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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE REVIEW OF
ISSUES CONCERNING
REPRESENTATION OF INDIGENT
DEFENDANTS IN CRIMINAL AND
JUVENILE DELINQUENCY CASES.

ADKT NO. 411

FILED

FEB 21 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

OBJECTION AND MOTION TO SET ASIDE ORDER

COMES NOW, HUMBOLDT COUNTY, a political subdivision of the State of Nevada, by and through the Humboldt County District Attorney, Russell D. Smith, and does hereby lodge this objection to the Order of the Supreme Court filed on the 4th Day of January, 2008 in the above-entitled matter and does hereby move to set aside the January 4, 2008 Order as it pertains to Humboldt County. The Humboldt County Board of Commissioners on behalf of the County have requested that the Order be Set Aside and that meetings be held to discuss the matter further. The basis for this Motion is set forth in the attached Memorandum of Points and Authorities.

Dated this 19th day of February, 2008.

[Signature]

Russell D. Smith
Humboldt County District Attorney
Nevada Bar No. 8891
Humboldt County District Attorney's Office
P.O. Box 909
Winnemucca, Nevada 89446
(775)623-6363

RECEIVED
FEB 21 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

08-33149

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

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

2. The Supreme Court directed The Commission to conduct hearings to "study the issues and concerns with respect to the selection, appointment, compensation, and qualifications of counsel assigned to represent indigent defendants." See "Final Report and Recommendations of Supreme Court Indigent Defense Commission" (herein the "Report") filed on November 20, 2007 with this Court.

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

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

5. On January 4, 2008, this Court issued an order (herein "Order") in the above-entitled matter, implementing several of the recommendations from the Report. See "ORDER" filed on January 4, 2008 with this Court.

6. The Report has numerous inaccuracies regarding the legal services offered in Humboldt County and Pershing County to indigent persons (See Exhibit #1 Attached Resolution incorporated by reference), including, but not limited to, the following:

a. The report indicates that Humboldt County utilizes the State Public Defender's Office and that Pershing County has contracted with a private law firm to provide

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3 indigent defense. See Report pg 18 (“While Pershing County was utilizing the State Public
4 Defender, the relationship was severed effective June 30, 2007. A contract has since been
5 awarded to a law office.” (Emphasis added)). This is entirely inaccurate. In accordance
6 with Nevada Revised Statutes (“NRS”) 260.010, the Humboldt County Board of
7 Commissioners by Ordinance 04-23-07, established an *Office of a County Public Defender*.
8 Pursuant to an interlocal agreement Humboldt County and Pershing County jointly provide
9 for a County Public Defender’s Office. Furthermore, Humboldt County awards those clients
10 that cannot be represented due to a conflict to a list of fully qualified “Conflict Defenders”
11 with years of exceptional service.

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13 b. The Report indicates that only Elko, Washoe and Clark Counties have
14 county public defender’s offices and that the rural counties should utilize the State Public
15 Defender’s Office. As noted above this is inaccurate.

16 c. Humboldt County has set criteria which establishes a broad definition
17 of indigent.¹ Pursuant to the Ordinance and Agreement, when making a determination of
18 indigency, the judges look to both income and assets and also consult the Federal Poverty
19 Guidelines (“FPG”). The Humboldt County Courts may appoint counsel even if the
20 applicant makes more than 300 percent of the FPG provided that they are assessed a
21 reasonable fee for counsel’s services.
22

23 7. The Order directing the District Court to implement changes covering
24 Humboldt County removing the local judges from the decision-making process is not

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
27 seriousness, need, and urgency of the matter, the difficulties or intricacies of the issues involved, and the financial
28 circumstances of the applicant.”

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3 necessary and constitutes an un-funded mandate. Humboldt County has not budgeted for this
4 provision, and this Court has provided no funds to assist Humboldt County in carrying out its
5 Order.

6 8. The Order changes existing statutes (without finding the statutes
7 unconstitutional) and it violates the separation of powers. It is a legislative or executive
8 function to create a new agency, not the judiciary.

9 9. The Order directing the District Court to exclude trial judges/justices of the
10 peace from the process of appointing counsel is unnecessary in Humboldt County. During
11 the previous year, there were very few appointments outside of the Public Defender.

12 10. This Court's imposition of the "Indigent Criminal Defense Performance
13 Standards" ("Performance Standards") will cause a substantial increase in costs for Humboldt
14 County. The Performance Standards invite needless litigation. The vast majority of cases in
15 Humboldt County result in beneficial plea agreements. Consider the following:
16

17 a. The appointed counsel would be "obligated" to fully investigate
18 matters, even where the client agrees that the reports are accurate and wants to settle the
19 matter²;

20 b. The appointed council would be unrealistically "obligated" to conduct
21 an interview of the client within "24 hours" of his appointment³;

22 c. The appointed counsel would be "obligated" to requirements which the
23

24
25 ² Under Standard 9 Investigation (page 8 of ADKT 411 Exhibit A), counsel would be required to make a
26 thorough and independent investigation even if the client did not require such an investigation. This would create
27 additional burdens on the system that are unnecessary. Under Standard 9 Plea Negotiations (ADKT 411 Exhibit A:
28 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..."

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

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3 United States Supreme Court did not include in Strickland v. Washington, 466 U.S. 668, 687,
4 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and failure to adhere to them may result in
5 constitutionally merit-less “ineffective assistance” claims;

6 d. To meet these requirements/obligations to file Motions, District
7 Attorneys and courts would be required to expend additional resources on frivolous or even
8 wasteful litigation.

9 e. The appointed counsel that are subject to this Order would be held to a higher
10 standard than retained counsel; and

11 f. There is no apparent need for the heightened standards when local indigent
12 criminal defendants are receiving constitutionally sound representation. There is no finding
13 by this court that the number of ineffective assistance of counsel findings have increased or
14 are at an unacceptable level. In fact, the author cannot remember the last time a public
15 defender has been found to be ineffective by the Nevada Supreme Court for his or her
16 representation of indigent clients.
17

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19 **II. ARGUMENT**

20 Humboldt County prays that this Court rescind the Order as it relates to Humboldt
21 County
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24 **A. THE ORDER VIOLATES THE PRINCIPLES BEHIND THE**
25 **PROHIBITION AGAINST UN-FUNDED MANDATES**

26 The Order would require additional expenditures that were not provided for in the
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budgetary process for the fiscal year 2007-08. NRS 218.2479 limits the ability of the legislature to impose un-funded mandates. The Citizens of Nevada have expressly stated their feelings that unfunded mandates should not be placed on local government. The Order would require that Humboldt County expend additional monies to employ a committee/board/agency for the appointment of counsel for indigent people. The Order contemplates the appointment of administrators of an indigent defense program. There is no need for such a program in Humboldt County. The vast majority of appointed cases go to the Office of the County Public Defender or to the Conflict Defenders. There is no evidence that such an expense is needed in Humboldt County.

Humboldt County is not currently paying for investigators for all felony or life sentence cases. Under the Order it appears that public defenders would have a right and a duty to have an investigator fully investigate every case prior to any negotiations even if the defendant agrees with the facts in the criminal reports and does not want to pursue further investigation. This would create a tremendous expense and burden on counties which already are short on funds.

The Report makes this abundantly clear that the Commission failed to adequately study the representation of indigent defendants in Humboldt County before issuing its Report. *See Above*. Since there are so few appointments outside of the Public Defender and Conflict Defenders, there is no need for a committee/board/agency or administrators because there is no evidence of impropriety.

Furthermore, the Court has issued an order requiring expenditures without prior notice to Humboldt County. Humboldt County is entitled under the Due Process

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3 Clause to notice that this Court intended to enter an order affecting Humboldt County
4 with a chance to offer its own objections. Objection is therefore now lodged to this
5 Order and its requirements.
6

7 B. THE ORDER CREATES A STANDARD THAT DEPARTS
8 SIGNIFICANTLY FROM STRICKLAND

9 In Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674
10 (1984), the United States Supreme Court established the minimum requirements for counsel
11 to be effective counsel under the Constitution. The Performance Standards set forth by this
12 Court exceed this standard and provide a detailed micromanaging of the efforts of appointed,
13 not retained, defense counsel. Such a radical departure from Strickland will invite increased
14 merit-less litigation as defense counsel can easily violate the Performance Standards
15 inadvertently and potentially create an unneeded claim for ineffective assistance of counsel.
16 The Performance Standards obligate and require indigent defense counsel to take actions that
17 are inefficient and unnecessary. In issuing its Order this Court has invited numerous claims
18 that would have been merit-less under Strickland to be routinely filed alleging ineffective
19 assistance of counsel, but only against appointed counsel.
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22 A. Collateral Consequences

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

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15 **B. Appointment of Investigators in All Cases**

16 2. Indigent defense counsel would also be required to hire investigators to
17 conduct an independent investigation where one is not necessary. The standards for
18 investigations clearly indicate that appointed counsel must perform an investigation, even
19 if the client agrees with the contents of the police investigation and admits to the facts of
20 the case. The Performance Standards would create an undue burden on the system as
21 cases would be delayed while this independent investigation is occurring. It would cost
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23
24 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);

25 ⁵ Nollette v. State, 46 P.3d at 92-93, 118 Nev. at 349-50, (Nev. 2002). (“In fact, we have recently held that counsel was not ineffective for failing to inform a client about ... a collateral consequence of the client's guilty 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).

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

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3 thousands and thousands of taxpayer dollars and accomplish little in the way of making
4 the system better. The increased reluctance to enter reasonable plea agreements would
5 also clog the already overcrowded court system further, thus harming the very defendants
6 the court is looking to assist.

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9 **C. The Standards Violate Equal Protection**

10 **3. The Performance Standards appear unconstitutional on its face.**

11 These same standards do not apply to privately retained counsel. This Court is not
12 requiring privately retained counsel to ignore the paying clients desires and stage a full-
13 scale investigation at the clients expense. In essence, this Court is holding public
14 defenders to a standard beyond which private counsel must adhere to under Strickland.
15 Therefore, the Performance Standards are not being applied equally to all defense
16 attorneys in the State of Nevada. While only minor examples have been given, the
17 Performance Standards are replete with additional areas of concern in this regard. While the
18 Performance Standards may have a noble intent, the consequence of inviting additional
19 litigation that is unnecessary and burdensome far outweighs any benefit the Performance
20 Standards may have.
21

22 The standards of Strickland provide a much better working model for appointed
23 counsel. It would be far better to adopt a standard that allows for more training in line with
24 Strickland than having formalized requirements that attempt to micromanage every aspect of
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representation. For this reason, Humboldt County prays that this Court rescind its order as it relates to Performance Standards, especially in Humboldt County.

C. THE ORDER IS CONTRARY TO NRS 171.188 3. & 7.125

Under NRS 171.188 3. and NRS 7.125, the judge or magistrate is authorized by statute to make the determination of indigency and appoint counsel. This Court has ordered that judges be removed from the process, even though the legislature has deemed that the local judges are the appropriate fact-finders and appointing authority. While this Court could certainly rule that any statute is unconstitutional if appropriate facts are shown, this Court has not so ruled. Rather, this Court has determined to override the statute. Humboldt County objects because the statute reflects the will of the people as articulated by the Legislature.

The methodology of using judges for indigent determinations is infinitely more attuned to the realities of the court system and criminal justice apparatus in Humboldt County. Humboldt County also objects because this Court has not demonstrated any need to change the current system of representing indigent defendants. The old adage of "if it's not broke don't fix it" applies. As it exists, the system in place in Humboldt County works well without the problems faced by Clark County. What works for a populous county like Clark County may not necessarily work in a smaller county. Why create new problems through unnecessary Performance Standards? What began as a noble cause to ensure Clark County public defenders handle less cases has become unconstitutional overreaching by this Court.

Humboldt County objects to the modification of legislation without a basis for doing so. Humboldt County also finds no reason to overturning statutes without a proper basis or a case or controversy before this Court. In fact this Court did not

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overturn any existing statutes. As the District Attorney, I must advise the County Commissioners that they are bound under oath to follow the existing NRS until it is found unconstitutional by this Court or changed by the Legislature.

D. THE RECOMMENDATIONS VIOLATE NRS 260.010

NRS 260.010 clearly establishes Humboldt County's authority to provide for indigent defense through a County Public Defender's Office. Humboldt County has properly exercised its authority under this Statute. It has been the sad experience of Humboldt County to see services provided by State agencies that are often unacceptable. Part of the reason that Humboldt County refused services from the State Public Defender was that quality and accountability were not present. The local Courts, which the Order tends to remove from the process, can better oversee and ensure that quality representation occurs if control remains on the local level. When the State gets involved, oftentimes the needs of the smaller jurisdictions are simply ignored because the larger jurisdictions require more services and have more clout. Accordingly, while Humboldt County would accept any financial aid in the form of a grant to provide the services, Humboldt County objects to the recommendation that its Public Defender's Office go under State control. Accordingly, Humboldt County also objects because this Court is recommending an action in contradiction to NRS 260.010.

E. CASE STANDARDS

Humboldt County opposes Performance Standards that impose caseload limits because it applies an artificially created number without exploring into the increased

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3 effectiveness of attorneys due to technological advances. Furthermore, the Performance
4 Standards don't effectively evaluate how experienced attorneys can perform their duties
5 versus inexperienced attorneys. The County Public Defender can approach the County and
6 ask for additional help if needed. The people who are in the best situation to assess the
7 requirements are the local authorities. This is much better than relying on a artificially
8 generated number articulated from a study conducted nearly 30 years ago in 1973.

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10 The American Bar Association has strongly rejected adopting a caseload requirement
11 for public defenders and has instead adopted Strickland as the standard. The attorneys are to
12 weigh their ability to represent clients based upon the types and number of cases in their
13 caseload. As all attorneys know the longer one practices in a specific area of law the more
14 they can get accomplished with their time. As the Report indicates Clark County believes
15 that its attorneys and support staff are doing a good job for their clients. At the same time
16 with a relatively similar office but fewer cases assigned per attorney the Washoe County
17 Public Defender's Office believes it is not providing adequate services. The conclusion can
18 easily be drawn that attorney ability plays a big role. This Court should not adopt a standard
19 that attempts to limit by specific number, while ignoring case type and experience entirely,
20 the cases a public defender is assigned.

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23 **III. CONCLUSION**

24 Humboldt County requests that this Court rescind its Order as it applies to Humboldt
25 County and direct the Commission to set up a meeting in Humboldt County with Humboldt
26 County Officials, including, but not limited to, the District Court Judges, the Justice of the

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Peace, the Humboldt County Board of Commissioners, the Juvenile Probation Officers, the County Public Defender, and the District Attorney, at an open meeting, to discuss the issues prior to the issuance of any report affecting Humboldt County. The Order and Report do not correctly reflect what transpires on a local level and do not reflect the realities of the court system in Humboldt County. The Order is unduly burdensome and creates an unnecessary imbalance in the system. The Report indicates that the actual facts in Humboldt County were not considered.

Humboldt County agrees with this Court that appointment of counsel for indigent people is essential to the system of justice that we have. In fact, the Humboldt County Board of Commissioners has taken serious steps to ensure the appointment of counsel for indigent defendants in criminal and juvenile cases, as well as in Guardianships and Child Protection cases. Humboldt County emphatically expresses its desire to keep the current County Public Defender's Office and not be given the State Public Defender's Office as a substitute.

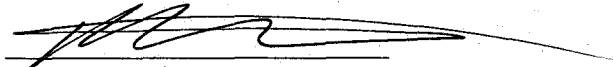
Furthermore, Humboldt County objects and requests that this Court reconsider its ruling on the Performance Standards since these rules will substantially increase the cost for an orderly and efficient judicial system (being an additional un-funded mandate). Humboldt County also objects to the removal of local judges from the process of appointing counsel for indigent people (being an un-funded mandate).

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**HUMBOLDT COUNTY RESPECTFULLY REQUESTS A HEARING IF THE
COURT IS UNWILLING TO GRANT THIS MOTION SO THAT EVIDENCE CAN
BE PRESENTED AND ARGUMENT HEARD.**

Dated this 19th day of February, 2008.



Russell D. Smith
Humboldt County District Attorney
Nevada Bar No. 8891
Humboldt County District Attorney's Office
P.O. Box 909
Winnemucca, Nevada 89446
(775)623-6363

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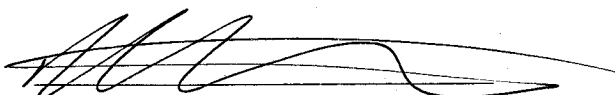
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Humboldt County District Attorney's Office, and that on the 20 day of February, 2008, I delivered at Winnemucca, Nevada, a true copy of the **OBJECTION AND MOTION TO SET ASIDE ORDER** to:

CLERK OF THE SUPREME COURT
201 South Carson Street
Carson City, Nevada 89701

ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701

- U.S. Mail
- Certified Mail
- Hand-delivered
- Placed in Det/Jet Box
- Via Facsimile



RESOLUTION

NO. _____

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 (herein "The Court") established a committee known as the Indigent Defense Commission (herein "The Commission").

WHEREAS, the Nevada Supreme Court directed The Commission to conduct 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."

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

WHEREAS, on November 20, 2007, the Commission filed its "Final Report and Recommendations of Supreme Court Indigent Defense Commission (herein the "Report"), attached hereto as Exhibit A.

WHEREAS, on January 4, 2008, this Court issued an Order (herein "Order"), attached hereto as Exhibit B, in the above-entitled matter, implementing several of the recommendations from the Report including "Indigent Criminal Defense Performance Standards" (herein "performance Standards").

WHEREAS, the Humboldt County Board of Commissioners (the "Board"), agrees with the Court that appointment of counsel for indigent people is essential to the system of justice that we have.

WHEREAS, the Board 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 Child Protection cases.

WHEREAS, the Report has numerous inaccuracies regarding the services offered in Humboldt 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. The Report also incorrectly states that Humboldt County is currently utilizing the State Public Defender's Office. In accordance with Nevada Revised Statutes 260.010, the Board established, by Ordinance 04-23-07, adding Chapter 2.44 of the Humboldt County Code, the Office of County Public Defender. Additionally pursuant to NRS 260.010, Humboldt and Pershing Counties have entered into a joint agreement, entitled "Interlocal Agreement Creating the Joint Office of the Humboldt/Pershing Public Defender." Furthermore, the local courts have a list of fully qualified Conflict Public Defenders. Even when the Board contracted with 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 that have county public defender's offices, the rural counties should be under the State Public Defender's Office. *See* Report pg. 11, 12, and 69. Humboldt County has a county public

defender's office. Furthermore, the Board believes that local control is superior to State control. While the Board would support full State funding of indigent defense, the Board would prefer a block grant allowing the Board 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 an Office of the County Public Defender, a larger and superceding problem was ensuring quality representation by a State agency over which the State Public Defender 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 decision.

c. Humboldt 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." Humboldt County considers both income and assets and confers with 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.

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 plea unless appropriate investigation and study of the case has been completed..."

The Report seems to indicate that a commission would be necessary consisting of a three-person panel with diverse backgrounds in the community. 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 three full-time persons. The cost of hiring three full-time people has not been budgeted and would cause the Board to violate procedures for budgeting for the fiscal year.

WHEREAS, based upon numbers provided by the Humboldt County Clerk, one hundred fourteen (114) indigent defendants were provided services during fiscal year 2007. Seventy-five percent of those cases were handled by the County Public Defender's Office while the remaining twenty-five percent were handled by Conflict Public Defenders paid on an hourly rate of \$100 an hour per NRS 7.125.

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, the Order directing the District to exclude trial judges/justices of the peace from the process of appointing counsel is not needed in Humboldt County.

WHEREAS, the appointments went to the Public Defender and the Conflict Public Defender's list.

WHEREAS, the Court's imposition of the Performance Standards will cause an undetermined but highly probable 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 Humboldt County result in plea agreements that benefit the State and the defendant.

WHEREAS, the Board believes 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 matter²;

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.”³ 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 fails 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 Humboldt County District Attorney would be required to respond to Motions where the issues are often handled more expeditiously in an informal manner through 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 retained criminal defense attorneys in the Performance Standards only apply to indigent public defense; and

² Standard 7, (See Page 6 of ADKT 411 Exhibit A).

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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 Humboldt County, contrary to the findings in the Report.

WHEREAS, although the Board will accept financial assistance if forced into an unfunded mandate, but are adamantly opposed to being served by the State Public Defender's Office or have the increased costs for the Performance Standards and other non-essential matters as recommended and adopted in the Court's Order.

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

WHEREAS, as indicative of the inaccuracies in the Report, the Commission did not adequately assess the needs of indigent defendants in Humboldt County or the system that is in place.

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

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

WHEREAS, the Board believes that a request should be made to the Nevada Supreme Court to rescind the Order as it applies to Humboldt County.

THEREFORE, IT IS HEREBY RESOLVED THAT the Humboldt County Board of Commissioners hereby direct and authorize the Humboldt County District Attorney to file an Objection and Motion to Set Aside the Order as it relates to Humboldt County on behalf of the Humboldt County Commissioners.

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IT IS SO RESOLVED.

The adoption of the foregoing Resolution was moved by Commissioner Dan Cassinelli and adopted on this 19th day of February, 2008, by the following vote of the Board of County Commissioners of Humboldt County.

AYES: _____

NAYS: _____

ABSENT: _____

Chairman
Humboldt County Commission

ATTEST:

CLERK