

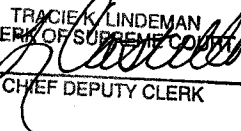
1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 IN THE MATTER OF THE REVIEW OF
3 ISSUES CONCERNING
4 REPRESENTATION OF INDIGENT
5 DEFENDANTS IN CRIMINAL AND
6 JUVENILE DELINQUENCY CASES.

ADKT NO. 411

FILED

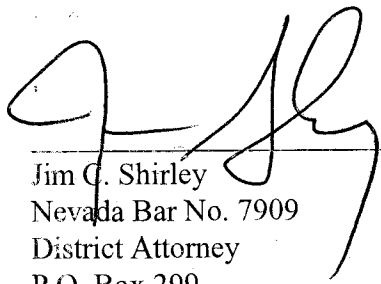
FEB 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

7 **OBJECTION AND MOTION TO SET ASIDE ORDER**

8 **COMES NOW, PERSHING COUNTY**, a political subdivision of the State of
9 Nevada, by and through the Pershing County District Attorney, Jim C. Shirley and does
10 hereby lodge this objection to the Order of the Supreme Court filed on the 4th Day of January,
11 2008 in the above-entitled matter and does hereby move to set aside the January 4, 2008
12 Order as it pertains to Pershing County. The Pershing County Board of Commissioners on
13 behalf of the County have requested that the Order be Set Aside and that meetings be held to
14 discuss the matter further. The basis for this Motion is set forth in the attached Memorandum
15 of Points and Authorities.

16 Dated this 8th day of February, 2008.



17 Jim C. Shirley
18 Nevada Bar No. 7909
19 District Attorney
20 P.O. Box 299
21 Lovelock, Nevada 89419

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 I. FACTS

24 1. On or about April 26, 2007, the Nevada Supreme Court established a
25 committee known as the Indigent Defense Commission (herein "The Commission").

26 **RECEIVED**
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CLERK OF SUPREME COURT
DEPUTY CLERK

1 2. The Commission conducted hearings to “study the issues and
2 concerns with respect to the selection, appointment, compensation, and qualifications of
3 counsel assigned to represent indigent defendants.” See “Final Report and
4 Recommendations of Supreme Court Indigent Defense Commission” (herein the “Report”
5 filed on November 20, 2007 with this Court (on file with this Court).

6 3. The Supreme Court also “directed the Commission to recommend appropriate
7 changes for the Court’s consideration.” Id.

8 4. On November 20, 2007, a Report from the Commission was filed with the
9 Supreme Court. Id.

10 5. On January 4, 2008, this Court issued an Order in the above-entitled matter,
11 implementing several of the recommendations from the Commission’s November 20, 2007
12 Report. See “ORDER” (herein “Order”) filed on January 4, 2008 with this Court.

13 6. The November 20, 2007 Report has numerous of inaccuracies regarding the
14 services offered in Pershing County to indigent persons (See Exhibit #1 Attached Resolution
15 incorporated by reference), including, but not limited to, the following:
16

17 a. The report indicates that Pershing County has contracted with a
18 private law firm to provide indigent defense. See Report pg 18 (“While Pershing County was
19 utilizing the State Public Defender, the relationship was severed effective June 30, 2007. A
20 contract has since been awarded to a law office.” (Emphasis added)). This is entirely
21 inaccurate. In accordance with NRS 260.010, the Pershing County Board of Commissioners,
22 established an *Office of a County Public Defender* in conjunction with Humboldt County
23 pursuant to Interlocal Agreement. Furthermore, Pershing County has a contract with fully
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25
26

1 qualified "Conflict Public Defender" with years of exceptional service.

2 b. The report indicates that only Elko, Washoe and Clark Counties have
3 county public defender's offices and that the rural counties should be under the State Public
4 Defender's Office. As noted above this is inaccurate.

5 c. Pershing County has set forth a broad definition of indigent.¹
6 The judges look at income and assets and use the Federal Poverty Guidelines (FPG). The
7 Pershing County Courts may appoint counsel even if the applicant makes more than 300
8 percent of the FPG provided that they are assessed a reasonable fee for counsel's services.

9
10 7. The order directing the District to implement changes that remove the judges
11 from the decision-making process is not necessary and constitutes an un-funded mandate.
12 Pershing County has not budgeted for this provision.

13 8. The order directing the District to exclude trial judges/justices of the peace
14 from the process of appointing counsel is not needed in Pershing County. During the
15 previous year, there were very few appointments outside of the Public Defender.

16
17 9. The Court's imposition of the "Indigent Criminal Defense Performance
18 Standards" ("Performance Standards") will cause a substantial increase in costs for the
19 County. The Performance Standards invite litigation that is not necessary. The vast majority
20 of cases in Pershing County result in beneficial plea agreements. Consider the following:

21 a. The County Public Defender would be "obligated" to fully investigate matters,
22 even where the client agrees that the reports are accurate and wants to settle the matter²;

23
24 _____
25 1 "Means any person (or in a Juvenile Matter, a child's parent or guardian), who is not able, financially, to
26 secure the services of legal counsel by means of his present or reasonably-anticipated resources, considering the
seriousness, need, and urgency of the matter, the difficulties or intricacies of the issues involved, and the financial

1 b. The appointed counsel would be “obligated” unrealistically to conduct
2 an interview of the client within “24 hours” of his appointment³;

3 c. Counsel would be “obligated” to perform efforts that are not required under
4 Strickland. Failure may result in constitutionally merit-less “ineffective assistance” claims;

5 d. Because of the heightened requirements/obligations to file Motions, District
6 Attorney and Courts would be required to expend additional resources in un-needed litigation.

7 e. Appointed counsel would be held to a higher standard than retained attorneys; and

8 f. There is no apparent need for the heightened standards when local indigent
9 criminal defendants are receiving Constitutionally sound representation.
10

11 **II. ARGUMENT**

12 The County prays that the Court rescind the Order as it relates to Pershing County.

13 **I. THE ORDER VIOLATES THE PRINCIPLES BEHIND THE**
14 **PROHIBITION AGAINST UN-FUNDED MANDATES**

15 The Court Order would require additional expenditures that were not provided in the
16 budgetary process for the fiscal year 2007-08. NRS 218.2479 limits the ability of the
17 legislature to impose un-funded mandates. The Citizens of Nevada have expressly voted and
18 stated that unfounded mandates should not be placed on local government. The Order would
19 require that the County expend additional monies to employ a committee/board/agency for
20 the appointment of counsel for indigent people. The Order contemplates the appointment of
21

22 circumstances of the applicant.”

23 2 Under Standard 9 Investigation (page 8 of ADKT 411 Exhibit A), counsel would be required to make a
24 thorough and independent investigation even if the client did not require such an investigation. This would create
25 additional burdens on the system that are unnecessary. Under Standard 9 Plea Negotiations (ADKT 411 Exhibit A:
Page 31) “Under **no** circumstances should defense counsel recommend to a defendant acceptance of a plea unless
appropriate investigation and study of the case has been completed...”

26 3 Standard 7,(See Page 6 of ADKT 411 Exhibit A).

1 administrators of an indigent defense program. There is no need for such a program in
2 Pershing County. The vast majority of appointed cases go to the Office County Public
3 Defender or the Conflict Public Defender. Out of seventy-two appointments of counsel, only
4 three went to outside counsel. There is simply no need for a change or additional expense.

5 The Commission failed to adequately inform itself of Pershing County's system prior
6 to making its recommendations. The Report makes this abundantly clear. *See Above.*

7 Because there are so few appointments outside of the Public Defender and Conflict contract,
8 there is no need for a committee/board/agency or administrators because there is no
9 appearance of impropriety. **Furthermore, the Court has issued an order requiring**
10 **expenditures without prior notice to Pershing County. Pershing County is entitled**
11 **under due process provisions to notice that this Court intended to enter an order**
12 **affecting the County.** Objection is therefore lodged to this requirement.

14 **II. THE ORDER CREATES A STANDARD THAT DEPARTS**
15 **SIGNIFICANTLY FROM STRICKLAND**

16 In Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674
17 (1984), the United States Supreme Court established the minimum requirements for counsel
18 to be effective counsel under the Constitution. The Performance Standards set forth by the
19 Court exceed this standard and provide a detailed micromanaging of the efforts of indigent,
20 not retained, defense counsel. Such a radical departure from Strickland will invited increased
21 merit-less litigation as defense counsel can violate the standards inadvertently and potentially
22 cause a case to be subject to a claim for ineffective assistance of counsel. The Performance
23 Standards obligate and require indigent defense counsel to take actions that are not necessary.
24
25
26

1 The Court has invited claims that would have been merit-less under Strickland to be routinely
2 filed alleging ineffective assistance of counsel against only appointed counsel.

3 Nothing in the Order or Report seems to indicate that the Commission or the Court
4 considered the broad sweeping ramifications created by imposing significant obligations on
5 appointed counsel. A clear example of this is that indigent defense counsel is required under
6 the Performance Standards to advise of collateral consequences prior to a plea. Failure to
7 advise clearly would be a violation of the performance standards. This Court has routinely
8 rejected the requirement that defendants be advised of collateral consequences by the trial
9 court.⁴ Furthermore, this Court has noted “when considering counsel's advisements to a
10 defendant under the stricture of Strickland, we agree with the Fifth Circuit Court of Appeals
11 that ‘[d]efense counsel has done all he must under the Constitution when he advises his client
12 of the direct consequences...’”⁵ This Court has noted “Strickland dictates that our evaluation
13 begins with the ‘strong presumption that counsel's conduct falls within the wide range of
14 reasonable professional assistance.’”⁶ The Order unrealistically narrows that range of
15 acceptable assistance with the sweep of a pen without adequate consideration of the facts.
16
17

18 Indigent defense counsel would also be required to hire investigators to conduct an
19 independent investigation where one is not necessary. The standards for investigations clearly
20 indicates that appointed counsel must perform an investigation, even if the client agrees with
21 the contents of the police investigation and admits to the facts of the case. The standards
22

23 4 Nollette v. State, 46 P.3d 87, 89, 118 Nev. 341, 344, (Nev. 2002) (collateral consequences are “limitless,
unforeseeable or personal to a defendant” and advisement would be impossible);

24 5 Nollette v. State, 46 P.3d at 92-93, 118 Nev. at 349-50, (Nev. 2002). (“In fact, we have recently held that
25 counsel was not ineffective for failing to inform a client about ... a collateral consequence of the client's guilty
26 plea... The consequences at issue here were collateral, rather than direct, Nollette's counsel was not ineffective for
failing to inform him” of the collateral consequences).

1 would create an undue burden on the system as cases would be delayed while the independent
2 investigation was occurring. It would cost thousands and thousands of dollars and accomplish
3 little in the way of making the system better. The increased reluctance to enter plea
4 agreements would also cost taxpayers thousands of dollars.

5 The Performance Standards impose obligations upon appointed counsel that is not
6 required of retained counsel. The appointed attorney is even held to higher standard than
7 Strickland requires. The Performance Standards will result in an increase in merit-less
8 ineffective assistance claims based upon those standards. While only minor examples have
9 been given, the Performance Standards are replete with additional areas of concern in this
10 regard. To place obligations upon appointed counsel of the magnitude contemplated in the
11 Performance Standards will result in significant increases in litigation and attendant costs.
12 While the Performance Standards may have a noble intent, the consequence of inviting
13 additional litigation that is unnecessary and would be burdensome to our system of justice and
14 far outweighs any benefit. The standards of Strickland provide a much better working model
15 for appointed counsel. It would be far better to adopt a standard that allows for more training
16 in line with Strickland than having formalized requirements that attempt to micromanage
17 every aspect of representation. For this reason, Pershing County prays and requests that the
18 Court rescind its order as it relates to Performance Standards, especially in Pershing County.
19
20

21 III. THE ORDER IS CONTRARY TO NRS 171.188 3. & 7.125

22 Under NRS 171.188 3. and NRS 7.125, the judge or magistrate is authorized by
23 statute to make an indigent determinations and appoint counsel. The Court has ordered that
24

25 6 Means v. State, 103 P.3d 25, 32, 120 Nev. 1001, (Nev. 2004) (*Citations Omitted*).

1 judges be taken from the process, even though the legislature has deemed that the local judges
2 are the appropriate fact-finders and appointing authority. While this Court could certainly
3 rule that any statute is unconstitutional if appropriate facts are shown, the Court has not so
4 ruled. Rather, the Court has determined to override the statute. Pershing County objects
5 because the statute shows the will of the people as articulated by the Legislature.

6 The methodology using judges for indigent determinations is infinitely more attuned
7 to the realities of the court system and criminal justice apparatus in Pershing County.

8 Pershing County also objects because there is no need to change the rule. The old adage of
9 “throwing the baby out with the bath water” applies. As it exists, the system in Pershing
10 County works well without the problems faced by Clark County. Why create new problems
11 that are unnecessary? **Pershing County objects to the modification of legislation without a**
12 **basis for doing so. Pershing County objects to overturning statutes without a proper**
13 **basis or a case or controversy before the Court.**

14
15 **IV. THE RECOMMENDATIONS VIOLATE NRS 260.010**

16 NRS 260.010 clearly provides that the County has the authority to provide for
17 indigent defense through a County Public Defender’s Office. Pershing County has exercised
18 its authority under this statute. It has been the sad experience of the County to see that the
19 services provided by State agencies are often unacceptable. Part of the reason that the County
20 went away from the State Public Defender was that the quality and accountability were not
21 present. The Courts, which the Order tends to remove from the process, can better oversee
22 and ensure that quality representation occurs if control remains on a local level. Oftentimes
23 the needs of the smaller jurisdictions are ignored because the larger jurisdictions require more
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1 services and have more clout. Accordingly, while Pershing County would accept any
2 financial aid in the form of a grant to provide the services, the County objects to the
3 recommendation that the Public Defender's Office go under State Control. Accordingly,
4 Pershing County objects because this Court is recommending an action in contradiction to
5 NRS 260.010. **Pershing County objects to overturning statutes without a proper basis or**
6 **a case or controversy before the Court to allow for such an action. The Court has no**
7 **case from Pershing County showing that the system does not work.**

8
9 **V. Caseload Standards**

10 The County opposes Caseload Standards because it applies an artificially created
11 number without really delving into the increased effectiveness of attorneys due to
12 technological advances. Furthermore, the standards don't effectively evaluate how
13 experienced attorneys can perform their duties versus inexperienced attorneys. Pershing
14 County has a relatively low caseload presently. Locally, the County Public Defender can
15 approach and ask for additional help from the County if needed. The people who would
16 know best are those who are working locally, not an artificial number articulated from a study
17 conducted nearly thirty years ago in 1973. The Court should not adopt these numbers.

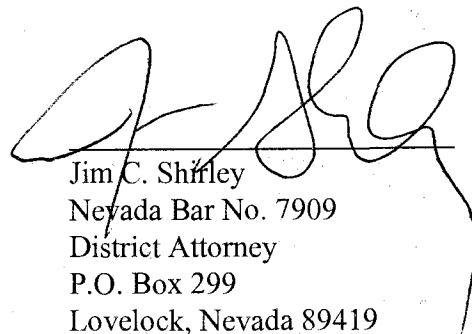
18
19 **III. CONCLUSION**

20 The County requests that the Court rescind its order as it applies to Pershing County
21 and direct the Commission to set up meeting in Pershing County with Pershing County
22 Officials, including, but not limited to, the District Court Judges, the Justice of the Peace, the
23 Pershing County Board of Commissioners, the Juvenile Probation Officers, the County Public
24 Defender, and the District Attorney, at an open meeting, to discuss the issues prior to the
25

1 issuance of any report affecting Pershing County. The Order and Report do not correctly
2 reflect what transpires on a local level and do not reflect the realities of the Court system in
3 Pershing County. The Order is unduly burdensome and creates an unnecessary imbalance in
4 the system. The Report shows that the actual facts in Pershing County were not considered.

5 Pershing County agrees with the Court that appointment of counsel for indigent
6 people is essential to the system of justice that we have. In fact, the Pershing County Board of
7 Commissioners has taken serious steps to ensure the appointment of counsel for the indigent
8 in criminal and juvenile cases, as well as in Guardianships and 432B cases. Pershing County
9 emphatically expresses its desire to keep the current County Public Defender's Office and not
10 be given the State Public Defender's Office as a substitute. Furthermore, Pershing County
11 objects and requests that the Court reconsider its ruling on the Performance Standards in that
12 these rules will substantially increase the costs for an orderly and efficient judicial system
13 (being an additional un-funded mandate). Pershing County also objects to the remove of
14 judges from the process of appointing counsel for indigent people (being an un-funded
15 mandate). **PERSHING COUNTY RESPECTFULLY REQUESTS A HEARING IF THE**
16 **COURT IS UNWILLING TO GRANT THIS MOTION SO THAT EVIDENCE CAN**
17 **BE PRESENTED AND ARGUMENT HEARD.**

18
19
20 Dated this 9th day of February, 2008.

21
22 
23 Jim C. Shifley
24 Nevada Bar No. 7909
25 District Attorney
26 P.O. Box 299
Lovelock, Nevada 89419

RESOLUTION

NO. 080201

RESOLUTION OPPOSING SUPREME COURT ORDER DATED JANUARY 4, 2008 AND THE NOVEMBER 20, 2007 STUDY WHICH RESULTED IN THE ORDER. RESOLUTION ALSO REQUESTING THE SUPREME COURT TO RESCIND THE ORDER AND RECONSIDER THE REPORT

WHEREAS, on or about April 26, 2007, the Nevada Supreme Court established a committee known as the Indigent Defense Commission (herein "The Commission").

WHEREAS, The Committee conducted hearings to "study the issues and concerns with respect to the selection, appointment, compensation, and qualifications of counsel assigned to represent indigent defendants in criminal and juvenile delinquency cases throughout Nevada." "Final Report and Recommendations of Supreme Court Indigent Defense Commission" (herein the "Report" filed on November 20, 2007 with the Nevada Supreme Court.

WHEREAS, The Supreme Court also "directed the Commission to recommend appropriate changes for the Court's consideration."

WHEREAS, on November 20, 2007, a Report from the Commission was filed with the Supreme Court.

WHEREAS, on January 4, 2008, this Court issued an Order in the above-entitled matter, implementing several of the recommendations from the Commission's November 20, 2007 Report. See "ORDER" (herein "Order") filed on January 4, 2008 with the Nevada Supreme Court.

WHEREAS, the Pershing County Board of Commissioners agrees with the Court that

appointment of counsel for indigent people is essential to the system of justice that we have.

WHEREAS, the Pershing County Board of Commissioners has taken steps in the past to take care of the appointment of counsel for the indigent in criminal and juvenile cases, as well as in Guardianships and 432B cases.

WHEREAS, the Pershing County Board of Commissioners would like financial assistance but would not care to go under the prior system with the State Public Defender's Office or have the increased costs for the performance standards and other non-essential matters addressed in the Court's Order.

WHEREAS, the November 20, 2007 Report has numerous inaccuracies regarding the services offered in Pershing County to indigent persons, including, but not limited to, the following:

a. The report indicates that Pershing County has contracted with a private law firm to provide indigent defense. See Report pg. 18 ("While Pershing County was utilizing the State Public Defender, the relationship was severed effective June 30, 2007. A contract has since been awarded to a law office." (Ephasis added)). This is entirely inaccurate. In accordance with NRS 260.010, the Pershing County Board of Commissioners established pursuant to ordinance 234, Chapter 2.80 of the Pershing County Code, which establishes the Office of County Public Defender. Additionally pursuant to NRS 260.010, Pershing and Humboldt Counties have entered into a joint agreement, entitled "Interlocal Agreement Creating the Joint Office of the Humboldt/Pershing Public Defender." Furthermore, the County has a contract

employing the services of a fully qualified "Conflict Public Defender." Even when the County used the State Public Defender, the services of a contract "Conflict Public Defender" were used.

b. The report indicates that other than Elko, Washoe and Clark Counties who have county public defender's offices, the rural counties should be under the State Public Defender's Office. See Page 11, 12 and 69 (Exhibit B: Indigent Defense Commission Report) of the Study. Pershing County has a county public defender's office. Furthermore, Pershing County believes that local control works better. While the County would support full funding of indigent defense by the State, the Court would prefer a block grant allowing the County to spend the money locally. The problem with State Agencies is notorious in the smaller communities. When costs have to be cut, the smaller rural counties always suffer disproportionately. While rising costs was a problem with the State Public Defender that led to the formation of a Office of a County Public Defender, a larger and superceding problem was ensuring quality representation by a State Agency over which the people in Carson had little supervisory capability¹. In 2005, the Humboldt and Pershing Counties had considered going with a County Public Defender's Office but failed to have sufficient time to implement such a determination.

c. Pershing County has set forth a definition of indigent as follows:
"Means any person (or in a Juvenile Matter, a child's parent or guardian), who is not able, financially, to secure the services of legal counsel by means of his present or reasonably-anticipated resources, considering the seriousness, need, and urgency of the

matter, the difficulties or intricacies of the issues involved, and the financial circumstances of the applicant.” Pershing County looks at income and assets and uses the Federal Poverty Guidelines (FPG) as a baseline. Using the FPG, the Courts may appoint counsel even when the applicant makes more than 300 percent of the FPG provided that they are assessed a reasonable fee for counsel’s services.

WHEREAS, the order directing the District to implement changes which remove the judges from the decision making process is not necessary and constitutes an unfunded mandate. Pershing County has not budgeted to appoint a full time commission to consider appointment of counsel. Because the appointment process would have to be ready to provide a decision on a daily basis, such an appointment would require, at a minimum, a full time person. The report seems to indicate that a commission would be necessary consisting of a three-person panel with diverse backgrounds in the community. The cost of hiring three full-time people has not been budgeted and would cause Pershing County to violate procedures for budgeting for the fiscal year.

WHEREAS, based upon numbers provided by the Pershing County District Attorney, approximately one hundred twenty-seven (127) Felony Cases, fifteen (15) Gross Misdemeanor Cases, two hundred twenty-one (221) (Non-traffic) Misdemeanor Cases, ninety-two (92) Citations, and one hundred twenty (120) Juvenile Petitions were filed and prosecuted by the Pershing County District Attorney's Office.

WHEREAS, a case was defined consistent with NRS 7.125 as a criminal complaint or juvenile petition, even if more than one count was alleged in the complaint.

WHEREAS, based upon numbers provided by the District Attorney’s Office,

approximately seventy-two appointments of counsel were made in the cases listed above. Of the seventy-two appointments, three or less involved counsel who were not part of the Public Defender's Office or Conflict Public Defender's Office. The rest of the cases involved retained counsel or pleas on misdemeanor cases or delinquency cases that did not involve legal counsel.

WHEREAS, the order directing the District to exclude trial judges/justices of the peace from the process of appointing counsel is not needed in Pershing County. During the previous year, there were very few appointments outside of the Public Defender and Conflict Public Defender for criminal or juvenile matters (perhaps as few as two).

WHEREAS, when there are appointments for persons outside of the Public Defender's Office or the Conflict Public Defender's Office, the appointments go to qualified local attorneys.

WHEREAS, the bulk of the appointments went to the Public Defender and the Conflict Public Defender.

WHEREAS, the Conflict Public Defender is selected from the request for proposals process outlined in the Nevada Revised Statutes.

WHEREAS, the Court's imposition of the "Indigent Criminal Defense Performance Standards" ("Performance Standards") will cause an undetermined but probably substantial increase in costs for the County.

WHEREAS, the Performance Standards invite litigation that is not necessary and would be counter-productive to the efficient and proper resolution of cases.

WHEREAS, the vast majority of cases in Pershing County result in plea agreements

that benefit the state and the defendant.

WHEREAS, most defendants either retain private counsel or are willing to take responsibility and accept their own conduct if given reasonable alternatives.

WHEREAS, the County Commissioners believe that the following would cause an increase in costs:

- a. The County Public Defender would be "obligated" to fully investigate matters, even where the client agrees that the facts alleged by the state are true and where the client wants to settle the matter¹;
- b. The County Public Defender would be "obligated" to conduct an interview of the client within "24 hours" of counsel's appointment unless there were "exceptional circumstances."² This requirement does not recognize that litigation often precludes immediate meetings with clients. This requirement does not recognize that appointments can be made to see clients;
- c. Counsel would be "obligated" to perform efforts that are not required under Strickland as outlined more fully herein. When counsel fail to meet these obligations, this could result in "ineffective assistance" claims that would be bolstered by the Performance Standards;
- d. Because of the heightened requirements/obligations to file Motions, the Office of the Pershing County District Attorney would be required to respond to Motions where the issues are often handled more expeditiously in an informal manner through

¹ Under Standard 9 Investigation (page 8 of ADKT 411 Exhibit A), counsel would be required to make a thorough and independent investigation even if the client did not require such an investigation. This would create additional burdens on the system that are unnecessary. Under Standard 9 Plea Negotiations (ADKT 411 Exhibit A: Page 31) "Under no circumstances should defense counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed..."

discussions between counsel (i.e. bail issues) and resolution through stipulation;

e. Because of the heightened requirements/obligations to investigate and litigate more, there would be additional strain placed upon the court system, thereby requiring additional staff and costs associated with litigation.

f. Because of the heightened requirements/obligations, the Public Defender would be held to a higher standard than regular criminal defense attorneys in that the standards only apply to indigent public defense; and

g. There is no apparent need for the heightened standards when local indigent criminal defendants are receiving more than adequate and Constitutionally sound representation from the current system in place in the County, contrary to the findings in the Report.

WHEREAS, Pershing County and Humboldt County have entered into a lawful interlocal agreement that provides adequately for the services of a public defender for indigent clients.

WHEREAS, the Commission did not adequately assess the needs of criminal defendants in Pershing County or the system that is in place as demonstrated by the inaccuracies in the Report.

WHEREAS, the Rural Subcommittee of the Commission should be invited to discuss the issues with Pershing County.

WHEREAS, the Pershing County Commissioners believe that a request should be made to the Nevada Supreme Court to rescind the Order as it applies to Pershing

County.

WHEREAS, the Pershing County Commissioners believe that meeting with the Rural Subcommittee would be beneficial to all involved, including the Nevada Supreme Court.

IT IS HEREBY RESOLVED THAT the Pershing County Commissioners hereby request and authorize the Pershing County District Attorney to file an Objection and a Motion to Set Aside the requirements of the Order as they relate to Pershing County on behalf of the Pershing County Board of Commissioners.

IT IS SO RESOLVED.

The adoption of the foregoing Resolution was moved by Commissioner Ayooob, seconded by Commissioner Bloyed and adopted on this 6th day of February, 2008, by the following vote of the Board of County Commissioners of Pershing County.

AYES: 3

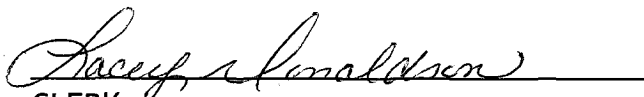
NAYS: 0

ABSENT: 0



Chairman
Pershing County Commission

ATTEST:



CLERK