

Fifth Report of the Monitor
Davis v. State, Case No. 170C002271B
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Introduction

This Monitor's Report to the First Judicial District Court of Carson City summarizes the Defendants' compliance with the terms of the *Davis v. State* Stipulated Consent Judgment (hereinafter "the Judgment") from May 1, 2022, to July 10, 2022.¹

Summary Points

The Nevada Department of Indigent Defense (hereinafter "the Department") continues to take significant steps toward compliance with the Judgment. The Department hosted a statewide training conference, conducted two oversight visits, coordinated additional Delphi panels for the workload study, requested and secured reimbursement for county expenses above the counties' maximum contribution, worked on several bill draft requests related to the Judgment's terms, approved updated county plans and budgets, and worked on data compliance, the wage/salary survey, and the oversight plan.

At the same time, this Report notes some challenges to compliance, including difficulty overseeing the contracting process between counties and attorneys providing indigent defense, and the Department's limited staff and budget to conduct oversight of the counties and annual review of the attorneys.

Achievements

Among the Department's compliance-related achievements are the following:

- **Completion of the Department's Annual Report**

The Department completed its annual report, due by July 1 of each year.²

- **Annual training**

The Department hosted a two-day statewide indigent defense training conference on May 26-27 in Las Vegas. Thirteen attorneys who provide indigent defense in the *Davis* counties attended the training.

- **Oversight visits**

The Executive and Deputy Directors traveled to Churchill County for its second oversight visit to that county on May 20, 2022.³ The Executive and Deputy Directors also conducted an

¹ The fourth report was delayed awaiting workload data from April 15, 2022, to May 12, 2022.

² The annual report is posted on the Department's homepage at <https://dids.nv.gov>.

³ The Department's Oversight Report for Churchill County is attached to this Report as Appendix G.

oversight visit for Lincoln County, where they visited two courthouses and met with the justices of the peace and the contract public defender.⁴

- **Progress on wage/salary survey**

The Department worked with Dr. Mitch Herian of Soval Solutions on two aspects of the wage/salary analysis:

1. An analysis of how to achieve salary parity between the Nevada Attorney General's Office and the Department of Indigent Defense Services/State Public Defender,⁵ and
2. A survey on compensation, expenses, and overhead for rural attorneys to complete. The survey should be ready to distribute by the end of July.

- **Updated County Plans and Budgets**

The Department worked directly with counties to update their fiscal year 2023 plans for indigent defense and to assist the counties in developing and submitting accurate quarterly budgets for indigent defense—an essential step toward reimbursement.

- **Reimbursement Process**

The Department secured from the Interim Finance Committee \$308,827 to reimburse Eureka, Mineral, Lyon, and White Pine counties for their expenses over their maximum contributions.⁶

- **Delphi Panels**

The National Center for State Courts (NCSC) conducted three additional Delphi panels for the workload study.

- **Bill Draft Requests**

The Department is working on several bill draft requests (BDRs) for the 2023 legislative session, including:

1. A provision to protect attorney-client privilege in the reimbursement and compensation process with the Department.
2. A provision that modifies NRS 260.070 to permit counties to submit their annual reports by May 31 instead of May 1.

⁴ The Department's Oversight Report for Lincoln County is attached to this Report as Appendix H.

⁵ Soval Solution, LLC's "Compensation Analysis and Recommendations for Nevada Department of Indigent Defense Services: Final Report" is attached to this Report as Appendix E.

⁶ The Department also applied for the counties of Douglas, Lincoln, and Nye to be reimbursed for case-related expenses in the amount of \$44,092. However, the Interim Finance Committee is taking the position that these expenses will not be reimbursed except in a county that exceeds its maximum contribution.

3. Changing the amount of time that an attorney has to request compensation under NRS 7.145 from 60 to 90 days.
4. Requesting that compensation for representing people in prison cases pursuant to NRS 212.070 be paid through the State Public Defender rather than through county funds.
5. A provision that creates more parity between the salaries at the Office of the Attorney General, the Department of Indigent Defense, and the State Public Defender.⁷

Areas of Concern

The areas of concern discussed in this Report are not failures of the Department but represent obstacles posed by budget limitations or external factors outside the Department's direct control. The Department is actively working to resolve these issues but is limited by fiscal and other external factors.

- **Department Budget**

The Department's limited budget presents serious challenges to complying with the Judgment. Some of the required activities require substantial resources and staff, such as in-person oversight visits to all counties, annual review of all attorneys providing indigent defense, and support, training and mentorship for attorneys. The Department is currently developing its budget.

- **New Contracts**

Many counties entered into new contracts with attorneys providing indigent defense. The contracts vary in language and in responsiveness to the Department's requests for amended contract language, and approval before implementation.

The Department asked several counties to add addendums to their existing contracts to comply with the Judgment, regulations, and the Department's model contract. To date, several counties have not provided those addendums. The Department, however, anticipates that it will be able to work with the counties to ensure that all contracts contain the provisions required by the Judgment.

⁷ The bill draft requests will be discussed in the next Monitor's Report.

Compliance to Date

The Judgment creates three categories of obligation:

- (I) Removing economic disincentives and ensuring independence
- (II) Setting and ensuring performance standards
- (III) Uniform data collection

This Report uses this tripartite structure to analyze compliance.

I. Removing Financial Disincentives & Ensuring Independence of the Defense

Four developments related to finances and independence occurred during the last quarter.

- A. The Department reviewed new contracts (commencing July 1, 2022) between attorneys and counties.
- B. The Department and data analyst worked on a wage/salary survey, and on comparing salaries between state public defender agencies and the Nevada Attorney General's Office.
- C. The Department secured reimbursement for county expenses over their maximum contribution through the Interim Finance Committee
- D. The counties' submitted budgets and plans for provision of indigent defense for fiscal year 2023.

A. Standardized Contracting

The Judgment contains several provisions regarding contracts between the county and the attorney providing indigent defense services. The table below summarizes the Judgment provisions on the left, and compliance on the right.

Provision in Consent Judgment ⁸	Compliance
The state "shall establish a standard contract" modeled on the NLADA model contract, amended as necessary "given local needs" and	The Department created such a standard contract, as analyzed in the Monitor's first report (July 1, 2021). ¹⁰

⁸ Judgment, 11-12, 14, 17.

¹⁰ The Department's model contract is attached to this Report as Appendix A.

for consistency with AB81 and its implementing regulations. ⁹	
<u>Approval</u> : All new contracts must be approved by the Executive Director “prior to execution.” ¹¹	It appears that some contracts have gone into effect before the Department had the opportunity to review them. The Regulations do not require the Department’s prior approval.
<u>Compensation</u> must be set at a reasonable hourly rate, and be comparable to the compensation of local prosecutors, taking into account overhead and expenses, including costs related to significant attorney travel time. ¹²	Compliance with this provision awaits the results of the Department’s wage/salary survey.
<u>Excess work</u> : Contracts must provide funding mechanisms for excess, unusual, or complex cases that does not require judicial approval. ¹³	This provision is present in finalized, approved county contracts and plans.
<u>Case-related expenses</u> : Contracts must separately fund investigative, expert, appellate, and other litigation support expenses. ¹⁴	This provision is present in finalized, approved county contracts and plans.
<u>Workload</u> : Contracts must specify anticipated workload and limits. ¹⁵	Compliance with this provision awaits results of the NCSC study.
<u>First appearance advocacy</u> : The “model contract” must include provisions addressing first appearances, specifically that the attorney should make “all reasonable efforts to meet with the client, in a confidential space, prior to first appearance;” argue for the client’s release; and advise client not to waive substantive rights or plead guilty at arraignment. ¹⁶	These provisions are in the model contract. County contracts vary regarding whether these provisions are included.
<u>Client communication</u> : The Department “shall include in the model contract referenced above	These provisions are in the model contract.

⁹ Judgment, 11.

¹¹ Judgment, 12.

¹² Judgment, 11.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Judgment, 14.

a provision requiring that indigent defense providers make all reasonable efforts to meet with each client within the first seven days following the assignment of the case, as well as every 30 days thereafter, unless there are no significant updates in the client's case." ¹⁷	County contracts vary regarding whether these provisions are included.
<u>Performance standards</u> : The contract must specify performance requirements.	Contracts vary in the specificity of performance requirements.

Discussion

Given that the workload and reasonable compensation provisions cannot be included until the completion of the workload and wage/salary surveys, the most pressing compliance issues are (1) counties failing to submit contracts for Department approval prior to execution, and (2) uneven inclusion of terms related to performance standards and specific lawyering activities, like client communication and first appearance advocacy.

Regarding prior approval, the Department requested and received draft contracts from several counties prior to their execution. Noting deficiencies, the Department requested modifications or addendums, and is still awaiting a response on some of those requests. It would perhaps have been easier if the counties had adopted the Department's standard contract as a template. But counties were resistant to the idea of using a template, preferring to create their own contracts that contain the terms required by the Regulations.

The Regulations contain several clear requirements for the contracts. Section 40 of the regulations requires that contracts between counties and attorneys clearly set forth the "category of cases in which each attorney subject to the contract is to provide services," the "minimum qualifications for each attorney subject to the contract," workload requirements, the method of compensating for case-related expenses, the requirement that conflicts must be identified and corrected, and that compensation be set through a reasonable hourly rate comparable to that of local prosecutors, taking into account overhead.

With regard to performance specifications, Section 27.2 states that "[a]ny plan or contract for the provision of indigent defense services" must require the attorney representing the defendant to: (a) Advise each client not to waive any substantive rights or plead guilty at the initial appearance unless doing otherwise is in the best interest of the client; and (b) Make all reasonable efforts to meet with each client within the first 7 days following the assignment of the case and, unless there are no significant updates in the client's case, every 30 days thereafter." Section 40 requires that the contracts state that "each attorney provide legal representation to all clients in a professional, skilled manner consistent with all applicable laws, regulations and rules

¹⁷ *Id.*

of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court.”

As the below county-based analysis demonstrates, many county contracts say little to nothing about performance standards, nor do they uniformly contain the specific clauses regarding client communication and first appearance advocacy. Moreover, contracts vary as to whether they include reference to ADKT 411’s performance standards, or other specific performance standards, like the ABA Criminal Justice Standards.¹⁸

Contracts by County¹⁹

The *Davis* counties vary significantly in how thoroughly they incorporate the performance requirements of the Judgment into their contracts with providers of indigent defense. While some county contracts explicitly list the performance requirements, others merely mention that the attorneys are bound by county plans, which contain the requirements.

Because the Department has not received all of the contracts or requested addendums, this detailed county-by-county analysis of the contracts should be seen as provisional. More contracts and addendums may be submitted within the next few weeks.

Churchill County

Churchill County established a public defender’s office and thus does not use provider contracts. Historically, conflict counsel has been appointed at an hourly rate. However, Churchill recently created an Office of the Alternate Public Defender (staffed by Wright Noel, formerly part of the Churchill Public Defender.) In addition, the updated county plan creates two contracts for conflict attorneys. When it selects attorneys for these positions, the contracts should be approved by the Department prior to their execution, per the Judgment.

Douglas County

Douglas County entered into four new contracts for fiscal year 2023.²⁰

The contracts do not include the Judgment’s required language for the model contract in terms of compliance with ADKT 411’s performance standards, first appearance advocacy, or client communication. The contracts do, however, refer to the county plan, which is more specific about performance standards. The contract (at Section 3G) requires that the attorney “perform all duties required under the Nevada Revised Statutes and by the Nevada Department of Indigent Defense, including standards of performance, record keeping, time keeping and

¹⁸ As discussed in the Monitor’s January 15, 2022, report, the Judgment requires that the Department measure attorney performance against the ABA Criminal Justice Standards as well as ADKT 411’s standards. Thus, it would make sense to include reference to the ABA standards in the contracts.

¹⁹ Three counties’ contracts are attached to this Report. The latest version of the other county contracts are available upon request.

²⁰ The Douglas County contract and plan are attached to this Report as Appendix B.

reporting requirements.” The contract also requires the attorney to “Comply with the Douglas County Plan for the Provision of Indigent Defense Services,” which is attached to the contract.

The Douglas County *plan* for indigent defense services contains the relevant language about client communication and part of the required first appearance advocacy language, as well as reference to the performance standards of ADKT 411.

Here, the question is whether a contract can be deemed compliant with the Judgment if the required language about performance standards and activities is present only in the county plan, with which the contract requires compliance.²¹ While such language may obligate an attorney to abide by the plan’s performance standards, the incorporation-by-reference method may not serve the practical function of alerting attorneys to their obligations. The performance requirements may be lost in the prolix.

Esmeralda

The Department has requested and is awaiting the FY2023 contract. The Monitor notes that the FY2022 contract did not specify performance requirements, performance activities, or funding mechanisms for complex cases.

Eureka

The Department requested the county add an addendum to its new contract to comply with the Judgment and regulations and is awaiting a response from the county. The existing FY2023 contract does not include performance standards, first appearance advocacy, or client communication provisions. A required provision about funding for case-related expenses is also absent.

Lander

Lander County contracts for a two-year term. The most recent contract went into effect on January 1, 2021 and will not expire until January 1, 2023. It was drafted before the regulations but contemplates changes to funding for experts and investigators, as well to first appearance requirements, both of which might trigger renegotiation of the contract. The contract should be amended to reflect the requirements set forth in the Judgment and the regulations.

Lincoln

The Department requested the county add an addendum to its contract to comply with the Judgment and regulations and is awaiting a response from the county. The existing FY23 contract seems to be based on an old contract because it does not refer to the Department or the

²¹ The Regulations state that “A plan for the provision of indigent defense services must require that representation be provided in a professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court.” Sec. 27.1.

Regulations, and states that allowances for case-related and extraordinary expenses will be determined by a “court of competent jurisdiction.” Yet, in practice and in the county’s plan, these expenses are being approved through the Department.

The contract specifies some performance requirements, including compliance with ADKT 411 and the ABA Criminal Justice Standards, as well as a requirement that the attorney contact the client within 5 days of appointment. No further mention is made of the client communication and first appearance advocacy required by the Judgment.

Lyon²²

The FY23 contract between Lyon County refers the reader to the county plan for performance standards. It states that the contracting attorney/firm must comply with the requirements of the Department of Indigent Defense Standards of Performance, as well as with applicable laws, rules, the county plan, and the Nevada Rules of Professional Conduct. No mention is made of ADKT 411 in the contract itself.

The Lyon County *plan* refers to performance standards set forth in ADKT 411, and contains the client communication provision required by the Judgment. The plan contains part of the first appearance advocacy, stating that the attorney must counsel against waiving substantive rights. But it does not mention the duty to advocate for release/affordable bail.²³ As in Douglas County, the attorney must refer back to the county plan to see specific performance standards and activities.

Mineral

The Department requested the county add an addendum to its contract to comply with the Judgment and regulations and is awaiting a response from the county. The existing FY23 contract does not contain provisions on client communication and first appearance advocacy.

Nye

The Nye County contracts for FY23 are not finalized yet.

White Pine²⁴

White Pine County entered into a two-year contract (FY22-23) with its current providers and one new attorney.

²² The Lyon County contract and plan are attached to this Report as Appendix C.

²³ This portion of the Judgment comports with the Nevada Supreme Court’s decision in *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155 (2020), which held that due process requires that defendants receive an individualized hearing to determine conditions of pretrial release and affordability of cash bail amounts.

²⁴ The White Pine County contract and plan is attached as Appendix D.

As in several other counties, the contract refers to the county plan for some of the performance standards and activities. The contract does not mention performance standards in ADKT 411, but the county plan requires attorneys to adhere to ADKT 411 standards. The plan contains a partial statement of the first appearance advocacy requirement (do not waive substantive rights) and the client communication requirement. But no such language appears in the contract. Because the contract refers to the Department's oversight authority, perhaps the standards are incorporated. But this may not be clear to an attorney contracting with the county.

Additionally, the contract contains some out-of-date language, such as stating that allowances for expenses for investigators and experts will be made through the courts. In fact, investigative and expert funds are approved through the Department in White Pine, pursuant to the county plan.

Summary & Analysis

Through its model contract and the Board's regulations, the Department has taken important steps to ensuring that the contracts are compliant with the Judgment. However, it appears to be challenging to get counties to adopt the contract as a template. As a result, it can be difficult to comb through the variety of contracts to ensure that they each conform with the Judgment and regulations.

It is the Monitor's recommendation that the contracts themselves contain direct references to performance standards required by the Judgment, as well as the ABA standards. The Judgment states that, in creating and overseeing standards for indigent defense, the "Defendants shall incorporate the performance guidelines set forth in the ABA Criminal Justice Standards and the Nevada Indigent Defense Standards of Performance [in ADKT 411]."²⁵ Including all general and specific performance standards in the contract is the best way to alert attorneys to their obligations.

Further, it would be helpful if new contracts between providers and counties clearly state the responsibility of attorneys to monitor their workloads and seek assistance if workloads become excessive. (Some contracts contain general statements about workload.) The ABA Guidelines for Excessive Workloads stress how important it is for attorneys to inform their supervisory agency of excessive workloads, noting how difficult it is for lawyers to say when their casework has become unmanageable.²⁶ Clarifying that the attorney has both permission and an obligation to request conflict counsel when the workload becomes excessive is even more important because the workload study is incomplete. Without strict case limits (which await the workload study's conclusions), the main benchmark of excessiveness is the attorney's subjective evaluation of workload.

²⁵ Judgment, 16. To comply with this provision, the Department has provided a link to the ABA Standards on its website and offered a CLE that discussed the ABA Standards. See <https://dids.nv.gov/Resources/Resources/>.

²⁶ ABA Eight Guidelines of Public Defense Related to Excessive Workloads, [hereinafter ABA Workload Guidelines] (2009), Comment to Guideline 3.

Recommendations: Contracts

- The Board should consider amending the regulations to include a requirement that the Department approve all new contracts before their execution,²⁷ and consider whether it is possible to require that the model contract be used as a template for the counties. In the alternative, the Department could create a short, standard addendum that could be incorporated in all county contracts. This would permit the counties to draft contracts according to local needs while ensuring that the provisions required by the Judgment are included.
- To alert attorneys to their obligations, the contracts should contain very clear statements of required activities, like client communication and first appearance advocacy, as well as reference to relevant performance standards, including the ABA standards.
- The contracts should contain a provision that they may be modified after completion of the workload study.

B. Fair compensation, comparable to prosecution

The Judgment requires the state to ensure that providers receive a “reasonable hourly rate that takes into account overhead and expenses, including the costs relating to significant attorney travel time.”²⁸ The compensation should be comparable to prosecutors in the same county, considering that prosecutors do not pay overhead and expenses.²⁹

As previously reported, the Department contracted with Dr. Herian of Soval Solutions to conduct, among other things, a wage/salary survey. In consultation with the Department, Dr. Herian is creating a survey for rural practitioners. It is expected to be completed and ready for distribution soon.

The Department also worked with Dr. Herian to analyze the salaries within the Department and at the State Public Defender (SPD).³⁰ The analysis culminated in a bill draft request (BDR) for salary increases for the Department and the State Public Defender to make the salaries comparable to similar positions in the Office of the Attorney General. While making the Department and State Public Defender’s salaries comparable to their prosecutorial counterparts is not explicitly required by the Judgment, it may be important to ensuring the Department’s

²⁷ Note that Section 38 of the Department’s Regulations states that review of the contracts is part of the Department’s oversight function.

²⁸ Judgment, 11. The state also must provide a “funding mechanism for excess, unusual, or complex cases.”

²⁹ See also Regulation 40(10). Per AB81, the Department’s standards must guard against financial disincentives to provide effective representation.

³⁰ Soval Solution, LLC’s “Compensation Analysis and Recommendations for Nevada Department of Indigent Defense Services: Final Report” is attached to this Report as Appendix E.

ability to attract and retain staff, and to parity between prosecutors and public defenders in the event that defendants in a rural county are represented by a state public defender through prior arrangement or through a corrective action plan. The BDR has not been finalized, and will be discussed further in the next Monitor's report.

C. Reimbursement for county expenses

On April 27, 2022, the Department submitted a request to the Interim Finance Committee (IFC) for \$352,919 to reimburse the counties out of the funds earmarked to cover the counties' expenses over their maximum contribution. On June 21, 2022, the Department appeared before the IFC on this request. The IFC approved \$308,827 to reimburse Eureka, Mineral, Lyon, and White Pine counties for their expenditures over their maximum contribution.

The IFC did not, however, reimburse \$44,092 for investigator/expert expenses in Douglas, Lincoln, and Nye counties. In tabling the request for reimbursement for \$44,092 for case-related expenses, the IFC changed its position from its prior grant of reimbursement, which treated case-related expenses as separate from reimbursement under the maximum contribution formula. The IFC will no longer reimburse for case-related expenses unless and until the county reaches its maximum contribution.³¹

These complications highlight how cumbersome the reimbursement process is. Reimbursement would be timelier for the counties and less labor-intensive for the Department if the Department had authority over the funds. As it stands, the Department must repeatedly present requests on an ad hoc basis to the IFC throughout the year. Each request for reimbursement is dependent on the meeting schedule of the IFC.

The Department currently is working with the counties to ensure that they submit their fourth quarter budgets and expenditures accurately and immediately. All requests for reimbursement over maximum contribution must be accompanied by a detailed budget and submitted by July 15, 2022. Without submitting this data on actual expenditures to the Interim Finance Committee, counties will not be reimbursed.

D. County Budgets for Fiscal Year 2023

Working with the rural counties on their indigent defense budgets is an ongoing process for the Department. The maximum contribution for each county is extrapolated using a formula based on expenditures from the 2018 and 2019 fiscal years. This means that having accurate numbers for FY18 and FY19 expenses is crucial to determining the appropriate maximum county contribution today.³² Churchill County's new administrator of indigent defense, for

³¹ The Department's position is that case-related expenses should be disbursed promptly and separately from the reimbursements disbursed after a county reaches its maximum contribution. *See* NRS 353.268.

³² *See* Regulations, sec. 16 (setting the formula for maximum contributions from the counties).

example, has revisited the 2018-19 expenditure calculations, resulting in a new maximum contribution for the county.³³

Additionally, counties must submit their quarterly reports promptly and accurately for the reimbursement process through the Interim Finance Committee. Finally, county plans for the upcoming year must accurately estimate expenses to ensure the Department requests the correct amount of earmarked funds for the next two-year period.³⁴

In the past quarter, the Department worked with the counties to estimate their budgets for FY23 and FY24. The following counties modified their plans: Churchill,³⁵ Lander,³⁶ Lincoln,³⁷ Mineral,³⁸ and Nye³⁹ for FY23.⁴⁰ The modified plans and the budgets for all 10 counties were approved by the Board on June 16, 2022. The Department then calculated the maximum contributions for each county for FY23, which were approved by the Board as well. Based on the new plans, as well as the actual expenditures over the past year, the Department estimated the state reimbursements for the next fiscal year.

Recommendations: Reimbursement of expenses

- Reimbursement for county expenses over their maximum contribution should continue to be rapid and reliable. Ideally, the Department should control disbursements to ensure prompt reimbursement for providers and the counties. Having to repeatedly request portions of the earmarked funds from the Interim Finance Committee causes delays for the counties and additional work for the Department's limited staff.

II. Establishment of Minimum Standards

The Judgment requires that minimum performance standards be assured in the following ways:

³³ See DIDS Review of Updated Plans, attached to this Report as Appendix F.

³⁴ As previously reported, the legislature earmarked \$1,169,427 for FY22 and FY23, respectively in AB 484 (2019) Sec. 80.

³⁵ Churchill County's modifications include the creation of a new Office of Alternate Public Defender, a Contract Position for Conflicts, and a position of Appointed Counsel Program Coordinator. The county selected an Appointed Counsel Program Coordinator to serve as the Department's designee. The new program coordinator analyzed past expenditures for indigent defense and calculated the correct cost for 2018-19. Based on the new numbers, the maximum contribution for Churchill County was recalculated.

³⁶ Lander County's new plan clarifies that the court is responsible for indigency screening.

³⁷ Lincoln County's new plan adds geographical limits to the selection of appointed counsel process in order to limit the costs of travel time.

³⁸ Mineral County's new plan identifies the Department—rather than a local designee—for selection and compensation of counsel and reimbursement of expenses.

³⁹ Nye County's plan was amended to increase the pay for the annual contracts.

⁴⁰ The DIDS Review of updated plans and budgets is attached to this Report as Appendix F.

- Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights.⁴¹
- Client communication per the standards set in ADKT 411; provision of space for confidential attorney-client meetings; all reasonable efforts to have confidential attorney-client meetings before an initial appearance.⁴²
- Systems to identify and remove conflicts.⁴³
- Establishment of performance standards.⁴⁴
- Establishment of workload standards.⁴⁵
- Qualifications for attorneys.⁴⁶
- A system of oversight.⁴⁷
- Attorney training and resources.⁴⁸

To review the conclusions of the Monitor's three prior reports, the Board and Department have successfully promulgated regulations, approved county plans, and developed a model contract. The Department's model contract substantially complies with the Judgment's requirements for articulating the professional standards in categories of indigency determination, first appearance, pretrial release, client communication, and conflict detection and removal, and qualification of attorneys.⁴⁹

Since May 1, 2022, the primary developments to report are in three areas:

- A. Continued oversight activities, and related issues related to performance standards
- B. The successful holding of an annual training conferences; and
- C. The convening of additional Delphi panels for the workload study.

⁴¹ Judgment, 14.

⁴² *Id.* at 14-15.

⁴³ *Id.* at 12.

⁴⁴ *Id.* at 16.

⁴⁵ *Id.* at 17.

⁴⁶ *Id.* at 15.

⁴⁷ *Id.* at 16-17.

⁴⁸ *Id.* at 16.

⁴⁹ As the October 15, 2021, report discussed, there remains a question of how to clarify the standards, including the inclusion of certain provisions from the ABA Criminal Justice Standards for the Defense Function that go beyond the standards set in ADKT 411.

A. Oversight activities and related issues

County visits

The Executive Director and Deputy Director conducted two oversight visits during this time period, to Churchill and Lincoln counties.

The Executive and Deputy Directors conducted a second oversight visit in Churchill County on May 20, 2022.⁵⁰ Since the Department's first oversight visit in December 2021, the county hired a plan administrator to serve as the Department's designee, who updated and corrected the budget. In addition, the county's modified plan establishes an alternate public defender and contract with two additional attorneys for conflicts.

The Executive and Deputy Directors also visited Lincoln County, where they conducted an oversight visit, and met with the justices of the peace and contract public defender.⁵¹ As mentioned later in this Report, there is a dearth of confidential spaces for attorney-client meetings in the Pioche and Alamo courthouses.

The next step for the Department in its oversight responsibilities is developing a plan, in consultation with the data analyst, for annual oversight of the counties and review of the attorneys, as required by the Judgment.⁵² A comprehensive plan should also make clear the Department's resource and staffing needs to successfully comply with this requirement of the Judgment.

Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; contracts require counsel against waiving substantive rights.⁵³

All counties have a plan in place to screen promptly for indigency to comply with AB424 (2021), which entitles all defendants an initial appearance and release hearing within 48 hours of arrest.

An unanswered question is whether remote hearings satisfy the Judgment. As noted in the Monitor's previous report, the Judgment requires that all indigent defendants be "represented by counsel *in person* at his or her initial appearance/arraignment."⁵⁴ This appears to require that the attorney be present in person in court. As noted above, many attorneys appear remotely for their client's first appearance, and remote appearances are likely to become more common now that the 48-hour rule is in effect.⁵⁵ The *Davis* parties may wish to determine whether these remote

⁵⁰ The Department's Oversight Report for Churchill County is attached to this Report as Appendix G.

⁵¹ The Department's Oversight Report for Lincoln County is attached to this Report as Appendix H.

⁵² Judgment, 16.

⁵³ Judgment, 14.

⁵⁴ Judgment, 14 (emphasis added).

⁵⁵ AB 424 permits the defendant's remote initial appearance and is silent as to the presence of counsel, although it is highly likely that the defendant has a right to the presence of counsel at this critical stage of the proceedings. *See*

appearances adequately comply with the Judgment and, if not, what resources would be required to assure in-person representation at first appearance.

As reported in the May 12, 2022, Monitor's Report, during some oversight visits the Executive and Deputy Director had the opportunity to observe bail hearings or to talk to the judge about the quality of defense counsel's advocacy at bail hearings.⁵⁶ Oversight likely requires periodic court observations in all the rural counties. The Department's forthcoming oversight plan will lay out how such oversight will occur.

Client communication per the standards set in ADKT 411; provision of space for confidential attorney-client meetings; all reasonable efforts to have confidential attorney-client meetings before initial appearance.⁵⁷

Confidential meeting space

The Department's oversight visits during this quarter confirmed another county lacking a dedicated confidential meeting space: Lincoln County. Previously, the Department noted that Esmeralda, Mineral, and Nye (Tonopah) lacked space for confidential attorney-client meetings, and other counties had meeting spaces that served dual functions. In Lincoln, the Department noted the absence of space dedicated to confidential client meetings in both the Alamo and Pioche courthouses. This is especially problematic because the contract public defender has offices more than 50 miles away from these courthouses.⁵⁸

Client communication per the standards set in ADKT 411

The Judgment requires that the Defendants "ensure that indigent defense providers comply with the performance standards regarding client communication laid out in ADKT 411, (Oct. 16, 3008) including making all reasonable efforts to [conduct a confidential interview] before any court proceeding, which interview shall include, at a minimum, an explanation to the client of the charges against him or her and potential penalties; a discussion concerning pretrial release; an explanation of the attorney-client privilege; a general procedural overview of the progression of the case; how and when counsel can be reached; and when counsel will see the client next."⁵⁹

As previously noted, it is impossible to know what is said in privileged attorney-client communications. Oversight of this standard likely will be accomplished through client surveys and attorney self-reporting. Unfortunately, the Department has received very few client surveys to date. As reported in the Monitor's prior report, as of May 10, 2022, the Department had

Rothgery v. Gillespie County, Texas, 554 U.S. 191, 212-213 (2008) (stating that first appearance is a "critical stage" of the proceedings).

⁵⁶ The Department observed bail hearings in Esmeralda and Nye counties during its initial oversight visits and noted that the attorneys appeared knowledgeable about their client's cases.

⁵⁷ Judgment, 14-15.

⁵⁸ Lincoln County Oversight Report (Appendix H).

⁵⁹ Judgment, 14-15.

received fewer than ten surveys, total, arriving from clients in Churchill, Lincoln, Lyon, and Nye counties. Since then, the Department has received two surveys from Douglas, two surveys from Lyon, and one from Churchill.

To elicit more client surveys, the Department updated their protocols so that the surveys can be emailed via a state system for online forms.⁶⁰ The Department has not, however, received any electronic submissions. The Department could follow up with attorneys for whom no clients are submitting surveys and ask them whether and how they are providing clients with surveys. It may also help encourage reluctant attorneys to know that some of the returned surveys contain positive reviews. Finally, it may also be useful for the Department to seek advice from a public defense agency in a different state that has used client surveys.

Recommendations: Oversight and Related Standards

- Determine whether remote appearance at initial appearance satisfies the Judgement.
- Assess ability to communicate with clients remotely before and during bail hearings.
- Explore methods of increasing the rate of return on client surveys.
- In the forthcoming oversight plan, determine staffing needs to observe bail hearings and other courtroom proceedings on regular intervals in all ten *Davis* counties.

B. Attorney training and resources⁶¹

The Department hosted what was, by all accounts, a successful two-day, in-person conference in Las Vegas on May 26-27 for a total of 11 CLE credits. As previously reported, the Department secured a grant for \$45,000 to reimburse rural attorneys for travel to the annual conference. Such events, and support for attendance, helps to ensure effective assistance of counsel by building mentorship and peer relationships among attorneys providing indigent defense. Connecting otherwise isolated public defense attorneys is a crucial part of this process.

A total of thirteen contract attorneys from the *Davis* counties attended the conference. Four others registered but did not attend. As noted in the Monitor's last report, many of the rural attorneys do not have anyone to cover their cases and thus cannot attend conferences and trainings on workdays.

Recommendations: Training

- If possible, increase funds for training and support for non-institutional indigent defense providers, including opportunities for them to form professional relationships.
- Address the lack of coverage for court dates, which prevent some attorneys from attending trainings and conferences.

⁶⁰ The online survey form can be found here:

https://hal.nv.gov/form/DIDs/Client_Satisfaction_Survey_ENGLISH and https://hal.nv.gov/form/DIDs/Client_Satisfaction_Survey_SPANISH.

⁶¹ Judgment, 16.

C. Establishment of workload standards: Delphi Panels

The Judgment requires that the Defendants contract with an outside provider within 12 months of the effective date of the Judgment to complete a workload study.⁶² As previously reported, the Department took immediate steps to commission a workload study with the National Center for State Courts (NCSC), but the initial timekeeping data phase of the study was distorted by pandemic restrictions. After collecting the initial timekeeping data, the study administrators at the National Center of State Courts (NCSC) convened Delphi panels but ultimately determined that they lacked sufficient timekeeping data to probe the relevant issues.

The NCSC extended its contract with the Department to June 30, 2022, so that the Department could gather six to nine months of timekeeping data from Legal Server to use as a supplement to the initial NCSC timekeeping data. The Department provided the NCSC with case and timekeeping data collected on Legal Server from October 1, 2021, through March 31, 2022.⁶³ Unfortunately, the NCSC study administrators determined that the Legal Server data was not complete enough for the purposes of the study. In response, the Department and the NCSC decided to extend the time period for the study for an additional year during which time several things would happen:

- Attorneys in the counties would increase their compliance with workload reporting through Legal Server.
 - The Department anticipates that the third quarter of workload data—due July 15, 2022—will be an improvement on the first two quarters.
- The NCSC would convene additional Delphi panels to discuss how much time each case-related activity should reasonably take.
 - The NCSC conducted three additional Delphi panels, discussed below.
- The NCSC would circulate a time sufficiency survey.
 - This step occurs after the study administrators analyze the results of the Delphi panels.
- The NCSC would triangulate the data from this study with the results of a national study of public defender workload that is currently being conducted by the Rand Corporation.

⁶² Judgment, 17.

⁶³ It should be noted that, as discussed in the Monitor's prior reports, the Legal Server data lack detail about the amount of time spent on each lawyering activity. The attorneys are not required to report time by activity type, making it difficult to disaggregate time spent, for example, on travel to a remote courthouse, from time spent on a client meeting.

- The results of the national workload study are expected to be released in October 2022.

The Second Set of Delphi Panels

The Delphi panels are part of the “quality adjustment” phase of the study,⁶⁴ in which the study administrators facilitate structured discussions among criminal defense attorneys to determine the amount of time particular case-related tasks should take.⁶⁵

The study coordinators convened three additional Delphi panels, one on juvenile defense, one on death penalty defense, and one on noncapital criminal defense. The noncapital criminal defense panel was scheduled for a second session that was canceled due to scheduling conflicts. The study administrators are attempting to reschedule the second session of that panel.

The Monitor attended two Delphi panels in May 2022, the death penalty defense and the noncapital criminal defense panels. The death penalty defense panel convened on May 12, 2022, and included attorneys experienced in death penalty litigation at the trial, appellate, or postconviction level. The panel included a private attorney practicing out of Reno, the Deputy Director of the Department (an experienced death penalty attorney), and public defenders from Washoe County and the Special Public Defender of Clark County. The participants discussed nine categories of trial tasks, the time per case and the frequency of the activity, and twelve categories of appellate activities. They were guided in the discussion by two handouts that described the task of the Delphi panel and the case-related activities in more detail.⁶⁶ The discussion lasted for approximately two hours. On May 16, 2022, the NCSC conducted a panel on juvenile defense that the Monitor did not attend.

The Panel on Noncapital Criminal Cases

On May 17, 2022, the NCSC conducted a panel on noncapital criminal cases that included three NCSC study administrators, the Executive Director of the Department, a contract attorney from Nye County, a contract attorney from Lyon County, the Public Defender for Humboldt County, the chief deputy public defender from the Nevada State Public Defender, and the training director for the Clark County Public Defender.

The NCSC study administrators had previously circulated estimates for the time that various lawyering activities take. They asked the Delphi panel participants to focus on three questions:

- (1) How much time do the identified lawyering activities usually take?
- (2) Do you have enough time to complete these activities?

⁶⁴ National Center for State Courts, *Rural Nevada Indigent Defense Services Interim Weighted Caseload Study*, p. 4-5 (June 2021). Available at: https://dids.nv.gov/Weighted_Caseload_Study/Weighted_Caseload_Study/

⁶⁵ *Id.* at 23.

⁶⁶ The NCSC criminal case activity handout is attached to this Report as Appendix I. The NCSC death penalty appeals handout is attached to this Report as Appendix J.

(3) How many attorneys or staff are needed?

The NCSC also circulated the handout describing nine activity categories (attached to this report as Appendix I). As the reader can see from the handout, the nine activities are broken down into sub-categories. So, for example, the final category of sentencing and post-adjudication has the following sub-categories:

Sentencing and post-adjudication

- a. Preparing for and attending sentencing hearing
- b. Pre-sentence report/sentencing memo
- c. Addressing fines, fees and restitution
- d. Finding alternative sanction options and programs
- e. Consulting with mitigation experts
- f. Gathering medical, educational and family histories
- g. Preparing for appeal
- h. Motioning for new trial
- i. Motioning for bail pending appeal and related motions
- j. Filing of appeal

Attorneys on the Delphi panel were asked to consider “how much attorney time, on average, is required to provide reasonably effective assistance of counsel pursuant to prevailing professional norms for different types of cases handled in state courts?” using the breakdown of activities as a guide.

Initially, Delphi participants sought clarification as to whether they should describe their current actual practices (descriptive information), or if they should describe how much time should ideally be spent on these activities if caseloads permit (prescriptive information). The NCSC study administrators made clear that participants should share how much time each lawyering activity *should reasonably* take, if done in accordance with prevailing professional norms, including the ABA Criminal Justice Standards for the Defense Function and the Rules of Professional Conduct.

The Panel’s Discussion of Activities and Time Needed

The Monitor notes that the process functioned fairly well in terms of arriving at time amounts that distinguished time currently spent on activities from the time that should be spent. The process also helped to disaggregate distinct activities. The earlier Nevada timekeeping data showed, for example, that attorneys reported the same average time for probation and parole cases. The participants in the Delphi panel noted, first, that parole revocation hearings are very different from probation revocation hearings, occur in a different forum, and often require travel time. With regard to probation revocation hearings, the Delphi panel tended to agree that around 5 hours seemed like a good standard, although acknowledged that it could take more time. For example, in Nye County, the revocation proceeding involves two hearings, investigation, research, preparation, and sometimes negotiation, between the two hearings.

Inadequate Time Spent in Various Areas

In other areas, the Delphi participants thought that the Nevada timekeeping data showed that attorneys were spending much less time on their cases than they should. For example, the participants agreed that the existing time values for misdemeanors (< 5 hours) and serious misdemeanors (< 8 hours) were low and did not seem to take into account time-consuming investigation, like reviewing body camera recordings. One attorney suggested that an average DUI case should take a minimum of 15 hours. It was noted that domestic violence cases now carry the right to a jury trial and preparing for trial generally results in a trial-day dismissal or good plea offer. At the same time, it was noted that high caseloads prevent attorneys from litigating their misdemeanor cases, or that, in their jurisdiction, the threat of a much higher sentence after trial—a trial penalty—forced early pleas of guilty, foreclosing meritorious litigation.

With regard to A and B felonies that carry 10 or more years of prison time, earlier attorney timekeeping data showed attorneys spending an average of 46 hours on each case. Per the NCSC, other jurisdictions report around 75 hours for cases carrying these severe penalties. The Delphi panelists seemed to agree that 46 hours was too low but struggled to come up with the right number. The Delphi panel participants expressed the need to review their own cases to consider time needed for case-related activities.

The Need for a Follow-Up Panel Discussion

Other lawyering activities were only touched upon during the panel, such as the time needed for representation of defendants in specialty courts, the time needed for an appeal, and post-conviction motions filed in the trial court. The criminal panel adjourned with a plan to reconvene after participants reviewed the time study numbers and their own files so that they could be better prepared to participate. The second session was scheduled for June 28, 2022. On June 28, however, several attorneys had scheduling conflicts. The NCSC is in the process of rescheduling the second session of this Delphi panel.

It is entirely possible that the busy schedules of the attorneys will make it difficult to reconvene the panel. Yet, it is concerning that the participants were so clear about the need to review their files and think more deeply about the time needed for certain lawyering activities before they responded. Perhaps some of the attorneys could meet again, and the panel could be supplemented by one or two additional attorneys. A secondary issue is that some attorneys on the panel do not handle their own appeals. An additional panel may be necessary for appellate practice.

Recommendations: Workload Standards

- Reconvene the general criminal Delphi panel.
- Consider whether it would be possible to convene a separate appellate panel.

- Consider circulating the time sufficiency survey broadly. This is a way to involve more attorneys in the process, including attorneys who may decline to participate in a Delphi panel but who nonetheless could offer their opinion on the average time needed for various lawyering activities.
- Request that the final weighted caseload study address the variables of travel times and office staffing.

III. Uniform Data Collection and Reporting

A. Attorney Workload Reporting

The last monitor's report noted the significant improvement in providers' reporting from the first to the second quarters.⁶⁷ This monitor's report is being written and submitted before the third quarter of workload data, due on July 15, 2022, is collected and analyzed by the Department. As such, there is no new data to report.

B. Annual Report

The Judgment requires an annual report that includes workload and case disposition data, as well as "any costs related to the provision of indigent defense."⁶⁸ The Department published its third annual report by the July 1, 2022, deadline.⁶⁹

The July 1, 2022, annual report profiles several indigent defense providers in various counties, provides case numbers by type and status (opened and closed), as well as the budget of the Department and each county. Workload data is not included primarily because the workload reporting requirements went into effect on October 1, 2021. Thus, for the 2021 calendar year, the Department has standardized data on workload only for the last quarter of the year. (In past reports, the Department included some information about attorney caseloads, but only in the form and to the extent that the counties provided it to the Department.)

It should be noted that the Department publishes workload data in quarterly reports, so the information about attorney workload is made available as it is collected.

⁶⁷ The first two workload reports can be found on the Department's website here: https://dids.nv.gov/Annual_Report/home/.

⁶⁸ Judgment, 18. The Executive Director is required to "prepare an annual report concerning indigent defense services in this State which includes information collected by the Department and such other information as requested by the Board." The report requires the "input of the Board," and must be submitted by July 1st to the Nevada Supreme Court, the Legislature, and the Office of the Governor. NRS 180.410.

⁶⁹ The annual reports can be found on the Department's website here: <https://dids.nv.gov/>. The judgment requires the annual report to include workload and case disposition data, as well as "any costs related to the provision of indigent defense." 18.

Recommendations: Data Collection and Reporting

- The parties may wish to determine the scope and format of the information to be included in future annual reports given that the Department publishes workload data on a quarterly basis.

Looking ahead

- **Contracts**

The amending of contracts continues. After the workload study they will need to be amended again.

- **Data collection compliance**

The third quarter of workload reporting is due on July 15, 2022.

- **Workload study**

The NCSC will conduct a follow up Delphi panel and time sufficiency survey. The Rand Corp data will be available in the fall.

- **Wage/salary survey, incentive study, oversight plan**

The Department will distribute a survey to rural attorneys who provide indigent defense to try to determine fair hourly rates. Of particular importance is the accurate calculation of overhead, which distinguishes private attorneys accepting appointed cases from both public defender offices and prosecutors. Overhead includes “the maintenance of an office, including rent, the costs of support staff, professional fees, the cost of liability insurance, the cost of continuing legal education,”⁷⁰ among other things.

The Department also will work on an oversight plan with the data analyst, most likely in August 2022.

- **Budget and Bill Draft Request on Salaries**

The Department is working to finalize its budget by September 1, 2022, and is also working on a BDR that addresses salary parity between the Attorney General’s Office and the Department/State Public Defender.

⁷⁰ Hannah Haksgaard, *Court-Appointed Compensation and Rural Access to Justice*, 14 U. ST. THOMAS J. L. & PUB. POL’Y 88, 104 (2020).

Building a budget—and having it approved—is essential to the ability of the Defendants to comply with the terms of this Judgment.⁷¹ As noted earlier in this Report, in-person oversight of indigent defense in the rural counties requires a substantial commitment of staff, time, and travel. To fulfill its obligations under the Judgment, the Department may need additional staff.

Next steps for the Monitor

As the Department continues to conduct training, support, and oversight, while collecting data on cases, workload, and expenditures for the counties, the Monitor will analyze and report on:

- Any new or adjusted contracts between providers and attorneys
 - Compliance of attorneys with the required data collection through Legal Server
 - Progress on the data analyst's wage/salary survey, oversight plan, and incentive plan
 - The Department's oversight activities and their results
 - Schedule and conduct visits to several counties, starting with Nye County in August 2022.
- The Monitor will coordinate with the Department in scheduling the visits.

⁷¹ It should also be noted that the Department does not have a fiscal employee on staff with experience building budgets.

Appendix A

Model Contract for Indigent Defense Providers



STANDARD CONTRACT FOR INDIGENT DEFENSE SERVICES

The terms of any contract between a county and independent contract attorney must avoid any actual or apparent financial disincentives to the obligation of an attorney to provide clients with competent legal services. The terms of any contract between the county must "identify the appointing authority, contracting authority, and contractor." Reg. Sec. 42(1)(a).

The [City, County, State], referred to as "the Contracting Authority," and [law firm or non-profit organization], referred to hereafter as "the Contractor," agree to the provisions of public defense services as outlined below for the period [date] to [date].

The Contracting Authority Administrator is [], and the Managing Director of the Contractor is [].

Following are the underlining bases for the Contract:

1. The right to counsel in criminal cases is protected by the Sixth and Fourteenth Amendments to the United State Constitution; Article 1, Section 8 of the Nevada Constitution, and Nevada Revised Statutes (hereinafter "NRS") §§ 171.188 and 178.397.

2. The Contracting Authority desires to have legal services performed for eligible persons entitled to public representation in _____ [City, County, State] by the Contractor, as authorized by law.

3. The Contractor agrees to provide, and the Contracting Authority agrees to pay for, competent, zealous representation to its clients as required by Nevada Rules of Professional Responsibility and the Regulations of the Board of Indigent Defense Services.

4. The Contracting Authority and the Contractor agree that all funds provided pursuant to this Contract are provided for the sole purpose of provision of indigent defense services to eligible clients of the Contractor.

The Parties agree as follows:

I. DEFINITIONS

The following definitions control the interpretation of this Contract:

- A. Appointing Authority: means the judge, justice or master of a court of law.
- B. Eligible client: means a defendant, juvenile, or parent has been determined by a finding by the Appointing Authority to be entitled to a court-appointed attorney pursuant to NRS 62D.030, 62D.100, 171.188.
- C. Case; Final Adjudication: "Case" shall have the meaning prescribed to it in Temporary Regulations of Board of Indigent Defense Services ["Reg."] Sec. 5. Completion of a case occurs upon final adjudication. "Final adjudication" shall have the meaning prescribed to it in Reg. Sec. 46(4)(d).
- D. Representational Services: The services for which the Contracting Authority is to pay the Contractor are "representational services," including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other Contractor and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the Contracting Authority is to pay the Contractor do not include capital cases; cases in which the most serious crime is a felony punishable by life, with or without the possibility of parole; or extraordinary expenses incurred in the representation of eligible clients.
- E. Other Litigation Expenses: "Other Litigation Expenses" shall mean those expenses which are not part of the contract with the Contractor, including investigations, expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be provided as set forth in the County's Model Plan for the Provision of Indigent Defense Services.
- F. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but not obtained.

II. DURATION OF CONTRACT

The contract terms must "specify the terms of the contract, including duration, any provision for renewal, and a provision for terminating the contract by either party." Reg. Sec. 42(1)(b).

This Contract shall commence on [DATE] and terminate on [DATE], unless extended or terminated earlier in a manner allowed by this Contract.

A contract may be extended or renewed in the following manner:

III. INDEPENDENT CONTRACTOR

The Contractor is, for all purposes arising out of this Contract, an independent contractor, and neither the Agency nor its employees shall be deemed employees of the Contracting Authority. The Contractor shall complete the requirements of this Contract according to the Contractor's own means and methods of work, which shall be in the exclusive charge and control of the Contractor and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

IV. CONTRACTOR'S EMPLOYEES AND EQUIPMENT

The Contractor agrees that it has secured or will secure at the Contractor's own expense, all person, employees, and equipment required to perform the services contemplated/required under this Contract.

V. MINIMUM QUALIFICATION FOR CONTRACTOR ATTORNEYS AND PERFORMANCE REQUIREMENTS

The terms of the contract must:

- Specify the category of cases in which the contractor is to provide services. Reg. Sec. 42(1)(c).
- Specify the minimum qualifications during the term of the contract. The qualifications shall equal or exceed the qualifications provided in the regulations of the Board of Indigent Defense Services. If a contract covers services provided by more than one attorney, qualifications may be graduated according to the seriousness of offense and each attorney shall be required to maintain only those qualifications establish for the offense level(s) for which the attorney is approved to provide indigent defense services. Reg. Sec. 42(1)(d).
- Identify the attorney(s) who will perform legal representation in each category of case covered by the contract and include a provision that ensures consistency in representation. Reg. Sec. 42(1)(e).
- Set the maximum workload each attorney may be required to handle pursuant to the contract based upon the applicable workload guidelines determined by the Board in accordance with Section 44 and require the reporting of indigent defense data in accordance with Sections 46 and 47. Reg. Sec. 42(1)(f).
- In accordance with Section 29, require that the contractor provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable regulations, laws, 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. Reg. Sec. 42(1)(g).
- The Plans and/or contracts must require attorneys to advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless to do otherwise is in the client's best interest and require indigent defense providers to make all reasonable efforts to meet with each client within the first seven days following the assignment of the case, as well as every 30 days thereafter, unless there are no significant updates in the client's case. Reg. Sec. 29(2).
- State a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest. Reg. Sec. 42(1)(h).

- A. To ensure that the ability, training, and experience of a Contractor Attorney in a matter matches the complexity of a case, a Contractor Attorney must demonstrate compliance with the standards and regulations of the Board of Indigent Defense

Services pertaining to training, education, and qualifications. A Contractor Attorney may only practice in the areas of indigent defense for which the Contracting Attorney is qualified by the Department of Indigent Defense Services.

- B. The Contractor agrees to provide representational services in the following categories of cases. (The Contractor must identify the attorney(s) who will perform legal representation in each category of case covered by the contract.)

Misdemeanor Proceedings:

Category B offense for which the maximum penalty is less than 10 years, C, D, E felony or Gross Misdemeanor proceedings:

Category B offenses for which the maximum penalty is 10 years or more.

Non-capital category A offenses, to be paid the statutory hourly rate in accordance with NRS 7.125.

Capital cases, to be paid the statutory hourly rate in accordance with NRS 7.125

Appeals

Capital Appeals

Juvenile Delinquency and In Need of Supervision Proceedings

- C. Failure on the part of the Contractor Attorney to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Contract. Failure on the part of the Contracting Authority to provide adequate funding to attract and retain experienced staff and supervisor(s) shall be considered a breach of this Contract.
- D. The Contractor agrees to staff its cases according to the following provisions:
- a. As set forth in the County's Plan for the Provision of Indigent Defense Services, the Contractor may receive assistance from associate attorneys, mentees, or other approved attorneys in carrying out his/her responsibilities however, the Contractor shall ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others, except that administrative or other tasks which do not affect the rights of the defendant may be delegated.
 - b. The Contractor agrees to comply with the County's Plan for the Provision of Indigent Defense Services and the Regulations, including Section 29 and 39.
 - c. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. The Contractor will refer to the Nevada Rules of Professional Conduct, as interpreted by the State Bar of Nevada and/or opinions of the state judiciary, and to the American Bar Association Standard for Criminal Justice in order to determine the existence and appropriate resolution of conflicts. If a conflict is determined to exist, counsel will promptly file a Motion to Withdraw with the Court pursuant to NRS 7.115 or follow the procedure for handling conflicts of interest provided in the plan for provision of indigent defense services.
 - d. It is agreed that the Contractor will participate in any Department workload study to determine an appropriate caseload. Prior to the completion of a workload study, the Contractor shall reasonably comply with the workload guidelines as determined by the Board of Indigent Defense Services.
 - e. The Contractor may use legal interns. If legal interns are used, they will be used in accordance with Nevada Supreme Court Rule (hereinafter "SCR") 49.5.
 - f. The Contractor agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all its staff.

- g. The Contractor agrees to conduct an independent investigation of the charges as promptly as practicable and, if appropriate, retain an investigator to assist with the defense of the client as set forth in the County's Plan for the Provision of Indigent Defense Services.
- h. If the Contractor is to be responsible for representing defendants in capital litigation, the following provisions apply: Appointment of attorneys to represent defendants charged in capital cases shall comport with SCR 250 and ADKT 0411. Two lawyers must be appointed as soon as possible in all open murder cases which are reasonably believed to result in a capital charge. Capital cases typically require the full-time equivalent of one investigator and mitigation specialist. *See* ADKT 0411, Standard 2-1.
- i. The Contractor will provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable regulations, laws, Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2009 and Nevada Supreme Court Order in Administrative Docket 411.

E. Significant Changes.

Significant increases in work resulting from changes in court calendars, including the need to staff additional courtrooms, shall not be considered the Contractor's responsibility within the terms of this Contract. Any request by the courts/appointing authority for additional attorney services because of changes in calendars or work schedules will be negotiated separately by the Contractor and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

VI. ATTORNEY TRAINING

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. Attorneys providing indigent defense services shall annually complete a minimum of five (5) hours of CLE courses relevant to the areas of indigent defense services in which they practice.

VII. ATTORNEY EVALUATION

Oversight of the Contracting Authority and Contractor in matters such as interpretation of indigent defense standards, recommendation of compensation and reasonable caseloads, and response to community and client concerns, shall be provided by the Contracting authority and Department of Indigent Defense Services [hereinafter "the Department"] as set forth in NRS 180.400, et. seq.

In conducting the review, the Department may obtain information from a variety of sources including client feedback, client surveys, other providers of indigent defense services, office staff, judicial personnel, observation of a deputy director of the Department, and statistical data provided to the Department pertaining to attorney workload. The Contractor will ensure that any client-surveys authorized by the Board are provided to clients at the conclusion of the representation.

VIII. COMPENSATION AND METHOD OF PAYMENT

The terms of the contract must:

- Specify how investigative services, expert witnesses, and other case-related expenses that are reasonably necessary to provide competent representation will be made in accordance with applicable regulations and laws. Reg. Sec. 42(1)(i).
- Provide compensation at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and considers overhead, expenses, and costs relating to significant attorney travel. Reg. Sec. 42 (j).

- A. Compensation will be provided at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and considers overhead, expenses, and costs relating to significant attorney travel. Reg. Sec. 42(1)(j). (See Exhibit A, if appropriate).
- B. For the term of this contract, the Contracting Authority shall pay the Contractor a rate of \$_____ (_____ hours times \$_____ per hour) for work performed, excepting capital cases and cases in which the most serious charge may be punished by life imprisonment. Payments will be made on a monthly basis.
- C. Capital and Life Cases: Capital cases or cases where the most serious crime is punishable by life imprisonment, with or without the possibility of parole, shall be paid the appropriate statutory hourly rate. *Id.* Workloads under this contract should be adjusted in accordance with the Board's regulation pertaining to attorney workloads when the Contractor undertakes a capital case or case where the most serious crime is punishable by life imprisonment. The Contractor and Contracting Authority may agree to a reduction in other cases in lieu of additional compensation for capital or life cases.

- D. Additional Compensation: The Contractor may seek additional compensation where the attorney/legal assistant/ support staff hours exceed the hours specified in this agreement. Requests for additional compensation must be submitted as set forth in the County's Model Plan for the Provision of Indigent Defense Services.
- E. Other Litigation Expenses: The defendant has the right to proper investigation of his/her case and for the appointment of expert witnesses when necessary for the reasonable defense of his/her case. Requests for other litigation expenses shall be submitted/paid as set forth in the County's Plan for the Provision of Indigent Defense Services.
- F. In the event of Contractor failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination of this Contract.

IX. REQUEST FOR CONTRACT MODIFICATIONS

The Contractor may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Contractor finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Contractor budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such a request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Contractor within 30 days of the finding of the request that the supplemental funds shall not be available.

X. REPORTS AND INSPECTIONS

This Contractor agrees to comply with the County's Plan for the Provision of Indigent Defense Services and cooperate with the Department as set forth in Reg. Sec. 44-47. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures.

XI. ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. The Contractor agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Contractor on each case.

- B. The Contractor agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Contractor for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Contractor shall prepare an annual financial statement relating to this Contract and shall provide the Contracting Authority with a copy no later than the last working day in March for inclusion in the County's May 1 Annual Report to the Department pursuant to NRS 260.070. The Contractor agrees to comply with any audit that the Contracting Authority wants to perform.
- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

XII. HOLD HARMLESS AND INDEMNIFICATION

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Contractor to Contractor employees or others by reason of the Contract. The Contractor shall protect, indemnify, and save harmless the Contracting Authority, the Department, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, offering or resulting from Contractor's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract.
- B. The Contractor agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the Contractor, its officers, employees, representatives or agents.

XIII. INSURANCE

Without limiting the Contractor's indemnification, it is agreed that the Contractor shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

A. General Liability Insurance

The Contractor shall maintain continuously public liability insurance with limits of liability not less than: \$_____ for each person, personal injury, \$_____ for each

occurrence, property damage, liability, or a combined single limit of \$_____ for each occurrence, personal injury and/or property damage liability.

B. Professional Liability Insurance

The Contractor shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Contractor which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

Such professional liability insurance shall be maintained in an amount not less than \$_____ combined single limit per claim/aggregate. The Contractor further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Contractor shall not be required to make any payments for professional liability if such liability is occasioned by the sole negligence of the Contracting Authority. The Contractor shall not be required to make payments other than its judicially determined percentage, of any professional liability which is determined by a court of competent jurisdiction to be the result of a comparative negligence of the Contractor and the Contract Authority.

Such insurance shall not be reduced or canceled without 30 days prior written notice to the Contracting Authority. The Contractor shall provide certificates of insurance or, upon written request of the Contracting Authority, duplicates of the policies as evidence of insurance protection.

C. Automobile Insurance

The Contractor shall maintain in force at all times during the performance of this contract a policy or policies of insurance covering any automobiles owned, leased, hired, borrowed or used by any employee, agent, subcontractor or designee of the Contractor to transport clients of the Contractor.

Such insurance policy or policies shall specifically name the Contracting Authority as an additional insured. Said insurance coverage shall be primary insurance with respect to the Contracting Authority, and any insurance, regardless of the form, maintained by the Contracting Authority shall be excess of any insurance coverage which the Contractor is required to maintain pursuant to this contract.

Automobile liability as stated herein shall be maintained at \$_____ combined single limit per accident for bodily injury and property damage.

D. Workers' Compensation

The Contractor shall maintain Workers' Compensation coverage as required by the state of Nevada. The Contractor shall provide a certificate of insurance or, upon written request of the Contracting Authority, a certified copy of the policy as evidence of insurance protection.

XIV. EVALUATION GUIDELINES

The Contracting Authority and/or the Department will review information obtained from the Contractor to monitor Contractor activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

XV. CORRECTIVE ACTION

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective actions, the following sequential procedure shall apply:

A. The Contracting Authority will notify the Contractor and the Department in writing of the nature of the breach.

B. The Contractor shall respond to the Contracting Authority and the Department in writing within five (5) working days of its receipt of such notification. The response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.

C. The Contracting Authority will notify the Contractor and the Department in writing of the Contracting Authority's determination as to the sufficiency of the Contractor's corrective measures. The determination of the sufficiency of the Contractor's corrective measures will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective measures in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole.

D. The Department may assist in the resolution of any material breach and provide ameliorative advice to the Contractor.

In the event that the Contractor does not respond to the Contracting Authority's notification within the appropriate time, or the Contractor's corrective measures for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part.

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Contractor which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken of completed.

XVI. TERMINATION AND SUSPENSION

The contract must "specify the terms of the contract, including duration, any provision for renewal, and a provision for terminating the contract by either party." Reg. Sec. 42(1)(b).

A. The Contracting Authority may terminate this Contract in whole or in part upon 10 days' written notice to the Contractor in the event that:

1. The Contractor substantially breaches any duty, obligation, or services required pursuant to this Contract;
2. The Contractor engages in misappropriation of funds; or
3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract, the Contracting Authority shall provide the Contractor written notice of termination, which shall include the reasons for termination and the effective date of termination. The Contractor shall have the opportunity to submit a written response to the Contracting Authority within 10 working days from the date of the Contracting Authority's notice. If the Contractor elects to submit a written response, the Department will review the response and make a determination within 10 days after receipt of the Contractor's response. In the event the Department affirms termination, the Contract shall terminate in 10 days from the date of the final decision of the Department. The Contract will remain in full force pending communication of the Department to the Contractor. A decision by the Department affirming termination shall become effective 10 days after it is communicated to the Contractor. If the Department does not affirm the decision to terminate the contract in light of the Contractor's response, the Department shall submit a written basis for the decision to the Contract Authority and Contractor within 10 days.

B. The Contractor reserves the right to terminate this Contract with cause with 30 days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Contractor terminates this Contract for reason other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the Contractor shall be liable for damages, including the excess costs of the procurement of similar service from another source, unless it is determined by the Department that (i) no default actually occurred, or (ii) the failure to perform was without the Contractor's control, fault or negligence.

C. In the event of termination or suspension of this Contract, the Contractor shall, if requested by the Contracting Authority, continue to represent clients that were previously assigned, unless the Contractor is prohibited from doing so by law, conflict of interest or the Rules of Professional Responsibility. If, in accordance with this section the Contractor continues to represent a client or clients previously assigned, the Contracting Authority will be liable for any payments owed Contractor for the completion of that work. The Contractor will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Department may request that the Contractor attempt to withdraw from any case assigned and not completed. Should a court require, after the Contractor has attempted to withdraw, the appearance by the Contractor where such representation is no longer the obligation of the Contractor pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Contractor upon judicial verification that continued representation is required.

D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Contractor shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Contractor by the Contracting Authority.

E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.

F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees.

XVII. ASSIGNMENT/SUBCONTRACTING

The Contractor shall not assign or subcontract any portion of this Contract without notice to the Contracting Authority and consent from the Contracting Authority. Any consent sought must be requested by the Contractor in writing not less than five days prior to the date of any proposed assignment or sub-contract, provided that this provision shall not apply to short-term personal services contracts with individuals to perform work under the direct supervision and control of the Contractor. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience and reporting requirements imposed by this Contract. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract.

The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under that Contract to clients of the Contractor.

The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but not limited to counseling service, consulting services, social work services, investigator services and legal services.

XVIII. RENEGOTIATION

Either party may request that the provision of this Contract be subject to renegotiation. After negotiations have occurred, any changes which are mutually agreed upon shall be incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

XIX. ATTORNEYS' FEES

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

XX. NOTICES

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be in writing and directed to the Chief Executive Officer of the Contractor and the director/manager of the Contracting Authority specified on page one (1) of this contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

XXI. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT

These parties agree that this Contract is the complete expression of the terms hereto and any oral representation of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

XXII. NONDISCRIMINATION

During the performance of this Contract, neither the Contractor nor any party subcontracting with the Contractor under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment

or application for employment or in the administration or delivery of services or any other benefit under this agreement.

The Contractor shall comply fully with applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibits such discrimination.

XXIII. CONFLICT OF INTEREST

A. Interest of Members of Contracting Authority and Contractor

No officer, employee, or agent of the Contracting Authority, or the State of Nevada, or the United States Government, who exercises any function or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Contractor.

B. Interests of Contractor Directors, Officers, and Employees

The following expenditures of Contract funds shall be considered conflict of interest expenditures and prima facie evidence of misappropriation of Contract funds without prior disclosure and approval by the Department: employment of an individual, either as an employee of the Contractor or as an independent consultant, who is either: (a) related to a director of the Contractor; (b) employed by a corporation owned by a director of the Contractor, or relative of a director of the Contractor. This provision shall not apply when the total salary is paid to the individual pursuant to his employment agreement or employment contract would be less than \$1500 per annum.

Agreed:

Contractor

Contracting Authority

Date:_____

Date:_____

Worksheet A

The Contractor agrees to accept the following cases from the Contracting Authority for the duration of this Contract for the rates show, subject to the terms of this Agreement:

<u>Case Type</u>	<u>Annual Caseload</u>	<u>Monthly Caseload</u>	<u>Payment</u>
Adult Felony			
Adult Misdemeanor			
Juvenile Offender			
Juvenile Dependency			
Civil Commitment			
Misdemeanor Appeal			
[Specialty Courts; Other]			
<u>Total:</u>			

The Contractor agrees to provide the following other services for the Contracting Authority for the rate shown, subject to the terms of this agreement:

<u>Service</u>	<u>Payment</u>
Complex Litigation	
24 Hour Advisory Service	
In Custody Arraignments	
[Other]	
<u>Total:</u>	

Appendix B

Douglas County Contract and Plan

Recorder's Office Cover Sheet

Recording Requested By:

Name: Paula Lochridge

Department: County Manager



00156540202209867390200209

KAREN ELLISON, RECORDER

Type of Document: (please select one)

☐ Agreement

☒ Contract

☐ Grant

☐ Change Order

☐ Easement

☐ Other specify: _____

FILED
NO. 2022.127
6/27/2022
DATE
DOUGLAS COUNTY CLERK
MINDEN, NV
BY MP DEPUTY

CONTRACT FOR INDIGENT LEGAL SERVICES

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA

AND

NADINE MORTON

This Contract for Indigent Legal Services (the "Contract") is entered into by and between Douglas County, a political subdivision of the State of Nevada ("County"), and Nadine Morton ("Attorney"). The County and Attorney are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WHEREAS, County, from time to time, requires the professional services of independent contractors; and

WHEREAS, it is deemed that the services of Attorney are both necessary and desirable and in the best interests of County; and

WHEREAS, Attorney represents that Attorney is licensed to practice law in the State of Nevada, is in good standing with the State Bar of Nevada, and is duly qualified, equipped, staffed, ready, willing and able to perform and render the legal services required by the County.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein made, the County and Attorney mutually agree as follows:

1. TERM AND EFFECTIVE DATE OF CONTRACT. The Contract will become effective on August 1, 2022, and will remain in effect until June 30, 2023, unless earlier terminated pursuant to the terms of this Contract. This Contract replaces the remaining term of any previously executed contract between Attorney and County.

2. INDEPENDENT CONTRACTOR STATUS. The Parties agree that Attorney, Attorney's associates and employees shall have the status of an independent contractors and that this Contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted, to the parties, including that Attorney is not a Douglas County employee and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the independent contractor or the County to the public employees' retirement system;
- (5) Accumulation of vacation leave or sick leave;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

Attorney and County agree to the following rights and obligations consistent with an independent contractor relationship between the Parties:

- a. Attorney has the right to perform services for others during the term of this Agreement.
- b. Attorney has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- c. Attorney shall not be assigned a work location on County premises.
- d. Attorney, at Attorney's sole expense, will furnish all equipment and materials used to provide the services required by this Agreement.
- e. Attorney, at Attorney's sole expense, has the right to hire assistants as subcontractors, or to use Attorney's employees to provide the services required by this Agreement.
- f. Attorney or Attorney's employees or contract personnel shall perform the services required by this Agreement, and Attorney agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Attorney.
- g. Neither Attorney nor attorney's employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.
- h. County shall not require Attorney or Attorney's employees or contract personnel to devote full time to performing the services required by this Agreement.

Attorney further certifies the following:

- i. Contactor is licensed by the State Bar of Nevada to provide legal services to members of the public and agrees to maintain the required professional license to practice law in active status and in good standing for the State of Nevada.
- j. Attorney understands that Attorney is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Attorney understands that an IRS Form 1099 will be filed by County for all payments County makes to Attorney.

3. SERVICES TO BE PERFORMED. On an as-needed basis, the Attorney will provide professional legal services including the following:

A. The Attorney will represent adult criminal defendants that a Court in Douglas County has determined to be indigent. The representation will include all stages of the criminal proceedings including bail hearings and other court appearances, appeals and revocation of probation or parole, but not post-conviction proceedings.

B. The Attorney will provide legal representation for a child alleged to be delinquent or in need of supervision where a Court orders the appointment in accord with NRS Chapter 62A.

C. Attorney agrees to perform the services of an attorney for a child, parent, or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.

D. If at any time during the representation of a person the Attorney has reason to believe the person is not indigent, the Attorney must immediately notify the Court.

E. If at any time during the representation of a person the Attorney has reason to believe that there is a legal ethical conflict with that representation, the Attorney must immediately notify the Court.

F. If a defendant who is requesting appointed counsel due to indigence has contacted Attorney concerning retaining that Attorney for representation, that Attorney will not be obligated to accept the appointed case. The Attorney must notify the appropriate court, by letter, of the contact with the indigent defendant prior to the proposed appointment, and the next firm in the rotation will be appointed.

G. The Attorney shall perform all duties required under the Nevada Revised Statutes and by the Nevada Department of Indigent Defense Services, including standards of performance, record keeping, time keeping and reporting requirements. However, in no event shall the Attorney be required to provide any information that would compromise client confidentiality, prejudice the rights or defense of any eligible client or violate any provision of the Nevada Rules of Professional Conduct.

4. Standard Of Work.

A. In providing legal representation as set forth in Section Three, Attorney must provide those services in a professional, competent, and effective manner. This includes, but is not limited to, interviewing the client, appearing at all Court hearings or providing coverage for those Court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations. Attorney shall:

- (1) Provide zealous, competent representational services in all cases;
- (2) Comply with the requirements of the Nevada Department of Indigent Defense Services and the Nevada Indigent Defense ("DIDS") Standards of Performance and not accept cases for which the Attorney is not approved by DIDS;
- (3) Comply with all applicable laws and regulations;
- (4) Comply with the Nevada Rules of Professional Conduct; and
- (5) Comply with the Douglas County Plan for the Provision of Indigent Defense Services (attached as Exhibit "A").

B. Attorney agrees to staff and maintain an office in Douglas County, Nevada. Attorney agrees to furnish a telephone number for use after normal office hours in any emergency that may arise where Attorney's services are requested pursuant to the terms of this Contract to the Justice Courts, District Courts and District Attorney. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of Attorney's practice as required by this Contract are the sole responsibility of Attorney and are a part of Attorney's compensation pursuant to Section 6 of this Contract.

C. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

D. Attorney agrees to furnish to County a copy of the DIDS Eligible Provider Approval Letter (Exhibit "B") verifying the category of cases Attorney is authorized to accept.

5. PAYMENT FOR SERVICES.

A. **For Fiscal Year 2022-2023:** Attorney agrees to provide the services set forth in Paragraph 4 at a cost not to exceed Two Hundred Forty-Two Thousand Nine Hundred Sixteen dollars and 67 cents (\$242,916.67) through the term of this Contract. Payment shall be made by the County to the Attorney in four quarterly payments of \$44,166.67 to be paid on or before August 1, 2022, \$66,250.00 to be paid on or before October 1, 2022, January 1, 2023, and April 1, 2023.

B. For legal services related to a child's welfare when a parent or other person is alleged to have abused or neglected a child, and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128, Attorney will be paid supplemental fees at the statutory rate for any work performed beyond ten (10) hours per case for appointments pursuant to NRS 128.100.

C. The Attorney may secure payment for extraordinary investigative costs, expert witness fees, forensic services, translators, laboratory analysis, or other legally necessary services if authorized in advance by the Douglas County Indigent Services Coordinator. Attorney understands and agrees that the reimbursement of these extraordinary costs is subject to the limits and requirements of NRS 7.135. Attorney agrees to submit invoices within ten days of the end of the prior month in which any extraordinary costs or other expenses were incurred and for which reimbursement is requested from the County. County will pay invoices it receives within a reasonable time. However, in no event will Attorney be reimbursed or receive payment for travel expenses or any form of per diem expense.

D. The compensation specified above is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court may, for the reasons specified in NRS 7.125(4), award extraordinary fees to Attorney in a particular matter, which are over and above the compensation specified provided that the statutorily prescribed procedures contained in NRS 7.125(4) are complied with.

6. TERMINATION OF CONTRACT.

A. Either Party may terminate this Contract without cause, provided that a termination shall not be effective until 90 calendar days after the Party has served written notice upon the other Party. All monies due and owing up to the point of termination of the Contract shall be paid by County, and all pending cases that were produced for this Contract must be immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Attorney will be reduced to the proportionate number of days worked by the Attorney. The Attorney must reimburse the County for any funds received to which they are not entitled due to the termination of the Contract.

B. If Attorney should be unable to perform any or all of the duties required by reason of illness, accident or other cause beyond Attorney's control, and the disability exists for a period beyond ten (10) judicial days, Attorney must provide, at Attorney's own expense, a substitute attorney (which could include other contract attorneys) to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of the Attorney's duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this Contract, and the respective duties, rights and obligations of this agreement will terminate.

7. PROFESSIONAL LICENSE. Attorney agrees to maintain his or her professional license to

practice law in active status and in good standing for the State of Nevada. Attorney promises and agrees to notify the County Manager if Attorney is brought before the State Bar of Nevada on any ethics charge or if Attorney is arrested for any crime. Failure to maintain this license to practice law will result in the immediate termination of this Contract.

8. GENERAL LIABILITY INSURANCE. Douglas County's liability coverage will not extend to the Attorney and Attorney is required to acquire and maintain general liability insurance in the minimum amount of \$1,000,000 during the term of this Contract at Attorney's sole expense. Proof of insurance must be sent to the Douglas County Manager. Such proof of insurance must be provided at least annually throughout the term of this Contract and Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such insurance.

9. LEGAL MALPRACTICE INSURANCE. Attorney agrees to acquire and maintain malpractice insurance in the minimum amount of \$250,000 per claim and \$500,000 aggregate claims during the term of this Contract at Attorney's sole expense. Proof of malpractice insurance must be sent to the County within five (5) business days upon request. Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such malpractice insurance.

10. NONAPPROPRIATION. Nothing in the Contract will be construed to provide Attorney with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Attorney will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Attorney. Attorney will have no claim of any sort to the unexpended funds.

11. CONSTRUCTION OF CONTRACT. The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The fee, rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court. The Parties mutually agree to not seek punitive damages against either Party.

12. COMPLIANCE WITH APPLICABLE LAWS. Attorney promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws. County will not waive and intends to assert all available NRS chapter 41 liability limitations.

13. ASSIGNMENT. Attorney will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the Douglas County Indigent Defense Services Coordinator and must meet the qualifications under the Nevada Department of Indigent Services to represent the charged individual. If

the Attorney wishes to have a substitute attorney appear for him or her due to vacation, illness or personal family matter, then the Attorney may do so and is responsible for paying the substitute attorney. There is no requirement to have the Douglas County Indigent Defense Coordinator approve such substitution if the substitution is for less than twenty-five judicial days per calendar year.

14. COUNTY INSPECTION. The accounting records and expense invoices of Attorney related to the Contract will be subject to inspection, examination and audit by the County, including, the County Manager and Chief Financial Officer to audit and verify the expenses claimed by Attorney.

15. Delegation of Authority. The Judges of the Ninth Judicial District Court and the Justices of the two Townships are expressly designated the authority to oversee and implement the provisions of this Contract. Such designations include the development of factors for determining whether a person is indigent and all other properly related matters related to the appointment of indigent defense counsel. The Douglas County Indigent Defense Services Coordinator is expressly designated the authority to oversee and implement the provisions of this Contract. This authority includes the assigning of cases on a rotating basis among attorneys to ensure an equitable distribution, ordering/requiring monthly time summaries from attorneys, and preparing vouchers for the quarterly payments due to Attorney. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

16. INDEMNIFICATION OF COUNTY. To the fullest extent permitted by law, Attorney shall indemnify, hold harmless and defend County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Attorney, its officers, employees and agents arising from or relating to this Contract. Attorney will defend, hold harmless and/or indemnify County against such claims. Notwithstanding the obligation of Attorney to defend County as set forth in this paragraph, County may elect to participate in the defense of any claim brought against County because of the conduct of Attorney, its officers, employees and agents. Such participation shall be at County's own expense and County shall be responsible for the payment of its own attorney's fees it incurs in participating in its own defense.

17. MODIFICATION OF CONTRACT. The Contract and any attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

18. AUTHORITY. The Parties represent and warrant that they have the authority to enter into this Contract.

19. STANDARD OF CARE. Attorney will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of Attorney's profession currently practicing under similar conditions and in compliance with the standards established by the Nevada Department of Indigent Defense Services and as required under the terms of this Contract.

20. THIRD PARTY BENEFICIARY. Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party, or to otherwise allow a third party to assert a cause of action against either Attorney or County.

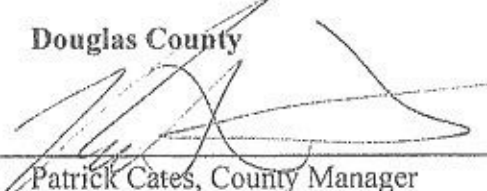
21. **NOTICES.** All formal notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

To County: Douglas County
Attn. County Manager
Post Office Box 218
Minden, Nevada 89423
Telephone: (775) 782-9821

To Attorney: Nadine Morton
1662 U.S. Hwy 395, Suite 208
Minden, NV 89423
Telephone (702) 718-3000

IN WITNESS WHEREOF, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

Attorney
By:  6/13/22
Nadine Morton, Attorney (Date)

Douglas County
By:  6/23/22
Patrick Cates, County Manager (Date)

Board of Indigent Defense Services
Approved 10/06/2021



The Douglas County Plan for the Provision of Indigent Defense Services

Adopted 9/16/2021

I. STATEMENT OF POLICY

A. Authorities:

1. NRS 180.320(2)
2. Nevada Department of Indigent Defense Temporary Regulation Section 23
3. In the matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT No. 411

B. Objectives

1. The objective of this Plan is to provide for equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services of appointed counsel, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense. The plan and any attorneys providing indigent defense services pursuant to this plan must be free from political and undue budgetary influence and be subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.

II. DEFINITIONS

- A. "Appointed Attorney" includes private attorneys, both contracted and hourly.
- B. "Appointed Counsel Program Coordinator" performs such duties and responsibilities as assigned by the County Manager as are reasonably necessary to oversee the program including assigning cases on a rotating basis among the contract Attorneys to ensure an equitable distribution; monitoring case reporting requirements from attorneys; approving of and overseeing the use of substitute attorneys for the contract Attorneys, and; all other properly related matters. As the Department of Indigent Defense's designee, this position will work in coordination with the Department of Indigent Defense Services to ensure requested data is provided to the Department.
- C. "Representation" includes counsel and investigative, expert and other services.

III. PROVISIONS OF REPRESENTATION

- A. Mandatory: Douglas County shall provide representation for any financially eligible person who:

1. Is charged with a felony or gross misdemeanor;
 2. is charged with a misdemeanor where jail time is mandatory or the prosecutor is seeking jail time;
 3. is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;
 4. is a juvenile alleged to have committed an act of delinquency or alleged to be a child in need of supervision;
 5. is party to a dependency case where termination of rights is a possibility;
 6. is subject to commitment pursuant to NRS 433A.310;
 7. is in custody as a material witness;
 8. is entitled to appointment of counsel under the Sixth Amendment to the U.S. Constitution or any provision of the Nevada Constitution, or when due process requires the appointment, or the judge is likely to impose jail time;
 9. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
 10. faces loss of liberty for criminal contempt;
 11. has received notice that a grand jury is considering charges against him or her and requests 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, infraction or code violation for which a sentence of confinement is authorized;
 2. is a party to a dependency case in which termination of parental rights is a possibility;
 3. is or has been called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 4. 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 as soon as feasible after their first appearance before a judge;
2. when they are formally charged or notified of charges if formal charges are sealed; or
3. when a Justice of the Peace or District Judge otherwise considers appointment of counsel appropriate

D. Number and Qualifications of Appointed Counsel:

1. one attorney shall be appointed consistent with Section 4 and 5 herein, except Capital Cases;
2. two attorneys shall be appointed consistent with Section 4 and 5 herein, as soon as possible 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. Financial Eligibility:

- (a) 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;
- (b) "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;
- (c) a defendant is presumed to have a "substantial hardship" if he or she is currently service a sentence in a correctional institution or housed in a mental health facility or is a minor;
- (d) defendants not falling below the presumptive threshold for indigency will be subject to a more rigorous screening process to determine if his or her particular circumstances, including seriousness of charges being faced, monthly expenses,

and local private counsel rates, would result in a "substantial hardship" were they required to retain private counsel.

2. Screening for Eligibility: Within 48 hours, the Court Administration, through Pretrial Services, or Appointed Counsel Coordinator, shall conduct 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 above. Appointed Counsel may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility.
3. Automatic Eligibility: A minor alleged to have committed an act of juvenile delinquency, or alleged to be a child in need of supervision is automatically eligible for appointed counsel because the presumption of indigency always accompanies any charges filed against a minor.

IV. APPOINTMENT OF PRIVATE ATTORNEYS

A. System of Selection for Court Appointed Counsel Attorneys

1. Annually, Douglas County will recruit attorneys to provide indigent defense services on a contract basis.
2. Recruitment will take place during the spring of each year, with annual contracts beginning July 1st of each fiscal year.
3. Attorneys interested in providing indigent defense services on a contract basis will provide Letters of Interest for consideration.
4. Attorneys must demonstrate compliance with the standards and regulations of the Board of Indigent Defense Services pertaining to training, education, and qualifications by submitting an application to the Department of Indigent Defense Services.
5. The Appointed Counsel Coordinator shall establish an Appointed Counsel Selection Committee (ACSC) to review the qualifications of applicants for contract or hourly appointments, to review the list of attorneys from which appointments are made in hourly cases, to determine which attorneys shall be recommended for appointments.
6. The committee shall be made up of five (5) members who:
 - (a) have no pecuniary interest in the outcome of the attorney selection or performance evaluation process;

- (b) have no legal, financial or familial relationship to any attorney whose qualification or performance will be evaluated;
 - (c) are not directly related to the judiciary or any prosecution function; and
 - (d) have an interest in the variety of types of cases that are represented by the appointed counsel lists to be selected by the Committee.
7. On an ongoing basis, the Committee shall:
- (a) meet at least once a year and shall solicit input from judges, and others familiar with the practice of criminal defense, juvenile law and family where appointed counsel are utilized;
 - (b) review any complaints from clients;
 - (c) review the history of participation in training of each applicant and each contract or hourly attorney receiving appointments; and
 - (d) determine eligibility and recommendation of appointed counsel for new and continued participation.
8. While appointed counsel may receive assistance from associate attorney's, participants in a mentorship program, or other attorneys deemed qualified by the ACSC, in carrying out his/her responsibilities, appointed counsel cannot delegate responsibilities for representation to another attorney. All substantive court appearances must be made by an attorney who has been determined to be qualified by the ACSC.
9. Complaints from clients, judges or the public about representation by appointed counsel shall be transmitted to the Coordinator for consideration by the ACSC in evaluation of appointed counsel.

B. Contract Attorneys

1. Douglas County shall contract for appointment of counsel;
2. Douglas County contract attorney compensation may be based on a flat fee, an hourly basis, or a combination of both. If 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 attorney to comply with the Performance Standards for Appointed Counsel as adopted and amended by the Nevada Supreme Court.
3. Douglas County shall contract with attorneys as appointed counsel only after the attorney has been qualified to enter into such a contract by the ACSC; and
 4. The contract must be subject to termination annually or sooner, if determined by the ACSC that a contract attorney is not abiding by the standard guidelines for qualification of appointed counsel; and
 5. The payment of fees and expenses of contracted appointed counsel by Douglas County shall be governed by contract between counsel and Douglas County.
 6. The contract shall exclude appointment in cases with the potential of a life sentence and capital cases.

C. Hourly and Capital Case Attorneys:

1. If contract counsel cannot handle the case; or the Appointed Counsel Program Coordinator determines the case is not appropriate for contract counsel to handle, alternative counsel will be selected by the Appointed Counsel Program Coordinator as follows:
 - (a) The Appointed Counsel Program Coordinator shall select this alternative appointed counsel, in consecutive order, from the hourly list, except
 - (b) If the nature of the case requires lead counsel be selected from the Capital Case list, the Appointed Counsel Program Coordinator, in consecutive order, shall select from the Capital Case list;
 - (c) The Appointed Counsel Program Coordinator shall select Second Chair counsel for a capital case: counsel may be selected next in order from the Hourly list, if the attorney qualifies under Supreme Court Rule 250 for second chair selection, or the Capital Case list.
2. The payment of fees and expenses of Hourly and Capital Case appointed attorneys shall be approved by the Appointed Counsel Program Coordinator.

- (a) Such invoices shall be submitted no later than ten days after the end of the month in which the services were rendered.
 - (b) The Coordinator shall approve for payment all reasonable attorney's fees requested. In reviewing for reasonableness, the Coordinator may consider factors such as: the average case times as determined by workload analysis, time and skill required, complexity of the case, and experience and ability of the Qualified Attorney(s). The Coordinator may request additional information where necessary. In the event the Coordinator denies or modifies the request, an explanation shall be provided to the Qualified Attorney, with a copy to the County Manager and the Department of Indigent Defense Services, as to why the denied portion was not reasonable. Such denials shall be subject to judicial review pursuant to NRS 7.135.
- D. Compensation of Court Appointed Counsel: Douglas County agrees to pay contract attorneys and/or panels of private attorneys up to the sum of One Hundred Ninety-Five Thousand Three Hundred and thirty-three Dollars and thirty-three Cents (\$195,833.33) per year. The County will make the payment to contract attorneys and/or panels of private attorneys on a quarterly basis on the first day of the first month of the quarter.
- E. Conflict of Interest Checks: Appointed Counsel shall, as soon as practicable, upon appointment, conduct a conflict check determining if any conflict of interest exists that would prevent representation of the defendant. If appointed, counsel determines that such a conflict exists, the appointed counsel shall bring this information as soon as possible to the relevant court. In no instance, shall a single attorney or law firm be appointed to represent co-defendants in a case. The Douglas County District Attorney's office shall have no authority to determine or recommend whether or not the appointed counsel has a conflict of interest.
- F. Payment of Fees and Expenses of Appointed Counsel: Douglas County agrees to budget for case-related expenses in the amount of \$100,000. Attorneys may secure reimbursement for extraordinary investigative costs, expert witness fees or other necessary services. Any payment for extraordinary costs or fees shall be paid only when submitted and approved by the Appointed Counsel Program Coordinator.
1. Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:
- (a) Pre-authorization: Case-Related Expenses expected to exceed two thousand five hundred dollars shall be submitted to the Coordinator for pre-authorization. The request shall include an explanation of why the expense is reasonably necessary to provide Representational Services

2. Reasonableness Review: All Case-Related Expenses are subject to the Coordinator's review for reasonableness. Invoices shall be submitted for such review no later than thirty days following the termination of the representation. Any requests for expenses not timely submitted shall be waived.
- G. Privileged Communications: County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or otherwise privileged communications between indigent criminal defense client and appointed counsel.
1. Within the Judicial Law Enforcement Center (JLEC) in Minden, private meeting rooms are available for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.
 2. Within the Tahoe Township Justice Court in Stateline, private meeting rooms are available for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.
- H. Complaints by Clients: Appointed Counsel shall maintain a system for receipt and review of written complaints made by clients. Appointed Counsel shall make publicly available the policy and procedure for receiving and reviewing written complaints. This system shall not interfere with a person's ability to avail themselves of the complaint process provided by the Department of Indigent Defense Services (DIDS) or Nevada State Bar.

V. TRAINING

- A. Appointed Counsel must meet all requirements for training and experience as promulgated in the Nevada Department of Indigent Defense Services regulations.

VI. DUTIES OF INDIGENT DEFENSE COUNSEL

- A. Standards of Performance. Services rendered by Appointed Counsel shall be commensurate with those rendered if counsel privately employed by a person. Representation shall be provided in a professional, skilled manner guided by applicable regulations; laws; Nevada 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. Additionally, Appointed Counsel must advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless doing so is the client's best interest. Appointed Counsel must make all reasonable efforts to meet with the client within seven

days following the assignment of the case and every thirty days thereafter unless there are no significant updates in the client's case.

- B. Continuity of Representation: Douglas County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants so that the same Appointed Counsel represents a defendant through every state of the case without delegating the representation to others, except that administrative and other tasks that do not affect the rights of the defendant.
- C. Workload Standard: The workload of an Appointed Counsel must allow the Appointed Counsel to give each client the time and effort necessary to ensure effective representation. Any Appointed Counsel who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the Appointed Counsel's competence, diligence, or representation of clients. Douglas County will provide the maximum workload guidelines as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.
- D. In Custody Arraignments: The Appointed Counsel Program Coordinator shall ensure the provision of Representational Services for all Eligible Clients who are in custody and require a bail hearing. If the Coordinator is unable to assign an attorney to be present at initial appearances and arraignments, the Coordinator may be present. Either the assigned attorney or Coordinator must be prepared to address appropriate release conditions in accordance with relevant statute, rules of criminal procedure and caselaw. If the Coordinator provides these services, they should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of the defendant. This plan ensures the presence of counsel at all other critical stages, whether in or out of court.
- E. No Receipt of Other Payment: Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment unless such payment is approved by order of the court.
- F. Private Practice of Law: Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to the contract.
- G. Use of Client Surveys: Appointed Counsel shall maintain a system for providing Client Surveys to their clients. Appointed Counsel shall make publicly available the policy and procedure for providing surveys. This system shall not interfere with a person's ability to avail themselves of the Client Survey form provided by the Department of Indigent Defense Services (DIDS).

- H. Caseload Reporting: Appointed Counsel shall report caseload data and times as promulgated in the Nevada Department of Indigent Defense Services regulations.

VII. APPOINTED COUNSEL PROGRAM COORDINATOR

- A. Selection: Douglas County will contract with a lawyer to serve as the Appointed Counsel Program Coordinator. The terms of this contract will be determined by this plan, Douglas County, and the Appointed Counsel Program Coordinator, but in no event will this Appointed Counsel Program Coordinator be directly involved in direct representation in appointed counsel cases.

- B. Duties:

1. The Appointed Counsel Program Coordinator shall have all the duties and responsibilities stated in the various sections of this plan.
2. The Appointed Counsel Program Coordinator shall maintain the list of all attorneys approved by the ACSC for contract, hourly, and capital case appointment. In addition, the Appointed Counsel Program Coordinator shall maintain appropriate records to reflect the cases and dates to which each attorney has been appointed.
3. When notified of the need for representation, the Appointed Counsel Program Coordinator, shall select, in order and as more fully described herein, the next available attorney from the list of those attorneys qualified to provide representation as approved by the Committee in accordance with Section 4 of this Plan. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Coordinator 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.
4. The Appointed Counsel Program Coordinator 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.
5. The Appointed Counsel Program Coordinator will work with the Department of Indigent Defense Services to provide any information requested.

VIII. EFFECTIVE DATE

- A. The Douglas County Plan for the Provision of Indigent Defense Services is approved on this the 16th day of September, 2021.

Appendix C

Lyon County Contract and Plan

AGREEMENT FOR PUBLIC DEFENDER SERVICES

This Agreement by and between LYON COUNTY (hereinafter "Contracting Authority") and WALTHER LAW OFFICES, PLLC (hereinafter "Contractor") shall take effect on the 1st day of July, 2022 ("Effective Date").

WHEREAS, the right to counsel in certain criminal matters is guaranteed by the United States Constitution, the Nevada Constitution, and the Nevada Revised Statutes (NRS); and

WHEREAS, the Contracting Authority is required by law to appoint a public defender to provide counsel in such matters to eligible indigent persons; and

WHEREAS, the Contracting Authority desires to contract with a private law firm to serve as its public defender; and

WHEREAS, the Contractor is a private law firm that desires to serve as the Contracting Authority's public defender and warrants that it has the means and ability to do so in a zealous and competent manner; and

WHEREAS, both parties desire to reduce the entirety of their agreement to writing in this document (hereinafter "this Agreement"), and intend for all funds paid under this Agreement to be used for the sole purpose of providing indigent defense services to eligible clients of the Contractor;

NOW, THEREOFRE, the parties agree as follows:

I. DEFINITIONS

As used in this Agreement, the underlined words below shall have the following meanings:

1. Appointing Authority: The judge, justice, or master presiding over a Case arising in a court of law within Lyon County.
2. Case: A "Case" shall have the meaning prescribed to it in Sec. 5 of the Regulations.
 - a. Misdemeanor Case: A Case in which the highest charge is a Misdemeanor.
 - b. Category B, C, D, or E Felony or Gross Misdemeanor Case: 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 less than ten (10) years imprisonment.
 - c. Category B Felony (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.

- d. Non-Capital Category A Case: A Case in which the highest charge is a non-capital Category A Felony.
 - e. Capital Case: A Case in which the highest charge is a capital Category A felony.
 - f. Juvenile Proceedings: A Case arising under NRS 432B and/or a Case in which a juvenile is alleged to be delinquent or need of supervision.
 - g. Appeal: Any appeal of an interlocutory adjudication or Final Adjudication in a Case to the Third Judicial District or the Nevada Supreme Court.
3. Cause: Cause for immediate termination of this Agreement. Cause for such termination shall exist in the event of:
- a. A material breach of this Agreement by the Contractor, including without limitation failure to provide Representational Services to Eligible Clients; failure to comply with reporting obligations; failure to utilize qualified attorneys; failure to meet performance standards; failure to adhere to the Nevada Rules of Professional Conduct; or any other failure from which it could reasonably be discerned that public funds are not being responsibly used for the provision of indigent defense services as required in this Agreement and in compliance with all applicable laws, rules, and regulations.
 - b. A material breach of this Agreement by the Contracting Authority, such as non-payment of compensation without justification; failure to provide reimbursement for reasonable Case-Related Expenses; or failure to obtain additional counsel or negotiate additional compensation in good faith in the event of a Substantial Workload Increase.
4. Department: The Nevada Department of Indigent Defense Services.
- Eligible Client: An indigent person whom an Appointing Authority has determined to be eligible for a court-appointed attorney pursuant to Section 8 of the Temporary Regulations of the Board of Indigent Defense Services, in a Case arising in a court of law within Lyon County.
5. Final Adjudication: "Final Adjudication" shall have the meaning prescribed to it in Section 43(4)(d) of the Regulations.
6. Fiscal Year: July 1st through June 30th.
7. Case-Related Expenses: Expenses for professional services reasonably needed to provide an effective defense of Eligible Clients under this Agreement. This includes reasonable fees for investigators, translators, expert witnesses, laboratory analysis, and other forensic services.

8. Plan: Lyon County's Plan for the Provision of Indigent Defense Services.
9. Regulations or Reg.: The Permanent Regulations of the Board of Indigent Defense Services.
10. Representational Services: All services part and parcel of the Contractor's delivery of competent, zealous legal representation to Eligible Clients under this Agreement. Such services may include, without limitation: investigation; interviews of clients and potential witnesses; review of physical evidence; legal research; preparation of pleadings, briefs, correspondence, exhibits, or other documents; preparation for and attendance at hearings and conferences; expert witness selection, discovery, and preparation; pretrial advocacy; trial advocacy; sentencing advocacy; appellate advocacy; plea bargaining; and any and all other services needed to provide competent, zealous legal representation from the beginning of a Case through Final Adjudication and, if applicable, through Appeal.
11. Significant Workload Increase: An increase in the number of Cases in a Fiscal Year that exceeds ten percent (10%) of the average number of Cases per Fiscal Year in the preceding three Fiscal Years.

II. APPOINTMENT OF PUBLIC DEFENDER; TERM OF APPOINTMENT

Pursuant to NRS 260.010(2) and Title 1, Chapter 9 of Lyon County Code, the Contractor shall be appointed as public defender for the Contracting Authority. The term of the Contractor's appointment shall be three (3) years, commencing on the Effective Date of this Agreement. This term may be extended by written agreement of the parties. This term may be terminated early by either party without Cause upon ninety (90) days written notice. This term may be terminated early by either party for Cause at any time. In the event of any early termination, with or without Cause, the Contractor shall take all professionally-responsible action to ensure an orderly transition of counsel that does not prejudice the rights or defense of Eligible Clients.

III. SCOPE OF SERVICES

Except as expressly limited in this Section, the Contractor shall provide Representational Services as follows:

1. Misdemeanor Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.
2. Category B, C, D, E Felony and Gross Misdemeanor Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.
3. Category B Felony (10+ year maximum) Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.

4. Non-Capital Category A Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.
5. Capital Cases: As of the Effective Date of this Agreement, the Contractor does not have an attorney qualified to serve as lead counsel in Capital Cases pursuant to Nevada Supreme Court Rule (SCR) 250, but the Contractor has attorneys qualified to serve as co-counsel in such cases. The Contractor shall, if appointed, serve as co-counsel in one (1) Capital Case per Fiscal Year. In the event the Contractor is appointed as co-counsel in a Capital Case two (2) or more times in a Fiscal Year, the Contractor may, at its option, provide Representative Services in the additional Cases after the first one. For all Capital Case appointments in excess of one (1) per Fiscal Year, the Contractor will receive additional compensation in accordance with Section IX below. In the event an attorney of the Contractor becomes qualified to serve as lead counsel in Capital Cases pursuant to SCR 250, the Contracting Authority and Contractor may negotiate the terms of such representation in a separate Agreement or a written modification of this Agreement.
6. Juvenile Proceedings: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.
7. Appeals: The Contractor shall represent Eligible Clients on any Appeal of an interlocutory adjudication or Final Adjudication to the Third Judicial District Court or the Nevada Supreme Court.

By way of express limited exception, the Contractor shall not provide the Representational Services otherwise required above to the extent doing so would violate any provision of the Nevada Rules of Professional Conduct, including but not limited to the provisions concerning conflicts of interest. The Contractor will refer to the Nevada Rules of Professional Conduct, as interpreted by the State Bar of Nevada and/or opinions of the State judiciary, and to the American Bar Association Standards for Criminal Justice to determine the existence and appropriate resolution of conflicts of interest. If a conflict of interest exists, the Contractor will promptly file an appropriate motion or follow the procedure for handling conflicts of interest provided in the Contracting Authority's Plan.

IV. ATTORNEYS; ATTORNEY QUALIFICATIONS; PERFORMANCE STANDARDS; TRAINING

1. Attorneys: The Contractor shall maintain a list of all attorneys who will perform Representational Services under this Agreement. The list shall specify, for each attorney, the category(ies) of Case(s) in which the attorney is qualified to provide Representational Services. The Contractor shall provide a copy of this list to the Contracting Authority within thirty (30) days of the Effective Date and in the event of any subsequent change to the list.
2. Attorney Qualifications: It shall be the sole responsibility of the Contractor to ensure all attorneys providing Representational Services to Eligible Clients under this

Agreement maintain all requisite qualifications for the category(ies) of Case(s) in which they are providing Representational Services. To ensure the ability, training, and experience of an attorney match the complexity of a given Case, the Contractor shall demonstrate compliance with the standards and regulations of the Department pertaining to training, education, and qualifications. The Contractor shall further ensure attorneys performing Representational Services in a particular category of Case under this Agreement are qualified by the Department to perform such services in that category of Case.

3. Performance Standards: It shall be the sole responsibility of the Contractor to ensure the attorneys whom it employs or with whom it contracts to perform its obligations under this Agreement:
 - a. Provide zealous, competent Representational Services in all Cases;
 - b. Comply with the requirements of the Department and the Nevada Indigent Defense Standards of Performance;
 - c. Comply with all applicable laws and regulations (including the Reg., as may be amended);
 - d. Comply with the Nevada Rules of Professional Conduct; and
 - e. Comply with the Contracting Authority's Plan.

The Contractor shall also ensure, to the greatest extent practicable, consistency in the representation of Eligible Clients such that the same attorney represents an Eligible Client through every stage of a Case. Nothing in this paragraph shall be construed to prohibit the Contractor from delegating appropriate administrative tasks to support staff, or to prohibit the Contractor from assigning 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.

4. Training: Ongoing professional training is a necessity for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Contractor shall ensure attorneys providing Representational Services under this Agreement annually complete a minimum of five (5) hours of continuing legal education relevant to the areas in which they practice and satisfy any other training requirements mandated by the Department.

V. WORKLOAD

The Contractor shall participate in any Department workload study to determine an appropriate caseload for individual attorneys providing Representational Services under this Agreement. Prior to the completion of a workload study, the Contractor shall reasonably comply with the workload guidelines as determined by the Department. After completion of the study, the Contractor shall ensure sufficient staffing to comply with any resultant workload guidelines.

In the event of a Significant Workload Increase, the Contracting Authority shall be responsible for retaining the services of additional counsel to provide Representational Services to

cover the amount of the Significant Workload Increase. Alternatively, the Contracting Authority and the Contractor may negotiate additional compensation to allow the Contractor to acquire additional personnel and/or resources needed to cover the Significant Workload Increase.

VI. OFFICES AND STAFFING

The Contractor agrees to staff and maintain an office in Lyon County, Nevada. The Contractor shall have staff available to answer telephone calls to the office during business hours and agrees to furnish to the Justice Courts, District Courts, Lyon County Sheriff's Office, and the Lyon County District Attorney a telephone number for use after hours in any emergency that may arise. The expense of office space, furniture, equipment, technology, software, legal research database access, supplies, and support staff services suitable for conduct of the Contractor's practice of law are the sole responsibility of the Contractor. The Contractor's expenses described in this paragraph are not a charge against the County as provided in NRS 260.040(5) and are not considered Case-Related Expenses. The Contractor may at its discretion use legal interns as part of its staffing, provided such usage complies with SCR 49.5

VII. REPORTING

The Contractor shall report quarterly to the Lyon County Manager and Board of Commissioners any information the Contracting Authority reasonably deems pertinent, including, without limitation, any information required under the Plan and/or the Regulations. The Contracting Authority shall approve the format in which such quarterly reports are provided.

The Contractor shall also report to the Department any information necessary for the oversight of indigent defense services in Lyon County, as required and specified in the Regulations.

In no event shall the Contractor be required to provide any information that would compromise client confidentiality, prejudice the rights or defense of any Eligible Client, or violate any provision of the Nevada Rules of Professional Conduct.

VIII. INSURANCE

The Contractor will maintain adequate liability insurance, including errors and omissions coverage and general liability coverage, in policy limits of at least five hundred thousand dollars (\$500,000.00) per occurrence during the term of this Agreement. The Contractor shall also maintain workers compensation insurance for its personnel as required by Nevada Law. The Contractor shall provide proof of all such insurance coverage to the Contracting Authority within thirty (30) days of the Effective Date of this Agreement. The insurance policies must be written by an insurance carrier authorized to issue the policies in the State of Nevada. The premium expense for all insurance coverage required in this Section is the sole responsibility of the Contractor.

IX. COMPENSATION

Except as otherwise expressly stated in this Section, the Contractor's full compensation for the performance of all Representational Services and all other obligations under this Agreement shall be the sum of:

ONE MILLION AND EIGHTY SEVEN THOUSAND DOLLARS AND 00/100 CENTS (\$1,087,000.00) per Fiscal Year, paid at the rate of NINETY THOUSAND FIVE HUNDRED AND EIGHTY THREE DOLLARS AND 33/100 CENTS (\$90,583.33) per month, due on or before the fifth (5th) of each month.

By way of express exception:

1. In the event the Contractor wishes to accept more than one appointment as co-counsel in a Capital Case in any Fiscal Year as is its prerogative under Section III, the Contractor shall receive one hundred twenty five dollars (\$125.00) per hour for all attorney time reasonably spent providing Representational Services in such Cases. The Contractor shall submit monthly invoices to the Contracting Authority, with time entries for Representational Services rounded to the nearest one-tenth (1/10) of an hour.
2. In the event the Contractor determines it is for any reason unable to meet its obligations under this Agreement, it may submit a written application to the Contracting Authority for modification of compensation and/or workload. The application shall state, with specificity, all reasons for the Contractor's request. Upon receipt of the application, the Contracting Authority may submit questions or requests for additional information to the Contractor, and the Contractor shall respond promptly and in good faith. The Contracting Authority may take any appropriate action to ensure its obligations to provide public defense services are met, including, without limitation, authorizing additional compensation for the Contractor, modifying the Contractor's workload, and/or amending or terminating this Agreement, as appropriate.
3. In the event of early termination without Cause, the Contractor shall continue to receive its monthly payment of ninety thousand five hundred and eighty three dollars and thirty three cents (\$90,583.33) until the end of the ninety (90) day notice period. In the event the notice period ends part way through a month, the Contractor shall receive a pro rated payment for that month. By way of example, if the notice period ends on the fifteenth (15th) day of a thirty (30) day month, the Contractor would receive one half of its monthly fee for that month (i.e., \$45,291.67). The Contracting Authority shall owe no further compensation after that, except that if the Contractor must provide continued Representational Services after the end of the notice period to ensure an orderly transition of counsel, the Contractor will receive compensation at the rate of one hundred twenty five dollars (\$125.00) per hour for all attorney time reasonably needed to ensure such transition. The

Contractor shall submit an invoice for these services, with time entries rounded to the nearest one tenth (1/10) hour, after all Eligible Clients have been transitioned to other counsel.

4. In the event of early termination for Cause, the Contractor shall receive its monthly payment of ninety thousand five hundred and eighty three dollars and thirty three cents (\$90,583.33) through the month in which termination occurs. The Contracting Authority shall owe no further compensation after that, except that if the Contractor must provide continued Representational Services in a subsequent month to ensure an orderly transition of counsel, the Contractor shall receive compensation at the rate of one hundred twenty five dollars (\$125.00) per hour for all attorney time reasonably needed to ensure such transition. The Contractor shall submit an invoice for these services, with time entries rounded to the nearest one tenth (1/10) hour, after all Eligible Clients have been transitioned to other counsel.

The Contractor acknowledges and agrees the provisions of NRS 7.125 do not apply, and the Contractor is not entitled to any compensation or reimbursement pursuant to NRS 7.125. The compensation provided for in this Section is in lieu of the statutorily prescribed fees under NRS 7.125.

X. REIMBURSEMENT OF CASE-RELATED EXPENSES

The Contractor may secure reimbursement for Case-Related Expenses in the manner set forth under the Contracting Authority's Plan and applicable law. All other expenses the Contractor incurs in providing Representational Services under this Agreement are the sole responsibility of the Contractor. Expenses for which the Contractor is solely responsible include, without limitation: travel and meal expenses of Contractor's personnel; wages, benefits, or other compensation of Contractor's personnel; costs associated with procuring office space; office supplies, technology, software, and equipment; and all other costs attendant to operating a private law practice.

XI. INDEPENDENT CONTRACTOR; PRIVATE LAW PRACTICE

This Agreement is for professional services as an independent contractor and does not create any employer/employee relationship between the Contracting Authority and the Contractor, its employees, or its affiliates. The Contracting Authority does not control the means by which the Contractor provides services. The Contracting Authority is not responsible for withholding income tax or other taxes in payments to the Contractor, procuring workers' compensation insurance for the Contractor, or providing group insurance, retirement, and other benefits available to Lyon County employees.

The Contractor may maintain a private law practice and may engage in the private practice of law which does not conflict with its obligations under this Agreement. The Contractor agrees not to file, or 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.

XII. ASSIGNMENT AND DELEGATION

The Contractor's rights and obligations under this Agreement are not assignable to any other law firm or third party without the express approval of the Contracting Authority.

XIII. DEFENSE AND INDEMNIFICATION

The Contractor shall defend, indemnify, and hold harmless the Contracting Authority, its officers, agents, and employees from and against all claims, suits, or asserted damages arising from the Contractor's provision of Representational Services under this Agreement.

XIV. ENTIRE AGREEMENT; MODIFICATIONS

This Agreement constitutes the entire agreement between the parties. This Agreement supersedes all prior agreements and understandings related to the Contractor's appointment as Lyon County's public defender, whether oral or written, and whether express or implied. This includes, without limitation, the parties' prior agreement with an effective date of August 1, 2021, which the parties agree is entirely void and of no further force and effect upon the Effective Date of this Agreement.

This Agreement may be amended or modified only by a written modification duly executed by both parties.


XV. GOVERNING LAW; CHOICE OF FORUM

This Agreement shall be interpreted in accordance with the laws of the State of Nevada. Because both parties have participated in drafting of this Agreement, it shall not be construed against either drafter. Any action to enforce any provision in this Agreement shall be brought in the Third Judicial District Court in Lyon County, Nevada.

Agreed:


Mario R. Walther, Owner
Walther Law Offices, PLLC

Date: 5/4/2022


Ken Gray, Chair
Lyon County Board of Commissioners

Date: 4/21/22

Approved

10/06/2021



PLAN FOR THE PROVISION OF INDIGENT DEFENSE SERVICES Fiscal Year 2021-2022

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 1st through June 30th.
- 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 Temporary 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, the Comptroller, and the Human Resources Director. 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. 24(1)(c) 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.

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 less than ten (10) 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 screening form attached as Appendix A. 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

Walther Law Offices, PLLC shall serve as Lyon County's primary public defender and shall be assigned to represent all Eligible Clients except:

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

In the event Walther Law Offices, PLLC 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:

1. Walther Law Offices, PLLC shall provide immediate notice of its inability to represent Eligible Client(s) to the Department by email at didscontact@dids.nv.gov. Walther Law Offices, PLLC 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. Walther Law Offices, PLLC shall include in the notification 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 from among the panel of Qualified Attorneys with whom Lyon County has an approved contract. The Department shall use a rotation system insofar as practicable, but shall ultimately 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.¹
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. Walther Law Offices, PLLC and/or other Qualified Attorneys may be assigned as co-counsel consistent with the terms of their approved contracts.

¹ 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.



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.

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 46 and 47 of the Regulations.

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

Walther Law Offices, PLLC shall provide Representational Services for all Eligible Clients who are in custody and require a bail hearing. Insofar as Walther Law Offices, PLLC has a conflict of interest precluding the firm from continuing to provide Representational Services in connection with a substantive defense of the charges, Walther Law Offices, PLLC 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 Walther Law Offices, PLLC 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, Walther Law Offices, PLLC 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.



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 Sergeant Jacek Sobel (jsobel@lyon-county.org), Sergeant Chris Bixby (cbixby@lyon-county.org), or Lieutenant Josh Barnes (jbarnes@lyon-county.org).

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 on the Requests for Attorneys' Fees form attached hereto as Appendix B, with appropriate backup, no later than ten (10) days after the end of the month in which the services were rendered. The backup shall contain time entries rounded to the nearest one-tenth (1/10th) of an hour, describing with specificity the work performed and identifying the attorney who performed it.²

The Department shall approve for payment all reasonable attorney's fees reflected on the Requests for Attorneys' Fees and backup. 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

² For invoicing purposes, Qualified Attorneys are encouraged to use LegalServer for invoice backup. An example of a time slip generated through LegalServer with sufficient detail is included with Appendix B. If a Qualified Attorney does not wish to use LegalServer, the Qualified Attorney may submit an alternative form of backup provided it contains a breakdown of services rendered in comparable detail.



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 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 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. 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, along with a completed Request for Case-Related Expenses Form (see Appendix C), no later than thirty (30) 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 18 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. Under that formula, the maximum amount Lyon County must pay for Fiscal Year 2021-2022 is eight hundred eighteen thousand, nine hundred thirty three dollars and five cents (\$818,933.05).



Pursuant to Section 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 Section 19 of the Regulations, using the form prescribed by the Department³. 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 for Fiscal Year 2021-2022, Lyon County shall receive reimbursement up to a limit of five hundred eighteen thousand sixty six dollars and ninety five cents (\$518,066.95)⁴. 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 September 2, 2021 and shall remain in effect through the end of the current fiscal year, i.e., until June 30, 2022. This plan may be modified by formal action of the Board of County Commissioners.

XI. PLAN ADMINISTERATOR 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, Jeff Page (jpage@lyon-county.org), the Lyon County Comptroller, Josh Foli (jfoli@lyon-county.org) or the Lyon County Human Resources Director, Eric Milavsky (emilavsky@lyon-county.org).

³ The form is available here:

<https://dids.nv.gov/uploadedFiles/didsnv.gov/content/CountyResource/Quarterly%20Financial%20Status%20Report%20-%20203-16-21.xlsx>.

⁴ Lyon County's flat fee agreement with Walther Law Offices, PLLC will alone exceed its maximum contribution amount by \$118,066.95. In addition, Lyon County estimates incurring \$150,000 in Case-Related Expenses, as well as \$250,000 in fees for conflict counsel (i.e., Qualified Attorneys who are assigned when Walther Law Offices, PLLC has a conflict of interest). Thus: $\$118,066.95 + \$150,000 + \$250,000 = \$518,066.95$.

Appendix D

White Pine County Contract and Plan

PROPOSED MASTER CONTRACT FOR PUBLIC DEFENSE SERVICES

The County of White Pine, a political subdivision of the State of Nevada, referred hereafter as "County" or "Contracting Authority," and Unaffiliated Law Firms¹ at ELY LEGAL COMPLEX, referred to as "Firm" or "Agency", agree to the provision of public defense services as outlined below for the period from July 1, 2021 to June 30, 2023.

RECITAL

WHEREAS, the State/County has a constitutionally mandated responsibility to provide public defender services under the *U.S. and Nevada Constitutions*;

WHEREAS, the County is authorized pursuant to Nevada Revised Statutes ("NRS") Chapter 260 to create an office of public defender and to fill such office by appointment;

WHEREAS, the County desires to have legal services performed for eligible persons entitled to public representation in White Pine County by the Firm, as authorized by law;

WHEREAS, the Firm agrees to provide 1/3 of the public defender services for the County, and the County agrees to pay for, competent, zealous representation to its clients as required by the Nevada Rules of Professional Conduct and NRS 260;

WHEREAS, the County and the Firm agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to eligible clients of the Firm;

WHEREAS, this Contract is intended to comply with requirements laid out by the Department of Indigent Defense Services in compliance with ACLU lawsuit and settlement agreement. (See Stipulated Consent Judgment, filed on August 11, 2020 in the First Judicial District Court of the State of Nevada In And For Carson City, Case no. CV 170C002271B); and,

WHEREAS, based upon the ongoing changes taking place to the Indigent Defense Regulations and the legal obligations of compliance with these Rules and Regulations which are being drafted, revised and adopted by the Department of Indigent Defense Services, it is declared that if one part of this contract becomes void or voidable due to compliance regulations unknown at this time, then the remainder of this contract remains legally binding and in full force and effect and as to those portions not in compliance they shall be revised, adopted and presented at the time of passage.

In consideration of the recitals and the mutual promises contained in this agreement, the parties agree as follows:

¹ Currently there are three unaffiliated law firms at the Ely Legal Complex: Sears Law Firm Ltd.; Eberhardy Law LLC; and, Kirsty E. Pickering, Attorney at Law, P.C.

I. DURATION OF CONTRACT

This Contract shall commence on July 1, 2021, and terminate on June 30, 2023, unless extended or terminated earlier in a manner allowed by this Contract.

II. DEFINITIONS

The following definitions control the interpretation of this Contract:

- A. Eligible client means a defendant, parent, juvenile, or any other person who has been determined by a finding by the Contracting Authority or Court to be entitled to a court-appointed attorney, pursuant to NRS 62D.030, NRS 171.188, and/or NRS 432B.420.
- B. Case defined: An Indigent Defense Case is defined as
 - 1. A single adult defendant on a single charging document, regardless of the number of counts alleged, in a felony, gross misdemeanor or misdemeanor matter; or
 - 2. A single juvenile defendant on a single petition, regardless of the number of counts alleged, in a juvenile delinquency or in need of supervision matter.
 - 3. For a case in which multiple charges are involved, the case is classified by the highest offense charged at the time of the appointment

Specialty Court Cases include Drug Court Staffing and Participation; Termination of Parental Rights Cases; NRS 432B Abuse and Neglect Cases; and, Guardianship cases under NRS 159.

- C. Case completion: Completion of a case is deemed to occur when all necessary legal action has been taken during the following period(s):

In criminal cases, from first appearance/bail hearing through disposition, from first appearance/bail hearing through the necessary withdrawal of counsel after the substantial delivery of legal services, or from the entry of counsel into the case (where entry into the case occurs after first appearance/bail hearing through no fault of the Firm) through disposition or necessary withdrawal after the substantial delivery of legal services. Nothing in this definition prevents the Firm from providing necessary legal services to an eligible client prior to first appearance/bail hearing, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below.

In other cases, from appointment through disposition or necessary withdrawal after substantial delivery of legal services.

- D. Disposition: Disposition in criminal cases shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) an order or result requiring a new trial, 4) imposition of sentence, or 5) deferral of any of the above coupled with any

other hearing on that case number, including but not limited to felony or misdemeanor probation review, that occurs within thirty (30) days of sentence, deferral of sentence, or the entry of an order of deferred prosecution. No hearing that occurs after 30 days of any of the above will be considered part of case disposition for the purpose of this Contract except that a restitution hearing ordered at the time of original disposition, whether it is held within 30 days or subsequently, shall be included in case disposition. Disposition includes the filing of a notice of appeal and prosecution of an appeal, if applicable.

- E. Representational Services: The services for which the Contracting Authority is to pay the Firm are representational services, including lawyer services and appropriate support staff services, appropriate sentencing advocacy and social work services, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other Firm and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the Contracting Authority is to pay the Firm do not include extraordinary expenses incurred in the representation of eligible clients. The allowance of extraordinary expenses at the cost of the Contracting Authority will be determined by a court of competent jurisdiction in accordance with NRS 7.135-.155 and any other relevant state statute, court rule, the Department of Indigent Defense Services and constitutional provisions.
- F. Complex Litigation Cases: Complex Litigation refers to all: capital murder; death penalty; sexual assault cases and cases as defined by NRS 7.125
- G. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the Firm, including private investigator services, expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the appropriate courts by motion and granted out of separate funds reserved for that purpose. Payment for mitigation specialists in death penalty cases is included in this category.
- H. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.

III. INDEPENDENT CONTRACTOR

The Firm is, for all purposes arising out of this Contract, an independent contractor, and neither the Firm nor its employees shall be deemed employees of the Contracting Authority. The Firm shall complete the requirements of this Contract according to the Firm's own means and methods of work, which shall be in the exclusive charge and control of the Firm and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

IV. OVERSIGHT

The Department of Indigent Defense Services has been directed by the Governor and established to conduct all oversight in rural counties. This Firm shall comply with those standards set per the Department of Indigent Defense Services Board. These include matters such as interpretation of indigent defense standards, recommendation of salary levels, reasonable caseloads, review of contract hours, and response to community and client concerns, among other things. The Firm will meet with the DIDS, as requested or required by DIDS.

V. FIRM'S EMPLOYEES AND EQUIPMENT

The Firm agrees that it has secured or will secure at the Firm's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract.

VI. MINIMUM QUALIFICATIONS FOR FIRM ATTORNEYS

- A. Every Firm shall comply with DIDS standards for representation as set forth in the Temporary Regulation of the Board on Indigent Defense Service attached as Exhibit B and incorporated by Reference.
- B. Vertical Representation: A county's plan for the provision of indigent defense services shall ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others, except that administrative and other tasks which do not affect the rights of the defendant may be delegated. See Exhibit B, Section 29.
- C. Notwithstanding the above, each Capital case assigned to the Firm will be staffed by two full time attorneys or FTE attorneys. The lead attorney shall have at least seven years of criminal law experience and training or experience in the handling of Capital cases; associate counsel shall have at least five years of criminal law experience.
- D. The Firm will be allowed to hire an additional attorney as a consultant to work on any case to ensure that the appropriate amount of experience or qualifications are met in each case as listed above.
- E. Failure on the part of the Firm to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Contract. Failure on the part of the Contracting Authority to provide adequate funding to attract and retain experienced staff and supervisor(s) shall be considered a breach of this Contract.

- F. DIDS received the application by Sears the application by Eberhardy and the application by Pickering and have made a determination as to the qualifications for these individual law firms. The eligibility as to case type and felony level as to KIRSTY PICKERING Law is attached as Exhibit "1" and incorporated by reference into this contract as though fully set forth herein.

VII. PERFORMANCE REQUIREMENTS

The Firm agrees to provide the services and comply with the requirements of this Contract. The number of cases for which such services will be required is 1/3 of all cases requesting and assigned public defender services. Any material breaches of this agreement on the part of the Firm or the Contracting Authority may result in action as described in Section XVIII (Corrective Action) or Section XIX (Termination and Suspension). The Firm agrees to provide representational services for the type of cases identified above in Section II. B Case defined and as approved by DIDS in Section VI. I.

The Firm agrees to staff its cases according to the following provisions:

- A. Continuity of representation at all stages of a case, sometimes referred to as "vertical" representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. The Firm agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Contract. Nothing in this section shall prohibit the Firm from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. The Firm agrees that it will attempt contact with all clients via phone, mail and/or email within 5 working days from notification of case assignment.
- C. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Firm agrees to screen all cases for conflict upon assignment and throughout the discovery process, and to notify promptly the appointing court and/or the Contracting Authority when a conflict is discovered. The Firm will follow the Nevada Rules of Professional Conduct, as interpreted by the Nevada Bar Association and /or opinions of the state judiciary, and to the American Bar Association Standards for Criminal Justice in order to determine the existence and appropriate resolution of conflicts.
- D. It is agreed that the Firm will maintain average annual caseloads per full time attorney or full time equivalent (FTE). The annual caseload will be in accordance with caseloads prescribed by law and/or established by DIDS regulation and includes by reference Exhibit B that requires the reporting of indigent defense data in accordance with sections 46 and 47.

Complex Litigation is considered to be outside of the normal caseload and is handled as described in Paragraph G. below.

- E. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel at the caseload levels anticipated by the DIDS Workload Case Study described above. The parties agree and expect that at a minimum the Firm will employ support staff services for its attorneys at a level proportionate to the following annual caseloads: One full time Legal Assistant. In addition, attorneys must have access to mental health evaluation and recommendation services as required.
- F. It is expected that support staff will be paid at a rate commensurate with their training, experience and responsibility, at levels comparable to the compensation paid to persons doing similar work in public agencies in the jurisdiction. The Firm may determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to ensure that support services do not fall below prevailing standards for quality of such services in this jurisdiction.
- G. Complex Litigation Cases: The Firm is responsible for representing defendants in Complex Litigation cases. Capital cases typically require 2 FTE attorneys and the FTE of one investigator, as well as the services of a mitigation specialist. Aggravated murder cases are considered Capital cases until such time as an irrevocable decision is made by the Prosecuting Attorney/District Attorney not to seek the death penalty in the case or lapse of statutory timeline to file notice of intent to seek death penalty.
- H. Complex Litigation cases remain pending until the termination of the guilt phase and penalty phase of the trial, or entry of a guilty plea. Upon entry of a verdict or guilty plea, such cases are complete for the purposes of accepting additional Complex Litigation cases.
- I. Other special provisions of this Contract which relate to Complex Litigation are found in Section VI (Minimum Qualifications) and Section IX (Assignment of Complex Litigation). Complex litigation cases include: capital murder; death penalty; sexual assault cases.
- J. DOMESTIC VIOLENCE MISDEMEANOR JURY TRIALS MANDATED: The Domestic Violence cases originating in the City of Ely, as opposed to White Pine County will be billed separately at \$100.00 per hour to White Pine County. The time expended on these cases will not be included in the total contract hours set forth below in Section VIII - Variance. This section does not apply to cases occurring within the City of Ely, cited to Ely Municipal court.
- K. The Firm may use legal interns. If legal interns are used, they will be used in accordance with Nevada Admission to Practice Rules.

- L. The Firm agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all of its staff.
- M. The Firm agrees to represent Nevada State Prison cases that occur within White Pine County as well as Post Conviction Habeas Cases. These cases shall be billed to and paid by the State of Nevada at the statutory rate. These cases will be billed separately and will not be included in the total contract hours identified below in Section VIII – Variance.
- N. Significant increases in workload resulting from the DIDS or restrictions as to caseload resulting from the work caseload survey remain undetermined. Therefore, any request by the DIDS for additional attorney services because Firm exceeds DIDS caseload requirements will be negotiated separately by the Firm and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

VIII. VARIANCE

The Firm agrees to provide the 1566 hours for the sum of (\$164,430) annually for all cases assigned which is \$105.00 per hour. The FIRM will reimburse the Contracting authority \$100.00 per hour for total hours that fall below 1566 hours annually.

If the Firm exceeds the 1566 hours required, the Firm may request additional compensation pursuant to Section XII or may request that those cases assigned beyond the amount of hours required by Indigent Defense Services shall be assigned to other private contract attorneys.

IX. ASSIGNMENT OF COMPLEX LITIGATION CASES

If assignment of Complex Litigation cases is contemplated by this Contract, the Firm will designate a full time or FTE attorney for that purpose and the County agrees to pay the Firm a separate rate of \$125/hour for death penalty and \$100.00 per hour for other Complex litigation. The County will be billed separately for these cases and the time expended on these cases will not be included in the total contract hours set forth in Section VIII - Variance. The Firm shall accept all Complex Litigation cases assigned to it by Contracting Authority subject to the following special provisions:

- A. The Contracting Authority shall not assign further Complex Litigation cases while the Firm has a pending Complex Litigation case, unless the Firm has available qualified staff and the Contracting Authority provides the necessary resources.
- B. Should the services of an additional FTE attorney be required due to the pendency of a Capital case, the Contracting Authority and the Firm will negotiate a provision of extra compensation to provide for the services of that attorney.

X. ATTORNEY TRAINING

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Firm shall provide sufficient training, whether in-house or through a qualified provider of CLE, to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules. If an attorney is transferred to a particular type of case (e.g. a Capital case) after having participated in the required eight hours of annual CLE required in Section VI, the Firm shall require additional training in the particular type of case, as necessary.

XI. COMPENSATION AND METHOD OF PAYMENT

- A. For the term of this contract, the Contracting Authority shall pay the Firm the sum of \$164,430.00 per year in four quarterly installments of \$41,107.50 together with a Lexus-Nexus and/or Westlaw subscription for the duration of the contract for the work performed, excepting therefrom Complex Litigation cases which include all death penalty; murder and sexual assault;
The Complex Litigation cases are either billed directly to the State of Nevada, or to White Pine County plus or minus the variance agreed to in Section VIII (Variance) or separate compensation agreed to in Section IX (Complex Cases). Payments will be made on a quarterly basis prior to the quarter beginning upon submission of an invoice by the Firm. It is possible that the actual amount of compensation will vary according to other terms of this Contract. (See Section VII, H City of Ely Misdemeanor DV Jury Trials). The parties contemplate that attorneys working under this Contract will be compensated comparably to prosecutors of similar experience and responsibility.
- B. Expert fees and other costs associated with Indigent defense are paid by pursuant to NRS Chapter 7.

XII. REQUESTS FOR CONTRACT MODIFICATIONS

The Firm may submit a request for modification to the Contracting Authority in order to request supplemental funding if the DIDS determines that funding provided by the Contract does not meet the requirements of the August 11, 2020 Stipulated Consent Judgment. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Firm budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such request within 60 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Firm and DIDS within 30 days of the finding of the request that the supplemental funds shall not be available.

XIII. REPORTS AND INSPECTIONS

A. Caseload Reports

By the fifteenth (15th) day of a quarter, the Firm will report the number of cases completed and hours spent on cases in the past quarter, separated by category, to the Contracting Authority Administrator. The Firm will send duplicate reports to the Department of Indigent Defense Services. The FIRM will comply with the requirements of NRS 260.070.

B. Annual Subcontract Attorney Use Report

If the Firm uses any subcontract attorneys in accordance with Section XXI (Assignment and Subcontracting), the Firm shall submit to Contracting Authority a summary report.

C. Bar Complaints

The Firm will immediately notify the Contracting Authority in writing when it becomes aware that a complaint lodged with the Nevada Bar Association/disciplinary body has resulted in reprimand, suspension, or disbarment of any attorney who is a member of the Firm's staff or working for the Firm.

D. Inspections

The Firm agrees to grant the Contracting Authority full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the Contracting Authority may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, the Firm shall provide to the Contracting Authority right of access to its facilities, including those of any subcontractor, to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by the Firm in a way that allows access by the Contracting Authority without breaching such confidentiality or privilege. The Firm agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the Contracting Authority agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The Contracting Authority will respect the attorney-client privilege.

XIV. ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. The Firm agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Firm on each case.

- B. The Firm agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Firm for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Firm shall at the request of the Contracting Authority have its annual financial statements relating to this Contract audited by an independent Certified Public Accountant and shall provide the Contracting Authority with a copy of such audit no later than the last working day in July. The independent Certified Public Accountant shall issue an internal control or management letter and a copy of these findings shall be provided to the Contracting Authority along with the annual audit report. All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include balance sheet, income statement, and statement of changes in cash flow. Any expense for an audit performed at the request of the Contracting Authority shall be billed to the County by the Contracting Authority.
- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

XV. HOLD HARMLESS AND INDEMNIFICATION

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Firm to Firm employees or others by reason of the Contract. The Firm shall protect, indemnify, and save harmless the Contracting Authority, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, occurring or resulting from Firm's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract.
- B. The Firm agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the gross negligence or malicious intentional acts of the Firm, its officers, employees, representatives or agents.
- C. The Contracting Authority shall indemnify and hold harmless the Firm and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the Contracting Authority, its officers, agents, and employees, or any of them, relating or arising out of the performance of this Contract. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Firm, the Contracting Authority shall defend the same at its sole cost and

expense and if a final judgment is rendered against the Firm and the Contracting Authority and their respective officers, agents, and employees, or any of them, the Contracting Authority shall satisfy the same.

XVI. INSURANCE

Without limiting the Firm's indemnification, it is agreed that the Firm shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

A. Professional Liability Insurance

The Firm shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Firm which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

The Firm further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Firm shall not be required to make any payments for professional liability, if such liability is occasioned by the sole negligence of the Contracting Authority. The Firm shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Firm and the Contracting Authority.

Such insurance shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. Upon request the Firm shall provide proof of malpractice insurance.

B. Workers' Compensation

The Firm shall maintain Workers' Compensation coverage as required by the State of Nevada

XVII. EVALUATION GUIDELINES

The Contracting Authority will review information obtained from the FIRM and DIDS to monitor Firm activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

XVIII. CORRECTIVE ACTION

- A. If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:
1. The Contracting Authority will notify the Firm in writing of the nature of the breach.
 2. **The Firm shall respond in writing within twenty (20) working days** of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
 3. The Contracting Authority will notify the Firm in writing of the Contracting Authority's determination as to the sufficiency of the Firm's corrective action plan. The determination of the sufficiency of the Firm's corrective action plan will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority Executive. The Contracting Authority agrees that it shall work with the Firm to implement an appropriate corrective action plan.
- B. In the event that the Firm does not respond to the Contracting Authority's notification within the appropriate time, or the Firm's corrective action plan for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part pursuant to Section XIX (Termination and Suspension).
- C. In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Firm which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken or completed as described in Section XI (Compensation and Method of Payment).

XIX. TERMINATION AND SUSPENSION

- A. The Contracting Authority may terminate this Contract in whole or in part upon 60 business days' written notice to the Firm in the event that –
1. The Firm substantially breaches any duty, obligation, or service required pursuant to this Contract;
 2. The Firm engages in misappropriation of funds; or
 3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract pursuant to this Section, the Contracting Authority shall provide the Firm written notice of termination, which shall include the reasons for termination and the effective date of termination. The Firm shall have the opportunity to submit a written response to the Contracting Authority within **TWENTY (20) working days** from the date of the Contracting Authority's notice. If the Firm elects to submit a written response, the Contracting Authority Administrator will review the response and make a determination within 10 days after receipt of the Firm's response. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority Executive. In the event the Contracting Authority Executive reaffirms termination, the Contract shall terminate in 30 business days from the date of the final decision of the Contracting Authority Executive. The Contract will remain in full force pending communication of the Contracting Authority Executive to the Firm. A decision by the Contracting Authority Executive affirming termination shall become effective 30 business days after it is communicated to the Firm.

- B. The Firm reserves the right to terminate this Contract with cause with 30 calendar days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Firm terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the Firm shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contracting Authority Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Firm's control, fault or negligence.
- C. In the event of the termination or suspension of this Contract, the Firm shall continue to represent clients that were previously assigned and the Contracting Authority will be liable for any payments owed for the completion of that work at a rate of \$100.00 per hour. The Firm will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Contracting Authority Administrator may request that the Firm attempt to withdraw from any case assigned and not completed. Should a court require, after the Firm has attempted to withdraw, the appearance of counsel from the Firm on behalf of any client previously represented by the Firm where such representation is no longer the obligation of the Firm pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Firm upon judicial verification that continued representation is required at the rate of \$100.00 per hour.
- D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Firm shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Firm by the Contracting Authority.

- E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees and costs associated with such litigation.

XX. RESPONSIBILITY OF MANAGING DIRECTOR OF FIRM

The managing director of the Firm shall be an attorney licensed to practice law in the State of Nevada. The managing director of the Firm shall be ultimately responsible for receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment provided pursuant to this Contract.

XXI. ASSIGNMENT/SUBCONTRACTING

- A. The Firm shall not assign or subcontract any portion of this Contract without consent of the Contracting Authority. Any consent sought must be requested by the Firm in writing not less than 30 days prior to the date of any proposed assignment or subcontract, provided that this provision shall not apply to short-term personal service contracts with individuals to perform work under the direct supervision and control of the Firm. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience requirements imposed by this Contract and the DIDS. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract. The Firm will be allowed to hire a consultant on certain matters which would fall under a Short-term personal service contract.
- B. The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under the Contract to clients of the Firm.
- C. The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but is not limited to counseling services, consulting services, social work services, investigator services and legal services.

XXII. RENEGOTIATION

The Firm may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Firm finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract or that the Firm and the

Contract Authority are in breach of the August 11, 2020 Stipulated Consent Decree, Case Number 170C002271B. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Firm budget for work under this Contract to demonstrate the claimed lack of funding as well as the parts of the Consent Decree that the DIDS claim are not being followed. Contracting Authority shall respond to such request within 60 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Firm and DIDS within 30 days of the finding of the request that the supplemental funds shall not be available.

XXIII. ATTORNEYS' FEES

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

XXIV. NOTICES

A. Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

1. In writing; and
2. Directed to the Chief Executive Officer of the Firm and the director/manager of the Contracting Authority department/division specified on page 1 of this Contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

XXV. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

XXVI. NONDISCRIMINATION

During the performance of this Contract, neither the Firm nor any party subcontracting with the Firm under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of

any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

The Firm shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.


XXVII. CONFLICT OF INTEREST

No officer, employee, or agent of the Contracting Authority, or the State of Nevada, or the United States Government, who exercises any functions or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Firm.

DATED This 20 day of June, 2021

DATED This 4 day of June, 2021

Kirsty E Pickering Law



Kirsty E Pickering, Owner
Bar No. 9295
kpickering@gmail.com
775-289-3333

AUTHORIZED AGENT



CONTRACTING AUTHORITY

WHITE PINE COUNTY PLAN
PROVISION OF INDIGENT SERVICES
NAC-180 §§ 2-50

This plan meets or exceeds the requirements for the provision of Indigent Defense Services, established by Nevada statutes, court judgments, and Nevada Court rules.

This plan addresses those factors in NAC-180; §§2-50 that relate to the proper provision of indigent defense services.

SECTION 1. DEFINITIONS. The definitions provided in NAC-180 §§3-10 are incorporated in this Plan.

THE FIRM: The Firm will serve as White Pine County's primary public defender and will be assigned to represent all Eligible Clients. Firm attorneys will be qualified by the Department of Indigent Defense Services (DIDS). Firm attorneys will have contracted with White Pine County to regularly provide services within the scope of the contract negotiated between a Firm Attorney and White Pine County. The Firm will consist of independent contract legal counsel who are not partners in their law practices but who have agreed to provide contract legal services to White Pine County.

INDIGENT SERVICES COUNSEL are those attorneys who may be appointed to represent indigent defendants who have committed offenses within the county and are entitled to representation under Nevada Law.

QUALIFIED ATTORNEY is an attorney who has been identified by DIDS as having the required qualifications to represent indigent defendants in White Pine County either as contract counsel in The Firm or as conflict counsel.

SECTION 2. JURISDICTION. This plan is intended to satisfy the requirements for White Pine County, Nevada only.

SECTION 3. HIRING PLAN. Hiring attorneys to provide Indigent Defense Services will follow this procedure. White Pine County will contract with qualified attorneys as public defenders. All contracts will be consistent with this plan and NAC 180 §§ 2-50, Nevada case law, and will be approved by the White Pine County Board of Commissioners. Qualified defense counsel will be selected by the White Pine County Board of Commissioners.

Proposals for the provision of services with specifications that meet or exceed NAC 180 §§ 2-50 will be sought by November 1 of a) prior to any biennium fiscal year when indigent services are being sought; or, b) any year prior to the termination or expiration of a currently existing system for indigent defense services. If termination of a contract for cause occurs during the contract period, White Pine County shall take action as necessary to remedy the situation.

Proposals will set forth the qualifications and legal experience of the applicant.

Proposals may include applications by multiple legal counsel so long as the proposals meet Nevada's legal requirements then in effect.

Proposals will meet the timeline set for provision of services sought by White Pine County.

Proposals will include the applicant's past performance in representing persons in the criminal justice system.

Proposals will include the applicant's ability to comply with current regulations then in effect for the provision of indigent defense services and/or the terms of the contract.

Proposals will include the cost of services under the contract including the cost for services, if any, that must be provided in addition to criminal defense services.

The County may seek references and consult references in the hiring process.

SECTION 4. INDIGENCY SCREENING PROCESS AND APPOINTMENT OF COUNSEL. Justice of the Peace will screen criminal detainees not later than within 48 hours of arrest, to determine whether they are eligible for defenses services.

If Justice of the Peace determines that the criminal detainee is qualified to receive indigent services, indigent services counsel provided by the Firm will be notified by the Justice of the Peace's court clerk and provided with the documentation sufficient to support a first appearance or bail hearing. Upon receipt by the Firm, the defendant will be selected by Firm attorneys by rotation so that the cases are equally distributed among Firm counsel. If a Firm attorney has a disqualifying conflict that cannot be resolved within Nevada Law and the Rules of Professional Conduct, that defendant will be represented by another attorney in the Firm as they may agree. In the event no Firm attorney can represent the Defendant, the Firm will notify the court and DIDS for appointment of Conflict Counsel as set forth below.

In the event of a dispute as to a criminal detainee's eligibility for services, the Indigent Services Provider will continue to provide representation until the matter is resolved with the judicial officer in accordance with Nevada law.

The Firm will serve as White Pine County's primary public defender and will be assigned to represent all Eligible Clients except when the Firm has a conflict of interest or otherwise cannot represent all parties in a matter in accordance with the Nevada Rules of Professional Conduct and this is verified by DIDS that such a situation exists.

In the event the Firm has a conflict of interest or otherwise cannot represent all parties in a matter, a separate Qualified Attorney from the DIDS List will be assigned. The procedure for assignment is set forth below:

The Firm will provide immediate notice of its inability to represent Eligible Client(s) to the Department by email at didscontact@dids.nv.gov. The Firm will 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 Firm will include in the notification the following information (if available): charging document, probable cause sheet or declaration, and the date, time and location of the next scheduled court appearance.

Upon receipt of the above notification, the Department will select other Qualified Attorney(s) for assignment from among the panel of Qualified Attorneys. The Department will use a rotation system insofar as practicable, but will ultimately 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 White Pine County officials, and capacity to take on work.

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 will be deemed rejected. The Department will contact other Qualified Attorneys until it obtains acceptance from a sufficient number of Qualified Attorneys to represent all Eligible Clients.

Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Department will 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, The Firm will make a good faith attempt to have a lead counsel qualified by District Court, in accordance with Nevada Supreme Court Rule 250. If no attorney in The Firm can qualify, White Pine County will retain a Qualified Attorney authorized to serve as lead counsel under Supreme Court Rule 250 and will pay compensation pursuant to NRS 7.125 for such services. The Firm and/or other Qualified Attorneys may be assigned as co-counsel consistent with the terms of their approved contracts.

In the event of an ethical or other professional conflict, another indigent services provider will be appointed by a designee of the Department of Indigent Defense (DIDS). Alternate appointees may be chosen who have been determined eligible to provide services from the DIDS list of qualified providers.

If two or more contracting attorneys are providing indigent defense services, a contracting attorney who has no conflict will provide defense services after notice to the court.

SECTION 5. INITIAL APPEARANCES AFTER ARREST OR SUMMONS. The provider of indigent defense services will be at all appearances after arrest or summons including: in Justice Court, first appearances, arraignments, justice court appearances for bail and release matters, waiver matters, hearing settings; in District Court, initial hearings for juvenile cases, and probation revocation cases as agreed to by written county contract if the scope of the contract exceed the DIDS definition of indigent services. Criminal detainees may refuse counsel, when fully informed of their rights, in accordance with NRS 171.188(1). Upon appointment, counsel will provide written information to all detainees containing contact information and appointment information to ensure prompt client contact after appointment. Attorneys must be prepared to address appropriate release conditions in accordance with relevant statute, rule of criminal procedure, and caselaw. A timely initial appearance, bail hearing, or arraignment hearing must not be delayed pending a determination of the indigency of the defendant. Counsel must be present at all other critical stages, whether in or out of court.

SECTION 6. PRIVILEGED COMMUNICATIONS. County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or otherwise privileged communications between indigent criminal defense clients and legal counsel. Within the White Pine County Detention Center, a room will be available for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege. The White Pine County Courthouse will allow use of a room for attorney-client privilege meetings. Facilities for unrecorded and unmonitored audio and video communications will be provided for those situations where face to face communications are unavailable.

SECTION 7. COLLATERAL INDIGENT DEFENSE SERVICES. Upon Notice of Appearance by Indigent Defense counsel, the courts and the prosecutor will provide copies of all available reports and things in a fashion designed to ensure rapid and accurate transmission.

PRIVATE INVESTIGATOR/EXPERT WITNESSES/CONFLICT COUNSEL. If the County uses contract attorneys, The Firm will seek leave from the Department of Indigent Defense Services to employ the use of private investigator services, expert witnesses or conflict counsel. The Firm will seek leave from the Department of Indigent Defense Services for reasonable fees for private investigators or expert witnesses reasonably necessary for trial preparation and for trial. The county will make available budget for expenses deemed necessary by the Department of Indigent Defense Services for these services. In the FY2022 budget for routine private investigators is \$30,000, for expert witnesses is \$20,000 and for conflict counsel is \$30,000.

SECTION 8. WARRANTY OF CONSISTENT REPRESENTATION. Indigent clients will be entitled to consistency of counsel throughout their cases. An individual defendant facing either repeat or multiple charges due to a course of conduct can expect to be represented by the same defense counsel throughout each stage of the case in each case. When an initial appearance is within 48 hours of arrest and before defense counsel can be formally appointed to a matter, counsel may be delegated to serve who may not be assigned to a particular client.

SECTION 9. WARRANTY OF PROFESSIONAL SERVICES. All Services provided by Indigent Defense counsel must meet or exceed the requirements of the Nevada Rules of Professional Conduct, the Nevada Indigent Defense Standards of Performance adopted October 16, 2008 by the Nevada Supreme Court Adopted in Administrative Docket 411 or as subsequently amended.

Indigent Defense counsel will counsel clients to avoid uninformed waivers of substantive or procedural rights or uninformed guilty pleas or waivers unless done after consulting with counsel. In aid of this requirement, counsel will ensure contact with clients occur within 7 days of appointment or assignment to the case. Counsel will maintain consistent contact with clients thereafter. Consistent contact means at least every thirty days unless there are no significant developments in the case.

Surveys provided by the Board of Indigent Services will be provided to indigent clients at the conclusion of representation.

SECTION 10. INVOICING AND PAYMENT

A. Conflict Counsel Fees

Qualified Attorneys providing services to Eligible Clients within White Pine County in exchange for an hourly rate will submit monthly invoices to the Department. Such invoices will be submitted on the Requests for Attorney's Fees form attached hereto as Exhibit B, with appropriate backup, no later than ten (10) days after the end of the month in which the services were rendered.

The backup will contain time entries rounded to the nearest one-tenth (1/10th) of an hour, describing with the work performed and identifying the attorney who performed it.¹

The Department will approve for payment reasonable attorney's fees reflected on the Requests for Attorneys' Fees and backup. 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 will provide an explanation to the Qualified Attorney, with a copy to the White Pine County Finance Director, as to why the denied portion was not reasonable. Such denials will be subject judicial review pursuant to NRS 7.135.

Payment for all approved attorneys' fees will be issued by the White Pine County Finance Director's Office. The Department will notify the Finance Director's Office of all approved Requests for Attorneys' Fees, attaching a copy of the invoice and backup. The Finance Director's Office will issue payment within thirty (30) days of receipt of documentation from the Department.

B. Case-Related Expenses

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

1. **Pre-Authorization:** Case-Related Expenses expected to exceed \$250 will be submitted to the Department for pre-authorization before they are incurred. The Qualified Attorney will submit the request for pre-authorization to the Department by email at didscontact@dids.nv.gov. The request will include an explanation of why the expense is reasonably necessary to provide Representational Services. The Department will notify the White Pine County Finance Director of preauthorization at the same time that the Qualified Attorney is notified.
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 will be submitted to the Department for such review no later than thirty (30) days following the termination of the representation. Any requests for expenses not timely submitted will be waived. The Department will approve all reasonable and necessary Case-Related Expenses, and will notify the White Pine County Finance Director's Office of all approved expenses and provide a copy of the invoice.
3. **Payment:** The White Pine County Finance Director's Office will issue payment for all approved Case-Related Expenses within thirty (30) days of receipt of notice of the Department's approval and a copy of the invoice.

¹ For invoicing purposes, Qualified Attorneys are encouraged to use LegalServer for invoice backup. An example of a time slip generated through LegalServer with sufficient detail is included with Appendix B. If a Qualified Attorney does not wish to use LegalServer, the Qualified Attorney may submit an alternative form of backup provided it contains a breakdown of services rendered in comparable detail.

SECTION 11. REIMBURSEMENT FOR PAYMENTS EXCEEDING THE MAXIMUM COUNTY CONTRIBUTION

Pursuant to NRS 180.320(3), the Department's Board has promulgated under Section 18 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. Under that formula, the maximum amount White Pine County must pay for Fiscal Year 2021-2022 is \$452,400.00. Will verify number per Marcie's email.

Pursuant to Section 19 of the Regulations, White Pine County will 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. White Pine County will file financial status reports with the Department in a manner consistent with Section 19 of the Regulations, using the form attached as Appendix C. The White Pine County Board of Commissioners hereby designates the White Pine County Finance Director 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 for Fiscal Year 2021-2022, White Pine County will receive reimbursement up to a limit of \$518,066.95. In the event reimbursable costs exceed this amount, nothing herein will be construed to preclude White Pine County from seeking additional reimbursement pursuant to NRS 353.266, NRS 180.450, or as otherwise permitted by law.

SECTION 12. WORKLOAD STANDARD: The workload of each Qualified Attorney providing services to Eligible Clients within White Pine 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 will 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 will 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 will maintain caseload data and track time spent providing indigent defense services in accordance with Regulations of the Board on Indigent Defense Services.

SECTION 13: EFFECTIVE DATE; MODIFICATION

This plan is effective October 1, 2021 and will remain in effect through the end of the current contract year, i.e., until June 30, 2023. The Firm will provide representation at bail hearings as necessary to conform to recent changes in the law. This plan may be modified by formal action of the Board of County Commissioners.

SECTION 13. PLAN ADMINISTERATOR AND CONTACTS

The County Finance Director will be the administrator of this plan and the contracts for the provision of indigent defense services. The County Finance Director will 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 White Pine County Manager or designee.

Appendix E

**Compensation Analysis and Recommendations
(Soval Solutions Report)**

Soval Solutions, LLC

Compensation Analysis and Recommendations for Nevada Department of Indigent Defense Services: Final Report

Prepared for the Nevada Department of
Indigent Defense Services

31 May 2022

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Summary

The Nevada Department of Indigent Defense Services (DIDS) helps provide critical representation for indigent defendants in the State of Nevada. In order for DIDS to carry out its functions, it is necessary for the organization to have the ability to attract and retain talent. Currently, DIDS is at a disadvantage in hiring qualified defense attorneys, as salaries are typically below those offered in other comparable organizations in the state. Specifically, many DIDS salaries are below those offered to employees in the Nevada Attorney General's office who have similar levels of responsibility. Furthermore, many DIDS employees receive salaries that are well below salaries offered to public defenders in urban counties, and below those offered to prosecutors in various counties. This document provides evidence of pay differentials between DIDS employees and similarly situated employees throughout Nevada. This information is then used to develop recommendations for updated salaries to be offered to DIDS employees.

Nevada Department of Indigent Defense Services Salary Change Request

The Department of Indigent Defense Services (DIDS) was established by AB 81 in 2019 and charged with oversight and regulation of indigent defense services throughout the state. The primary mission of DIDS is to “to assist Nevada counties in developing quality, equitable, and sustainable indigent defense systems that strengthen local communities and meet or exceed the state and federal constitutional guarantees that protect each of us.” In order to effectively pursue this mission, it is imperative that DIDS personnel, and the indigent defense community in Nevada, receive adequate pay in relation to the critical work that they do. Appropriate pay structures will ensure that DIDS and the indigent defense community can attract and retain the talent needed to provide vigorous representation of indigent defendants throughout the State of Nevada.

Currently, there are two primary challenges in relation to attorney pay within DIDS. First, the current pay structure for DIDS employees is not consistent with the pay structure used in the Nevada Attorney General’s office. DIDS regulation 39 states that, “... an attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and resources that are in parity, subject to any applicable negotiated collective bargaining agreements, with the corresponding prosecutor’s office that appears adverse to the office of public defender in criminal proceedings.” The pay disparity for similar job responsibilities may lead qualified candidates to pursue work in the Attorney General’s office—or in another executive department—rather than for DIDS.

Second, the pay structure of DIDS may be detrimental to efforts to recruit and retain attorneys to rural areas of the state. This is likely part of a broader problem regarding efforts to attract qualified defense attorneys to work in rural parts of Nevada. As Tables 3 and 4 of this document indicate, the salaries for public defenders in Nevada’s most urban counties outpace the salaries of attorneys in DIDS. To illustrate the imbalance, in Clark County the Public Defender salary ranges from \$138,216 to \$214,219 annually. This puts the maximum salary for the Clark County Public Defender 52.4% higher than the current salary for the DIDS Executive Director (\$140,611), 53.7% higher than the DIDS Deputy Director (\$139,346), and 61.1% higher than the State Public Defender. With an annual salary range of \$123,406 to \$191,318, the salary of the Clark County Assistant Public Defender also far outpaces the salary of the top three positions at DIDS. A similar situation exists with regard to Washoe County where the Public Defender salary ranges from \$145,121 to \$188,656 and the Alternate Public Defender Salary ranges from \$132,496 to \$172,224. This puts the maximum salary for the Washoe County Public Defender 34.2% higher than the current salary for the Executive Director or DIDS; the maximum salary for the Washoe County Assistant Public Defender is 22.5% higher than the current salary of the Executive Director of DIDS.

To increase the competitiveness of pay for defense attorneys within DIDS, it is proposed that the salary structure within DIDS is changed. First, it is proposed that salaries for managing attorneys are increased to more closely align with attorneys in the Attorney General’s office that possess similar organizational responsibilities. As Table 1 below indicates, it is proposed that the Executive Director of DIDS, the Deputy Executive Director of DIDS, and the State Public Defender would receive pay that is consistent with positions in the Attorney General’s office that have comparable job tasks and organizational responsibilities. Similarly, it is proposed that pay for the Supervising Public Defender- Appeals, the Supervising Public Defender-Trial, the Deputy Public Defender-Appeals, and the Deputy Public Defender

receive pay that is consistent with positions in the Attorney General's office that have comparable job tasks and organizational responsibilities.

In addition to changes to salary ranges for DIDS employees, several job classification changes are suggested. First, it is proposed that one current position be reclassified: the Supervising Public Defender-Office to be changed to Assistant Public Defender. This change will give the current Supervising Public Defender-Office a title and pay that is more in line with the actual duties of the position.

Second, currently, the roles for the Supervising Public Defender for Appeals and the Supervising Public Defender for Trials are specified in the Nevada Budget. It is requested that the specifications for "Appeals" and "Trials" for Supervising Public Defenders are dropped so that the roles for these individual positions are no longer fixed. The resulting two positions will have the titles "Supervising Public Defenders". This will provide greater flexibility within DIDS so that Supervising Public Defenders can effectively fill both roles in the office if needed.

Finally, it is also recommended that the positions of the Senior Deputy Public Defender and Senior Deputy Public Defender-Appeals are created. These positions will not require the hiring of new personnel at this time. Rather, the presence of these positions will allow for advancement opportunities for the Deputy Public Defender and the Deputy Public Defender-Appeals, thus providing an additional incentive for attorneys to seek employment with DIDS and ultimately maintain loyalty to the organization as they progress through a structured career path.

Table 1. Proposed Salaries and Job Categories for DIDS Personnel

Position Title	Current Salary	Proposed Salary	Equivalent AG Position Salary
Executive Director of Indigent Defense Services	\$140,611	\$158,347	Assistant Attorney General; Chief of Staff
Deputy Director of Indigent Defense Services (EA)	\$139,346	\$149,272	General Counsel; Solicitor General
State Public Defender	\$133,012	\$143,779	Bureau Chief (EA)
Assistant Public Defender (Formerly Supervising Public Defender-Office)	NEW POSITION	140,611	
Supervising Public Defender (EA) (Formerly Supervising Public Defender- Appeals, and Supervising Public Defender-Trial)	\$120,344	\$133,012	Chief Deputy Attorney General (EA)
Senior Deputy Public Defender-Appeals (EA)*	NEW POSITION	\$107,676-\$120,344	Senior Deputy Attorney General (EA)
Senior Deputy Public Defender (EA)*	NEW POSITION	\$107,676-\$120,344	Senior Deputy Attorney General (EA)
Deputy Public Defender – Appeals (EA)	\$107,676	\$107,676-\$120,344	Deputy Attorney General (EA)
Deputy Public Defender (EA)	\$107,676	\$107,676-\$120,344	Deputy Attorney General (EA)

*This is a new class of position that does not necessarily require the hiring of new attorneys at this time. Instead, the presence of this position will allow advancement opportunities for Deputy Public Defenders.

The proposed salary structure will not completely address discrepancies between urban and rural pay for defense attorneys in Nevada. However, the adjustment will represent an initial step in alleviating disincentives for defense attorneys to practice, particularly in rural parts of the state.

Comparison of Current Office of Attorney General and Department of Indigent Defense Services Salaries

To understand the current status of employment positions and how those positions compare to comparable jobs in the Attorney General's office, Table 2 below provides an overview of the current salaries for the various positions in both the Nevada Office of Attorney General (AG) and the Nevada Department of Indigent Defense Services. Two aspects of the table are noticeable. First, the AG's office has a much more varied classification of positions. The AG's office contains 25 unique classes whereas DIDS has 10 unique position classifications. This discrepancy suggests that an individual working within DIDS may experience fewer opportunities for advancement and promotion, in relation to an individual working in the AG's office.

Second, the table provides clear evidence that the top positions within DIDS are not receiving compensation that is in parallel to the top positions within the AG's office. The top two positions within DIDS—the Executive Director and Deputy Director—receive pay that is below the top seven positions within the AG's office. The State Public Defender receives a salary that is directly in line with the salary received by the Chief Deputy Attorney General.

Of particular concern is the fact that several positions within DIDS are considered to have a higher job classification using the U.S. Equal Employment Opportunity Commission (EEO) standards than their counterparts in the Attorney General's office, yet receive substantially less pay. To illustrate, the column titled "EEO-4" in Table 2 indicates the ways in which jobs are classified using EEO standards. Positions with the EEO-4 classification of "A" are considered Officials and Administrators. Positions with the EEO-4 classification of "B" are considered "Professionals" who report to employees that are classified as "A". We can see that the two executive-level positions within DIDS are classified as Officials and Administrators using the EEO-4 Job Category classification, yet receive lower rates of pay than employees in four categories classified as "B" within the Attorney General's office.¹ Similarly, the three current Supervising Public Defender positions within DIDS are classified as job code "A", yet receive equivalent pay to a position within the Attorney General's office classified with job code "B".

¹ The State of Nevada appears to have adapted the numeric system of Job Category classifications used by the U.S. Equal Employment Opportunity Commission with an alphabetic system. Please see the following location for more detail about Job Category classifications: <https://eeocdata.org/pdfs/EEO-4%20Instruction%20Booklet.pdf>.

Table 2. Comparison of Roles and Salaries in Nevada Office of Attorney General and Department of Indigent Defense Services						
OFFICE OF ATTORNEY GENERAL				DEPARTMENT OF INDIGENT DEFENSE SERVICES		
EEO-4	ROLE	SALARY	EEO-4	ROLE	SALARY	
B	ASSISTANT ATTORNEY GENERAL	158,347				
A	CHIEF OF STAFF	158,347				
B	CONSTRUCTION LAW COUNSEL	149,272				
A	GENERAL COUNSEL	149,272				
B	SOLICITOR GENERAL	149,272				
B	SPECIAL COUNSEL (EA)	149,272				
A	BUREAU CHIEF (EA)	143,779				
			A	EX DIR OF INDIGENT DEFEN SRVS	140,611	
			A	DEP DIR OF INDIG DEFS SRVS (EA)	139,346	
A	CHIEF DEPUTY ATTY GENERAL (EA)	133,012	A	STATE PUBLIC DEFENDER	133,012	
B	AG COUNSEL FOR PROSECUTG ATTYS	120,977				
A	SPECIAL ASSISTANT, AG, MILITARY	120,977				
A	SPECIAL ASSISTANT, AG, NEIGHBORH	120,977				
B	SR DEPUTY ATTY GENERAL (EA)	120,344	A	SPVG PUB DEFENDR-APPEALS	120,344	
			A	SPVG PUB DEFENDR-OFFICE	120,344	
			A	SPVG PUB DEFENDR-TRIAL	120,344	
B	CHIEF FINANCIAL OFFICER	115,096				
B	INFORMATION TECHNOLOGY CHIEF	112,798				
B	DEP ATTY GENERAL (EA)	107,676	B	DEP PUBLIC DEFENDER-APPELL(EA)	107,676	
			B	DEP PUBLIC DEFENDER (EA)	107,676	
A	CHIEF INVESTIGATOR	98,809				
A	CHIEF PERSONNEL MANAGER	98,809				
B	FINANCIAL ANALYST	91,841				
B	PUBLIC INFORMATION OFFICER	79,807				
B	INVESTIGATOR (EA)	74,242	D	INVESTIGATOR (EA)	74,242	
B	OMBUDSMAN, DOMESTIC VIOLENCE	67,131				
E	SPVG LEGAL RESEARCHER (EA)	66,506				
F	EXECUTIVE ASSISTANT	63,340	F	EXECUTIVE ASSISTANT	63,340	
E	LEGAL RESEARCHER (EA)					
E	PROGRAM SPECIALIST-TECH CRIMES					

Source: State of Nevada Compensation Schedule: https://hr.nv.gov/uploadedFiles/hrnvgov/Content/Sections/Compensation/2021_Compensation_Schedules/PP10%207-12-21.pdf

Note: Shaded cells indicate roles across which equivalent pay is given for employees of Office of Attorney General and Department of Indigent Defense Services

Source: State of Nevada Compensation Schedule: https://hr.nv.gov/uploadedFiles/hrnvgov/Content/Sections/Compensation/2021_Compensation_Schedules/PP10%207-12-21.pdf

Note: Shaded cells indicate roles across which equivalent pay is given for employees of Office of Attorney General and Department of Indigent Defense Services

Salaries for DIDS Attorneys in relation to County Public Defenders and Select District Attorneys

Beyond pay differentials for attorneys within the Executive Branch, attorneys within DIDS experience pay deficits with some of their counterparts at the county level throughout Nevada. The differentials are particularly acute when we compare DIDS employees to public defenders in urban parts of the state.

The following tables present salary information for county-level salaried positions within public defenders' offices across the State of Nevada. As noted above, top public defender positions in urban counties in Nevada are commonly salaried above even the top executive positions within DIDS. The discrepancy in pay between DIDS attorneys and county-level public defenders in urban parts of the state may hinder the ability of DIDS to attract highly qualified attorneys to serve in the office.

To illustrate the imbalance, in Clark County the Public Defender salary ranges from \$138,216 to \$214,219 annually. This puts the maximum salary for the Clark County Public Defender 52.4% higher than the current salary for the DIDS Executive Director (\$140,611), 53.7% higher than the DIDS Deputy Director (\$139,346), and 61.1% higher than the State Public Defender. With an annual salary range of \$123,406 to \$191,318, the salary of the Clark County Assistant Public Defender also far outpaces the salary of the top three positions at DIDS.

Table 3. Clark County Public Defender Salaries			
Role	Code	Minimum	Maximum
SPECIAL PUBLIC DEFENDER	M07227	\$138,216.00 yr	\$214,219.20 yr
PUBLIC DEFENDER	M07229	\$138,216.00 yr	\$214,219.20 yr
ASSISTANT PUBLIC DEFENDER	M07228	\$123,406.40 yr	\$191,318.40 yr
ASSISTANT SPECIAL PUBLIC DEFENDER	M07226	\$123,406.40 yr	\$191,318.40 yr
CHIEF DEPUTY PUBLIC DEFENDER*	E07329	\$113,193.60 yr	\$175,406.40 yr
DEPUTY PUBLIC DEFENDER*	E07327	\$77,084.80 yr	\$150,363.20 yr
SPECIAL INVESTIGATOR - PUBLIC DEFENDER	N46244	\$57,158.40 yr	\$88,649.60 yr
INVESTIGATOR II - PUBLIC DEFENDER	N46243	\$52,998.40 yr	\$82,097.60 yr
INVESTIGATOR I - PUBLIC DEFENDER	N46242	\$49,088.00 yr	\$76,024.00 yr
* Salaries set by Collective Bargaining Agreement between Clark County and the Clark County Defenders Union. Sources: Salary data obtained from Clark County Human Resources, governmentjobs.com.			

A similar situation exists with regard to Washoe County where the Public Defender salary ranges from \$145,121 to \$188,656 (see Table 4). This puts the maximum salary for the Washoe County Public Defender 34.2% higher than the current salary for the Executive Director or DIDS, 35.4% higher than the Deputy Director, and 41.8% higher than the State Public Defender. The Washoe County Alternate Public Defender Salary ranges from \$132,496 to \$172,224. The maximum salary for the Washoe County Assistant Public Defender is 22.5% higher than the current salary of the Executive Director of DIDS, 23.6% higher than the DIDS Deputy Director, and 29.5% higher than the State Public Defender.

Table 4. Washoe County Public Defender Salaries

Role	Code	Minimum	Maximum
Public Defender		\$145,121.60	\$188,656.00
Alternate Public Defender		\$132,496.00	\$172,224.00
Deputy Public Defender IV*	1083	\$110,968.00	\$156,228.80
Deputy Public Defender III*	1082	\$99,153.60	\$143,728.00
Deputy Public Defender II*	1081	\$84,572.80	\$114,108.80
Deputy Public Defender I*	1080	\$74,027.20	\$99,403.20

* Salaries set by Collective Bargaining Agreement between Washoe County and the Washoe County Public Attorneys Association. Sources: Salary data obtained from Collective Bargaining agreement and Washoe County Human Resources website.

Elko County has recently undertaken a compensation and salary study. In that study, it is suggested that public defenders in paygrades in E18, E20 and E21 receive substantial pay increases. The suggested paygrades and steps are presented in Table 5. As the table shows, the Chief Civil Deputy Public Defender and Public Defender (Grade E21) are suggested to have a pay range of \$106,017 to \$153,732. This would again put the maximum end of the scale above each of the top three positions within DIDS. The Chief Civil Deputy Public Defender is slated to have an annual pay range of \$98,633 to \$143,020. The top end of this range is essentially at the level of the DIDS Executive Director and above the other two positions in the agency. In short, the public defenders in Elko County are on track to receive salary updates that are equivalent to or exceed the salaries received by the top employees within DIDS.

Table 5. Proposed Elko County Public Defender Salaries

Step	Deputy Public Defender (Grade E18)	Chief Civil Deputy Public Defender (Grade E20)	Chief Civil Deputy Public Defender and Public Defender (Grade E21)
1	\$41.03	\$47.42	\$50.97
2	\$43.08	\$49.79	\$53.52
3	\$45.14	\$52.16	\$56.07
4	\$47.19	\$54.53	\$58.62
5	\$49.24	\$56.90	\$61.17
6	\$51.29	\$59.27	\$63.72
7	\$53.34	\$61.64	\$66.27
8	\$55.39	\$64.01	\$68.82
9	\$57.45	\$66.39	\$71.36
10	\$59.50	\$68.76	\$73.91
Annualized Pay Range*	\$85,342 to \$123,760	\$98,633 to \$143,020	\$106,017 to \$153,732

*Computation based on 2,080 hour work year.

Source: Step and Salary data obtained from updated pay and salary study for Elko County. Provided to the author.

Finally, the salaries for the top three public defender position in Churchill and Humboldt counties are presented in Tables 6 and 7, respectively. The salaries show that officials in these rural counties receive salaries that are roughly equivalent to the salaries paid to the top three employees at DIDS. Again, this equivalence suggests that DIDS is at somewhat of a disadvantage in attracting top talent to its office, in relation to the pay received by public defenders in urban counties.

Table 6. Churchill County Public Defender Salaries

Role	Code	Minimum	Maximum
Public Defender	1281	\$109,636.80 yr	\$147,409.60 yr
Deputy Public Defender II	1283	\$89,960.00 yr	\$120,993.60 yr
Deputy Public Defender I	1282	\$81,494.40 yr	\$109,636.80 yr
Source: Churchill County, Nevada HR https://www.governmentjobs.com/careers/Churchill/classspecs?keywords=public%20defender			

Table 7. Humboldt County Public Defender Salaries

Role	Code	Minimum	Maximum
Public Defender	100-048-01	\$111,012.28 yr	\$141,540.66 yr
Alternate Public Defender	APD1	\$100,445.61 yr	\$128,048.95 yr
Deputy Public Defender	100-048-02	\$85,424.34 yr	\$117,459.15 yr
Source: Humboldt County, Nevada HR: https://www.governmentjobs.com/careers/hcnv/classspecs?keywords=public%20defender			

To provide additional evidence regarding the lack of equivalence between DIDS employees and their counterparts at the county level, it may be useful to examine the salaries of District Attorneys in Carson City, Nevada. Recall that under DIDS regulation 39, public defenders are supposed to earn a salary equivalent to the “corresponding prosecutor’s office that appears adverse to the office of public defender in criminal proceedings.” The Carson City District Attorneys office can provide a comparison. As Table 8 shows, the maximum salaries of the top positions within the Carson City District Attorneys office are considerably higher than the top salaries of the top positions within DIDS. It should be noted that county salaries for some elected positions in Nevada counties are regulated by NRS 245.043.

Table 8. Carson City District Attorney Salaries

Role	Code	Minimum	Maximum
Assistant District Attorney	L240	\$107,413.23 yr	\$184,587.87 yr
Chief Deputy District Attorney	L301	\$97,648.58 yr	\$156,237.50 yr
Supervisor Deputy District Attorney	L230	\$100,838.40 yr	\$117,705.40 yr
Senior Deputy District Attorney	L220	\$84,032.00 yr	\$107,140.80 yr
Deputy District Attorney	L210	\$70,131.37 yr	\$102,889.71 yr
Deputy District Attorney-Civil	L210	\$70,131.37 yr	\$102,889.71 yr
Deputy District Attorney-Juvenile	L210	\$70,131.37 yr	\$102,889.71 yr
Source: Carson City Human Resources Website: https://www.carson.org/home/showdocument?id=76969&t=637648702608000000			

Retirement and Bar Dues

Beyond salary differentials, counties also make contributions to retirement plans. This differs from state employees at DIDS who are part of the employee-employer compensation plan, which requires employees to contribute 15.5% of their income to retirement. The 15.5% contribution further differentiates the salaries of county and state employees by enlarging the salary gap between DIDS employees and county employees in similar positions of authority.

Currently paying the bar dues of Nevada state employees is prohibited by rules laid out in the Nevada State Administrative Manual (SAM). Specifically, SAM 2628 states that professional association dues are not an allowable State expense. The payment of bar dues and fees associated with required continuing legal education courses (CLEs) are a requirement for all practicing attorneys in Nevada. In order to maintain competitiveness in both the public and private labor markets, it is suggested that DIDS be allowed to reimburse employees for bar dues and CLEs. With 11 employees at DIDS, this works out to \$4,950 in bar dues annually.

Appendix F

DIDS Review of Updated County Plans

DIDS Review

Updated Churchill County Plan (Attachment 1.A)

☒ Meet Standards ☐ Does Not Meet Standards

\$918,044

Estimated Cost of the Plan:

Modifications to Plan:

Continues with the Office of Public Defender, creates a new Office of Alternate Public Defender, a Contract Position for Conflicts, and a position of Appointed Counsel Program Coordinator.

The Office of the Public Defender will be the primary provider of indigent defense and will assign cases to the Office of the Alternate Public Defender. The contract position will handle conflicts. If there are conflicts beyond, the Appointed Counsel Program Coordinator will assist with assigning counsel.

Sue Sevon, will act as Appointed Counsel Program Coordinator, so long as approved by the Churchill Board of County Commissioners.

Request to Modify FY18 / FY19 Average.

Updated Lander County Plan (Attachment 1.E)

☒ Meet Standards ☐ Does Not Meet Standards

\$217,099

Estimated Cost of the Plan:

Modifications to Plan:

Clarified the Screening Process is to be performed by the Court. The previous plan called for the Appointed Counsel Administrator to perform this role.

Updated Lincoln County Plan (Attachment 1.F)

☒ Meet Standards ☐ Does Not Meet Standards

\$205,000

Estimated Cost of the Plan:

Modifications to Plan:

Provides geographical limitations for the appointment of counsel to reduce on travel expenses for appointed counsel.

Updated Mineral County Plan (Attachment 1.H)

☒ **Meet Standards** ☐ **Does Not Meet Standards**

Estimated Cost of the Plan:

\$182,000

Modifications to Plan:

Removes the role of Appointed Counsel Administrator and instead uses DIDS for this role.

Updated Nye County Plan (Attachment 1.I)

☒ **Meet Standards** ☐ **Does Not Meet Standards**

Estimated Cost of the Plan:

\$955,000

Budget for Plans for Provision of Indigent Defense – Davis Counties

FISCAL YEAR 2023 Budgeted Indigent Defense Services Expenses

Expenditure Category	Davis Counties									
	Churchill	Douglas	Esmeralda	Eureka	Lander	Lincoln	Lyon	Mineral	Nye	White Pine
Salaries	604,653				5,000					
Contract Attorneys	100,000	1,309,000	82,000	75,000	135,000	145,000	1,087,000	117,000	75,000	553,290
Budget Appointed Attorneys	61,000			35,000	20,000		360,000	35,000	80,000	35,000
DIDS Designee	48,000	200,000			5,000				75,000	
Expert / Investigators	56,400	115,000			35,000	60,000	220,500	30,000	50,000	55,000
Travel/Training	5,560				1,000					
Construction/Lease	7,000									
Supplies	38,330				3,100					
Other					12,999					
Total	920,943	1,624,000	82,000	110,000	217,099	205,000	1,667,500	182,000	955,000	643,290
Requesting Reimbursement	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES
Updated Plan for FY23	YES	NO	NO	NO	YES	YES	NO	YES	YES	NO
See Attachment	1.A	1.B	1.C	1.D	1.E	1.F	1.G	1.H	1.I	1.J

Appendix G

Churchill County Oversight Visit Report



STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578
Phone: (775) 687-8490 | dids.nv.gov

OVERSIGHT REPORT

Churchill County

Visit date: May 20, 2022

I. Brief Narrative.

Executive Director **Marcie Ryba** and Deputy Director **Thomas Qualls** traveled to Fallon, Nevada for an oversight visit, to meet with **County Manager Jim Barbee**, soon-to-be Appointed Counsel Administrator **Sue Sevon**, and **Churchill County Public Defender Jacob Sommer**.

We met with all parties in County Manager Jim Barbee's office. We discussed and clarified the following items:

- **New Indigent Defense Structure:** Churchill County has elected to create a 4-tier indigent defense system. Moving forward there will be a Public Defender's Office, an Alternate Public Defender's Office, and two conflict contracts.
- **Timekeeping** – The County Manager declared that all offices will be required to do the necessary timekeeping and data recording which are mandated by the *Davis* settlement and the Regulations. There has been some historical resistance by the PD's office, which has been documented elsewhere, and was the subject of a previous corrective action report. It appears this resolves the matter. Even Jacob Sommer stated that his office has already begun to get caught up. We will follow-up.
- **Appointed Counsel Administrator:** Sue Sevon will be the County's Appointed Counsel Administrator. Our previous Oversight Report from December of 2021 noted that Churchill's Plan calls for an Appointed Counsel Administrator, but that one had not yet been hired. This, too, appears resolved.
- **Churchill County Attorney List:** Sue Sevon noted some frustration with some (unnamed) persons on the conflict list. But with a 4-tier system, the county will rarely need to resort to the appointed list.
- **Maximum Contribution Formula & Fiscal Reporting:** Churchill County wishes to change its Maximum Contribution numbers, stating that it did not submit accurate reporting previously, as it did not know what to include or not include. Accordingly, the county has significantly changed its reporting from the last 3 quarters. The county seeks Board approval for the change in maximum

contribution. It also asks that we request re-imbursement from the State for this quarter. Here's what the numbers then and now look like:

2 year avg	plus inflation	FY21 budgeted	difference
\$ 521,398.57	\$ 530,470.91	\$ 956,107.00	\$ 434,708.43

Requested Modification

\$ 345,719.86	\$ 351,735.39	\$ 956,107.00	\$ 610,387.14
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III. Next Steps.

1. We will keep tabs on all these matters and update these reports as needed.

IV. Photos

No photos at this time.

Appendix H

Lincoln County Oversight Visit Report



**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578
Phone: (775) 687-8490 | dids.nv.gov

OVERSIGHT REPORT

Lincoln County

Contact date: May 16, 2022

I. Brief Narrative.

On Wed, April 20, 2022, Executive Director **Marcie Ryba** and Deputy Director **Thomas Qualls** traveled to Alamo, Nevada, to visit with Lincoln County **Justices of the Peace Nola Holton** and **Mike Cowley**, as well as Lincoln County **Public Defender Franklin Katschke**. Judge Cowley agreed to drive 90 minutes from Pioche to meet with us in Alamo.

The Judges explained that the point person for county reporting should be **Denise Brown** (who is Board Member Bevan Lister's sister).

Public defender/client communication space. There is a need for public defender space in the courthouses of both Alamo and Pioche courthouses. In Alamo (Pahrangat Valley Justice Court), there is a jury/meeting room that can be used, but there is a desire to convert a neglected annex into a public defender office. The plan is to use court revenue from assessments to pay for the renovation. We explained that the county could put the estimated cost of the renovation into their annual fiscal report regarding expected indigent defense expenditures, and it could be reimbursed through the maximum contribution formula, if approved.

In Pioche (Meadow Valley Justice Court), there are no spaces available for client meetings. They have to clear the courtroom if Franklin needs to have a private conversation with one of his clients. He has a good relationship with the current DA, who would allow him to use his office there, and who also lets Franklin use the printer, copier, etc. in his office.

Also, Franklin's office is in Caliente, which is about 50 minutes from Alamo. Offices in each courthouse/ location would be beneficial to the defendants in each place.

For some reason, the judges get regular phone calls from indigent defendants asking them questions. For obvious reasons they do not answer the questions and inform the clients to call their attorney.

48-hour hearings. Franklin reports that there is no planned increase in his compensation for the additional work. We had a discussion that possibly (contract conflict atty) Kelly Brown and Franklin could rotate being on call for the hearings.

The judges also reported that Judge Scott Pearson from Washoe County had volunteered to hold the hearings virtually for them – and other rural counties. They discussed that while this would be a benefit to the judges, it would not be helpful to Franklin or to many of his clients. They explained that as a small community, they know most of the offenders, several of whom require tailored approaches, and so having a judge unfamiliar with their community probably won't work in Lincoln County.

Indigent Defense Plan. Everyone agrees that the plan seems to be working well. The judges like that a preferred list of appointed attorneys from nearby geographic areas was created.

Indigent screenings. These are currently being done by the jail within 48 hours. And they are working out any bugs in the system.

Virtual appearances. The judges prefer for the defendants to be present for hearings. They understand and are ok with some hearings being virtual, if the circumstances would require hardships otherwise. Part of the problem is poor internet connections and that they have to rely upon the free version of zoom, so if hearings are longer than 50 minutes, they have to restart hearing.

Performance of PD. The judges both reported being happy with Franklin and the job he does as public defender. They report that they are all able to work well together, often to come up with create solutions to defendants' needs.

Possibilities for future. We explained that any changes to their indigent defense system, such as building a county office or opting into the NSPD, must be included in their annual reporting. And we discussed the maximum contribution formula in some depth, while exploring the various options for providing sustainable indigent defense services.

In speaking with Franklin privately, after the meeting that included the judges, he was curious about DIDS' overall vision and direction. We explained, as always, that our overall goals are to assist in whatever plan is best for the individual counties. We discussed in more detail the various benefits of each kind of structure, such as a county office or an NSPD office, including the possibility of an assistant, and possibly an investigator and/or social worker, PERS, and student loan relief. Franklin was candid about the difficulty in paying overhead, and in even hiring a skilled assistant, because the amount he is able to pay is so low and that he can't offer benefits.

II. Oversight Criteria.

1. Client Communication
 - a. There is a need for public defender space in the courthouses of both Alamo and Pioche courthouses. Franklin has options in each place, but they are not ideal in Pioche.
 - b. Defendants seem confused about who to call.
 - c. Franklin appears to have time and ability to communicate with his clients.
2. First Appearances / 48-hour hearings
 - a. Franklin is doing first appearances.
 - b. The 48-hr hearings, when required, will likely be remote.
 - c. It is unclear whether Franklin will be on-call or share rotation with Kelly Brown. We encouraged more money and possibly a contract person to handle or be in rotation.
3. Preparedness / Knowledge of Case
 - a. The judges are happy with Franklin. Franklin appears to have a genuine desire to provide quality representation to his clients. He even gives free legal advice to many Lincoln County residents.
4. Investigation / Experts
 - a. Franklin uses each when needed and has his own budget.
 - b. He has an interest in an organized office with a full-time investigator.

III. Next Steps.

1. Follow-up with county and Denise Brown regarding financial reporting and future plans for indigent defense structure and renovation of space in Alamo courthouse.

IV. Photos

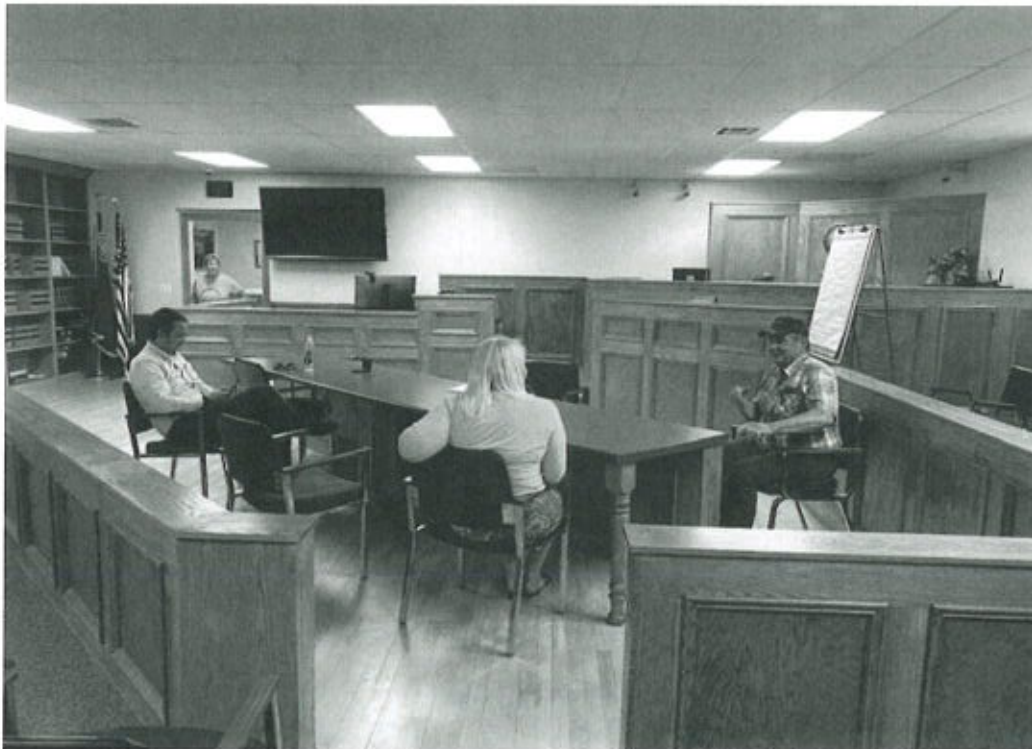
1. Lincoln County / Pahrangat Valley Courthouse in Alamo, NV
2. Pahrangat Valley Justice Court, Alamo, NV (Judge Holton, Franklin Katschke, Marcie Ryba, Judge Cowley)
3. Jury room / Client meeting space, Alamo, NV
4. Future PD Annex at Pahrangat Valley Justice Court

Lincoln County Oversight Report, #2

1.



2.



3.



4.



Appendix I

Delphi Panel Handout for Noncapital Criminal Cases

Attorney Activity Categories

Since *Gideon v. Wainwright*, the provision of an attorney to a criminal defendant is an accepted constitutional right under the Sixth Amendment. The past fifty years have witnessed the ongoing development of what that right means in practice. In *Strickland v. Washington*, the Supreme Court held that a defense attorney must render “reasonably effective assistance” under “prevailing professional norms” to meet the demands of the Amendment.

The question we are asking you to consider is how much attorney time, on average, is required to provide reasonably effective assistance of counsel pursuant to prevailing professional norms for different types of cases handled in state courts?

In considering time needed to provide reasonably effective assistance of counsel, pursuant to prevailing professional norms, we ask you to focus only on attorney time in the individual case. For example, please do not include time an investigator spends investigating, but rather the attorney’s time supervising and meeting with the investigator, going over the investigator’s work, and any additional, follow-up work conducted directly by the attorney. For this exercise, case time includes only attorney time doing actual attorney work on the specific case. It should not include general team or office meetings, travel time or wait time. To help you identify the time needed to provide reasonably effective assistance of counsel, we have segmented attorney work into nine general categories for your consideration.

Adult Criminal Cases

- Death penalty case
- Non-capital A&B felonies 10+ years
- B felonies <10 years; C, D & E felonies; Gross misdemeanors
- Misdemeanor DUIs; Misdemeanors – domestic violence
- Other misdemeanors, including misdemeanor appeals
- Probation violations; Parole violations
- Direct appeals of non-capital felony convictions and gross misdemeanors
- Specialty court cases

1. **Client Communication and Meetings** – Time spent communicating with the client and the client’s family, friends, or designated contacts. Includes
 - a. Client Interviews
 - b. Plea Discussions with Client
 - c. Sentencing/Disposition Discussions with Client
 - d. Institutional Visits (e.g. Jail, Hospital, Detention Center, Shelter Care)
 - e. Phone Calls, mail, video calls
 - f. Office Visit
 - g. Correspondence

Excludes arranging services exclusively related to Sentencing/Mitigation, which falls under Sentencing/Mitigation. Excludes time spent traveling or waiting to meet with client.

2. **Investigation and Discovery Activities** – Time spent on investigation of the case and exchange of discovery with the prosecution. Includes:
- a. Preparation and Submission of Discovery Requests
 - b. Review of Records and Physical Evidence (e.g. Discovery)
 - c. Interacting with State's Attorney re: Discovery
 - d. Consult with Social Workers and other Professionals
 - e. Direct Activities of Investigative Staff
 - f. Crime Scene Visits

3. **Expert Research and Consultation** – Time spent hiring and working with pre-trial and trial experts (but excluding experts exclusively related to sentencing). Includes:
- a. Identifying and Conferring with Experts (e.g., Forensics)
 - b. Consult with experts related to competency and other pretrial matters, as well as trial experts

Excludes Experts exclusively related to Sentencing/Mitigation, which falls under Sentencing/Mitigation.

4. **Legal Research and Writing** – Time spent on legal research and writing. Includes:
- a. Drafting of motions, pleadings, briefs, etc. related to pretrial, motions, or trial, including any written submission to the prosecutor related to negotiations

Excludes research or writing exclusively related to Sentencing/Mitigation, which falls under Sentencing/Mitigation

5. **Court Preparation** – Time spent preparing for all pretrial hearings. Includes:
- a. Preparing for factual and legal arguments at hearings
 - b. Client and/or family preparation for hearing and trial
 - c. Subpoenaing and preparing witnesses
 - d. Preparing materials for court including exhibits and presentations
 - e. Defense team meetings or other consultation with colleagues specifically in preparation for hearing or trial

Excludes preparation for hearings exclusively related to Sentencing/Mitigation, which falls under Sentencing/Mitigation.

6. **Court Time on Predisposition Matters** – Time spent in court for all pretrial hearings. Includes:
- a. Arraignment hearings (including preparation)
 - b. Preliminary hearing duties
 - c. Pretrial & status conferences
 - d. Competency hearings
 - e. Pretrial motion hearings

Excludes travel time and waiting time

Excludes court time related to Sentencing/Mitigation, which falls under Sentencing/Mitigation

7. **Non-Trial Disposition and Plea Negotiations** – Time spent on resolving the matter or any part of the matter by agreement. Includes:
 - a. Plea discussions with state's attorney and judge
 - b. Adjudication without trial (diversions, mutual postponements, other negotiated dispositions, nolle pros)
 - c. Taking of the plea
8. **Trial/Contested Adjudication** – Time spent on resolving the matter by trial or other contested adjudication. Includes:
 - a. Preparation of jury selection
 - b. Opening statement
 - c. Cross examination of prosecution's witnesses
 - d. Motions during the trial
 - e. Coordinating witness appearances
 - f. Presentation of the defense case
 - g. Closing argument
 - h. Jury instruction
9. **Sentencing/Mitigation and Post-Adjudication** – Time spent preparing for sentencing, attending sentencing hearing(s), and on any post-adjudication activities. Includes:
 - a. Preparing for and attending sentencing hearing
 - b. Pre-sentence report/sentencing memo
 - c. Addressing fines, fees and restitution
 - d. Finding alternative sanction options and prog
 - e. Consulting with mitigation experts
 - f. Gather medical, educational and family histories
 - g. Prepare for appeal
 - h. Motion for new trial
 - i. Motion for bail pending appeal and related motions
 - j. Filing of appeal

Appendix J

Delphi Panel Handout for Death Penalty Appeals

Attorney Activity Categories

Since *Gideon v. Wainwright*, the provision of an attorney to a criminal defendant is an accepted constitutional right under the Sixth Amendment. The past fifty years have witnessed the ongoing development of what that right means in practice. In *Strickland v. Washington*, the Supreme Court held that a defense attorney must render “reasonably effective assistance” under “prevailing professional norms” to meet the demands of the Amendment.

The question we are asking you to consider is how much attorney time, on average, is required to provide reasonably effective assistance of counsel pursuant to prevailing professional norms for different types of cases handled in state courts?

In considering time needed to provide reasonably effective assistance of counsel, pursuant to prevailing professional norms, we ask you to focus only on attorney time in the individual case. For example, please do not include time an investigator spends investigating, but rather the attorney’s time supervising and meeting with the investigator, going over the investigator’s work, and any additional, follow-up work conducted directly by the attorney. For this exercise, case time includes only attorney time doing actual attorney work on the specific case. It should not include general team or office meetings, travel time or wait time. To help you identify the time needed to provide reasonably effective assistance of counsel, we have segmented attorney work into nine general categories for your consideration.

Direct Appeals of Capital Convictions

1. Client communication and meetings

Time spent communicating with the client and the client’s family, friends, or designated contacts. Includes in-person and video meetings, telephone calls, writing client letters, etc.

2. Initial record review and legal research

Review of the trial court record and preliminary research into legal issues.

3. Factual investigation

Investigation of the facts of the case beyond the trial court record, e.g., trial attorney interviews, witness interviews.

4. Expert research and consultation

Identifying and consulting with experts.

5. Composition of trial court pleadings

Writing pleadings, motions, etc. to be filed with the trial court.

6. Trial court hearings--non-evidentiary

Preparing for and appearing at all trial court hearings other than evidentiary hearings and resentencings.

7. Trial court hearings—evidentiary

Preparing for and appearing at evidentiary hearings in the trial court. Conducting negotiations

with the prosecutor related to trial court evidentiary hearings.

8. Composition of Supreme Court pleadings and briefs

Writing pleadings and briefs to be filed with the Nevada Supreme Court or the Supreme Court of the United States.

9. Supreme Court arguments

Preparing for and making arguments before the Nevada Supreme Court or the Supreme Court of the United States.

10. Resentencing hearings

Preparing for and attending resentencing hearings. Conducting negotiations with the prosecutor related to resentencing hearings.

11. Negotiations not related to trial court evidentiary or resentencing hearings

Other negotiations with the prosecutor.

12. Case-related administration (discovery, missing transcripts, etc.)

Administrative work related to a specific case, such as requesting discovery, transcripts, recordings, and other case-related records and materials.