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Comments of
Jeffrey M. Wells
Assistant County Manager, Clark County
Nevada Supreme Court ADKT Hearing #411
March 18, 2008

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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *J. Wells*
CHIEF DEPUTY CLERK

Good afternoon, Mr. Chief Justice, Members of the Court, my name is Jeff Wells and I am an Assistant County Manager for Clark County, Nevada.

With your permission I would like to take a few minutes to review with the Court all of the steps that Clark County has taken to date in order to implement the Court's Order of January 4, 2008. Additionally, where appropriate, I would like to request a delay in several of the implementation dates contained in that Order.

The January 4th Order essentially dealt with four major topics and I would like to address each of them.

Determination of Indigency

Clark County is appreciative of the fact that the Court has defined an eligibility standard.

We are currently pursuing a licensing agreement with a software company that allows for an instantaneous credit background check to determine indigency. We have scheduled a joint test of this software with Washoe County for the last week of March. In anticipation of acquiring this new tool we have already approved the equivalent of two (2) new positions to implement the program.

Because the license for this software is based on a funding model of \$5 to \$11 for each transaction plus a \$50,000 installation fee, I suspect the software will be cost prohibitive for most Nevada counties, perhaps even Washoe. Accordingly, I have been negotiating to purchase a license agreement for the entire state and not just Clark County. If successful, I believe we could then enter into interlocal agreements to allow all Nevada Counties to use this product.

Court Appointed Public Defense System

The Court's January 4th Order made it very clear that you wanted the Appointed Counsel process removed from the Courts. To that end we have created the Office of Appointed Counsel. It is our intent to draft a completely new application and contract for Appointed Counsel. And we will be creating a new selection process to ensure that attorneys that are appointed are qualified to represent indigent defendants in both conflict and general track cases.

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Clark County will be moving the entire indigent defense budget away from the Court's budget and including it in the County Management Budget. It is also my plan to ask for an increase of \$2.5 to \$3 million dollars in that budget line for the next fiscal year.

The Order contemplated that we would submit an administrative plan to the Court by May 1st to indicate how and by what date these issues were going to be addressed.

Subsequent to the January 4th Order however, the Court created a new Conflict and Assigned Counsel Committee. That committee has been tasked with suggesting a program model and guidelines that the Counties could incorporate into their Appointed Counsel program. Because Clark County is interested in incorporating the Committee's suggestions and policies, we have intentionally slowed down the development of our County specific program.

The Committee has met twice and has another meeting scheduled for March 25th. Accordingly, the Committee report probably won't be available until some time in April. Based on that timing, I believe it would be unrealistic to expect the Counties to review the Committee report and develop their County specific programs and still report to the Court by May 1st. Although Clark County fully intends to have a new process in place by July 1st, a delay in the May 1st deadline seems appropriate.

Weighted Case Study

The January 4th Order also required both Clark and Washoe County to conduct a weighted case study and submit the results to the Court by July 15th.

In response to this part of the Court's Order, Clark and Washoe Counties jointly issued an RFP in February. Vendor interviews and selection will take place during the last week of this month.

It is our understanding that a weighted case study will generally require four (4) to five (5) months of data collection, followed by a vendor question and answer period, an analysis period, and finally a report drafting and presentation period.

Based on this information Clark County requests that the July 15th date be delayed so that the vendor ultimately selected for this project can have an adequate period of time to conduct its study.

Performance Standards

It is probably the April 1st deadline for the performance standards that has created the most controversy and possibly the most confusion with regard to the Court's Order. Most of the analysis around the performance standards would indicate that additional staff or

resources would be required to provide strict adherence to every aspect of the performance standards.

That being said, even if a jurisdiction decided to address this issue simply by the addition of additional staff, I submit it was not realistically possible to recruit, hire, and train new attorneys by the April 1st deadline.

Let me use Clark County as a practical example. We posted multiple positions at both the Associate Attorney and Attorney level shortly after the Court's Order in January. Because we wanted to recruit the best possible candidates, we advertised nationally and received over 50 applicants by the time we closed the application period around the middle of February. We interviewed virtually all of the qualified applicants with the last round of interviews being just last week.

Our Public Defender has identified approximately ten (10) of these applicants that he would like to hire. Two of these applicants presently work in Public Defenders offices in other states and took the Nevada bar in February. However, those bar results will not be available until later in April. Assuming they pass the exam, these candidates will then have to be hired, move to Nevada and be trained. Several other candidates are law clerks already in state, but of course they too will have to wait on the bar results, provide notice to the Judges they clerk for and be trained within the Public Defender's office.

It was, and is, simply not possible to do all this prior to the April 1st deadline.

While this list of possible new hires does not represent an increase of ten attorneys to the Public Defender's office. It does mean that all vacant attorney positions will be filled, including a couple of positions that have been vacant for up to six months. It also reflects an immediate increase of one (1) and possibly more attorney positions plus three (3) new law clerk positions.

A second reason to delay the April 1st date is simply the confusion that exists within the defense bar and the Judiciary as to what the standards actually mean. I've heard Judges ask whether the standards apply to all defense counsel or only to indigent defense. I've heard attorneys ask if they need to conduct a full investigation, even when their client acknowledges the facts and wants to entertain a plea. These and many, many more questions need to be addressed.

It is our position that the performance standards should be considered as guidelines, or something that Counsel "should" do whenever practical, as opposed to something that one is required to do in every single case, at least until there is time for some continuing education classes for both the Judiciary and the defense bar as to what exactly the Court meant with regard to each of these standards.

Conclusion

In summary, the January 4th Order had four separate implementation dates. I believe the January 4th date for eligibility should remain, but I believe the April 1st, May 1st and July 15th dates should all be delayed. The Court has already set a hearing date for September 5th. It would be our recommendation that the hearing on September 5th be utilized as essentially a status check date where every entity would report to the Court what has been accomplished as of that point with regard to all the issues raised by the Court in its January 4th Order. And, based on that input, the Court could determine whether its goals have been met or whether additional matters need to be addressed.

To be clear, for the reasons I've already stated, I would include the April 1st date for the performance standards in the September hearing as well. I believe these standards should simply be described, as something Counsel "should" do as opposed to something Counsel "shall" do until the full intent of these standards can be determined.



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RE: Comments - ADKT Hearing #411

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Hard copy to follow: YES [] []

COMMENTS:

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