot handle the case; or the

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Appointed Counsel Administrator determines the case is not appropriate for contract Appointed Counsel to handle, alternative counsel will be selected by the Appointed Counsel Administrator as follows:

1. the Appointed Counsel Administrator shall select alternative Appointed Counsel, in consecutive order, from the hourly sub-list; except

2. if the nature of the case requires lead counsel be selected from the capital case sub-list, the Appointed Counsel Administrator, in consecutive order, shall select lead counsel from the capital case sub-list;

3. the Appointed Counsel Administrator shall select a second chair counsel for all capital cases: counsel shall be selected next in order from the hourly sub-list, if the attorney qualifies under Nevada Supreme Court Rule 250 for second chair selection, or otherwise from the capital case sub-list.

b. The payment of fees and expenses of hourly and capital case Appointed Counsel shall be approved by the Appointed Counsel Administrator subject to appeal in the same way as discussed in Section III. E. 3. b, c, and d.

3. Delegation of Responsibilities

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

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

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1 c. All substantive court appearances must be made by an attorney
2 who has been determined to be qualified by the ACSC to handle the type of case
3 involved in the court appearance.

4 C. Post Conviction

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

9 2. In mandatory appointment cases

10 a. the Appointed Counsel Administrator shall select, in consecutive
11 order, counsel from the hourly post conviction sub-list; and

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

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

16 a. the Appointed Counsel Administrator shall select, in consecutive
17 order, counsel from the post conviction sub-list; and

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

20 4. All attorney fees, investigation, expert or other fees shall be
21 recommended for approval or denial by the Appointed Counsel Administrator to the
22 Chief Judge of the Second Judicial District Court:

23 a. the fee recommendations of the amount approved for payment
24 shall be presented to the Chief Judge of the Second Judicial District Court by the
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Appointed Counsel Administrator. The Chief Judge will determine whether to accept, modify, or reject the Appointed Counsel Administrator recommendation;

b. Appointed Counsel Administrator shall prepare the order for payment by the State Public Defender in accordance with the Chief Judge's decision.

VI. MENTORSHIP AND TRAINING

A. Mentoring Programs

If the ASCS determines justice will be served by selection of attorneys who do not possess the requisite experience a mentoring program must be established to insure that the less experienced attorney will be provided supervision and mentoring from an experienced attorney. An attorney who has not tried a minimum of one felony jury trial shall not try a felony case without the assistance of an experienced criminal defense attorney sitting as second chair.

B. Annual Training

Each member of the ACSC Appointed Counsel List is encouraged to attend annual Continuing Legal Education in the specific area in which they accept appointments, i.e. family law, appellate law, post conviction, capital cases, and criminal law.

C. Periodic Training

Periodic training events will be conducted on issues of interest to Appointed Counsel by the Public Defender and/or Alternate Public Defender to which members of the Appointed Counsel List shall be invited.

D. Creation and Coordination of Training

The Public Defender, Alternate Public Defender and the Appointed Counsel Administrator shall cooperate to coordinate, schedule and create training events as described above.

1 **VII. DUTIES OF APPOINTED COUNSEL**

2 A. Standards

3 The representation by Appointed Counsel shall be commensurate with representation by
4 privately employed counsel. Representation shall be provided in compliance with the
5 Performance Standards for Representation of Indigent Defendants adopted by the
6 Nevada Supreme Court.

7 B. Professional Conduct

8 Appointed Counsel shall conform to the highest standards of professional conduct,
9 including but not limited to the Nevada Rules of Professional Conduct.

10 C. No Receipt of Other Payment

11 Appointed Counsel may not require, request, or accept any payment or promise of
12 payment or any other valuable consideration for representation under the appointment,
13 unless such payment is approved by order of the District Court.

14 D. Continuing Representation

15 Once counsel is appointed, counsel shall continue representation until substitute counsel
16 has filed a Notice of Appearance, an order has been entered allowing or requiring the
17 person represented to proceed pro se, or the appointment is terminated by court order. If
18 Appointed Counsel is relieved, such counsel must assist substituted counsel in securing
19 the file and other necessary information to insure that all deadlines are met, including
20 those applicable to appeal and post-conviction matters.

21 **VIII. APPOINTED COUNSEL ADMINISTRATOR**

22 A. Selection

23 1. Washoe County will contract with an attorney to serve as the Appointed
24 Counsel Administrator. The contract terms will be determined by this Plan, Washoe
25 County and the Appointed Counsel Administrator, but in no event will the Appointed
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Counsel Administrator be directly involved in representation in Appointed Counsel cases.

B. Duties

1. The Appointed Counsel Administrator shall have all the duties and responsibilities stated herein.

2. The Appointed Counsel Administrator shall maintain the list of all attorneys approved by the ACSC broken out into sub-lists for contract and, hourly, in criminal, post conviction, juvenile, dependency, and capital case types. In addition, the Appointed Counsel Administrator shall maintain appropriate records of the date and the cases for each Appointed Counsel who has been appointed.

3. The Appointed Counsel Administrator will provide quarterly reports to the ACSC stating the number of cases which each attorney has been appointed in the past quarter, and the total number of appointed cases each attorney has open currently. The Appointed Counsel Administrator will also notify the ACSC of any issues regarding the performance of any member of the list including, but not limited to, any complaints from the judiciary regarding the attorney's level of representation of appointed case clients.

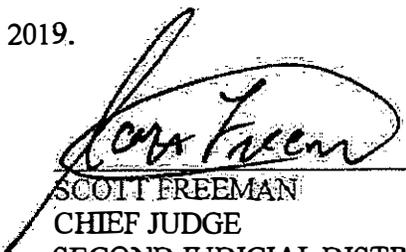
4. When notified of the need for representation, the Appointed Counsel Administrator, shall select, in order and as more fully described herein, the next available attorney from the list of attorneys qualified to provide representation as approved by the ACSC.

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

Dated this 1 day of February, 2019.


SCOTT FREEMAN
CHIEF JUDGE
SECOND JUDICIAL DISTRICT COURT

