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Nevada Supreme Court Indigent Defense Commission
201 South Carson Street
Carson City NV 89701-4702

Dear Commission Members:

These comments regarding the Final Report and Recommendations of the Supreme Court Indigent Defense Commission ("Report") are submitted on behalf of the Nevada Advisory Council for Prosecuting Attorneys ("NVPAC") and the Nevada District Attorneys Association ("NVDA"). NVPAC and NVDA support the creation of indigent criminal defense performance standards to ensure reasonably effective assistance of counsel in accordance with *Strickland v. Washington*, 466 U.S. 668 (1984), but strongly object to the imposition of numerical caseload standards. Numerical caseload standards disregard differences in the complexity of cases, disparities in attorney productivity, and efficiencies created through technology.

Page 7 of the Report erroneously represents that the American Bar Association has established numerical caseload standards. The ABA Standards regarding workloads are set forth in *ABA Standards for Criminal Justice: Providing Defense Services* Standard 5-5.3 (3d ed. 1992) and *ABA Standards for Criminal Justice Prosecution Function and Defense Function* Standard 4-1.3 (3d ed. 1993) (copies attached), and do not establish numerical standards. The commentary to *Providing Defenses Services* Standard 5-5.3 cites numerical standards adopted by the National Advisory Commission on Criminal Justice Standards and Goals in 1973, and these are often misrepresented as ABA standards although they have never been adopted by the ABA.

Thank you for the opportunity to clarify this error.

Sincerely,

Brett Kandt
Executive Director

Attachment

07-28452

ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES
Standard 5-5.3 (3d ed. 1992)

Standard 5-5.3 Workload

(a) Neither defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Special consideration should be given to the workload created by representation in capital cases.

(b) Whenever defender organizations, individual defenders, assigned counsel or contractors for services determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organization, individual defender, assigned counsel or contractor for services must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations

ABA STANDARDS FOR CRIMINAL JUSTICE PROSECUTION FUNCTION AND
DEFENSE FUNCTION Standard 4-1.3 (3d ed. 1993)

Standard 4-1.3 Delays; Punctuality; Workload

(a) Defense counsel should act with reasonable diligence and promptness in representing a client.

(b) Defense counsel should avoid unnecessary delay in the disposition of cases. Defense counsel should be punctual in attendance upon court and in the submission of all motions, briefs, and other papers. Defense counsel should emphasize to the client and all witnesses the importance of punctuality in attendance in court.

(c) Defense counsel should not intentionally misrepresent facts or otherwise mislead the court in order to obtain a continuance.

(d) Defense counsel should not intentionally use procedural devices for delay for which there is no legitimate basis.

(e) Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations. Defense counsel should not accept employment for the purpose of delaying trial.