

# Soval Solutions, LLC

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## Hourly Rate Recommendations for Contract Attorneys in Rural Nevada

Prepared for the Nevada  
Department of Indigent Defense Services

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Soval Solutions, LLC  
1406 Veterans Drive, #212  
Omaha, NE 68022  
Dr. Mitchel N. Herian, Owner  
[mitch@sovalsolutions.com](mailto:mitch@sovalsolutions.com)  
402-651-6329

## Summary

In rural Nevada counties, conflict and contract attorneys serve the critical role of providing indigent defense services to criminal defendants. If it were not for the presence of these individuals, indigent criminal defendants, in many cases, would not have local access to constitutionally-protected representation in court.

Current conditions in rural Nevada counties are making it less likely that local attorneys will be present to provide indigent defense services. In particular, current hourly contract rates are not always sufficient to cover the costs of providing criminal defense services for current attorneys. Furthermore, the stagnating value of current rates is likely making it less likely that rural Nevada counties will be able to attract the next generation of attorneys willing to live and provide indigent defense services in rural areas of the state.

Nevada last set its hourly contract rate for non-capital cases at \$100/hour and \$125/hour for capital cases in 2003. This represents a nearly 20-year time span in which the costs of living have increased dramatically in Nevada. During this time, the cost of doing business for solo practitioner and small law firms has also increased considerably.

It is recommended that the Nevada Department of Indigent Defense Services (DIDS) mandate a minimum hourly rate of \$163 for non-capital cases and \$204 for capital cases in rural counties in the state. This would represent a 63% increase from current rates for both non-capital and capital cases. This 63% increase is consistent with the increase in the cost of living between 2003 and 2022, as estimated by the Bureau of Labor Statistics Consumer Price Index calculator. Given current contracts in place within Nevada Counties for the provision of indigent defense services, these new rates would increase the costs for indigent defense by \$1,648,914 in FY 2023.

It is recommended that the state also consider setting regular increases, either through board regulations or legislative actions. The federal defender system, and many states, currently use a system where oversight bodies recommend or mandate regular increases in hourly rates for indigent service providers. It is recommended that periodic increases to hourly rates are tied to the cumulative percentage increase for Nevada state classified employees, as described in NRS 223.050.

## **Results from 2022 Attorney Overhead Survey**

In July, 2022, DIDS and Soval Solutions collaborated on the development of a survey to determine approximate overhead costs for contract indigent defense service providers. Attorneys were notified of the survey through various list serves, as well as through the Nevada State Bar Association weekly newsletter. A total of 136 attorneys completed the survey, including 56 who indicated that they currently work as a contracted or appointed criminal indigent defense service provider, or serve as a civil court-appointed attorney. The survey asked respondents to indicate the amount of overhead expenses incurred during a typical year, as well as the categories of overhead expenses that are most common. The survey asked several questions about the type of law firm at which attorneys are employed.

Among the 65 attorneys who serve as contracted or appointed criminal indigent defense service providers, or serve as a civil court-appointed attorneys, the results of the survey showed that 38 attorneys work as solo practitioners. Another 13 work in firms that range from 2-5 attorneys. The majority of attorneys indicated that they are solely responsible for overhead costs. Attorneys were asked to indicate the total amount of overhead costs for their firm/organization. The average overhead cost per attorney was \$86,427. The cost categories that comprise the greatest percentage of overhead costs were: non-attorney compensation, office space, office supplies, and attorney benefits and health care.

To understand how overhead costs might impact the take-home pay of contract attorneys who receive the current \$100/hour rate for their work, we can use data from the attorney overhead survey to develop estimates. Assuming that there are 220 working days in a typical year, and that there are seven working hours in a day, we arrive at a total of 1,540 work hours per year. An attorney who works the full 1,540 hours at an hourly rate of \$100/hour would gross a total of \$154,000 in a typical year. Assuming that an attorney incurs average overhead costs, this would net that an attorney \$67,573 per year.

To further contextualize the situation for contract indigent defense service providers, attorneys had the opportunity to provide open-ended comments about their role as providers. Table 1 below presents relevant comments that were received from attorneys. These comments are presented verbatim, copied directly from the comments provided in the survey.

**Table 1. Open-Ended Comments from Nevada Indigent Defense Services Providers**

The cost of inflation is unbearable and if hourly rates are not raised, I will no longer be taking appointed work.

I work as a specialty court contracted public defender. The pay is not enough on it's own to dedicate my practice to just the specialty court. If you want an experienced attorney that can dedicate his/her practice to the Indigent then, Depending on case load Location , cost of living and expenses then a minimum of \$150,000.00 per year in Northern Nevada is close. Southern Nevada is closer to \$200,000.

Experts, investigators, mitigation specialists for death penalty work and life sentence cases where the jury sentences, secretarial, paralegal, copy, print, network, computer, smartphone, mitigation travel for death penalty work, death penalty specific CLE?ÇOs, filing fees, malpractice insurance

Training costs for Indigent Defense attorneys. It should be considered to make sure attorneys are current in the practice of indigent defense, especially when discussing indigent defense for the youth in our community.

Our admin staff costs have increased dramatically since the COVID pandemic. Positions that we used to pay in the \$14-\$16 range are now \$18-22 per hour. An admin supervisor position that used to be \$20 per hour is now \$25 per hour. These are substantial increases of not less than 25 percent. The hourly rates in Nevada have been the same for 20 years. During that time, all costs have increased, notably staff pay, rents and malpractice insurance and health insurance (this has gone way up in 20 years). I compared the salaries for DAs and Public Defenders over this same period and they have increased at least 42%. The CJA rates for appointed counsel have gone from \$90 to \$158 over this time period, a 75% increase.

I previously worked in private practice as appointed indigent defense counsel associated overhead costs: 1. office space (they need a safe and confidential place to meet with clients...this will cost at least \$1000 a month) 2. office services-phone, email, fax 3. malpractice insurance 4. mailing costs 5. it's very beneficial to have office staff 6. yearly bar fees 7. legal research such as westlaw lexis/nexis research 8. employment taxes 9. workers comp/premises liability 10. health insurance 11. retirement savings

I simply do not know all of these requested figures as I've only been with the firm for 18 months but only through 1 fiscal year. I do know that as crime rates increase, so do the level of severity of these cases. We are not getting appointed to lower level felonies and gross misdemeanors as much. But, rather, Murders, Attempt murders, sex assault and related sex crimes, drug trafficking and human trafficking. I believe that the base contract should be raised to \$6,000.00/month, and billable cases be allowed at \$150/hour. Moreover, certain category "B" case should be automatically billable cases instead of having to ask for special permission from the OAC, such as attempt murder.

With inflation, costs are rising.

increased rate of statutory compensation beyond \$100 per hour. should be based upon inflation cost of living increase each year.

It can be expensive to run all this stuff
Does DIDS require paying for case management software when most practitioners already have their own? Transfer that cost to the practitioners and use the money elsewhere
The administrative costs associated with inputting all the DIDS information should be noted. Category A and death penalty cases should pay more. It is not ethical to have flat fee contract attorneys expected to do direct appeals. A study needs to be done to determine the percentage of direct appeals that come out of Clark County and Washoe versus rurals. There is a big incentive for attorneys to never inquire to inmates whether they want to appeal a sentence ESPECIALLY FROM GUILTY PLEAS! There are still plenty of grounds to appeal even from a guilty plea, and I don't believe inmates are getting told those options like they should be.
I do not even have health insurance because I CANNOT afford it.
Often for the indigent defense tracks, the case load is high enough that to handle the volume extra staff is needed OR alternatively, the clients get ignored. I could no longer justify the overhead spent on the amount of work involved and that's why I gave up my track that I had for the past 8 years.
Cost of living and inflation.
Paying people a livable wage and having an office that my clients can access is not cheap. If I didn't have retained clients to cover a lot of my overhead, I could not take on an indigent contract, which is a passion of mine.
The monthly flat rate for attorneys hasn't been risen...ever. Need to look at that. I am in court way more often so some cases should be billable if it's beyond 4 appearances in court.

## Cost of Living Increases in Nevada

Since 2003, economic conditions within Nevada and the U.S. have changed. Recent data from the Bureau of Labor Statistics (BLS) have shown that just in the last year, the Producer Price Index for the provision of goods and services in the U.S. increased 17.9% from June, 2021 to June, 2022.<sup>1</sup> The Consumer Price Index (CPI) rose 9.1 percent during this same time.<sup>2</sup>

According to the Bureau of Labor Statistics Consumer Price Index calculator<sup>3</sup>, \$100 in 2003 dollars —the current hourly rate provided to indigent defense services providers in rural Nevada—would equate to about \$163 in June, 2022 dollars. The \$125/hour rate for capital cases would equate to about a \$204/hour rate in June, 2022 dollars. While the CPI index does not serve as a direct measure of “cost-of-living” increase, and therefore should not be the sole factor that determines whether rate increases are needed, the index does have validity as an indicator for public policy decisions.

Perhaps a more concrete measure of cost-of-living increases in Nevada can be obtained through housing prices. According to the 2020 American Community Survey (ACS) 5-year estimates the median home value in Nevada is \$290,200. The table below presents the top 15 states in terms of median home value. As the table shows, Nevada ranks 12<sup>th</sup> highest among the 50 states and the District of Columbia. It is important to note that the median home value is used here, rather than the mean. While the mean home value may show a much higher number for Nevada (and other states), the mean may be skewed upward by homes that have extremely high values. Therefore, it is common to see the median value used in analyses such as the one in Table 2.

State	Median Home Value	State	Median Home Value
1) Hawaii	\$636,400	9) Maryland	\$325,400
2) D.C.	\$618,100	10) New York	\$325,000
3) California	\$538,500	11) Utah	\$305,400
4) Massachusetts	\$398,800	<b>12) Nevada</b>	<b>\$290,200</b>
5) Colorado	\$369,900	13) Virginia	\$282,800
6) Washington	\$366,800	14) Connecticut	\$279,700
7) New Jersey	\$343,500	15) Rhode Island	\$276,600
8) Oregon	\$336,700	43) Iowa	\$153,900

Source: American Community Survey, 2020, Table B25107

To get a sense of the extent to which Nevada homes are priced at very high levels, it is possible to examine the proportion of homes that are priced between \$500,000 and \$1 million. Using this metric, Nevada again ranks high in terms of home valuation in 2020. The table below shows that 11.3% of homes in Nevada were valued between \$500,000 and \$1 million in 2020. This places Nevada 14<sup>th</sup> out of the 50 states and the District of Columbia. The right-hand column presents the percent of homes that

<sup>1</sup> U.S. Bureau of Labor Statistics. <https://www.bls.gov/opub/ted/2022/producer-prices-for-goods-up-17-9-percent-from-june-2021-to-june-2022.htm>

<sup>2</sup> U.S. Bureau of Labor Statistics. <https://www.bls.gov/opub/ted/2022/consumer-prices-up-9-1-percent-over-the-year-ended-june-2022-largest-increase-in-40-years.htm>

<sup>3</sup> U.S. Bureau of Labor Statistics. [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)

fell into this valuation category in 2015. The table shows a considerable increase in Nevada since 2015, when only 4.5% of homes were valued in this range. It is notable that Nevada (and other Western states) experienced rapid growth in the percentage of high-value homes, in relation to many of the Eastern states on the list.

<b>Table 3. Percentage of Homes Valued between \$500,000 and \$1 million, 2015 to 2020</b>		
	% of Homes Valued from \$500k to \$1 million in 2020	% of Homes Valued from \$500k to \$1 million in 2015
1) Hawaii	49.2%	42.6%
2) District of Columbia	41.3%	34.1%
3) California	37.0%	26.9%
4) Massachusetts	27.8%	18.0%
5) Washington	24.0%	12.5%
6) Colorado	22.8%	10.5%
7) New York	22.5%	18.0%
8) New Jersey	20.9%	16.9%
9) Oregon	18.8%	8.8%
10) Virginia	18.0%	14.1%
11) Maryland	17.8%	14.8%
12) Utah	13.3%	5.9%
13) Connecticut	12.1%	11.8%
<b>14) Nevada</b>	<b>11.3%</b>	<b>4.5%</b>
15) Rhode Island	10.4%	7.5%
Source: American Community Survey, 2020, Table B25075		

### **Federal Rates for Public Defenders**

As noted, Nevada last set hourly rates for indigent service providers at \$100/hour for non-capital cases and \$125/hour for capital cases. At the time of this increase, the \$100/hour rate put Nevada ahead of the federal judiciary in potential rates paid to indigent defense providers. Since 2003, however, Nevada has fallen far behind the federal judiciary in this domain. As Table 4 indicates, the current maximum rate for federal public defenders is \$158/hour. This represents a 76% increase in the maximum hourly rate for public defenders since Nevada’s last rate increase. If the State of Nevada’s hourly rate had kept pace with federal increases, the current hourly rate would be \$176/hour for non-capital cases.

If services were performed between...	The maximum hourly rate is...
01/01/2022 to present	\$158
01/01/2021 through 12/31/2021	\$155
01/01/2020 through 12/31/2020	\$152
02/15/2019 through 12/31/2019	\$148
03/23/2018 through 02/14/2019	\$140
05/05/2017 through 03/22/2018	\$132
01/01/2016 through 05/04/2017	\$129
01/01/2015 through 12/31/2015	\$127
03/01/2014 through 12/31/2014	\$126
09/01/2013 through 02/28/2014	\$110
01/01/2010 through 08/31/2013	\$125
03/11/2009 through 12/31/2009	\$110
01/01/2008 through 03/10/2009	\$100
05/20/2007 through 12/31/2007	\$94
01/01/2006 through 05/19/2007	\$92
05/01/2002 through 12/31/2005	\$90
Source: <a href="https://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-2-ss-230-compensation-and-expenses#a230_16">https://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-2-ss-230-compensation-and-expenses#a230_16</a>	

It is important to note that while the federal judiciary does offer much higher hourly rates to contract public defenders, there are caps on the total sum of dollars that can be billed by attorneys for specific types of cases. It may be worthwhile to review those caps at the website contained in Table 3.

### **Potential Shortage of Attorneys**

In rural Nevada and other rural parts of the U.S., a shortage of attorneys occurring. While the shortage of attorneys in rural areas cannot be attributed to the pay and hourly rates received by indigent defense service providers, it must be recognized that the attorney shortage may be exacerbated by low rates of pay for attorneys working in the public domain. At the end of the day, any attorney shortage hampers the ability of the criminal justice system to carry out its functions. Competitive pay structures for indigent defense service providers (and other attorneys working in the criminal justice system) can help attract new attorneys to rural parts of the state.

To provide initial evidence regarding a potential shortage of attorneys in rural areas of the state, data from the American Bar Association (ABA) and the American Community Survey (ACS) were obtained. Specifically, a recent ABA report provided the number of attorneys per county throughout the U.S. in 2020. The ACS provides 5-year estimates on the total population of each county. Using these data sources, an attorney rate can be computed for each county. As Table 5 indicates that the rate of attorneys in rural areas of the state is much lower than in urban counties. Carson City has 6.26



attorneys per 1,000 residents; Washoe County has 3.56 attorneys per 1,000 residents; and Clark County has 2.73 attorneys per 1,000 residents. Most other rural counties lag far behind in the availability of attorneys for indigent defense, and other, work. Again, more competitive pay structures may entice some newer attorneys to reside and work in rural areas and provide critical public services, including serving as indigent service providers.

<b>Table 5. Rate of Attorneys in Nevada Counties</b>			
<b>County</b>	<b>Attorneys</b>	<b>Population</b>	<b>Attorneys per 1,000 Residents</b>
Carson City	346	55,244	6.26
Churchill	27	24,606	1.10
Clark	6,084	2,228,866	2.73
Douglas	101	48,486	2.08
Elko	92	52,537	1.75
Esmeralda	1	1,030	0.97
Eureka	2	1,839	1.09
Humboldt	23	16,834	1.37
Lander	4	5,565	0.72
Lincoln	6	5,177	1.16
Lyon	32	55,667	0.57
Mineral	3	4,487	0.67
Nye	31	45,514	0.68
Pershing	8	6,591	1.21
Storey	4	4,086	0.98
Washoe	1,654	464,182	3.56
White Pine	17	9,570	1.78
Sources: American Bar Association, Profile of the Legal Profession, 2020; U.S. Census Bureau, American Community Survey			