



# **PLAN FOR THE PROVISION OF INDIGENT DEFENSE SERVICES**

## **Fiscal Year 2024-2025**

### **I. PLAN OBJECTIVE**

The objective of this plan is to ensure competent, zealous legal representation for indigent persons eligible for the services of court-appointed counsel. To that end, this plan establishes guidelines and procedures for, among other things, the appointment, duties, compensation, and oversight of the attorneys with whom Lyon County contracts to serve as its public defenders.

### **II. DEFINITIONS**

- A. Appointing Authority: The Judge, Justice, or Master presiding over a case arising in a court of law within Lyon County.
- B. Case-Related Expenses: Expenses, other than attorneys' fees, reasonably necessary to provide an appropriate defense. Such expenses may include, without limitation, fees for investigators, expert witnesses, forensic services, photocopying, and transcription.
- C. Department: The Nevada Department of Indigent Defense Services.
- D. Eligible Client: An indigent person whom an Appointing Authority has determined to be eligible for the services of a public defender.
- E. Fiscal Year: July 1<sup>st</sup> through June 30<sup>th</sup>.
- F. Qualified Attorney: An attorney approved by the Department to provide indigent defense services within certain categories of cases as set forth in the Regulations.
- G. Regulations: The Permanent Regulations of the Board of Indigent Defense Services.

### **III. APPOINTMENT OF PUBLIC DEFENDERS**

Lyon County shall appoint only Qualified Attorneys as public defenders. Lyon County may contract with as many Qualified Attorneys as necessary to ensure adequate representation for all Eligible Clients. All contracts with Qualified Attorneys shall be consistent with this plan and the Regulations, and shall be approved by the Lyon County Board of Commissioners.

#### **A. Selection Process**

In seeking out Qualified Attorneys to serve as public defenders, Lyon County shall use a selection committee composed of the County Manager and the Comptroller. The selection committee may, through a formal request for proposals or through other means, request information from Qualified Attorneys regarding their experience, workload capacity, fee structure,

and any other material information. The selection committee shall weigh these and other relevant factors (including those set forth under Sec. 22(3) of the Regulations) in identifying the Qualified Attorneys with whom it would be in Lyon County's best interest to contract, and the terms of such contracts. The selection committee may utilize outside counsel for assistance during any portion of the selection process, and during the drafting and negotiation of contracts with Qualified Attorneys. In addition, the selection committee may seek input from the Department. The selection committee shall present all proposed contracts to the Board of County Commissioners for approval. No contract shall be effective unless and until it is approved by the Board of County Commissioners.

Any Qualified Attorneys interested in consideration by the selection committee are encouraged to contact the Lyon County Manager.

#### **B. Compensation**

The terms of compensation shall be set forth in each Qualified Attorney's approved contract. The compensation shall reflect the Qualified Attorneys' experience, competency, credentials, and amount of work performed. Compensation may be in the form of flat fees, piece rates, hourly rates, or any combination thereof, provided that the compensation is ultimately reasonable and consistent with the Regulations.

#### **C. Independent Contractors; Private Practice of Law**

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be independent contractors, not employees of Lyon County. Qualified Attorneys may engage in the private practice of law outside the scope of their approved contracts provided that: (i) such practice does not conflict with obligations to Lyon County under the Qualified Attorney's approved contract; (ii) such practice does not conflict with the Qualified Attorney's ability to provide zealous, competent representation to Eligible Clients; and (iii) the Qualified Attorney agrees not to represent clients in any lawsuits against Lyon County, its officers, employees, or agents, or entities in which the Board of County Commissioners act as a governing body.

### **IV. ELIGIBLE CLIENTS**

Consistent with the Regulations and applicable law, the Appointing Authority shall be responsible for determining whether a person is indigent and is eligible for the services of a public defender in the following categories of cases:

1. Misdemeanor Cases: A case in which the highest charge is a misdemeanor.
2. Category B, C, D, or E Felony or Gross Misdemeanor Cases: A case in which the highest charge is a gross misdemeanor or a Category B, C, D, or E felony for which the maximum penalty is ten (10) or fewer years imprisonment.

3. Category B Felony Cases (10+ year maximum): A case in which the highest charge is a Category B felony for which the maximum penalty is greater than ten (10) years imprisonment.
4. Non-Capital Category A Cases: A case in which the highest charge is a non-capital Category A felony.
5. Capital Cases: A case in which the highest charge is a capital Category A felony.
6. Juvenile Proceedings: A case in which a juvenile is alleged to be delinquent or need of supervision.
7. Appeals: Any appeal of an interlocutory adjudication or Final Adjudication in a Case to the Third Judicial District or the Nevada Supreme Court.
8. Other Cases: Any other case in which the assignment of court-appointed counsel is required or permitted by law.

The Appointing Authority shall make indigence determinations in the above categories of cases in accordance with applicable law. A Pretrial Services Officer may be utilized to assist with screening for indigence. The Pretrial Services Officer shall use the approved screening form. Such screening shall occur within forty eight (48) hours of arrest. Indigence determinations are ultimately the responsibility of the Appointing Authority.

## **V. ASSIGNMENT OF QUALIFIED ATTORNEYS TO ELIGIBLE CLIENTS**

Lyon County plans on contracting with three primary public defender firms that shall serve as Lyon County's primary public defenders and conflict public defenders for adult cases. They will also serve as conflict counsel in juvenile cases. One firm will be assigned to the Fernley Justice Court and the Fernley Municipal Court as the primary public defender. Another firm will be assigned to the Dayton Justice Court and the Walker River Justice Court as their primary public defender. A third firm will serve as the primary public defender for Drug Court, juvenile cases, and the Yerington Municipal Court. All firms will be responsible for inputting applicable information into the Department's case management system, including hours and conflicts.

These three contracts will handle all eligible clients arising in all municipal, justice, and district courts within Lyon County except:

1. In the event that a firm has a conflict of interest or otherwise cannot represent all parties in a matter in accordance with the Nevada Rules of Professional Conduct;
2. As lead counsel in a capital case.

In the event that a firm has a conflict of interest or otherwise cannot represent all parties in a matter, a separate Qualified Attorney with whom Lyon County has an approved contract shall be assigned. The procedure for assignment is set forth below:

The firm primarily representing the Dayton Justice Court jurisdiction will be the primary conflict counsel for the Canal Township Justice Court and conflict Juvenile cases in the Dayton Justice Court jurisdiction. The firm primarily representing the Canal Township Justice Court jurisdiction will be the primary conflict counsel for the Dayton Justice Court jurisdiction and Juvenile cases in the Canal Township Justice Court jurisdiction and secondary conflict counsel for the Walker River Justice Court. The firm primarily representing the Walker River Justice Court jurisdiction will be the primary conflict counsel for jurisdiction for Juvenile cases in the Walker River Township Justice Court jurisdiction. The firm primarily representing Drug Court, juvenile cases, and the Yerington Municipal Court will serve as primary conflict counsel for the Walker River Justice Court. Lyon County may change primary and secondary conflicts for certain cases based on complexity so that the workloads between the primary public defender firms are more equitable. The primary and secondary conflicts may be assigned by the courts administratively without notification to the Department.

For all other conflicts, the assignment will be as follows:

1. A firm shall provide immediate notice of its inability to represent Eligible Client(s) to the Department by email at [didscontact@dids.nv.gov](mailto:didscontact@dids.nv.gov). the firm shall make this notification as soon as it determines that it intends to file a notice of conflict or a motion to withdraw, as applicable. The notification shall include the following information (if available): charging document, probable cause sheet or declaration, and the date and location of the next scheduled court appearance.
2. Upon receipt of the above notification, the Department shall select other Qualified Attorney(s) for assignment, starting with the three primary defender firms and then proceeding to the panel of Qualified Attorneys with whom Lyon County has an approved contract. The Department shall otherwise have discretion to make assignments on any legitimate basis, including, without limitation, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from Eligible Clients, feedback from Lyon County officials, and capacity to take on work.
3. A Qualified Attorney contacted by the Department for an assignment may accept or reject the assignment. If the Qualified Attorney (or staff duly authorized to accept assignments on the Qualified Attorney's behalf) is not available during normal business hours when contacted by the Department, the assignment shall be deemed rejected. The Department shall contact other Qualified Attorneys until it obtains acceptance from a sufficient number of Qualified Attorneys to represent all Eligible Clients.<sup>1</sup>

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<sup>1</sup> Nothing herein shall preclude Lyon County from entering into additional contracts to add more Qualified Attorneys to the panel after the effective date of this plan. In addition, nothing herein shall preclude the Department from exercising its authority to appoint counsel outside the panel pursuant to NRS 7.115 et seq. in the event there are not a sufficient number of Qualified Attorneys on the panel to accept assignments to represent all Eligible Clients.

4. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Department shall provide prompt notice and a proposed order confirming selection of counsel to the Appointing Authority—i.e., the Judge, Justice, or Master presiding over the court in which the Eligible Client's charges are pending.

In the event of a capital case, Lyon County shall retain a Qualified Attorney authorized to serve as lead counsel under Supreme Court Rule 250 and shall pay reasonable compensation for such services. The primary public defender firms and/or other Qualified Attorneys may be assigned as co-counsel consistent with the terms of their approved contracts.

## **VI. DUTIES OF QUALIFIED ATTORNEYS**

### **A. Standards of Performance**

Qualified Attorneys providing services to Eligible Clients within Lyon County shall be responsible for providing such services in a professional, skilled manner. They shall comply with all applicable laws, regulations, Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2008 Nevada Supreme Court Order in Administrative Docket 411, or the same as may be amended.

### **B. Continuity in Representation**

Qualified Attorneys providing services to Eligible Clients within Lyon County shall ensure, to the extent practicable, consistency in representation such that the same attorney represents a defendant through every stage of the case; provided, however, that attorneys may delegate appropriate administrative tasks to support staff, or may assign more than one (1) attorney to represent an Eligible Client as necessary provided it would not prejudice the rights or defense of the Eligible Client. Courts may also group all of a defendant's cases with a single attorney to enable continuity in representation.

### **C. Workload Standard**

The workload of each Qualified Attorney providing services to Eligible Clients within Lyon County must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence, and/or representation of clients. The maximum workload guidelines as determined by the Department are incorporated herein by reference and shall be followed to the greatest extent practicable. To the extent required by the Department's Board, Qualified Attorneys providing indigent defense services under this plan shall maintain caseload data and track time spent providing indigent defense services in accordance with Sections 44 and 45 of the Regulations. The County will require the four primary public defender firms to employ enough attorneys and support staff to meet caseload standards based on the workload standards. If the four primary public defenders are unable to hire enough attorneys due to a lack of qualified applicants, then the County will work with the Department on any other viable options for meeting the workload standards.

Lyon County plans to meet the workload standards by November 1, 2024 as follows: Each of the three primary public defender firms for adults will be required to have three attorneys and two support staff. The primary public defender firm for juveniles will be required to have one attorney. Additional conflict contracts are expected to supply two attorneys towards the workload standards. Investigations will continue to be contracted outside the attorney contracts in sufficient numbers to meet the DIDS requirements as well. Since the proposed three primary attorney system for adult cases is a new development, caseloads by firm will continue to be evaluated and contracts adjusted to meet proper staffing numbers based on the caseload analysis.

#### **D. Conflicts of Interest**

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be required to timely screen all case assignments for conflicts of interest. In the event of a conflict of interest, the Qualified Attorney shall file an appropriate motion or, as applicable, a notice of conflict with the Appointing Authority. Unless leave to withdraw is withheld by the Appointing Authority, the Qualified Attorney shall ensure prompt transfer of the Eligible Client's file to the Eligible Client's new attorney.

#### **E. Training**

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be required to comply with the training and continuing education requirements of the Department.

#### **F. Other Responsibilities**

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be responsible for ensuring:

1. Clients do not waive any substantive rights or plead guilty at the initial appearance, unless doing so is the client's best interest.
2. Clients receive adequate and frequent communication from their attorney. As a guideline, Qualified Attorneys shall, where practicable, communicate with clients seven (7) days following the assignment of the case and every thirty (30) days thereafter unless there are no significant updates in the client's matter.
3. Clients are notified of and encouraged to participate in client surveys authorized by the Department.
4. Clients are appropriately notified of their right to utilize the Department's Complaint and Recommendation process.
5. Attorney-client privilege and client confidentiality are maintained.

### **G. Initial In-Custody Appearances**

The County will establish a rotating coverage schedule for the three primary public defender firms so that Representational Services are provided for all eligible adult clients who are in custody and require a bail hearing. Insofar as any firm has a conflict of interest precluding the firm from continuing to provide Representational Services in connection with a substantive defense of the charges, that firm shall limit the scope of its representation. It shall only advocate for the Eligible Client's best interests at the bail hearing and shall advise the Eligible Client of the limited scope of such representation.

Notwithstanding any other provision herein, nothing shall preclude any firm from declining to represent an Eligible Client, even for the limited purpose described in the preceding paragraph, if it determines it cannot do so in a manner consistent with the Nevada Rules of Professional Conduct. In the event this occurs, the firm shall immediately notify the Department so the Department can assign alternative counsel from among the panel of Qualified Attorneys with whom Lyon County has an approved contract.

In accordance with NRS 178, all bail hearings shall occur within forty eight (48) hours after the Eligible Client has been taken into custody, unless continued for good cause.

## **VII. ACCOMMODATIONS FOR CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATIONS**

The Lyon County Sheriff's Office offers the opportunity for Qualified Attorneys to meet confidentially with Eligible Clients in person or via video conference. Qualified Attorneys seeking a confidential meeting are encouraged to contact Lyon County Sheriff's Office staff at 775-463-6600 at least twenty four (24) hours in advance. The Lyon County Sheriff's Office will make every reasonable effort to ensure a Qualified Attorney is able to meet with an Eligible Client at the desired time. Absent twenty four (24) hours' notice, the Lyon County Sheriff's Office will still make every reasonable effort to arrange a meeting as requested by the Qualified Attorney, but Qualified Attorneys shall, for their part, demonstrate reasonable flexibility and mutual cooperation in such instances. Qualified Attorneys shall be responsible for compliance with all safety protocols and all reasonable instructions of jail personnel.

Questions or concerns with respect to accommodations for confidential meetings with Eligible Clients may, if not satisfactorily addressed by staff, be directed to the Lieutenant in charge of the jail.

## **VIII. INVOICING AND PAYMENT**

### **A. Attorneys' Fees**

Qualified Attorneys providing services to Eligible Clients within Lyon County in exchange for an hourly rate shall submit monthly invoices to the Department. Such invoices shall be submitted via LegalServer (or any other platform the Department may subsequently choose to utilize) no later than ten (10) days after the end of the month in which the services were rendered.

Time entries shall be rounded to the nearest one-tenth (1/10<sup>th</sup>) of an hour, describing with specificity the work performed and identifying the attorney who performed it.

The Department shall approve for payment all reasonable attorney's fees. In reviewing for reasonableness, the Department may consider factors such as: (i) average case times as determined by workload analysis; (ii) time and skill required; (iii) complexity of the case; and (iv) experience and ability of the Qualified Attorney(s). The Department may request additional information or explanation where necessary. In the event the Department denies or modifies a request for attorneys' fees, it shall provide an explanation to the Qualified Attorney, with a copy to the Lyon County Manager, as to why the denied portion was not reasonable. Such denials shall be subject to judicial review pursuant to NRS 7.135.

Payment for all approved attorneys' fees shall be issued by the Lyon County Comptroller's Office. The Department shall notify the Comptroller's Office of all approved requests for attorneys' fees, attaching a copy of the invoice and any backup. The Comptroller's Office shall issue payment within ten (10) days of receipt.

## **B. Case-Related Expenses**

Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:

1. Pre-Authorization: Case-Related Expenses expected to exceed two thousand five hundred dollars (\$2,500) shall be submitted to the Department for pre-authorization before they are incurred. The Qualified Attorney shall submit the request for pre-authorization to the Department by email at [didscontact@dids.nv.gov](mailto:didscontact@dids.nv.gov). The request shall include an explanation of why the expense is reasonably necessary to provide Representational Services.
2. Reasonableness Review: All Case-Related Expenses, whether or not they are subject to pre-authorization, are subject to the Department's review for reasonableness. Invoices for Case-Related Expenses shall be submitted to the Department no later than sixty (60) days following the termination of the representation. Any requests not timely submitted shall be waived. The Department shall approve all reasonable and necessary Requests for Case-Related Expenses, and shall notify the Lyon County Comptroller's Office of all approved expenses and provide a copy of the invoice.
3. Payment: The Lyon County Comptroller's Office shall issue payment for all approved Case-Related Expenses within ten (10) days of receipt of notice of the Department's approval and a copy of the invoice.



## **IX. REIMBURSEMENT FOR PAYMENTS EXCEEDING THE MAXIMUM COUNTY CONTRIBUTION**

Pursuant to NRS 180.320(3), the Department's Board has promulgated under Section 16 of its Regulations a formula for establishing the maximum amount a county is required to pay for the provision of indigent defense services in a Fiscal Year. Lyon County shall not pay any amount in excess of that formula in any Fiscal Year.

Pursuant to Sections 16 - 19 of the Regulations, Lyon County shall be permitted to obtain reimbursement for costs associated with the provision of indigent defense services under this plan to the extent they exceed the maximum contribution in the preceding paragraph. Lyon County shall file financial status reports with the Department in a manner consistent with the Regulations, using the forms prescribed by the Department. The Lyon County Board of Commissioners hereby designates the Lyon County Comptroller as its designee to submit such reports to the Department. To the extent the financial status reports reflect costs in excess of the maximum contribution. In the event reimbursable costs exceed this amount, nothing herein shall be construed to preclude Lyon County from seeking additional reimbursement pursuant to NRS 353.266, NRS 180.450, or as otherwise permitted by law.

## **X. EFFECTIVE DATE; MODIFICATION**

This plan is effective November 1, 2024 and shall remain in effect until June 30, 2025. This plan may be modified by formal action of the Board of County Commissioners.

## **XI. PLAN ADMINISTRATOR AND CONTACTS**

The County Manager shall be the administrator of this plan and the contracts for the provision of indigent defense services. The County Manager shall report material breaches or other significant matters to the Board of County Commissioners. The Board of County Commissioners may take any lawful, situationally-appropriate action with respect to any contract.

Questions about the administration of this plan may be directed to the Lyon County Manager.