

Comments of
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JANETTE M. BLOOM
CLERK OF SUPREME COURT
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DEPUTY CLERK

Good morning, my name is Jeff Wells and I am an Assistant County Manager for Clark County, Nevada.

Clark County takes very seriously its obligation to provide effective and zealous representation for those accused of committing a crime, and we applaud the Court for examining the state of indigent defense in Nevada.

Clark County, both through its Commissioners and the County Management office, is committed to providing a constitutionally sound defense for those who cannot otherwise afford it. In fact the County Commission recently adopted a number of structural changes in our public defender system in order to further that goal. (Exhibit A) Several additional changes are being planned.

Clark County is concerned however with the Commission's recommendation to adopt caseload standards. Let me be perfectly clear - - Clark County fully supports the adoption of Performance Standards - -it is only the adoption of a fixed caseload limit that we oppose.

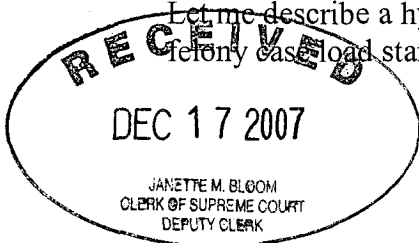
We have three primary concerns with a caseload standard.

1) First, there is no number, no matter how small, that can guarantee effective representation. Effective representation is not determined by how many cases an attorney is handling. It is determined by how competent the attorney is and by how zealously the attorney actually represents each individual defendant.

In fact, as acknowledged by the US Department of Justice's 2001 Indigent Defense Series, before we can establish a caseload standard some agreement will have to be reached on even what a case is. For example, if a case is assigned to a public defender, but the defendant is missing for an extended period of time, and no action is being taken on the file is that still a case ?

Or if a defendant is charged with two counts under one case number is that one or two cases? Common practice would say just one. But if during the pendency of that case the same defendant is charged with a new criminal episode and that case is assigned to the same public defender -do we have two cases? And then if there is a motion and order to consolidate these cases, are we back to one case ?

Let me describe a hypothetical fact pattern - -let's assume that the recommended 192 felony caseload standard is adopted, and we have a public defender who is handling 190



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cases. Then, after an audit, it determined that the public defender's staff counted the cases incorrectly and he was actually handling 195 cases. Does that lead to the conclusion that he provided ineffective representation on every one of those cases? I think not. And I suspect that if one of those 195 cases were before this very court that you would look at what was actually done in the case without regard to the 190 versus 195 caseload standard. But if in fact that is what this Court would look at - - then why even establish an artificial number in the first place?

2) A maximum caseload standard implies "a one size fits all" proposition. We would submit that "one size does not fit all". We would also submit that no matter what number is picked some attorneys - - simply by their experience, by their individual work ethic and by the quality and expertise of their staff - - will be able to handle 10, 20 or 30 percent more cases. While another attorney, based on his possible limited experience, or staff may not be able to handle even 70 percent of the caseload. I believe the Commission partially acknowledged this inherent disparity between attorneys and that is why the proposed standard includes a narrow range from 150 to 192 cases.

One size does not fit all. This becomes abundantly clear when we consider that the non-life felony caseload numbers adopted by Public Defender offices in other states range from as low as 80 to as high as 300.

3) One has to be concerned that if this Court adopts a maximum caseload standard of say 200 cases, and a public defender has for several months been handling 250 cases, does that per se violation of the caseload standard mean that every single case that the attorney handled is now subject to a new or even renewed challenge of ineffective counsel? Does it mean that there is a per se violation of the first prong of the Strickland test?

We've also heard some discussion that a new standard could be phased in - - for example public defenders might be given a year or two to hire enough staff to bring their caseloads down to the prescribed number. I don't see how that could work, because every defendant during the two-year interim would argue that he received ineffective representation.

In conclusion, Clark County appreciates that the Court has taken on this challenge and we look forward to the adoption of definitive performance standards. However, we urge you to reject the concept of an artificial fixed maximum caseload because we firmly believe it creates far more serious problems than it resolves.

Exhibit A

Recommendations approved (or approved as amended) by the County Commission on November 6, 2007 included the following:

1. Limiting the number of murder and sexual assault cases in the Public Defender and Special Public Defender's office. These are the cases that have the severest penalties and require the most attention. These cases would be placed with new and existing contract attorneys who would be paid at the statutory hourly rate.
2. Conducting a case weighting and time management study for the Public Defender's Office. It is estimated that the study would cost approximately \$200,000. [This type of study has been used to measure judicial, prosecutorial, and defense caseloads. The attorney tracks his/her time for each task related to a case. The study measures time and balances the time spent against the nature of the case.] Such a study would provide a more accurate measure of the Public Defender caseloads.
3. Increasing the contract amount for Adult Criminal appointments from \$3000 to \$4500 per month with performance standards attached to the contract. Attorneys would additionally be paid the hourly rate of \$100 per hour for time spent in trial. This would eliminate the financial disincentive that currently exists when a contract attorney goes to trial.
 - **NOTE:** The County Manager also recommended that contract attorneys handle all misdemeanor cases on their track. The County Commission did not approve this recommendation but instead directed the County Manager and the Public Defender to continue discussion of the handling of misdemeanor cases i.e. the use by the Public Defender's Office of misdemeanor cases for training versus transferring misdemeanors to contract attorneys.
 - **NOTE:** In addition, the County Commission directed staff to bring back a recommendation as to whether the public interest would be better served by contracting private attorneys to handle cases or to use a portion of the funds to provide additional staff in the Public Defender's Office.
 - **NOTE:** The County Commission also directed staff to consider transferring the indigent defense budget item from the Court's budget to the County Manager's budget.
4. Increasing the contract amount for Juvenile Delinquency appointments from \$3000 per month to \$4000 per month.
5. Issuing a Request for Proposal for contract attorneys for Juvenile Dependency Cases. One contract could provide representation for indigent families who cannot be represented by the Special Public Defender's Office.

6. Examining the feasibility of expanding the Special Public Defender's Office by adding experienced attorneys to handle those cases that are currently hourly appointments.
7. Issuing a Request for Proposal for a private, experienced criminal defense attorney to review all hourly billings submitted by private attorneys.