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STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578
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NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED REGULATIONS OF THE
NEVADA STATE BOARD ON INDIGENT DEFENSE SERVICES
AND WORKSHOP AGENDA

NOTICE IS HEREBY GIVEN that the Nevada State Board on Indigent Defense Services will hold a public workshop at **1:00 p.m. on Thursday, May 2, 2024, at the following locations:**

Date and Time: May 2, 2024, 1:00 pm

Physical Meeting Location: Legislative Building, Room 2135
401 South Carson Street
Carson City, Nevada

If you cannot attend the meeting, you can listen or view it live over the Internet. The address for the Nevada Legislature website is <http://www.leg.state.nv.us>. Click on the link "[View Events.](#)"

We are pleased to make reasonable accommodations for members of the public with a disability. If accommodations for the meeting are necessary, please notify us by email at accessibility@lcb.state.nv.us or by phone at (775) 684-6903 as soon as possible.

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The purpose of the workshop is to solicit comments from interested persons through videoconference, teleconference, and in-person on the general topic(s) that may be addressed in the proposed regulation (NAC 180).

Below is an agenda of all items scheduled to be considered. Live public comment and written public comment will be taken as designated in the workshop agenda. Public comment may be limited to three minutes per person. Members of the public are encouraged to submit written comments for the record, which must be received no later than **May 1, 2024**. Written comments must be received by email: didscontact@dids.nv.gov or by mail: Cindy Atanazio, Executive Assistant, Department of Indigent Defense Services, 896 W. Nye Lane, Suite 202, Carson City, Nevada 89703.

A copy of this notice and the regulations to be discussed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulations to be adopted will be available at the Department of Indigent Defense Services, 896 W. Nye Lane, Suite 202, Carson City, Nevada 89703.

This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administration Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

A copy of all materials relating to the proposal may be obtained from the Department's website at https://dids.nv.gov/Meetings/2024/2024_Meetings/ or by contacting Cindy Atanazio, Executive Assistant, Department of Indigent Defense Services, 896 W. Nye Lane, Suite 202, Carson City, Nevada 89703. A reasonable fee for copying may be charged. Members of the public who would like additional information about the proposed regulation may contact Cindy Atanazio, at the above-mentioned address, by calling (775) 687-8490, or via e-mail to didscontact@dids.nv.gov.

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WORKSHOP AGENDA

1. Open Workshop

2. Public Comment.

Public testimony under this item may be presented in person or by phone or written comment.

Because of time considerations, each person offering testimony during this period for public comment will be limited to not more than 2 minutes.

A person may also have comments added to the minutes of the meeting by submitting them in writing either in addition to testifying or in lieu of testifying. Written comments may be submitted by email to didscontact@dids.nv.gov or by mail to the Department of Indigent Defense Services, 896 W. Nye Lane, Suite 202, Carson City, Nevada 89703.

To dial in to provide telephonic testimony during this period of public comment in the meeting any time after 12:30 p.m. on May 2, 2024:

Dial (888) 475-4499.

When prompted to provide the Meeting ID, please enter 845 2081 4979 then press #. When prompted for a Participant ID, please press #.

To resolve any issues related to dialing in to provide public comment for this meeting, please call (775) 684-6990.

3. Presentation and Discussion of Proposed Regulation. (For Possible Action)

The proposed amended regulation conforms chapter 180 of the NAC to existing law by the Board on Indigent Defense Services establishing requirements for specific continuing education and experience for attorneys who provide indigent defense services in death penalty cases.

4. Public Comment.

5. Close Workshop.

Note: Any agenda item may be taken out of order; items may be combined for consideration by the public body; items may be pulled or removed from the agenda at any time; and, discussion relating to an item may be delayed or continued at any time. The workshop presenter will indicate when live public comment will be taken and, within his/her discretion, may allow for public comment on individual agenda items.

The notice of workshop and the text of the proposed regulations has been posted at the following locations:

1. Posted at the Department's office: Department of Indigent Defense Services, 896 W. Nye, Suite 202, Carson City, NV 89703.
2. Posted at the in-person physical location: Legislative Building, 401 S. Carson Street, Carson City, NV 89701.
3. By email to all persons on the Board on Indigent Defense Service's email list.
4. By email for posting by the Nevada State Library, Archives and Public Records Administrator.
5. By email for posting by the Nevada Legislature.
6. Posted online to the Nevada Legislature website: <https://leg.state.nv.us/>.
7. Posted online to the State of Nevada Public Notice website: <https://notice.nv.gov>.
8. Posted online to the Department's website: <http://dids.nv.gov>

Dated this 18th day of April, 2024.



Marcie Ryba
Executive Director

**Proposed Regulations of the Board on Indigent Defense Services
NAC 180**

Sec. 29. The provisions of section ~~[30]s 28 to 37, inclusive,~~ of this regulation appl[ies]y only to the provision of indigent defense services in counties whose population is less than 100,000.

Sec. 34. An attorney who seeks to provide indigent defense services to a person charged with or convicted of a category A felony in which the death penalty is or may be sought or has been imposed ~~must meet the criteria set forth in Supreme Court Rule 250.~~ *[must meet the following requirements:*

1. **Lead Trial Counsel:** *An attorney appointed as lead counsel at the trial level at a minimum must have:*
 - a. *Acted as lead defense counsel in five felony trials, including one murder trial, tried to completion (i.e., to a verdict or a hung jury);*
 - b. *Acted as defense co-counsel in at least one death penalty trial tried to completion;*
 - c. *Obtained a license or permission to practice in Nevada; and*
 - d. *Attended at least one comprehensive program in the defense of capital cases within the past two years; or*
 - e. *As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth above, have a significant record of quality representation and have the ability to handle complex felony trial matters.*
2. **Trial Counsel:** *An attorney appointed as counsel at trial that is not serving as lead counsel at a minimum must:*
 - a. *Have qualified under Section 33 to handle non-capital Category A felony or a category B felony for which the maximum penalty is more than 10 years;*
 - b. *Obtained a license or permission to practice in Nevada; and*
 - c. *Attended at least one comprehensive program in the defense of capital cases within the past two years; or*
 - d. *As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth above, have a significant record of quality representation and have the ability to handle complex felony trial matters.*
3. **Lead Appellate Counsel:** *An attorney appointed to serve as lead counsel on direct appeal at a minimum must have:*
 - a. *Acted as counsel in at least one capital direct appeal or post-conviction appeal;*
 - b. *Obtained a license or permission to practice in Nevada;*
 - c. *Attended at least one comprehensive program in the defense of capital cases within the past two years; or*
 - d. *As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth above, have a significant*

record of quality representation and have the ability to handle complex felony appellate matters.

4. **Appellate Counsel:** *An attorney appointed to serve as counsel on a direct appeal, that is not serving as lead counsel, at a minimum must have:*
 - a. *Participated in two direct appeals or two post-conviction appeals arising from felony convictions;*
 - b. *Obtained a license or permission to practice in Nevada; and*
 - c. *Attended at least one comprehensive program in the defense of capital cases within the past two years; or*
 - d. *As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth above, have a significant record of quality representation and have the ability to handle complex felony appellate matters.*
5. *Attorneys seeking to remain on the appointment roster must attend and successfully complete, at least every 2 years, a specialized training program that focuses on the defense of death penalty cases.*
6. *A comprehensive program in the defense of capital cases shall include, but is not limited to, presentations and trainings in the following areas:*
 - a. *Relevant state, federal, and international law;*
 - b. *Pleading and motion practice;*
 - c. *Pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;*
 - d. *Jury selection;*
 - e. *Trial preparation and presentation, including the use of experts;*
 - f. *Ethical considerations particular to capital defense representation;*
 - g. *Preservation of the record and of issues for post-conviction review;*
 - h. *Counsel relationship with the client and his family;*
 - i. *Post-conviction litigation in state and federal courts; and*
 - j. *The presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.]*



Department of Indigent Defense Services
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**SMALL BUSINESS IMPACT STATEMENT REGARDING PROPOSED
AMENDMENT OF NAC 180 REGULATIONS**

1. A description of the manner in which comment was solicited from affected small business, a summary of their responses, and explanation of the manner in which other interested persons may obtain a copy of the summary:

The Department of Indigent Defense Services requested input from private attorneys, law firms, and related businesses via an e-mailed survey link.

The survey asked for input on economic effects on small businesses with space to elaborate on responses.

The Department received 7 completed surveys.

2. The manner in which the analysis was conducted:

The Department has reviewed the 7 responses, which are provided in substantive part as follows:

1. The repeal of regulations contained in NAC 180 would not affect their small business.
2. Changing the regulation may make it more difficult to obtain qualifications to represent indigent persons in capital cases.

The Department has not received enough data to determine in a statistically significant way whether a direct or significant economic burden would be imposed upon small businesses.

3. The estimated economic effect of the proposed regulation on the small business which it is to regulate, including, without limitation both adverse and beneficial effects; and both direct and indirect effects.

There are no reasonably foreseen potential economic impacts to small business.

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- 4. A description of the methods that the agency considered to reduce the impact of the proposed regulations on small businesses and a statement regarding whether the agency actually used any of those methods.**

The agency has not utilized any impact-reduction methods due to the limited data available and lack of foreseen potential economic impacts.

- 5. The estimated cost to the agency for the enforcement of the proposed regulation.**

The estimated cost to the agency is unknown at this time.

- 6. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect, and the manner in which the money will be used.**

The proposed regulatory change does not involve an increase to existing fees or create any new fees.

- 7. If the Proposed Regulation Included Provisions Which Duplicate or Are More Stringent Than Federal, State or Local Standards Regulating the Same Activity, an Explanation of Why Such Duplicative or More Stringent Provisions Are Necessary.**

The proposed provisions are similar to, but do not duplicate, Supreme Court Rule 250. NRS 180.320(2)(d) compels the Board on Indigent Defense Services to “Adopt regulations establishing standards for the provision of indigent defense services, including, without limitation: . . . (1) Establishing requirements for specific continuing education and experience for attorneys who provide indigent defense services.” This mandate shows the clear intent of the legislature to empower the Board to implement such standards to the exclusion of other agencies or branch of government, including the Supreme Court of Nevada.

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8. The Reasons For the Conclusions of the Agency Regarding the Impact of a Regulation on Small Businesses.

As indicated above, there was not enough data collected from small businesses to come to a conclusion that the proposed regulatory changes would impose a direct and significant economic burden upon small businesses.

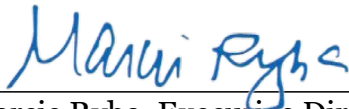
a. Does the Proposed Regulation Impose a Direct and Significant Economic Burden Upon Small Businesses?

The proposed regulations do not impose a direct or significant economic burden upon small businesses.

b. Will the Proposed Regulation Directly Restrict the Formation, Operation or Expansion of a Small Business?

The proposed regulations will not directly restrict the formation, operation or expansion of a small business.

Signed and effective this 26th day of March, 2024.



Marcie Ryba, Executive Director
Nevada State Department of Indigent Defense Services