

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADKT No. 411

FILED

MAR 14 2008

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

8 To: Tracie K. Lindeman, Clerk of the Supreme Court, 201 South Carson Street,
9 Carson City, Nevada 89701

10 Written Comments Submitted By Sally Loehrer, District Court Judge, Department 15,
11 Eighth Judicial District Court

12
13 While this writer applauds the efforts and the intentions of the Indigent Defense
14 Committee, I am concerned there are many unintended, negative consequences which
15 will stem from adoption of the NEVADA INDIGENT DEFENSE STANDARDS OF
16 PERFORMANCE. Some of these unintended consequences are listed below.

17
18 1) Indigent defendants will be held days or weeks longer in a detention facility
19 than those persons whom are able to privately retain counsel due to Standard 7
20 (a) and (b) page 29 of Exhibit A to ADKT 411 which states in pertinent part:

21
22 (a) ".....The duty to investigate exists regardless of the accused's admissions or
23 statements to defense counsel of facts constituting guilt or the accused's stated
24 desire to plead guilty."

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1 (b) "Counsel should:

2
3 4. attempt to locate all potential witness and have them interviewed;"

4 The defendant with privately retained counsel will be allowed to negotiate his/her
5 case the first day it appears before a magistrate/justice/judge and be released from
6 custody as soon as a plea is entered while the indigent defendant will be required to
7 sit in jail until precious little resources are spread over literally thousands of
8 indigent defendants in an effort to "locate all witnesses and.." interview them.

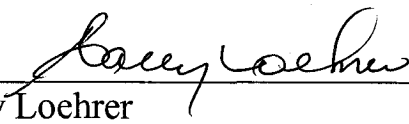
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10 2) The justice system as it now operates in Las Vegas Justice Court, Clark County
11 Nevada, clears (resolves) upwards of 90% of its misdemeanor cases at the
12 initial arraignment. None of the indigent portion of these persons would be
13 allowed to resolve his/her case on that first Court appearance. Multiple court
14 appearances will double or triple the number of cases before a given judge on
15 every court date. Arraignment calendars will last 2 to 3 times longer than they
16 do today. Courts will have much less time to conduct felony/gross
17 misdemeanor preliminary hearings and misdemeanor and civil trials due to the
18 geometric expansion of the arraignment calendars.

19
20 3) Felony and gross misdemeanor cases which are resolved at early negotiation on
21 or before the date set for preliminary hearing may no longer be so resolved.
22 Instead, thousands more witnesses will be required to attend court and testify at
23 a preliminary hearing while the indigent defendant sits in jail at a daily cost to
24 the citizenry of Clark County of about \$120 per day per inmate. The capacity
25 of all local jails will be reached, breached and exceeded within two weeks of
implementation of these standards.

1 4) Timely processing of all criminal cases will be adversely affected. While there
2 should never be a rush to judgment, the Court system should not erect barriers
3 to the speedy administration of justice. This writer sees little benefit to the
4 indigent defendant of requiring his attorney to personally or thru an investigator
5 locate and contact witnesses and conduct other investigation prior to the entry
6 of a plea in any situation where the attorney can rationally discuss the police
7 reports, the witness statements and other discovery matters with the indigent
8 client; where the client acknowledges he/she is the one involved; and it is
9 his/her desire to negotiate the best deal possible in the shortest possible period
10 of time.

11
12 5) I suggest a substitute standard be adopted which requires defense counsel to
13 obtain the discovery (police reports, affidavit of arrest, witness statements
14 attached to police reports, a copy of the defendant's SCOPE report), the
15 charging document and review the same with the client before any plea be
16 negotiated. Investigation should be reserved for those cases in which the
17 defendant denies culpability and those where the defendant wishes to proceed to
18 trial.

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20 Dated this 14th day of March, 2008

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22 
23 Sally Lochrer