

NACO

NEVADA ASSOCIATION OF COUNTIES

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June 30, 2008

Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701

Hand Delivered

RE: ADKT NO. 411

FILED

JUL 01 2008
TRACIE LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Honorable Supreme Court Justices:

The Nevada Association of Counties (NACO) submitted written comments on March 17, 2008 outlining our concerns with the Court's January 4, 2008 Order. We appreciate the Court's taking our comments into consideration prior to issuing the March 21st Order. We would now like to offer some additional comments in advance of the July 1, 2008 hearing.

In the Court's March 21st Order, NACO was afforded the opportunity to have two representatives serve as members of the Rural Issues Subcommittee of the Indigent Defense Commission. NACO would like to thank the Court for this opportunity and believes that the participation of Elko County Commissioner John Ellison and Nye County Commissioner Joni Eastley has been worthwhile and beneficial to the effort undertaken by the Court to improve the indigent defense system in Nevada.

Progress is being made in developing an indigent defense system that takes into account the differing realities among Nevada's counties while providing for consistent representation for indigent defendants throughout the state. We believe the hard work being put in by members of the Commission and Subcommittee will result in an effective indigent defense system. However, the work is not finished and several challenges remain to be overcome. These challenges include:

- Inadequate resources to fund indigent defense. County governments have the responsibility for providing many essential services to their residents such as public safety, infrastructure, and social services, as well as for the health and criminal defense needs of their indigent citizens. Additional state funding of the indigent defense system is needed and can only be provided through legislative action.
- Defining how to deliver equitable defense counsel across the state. The need for indigent defense is different in urban and rural areas because of differing demographics, types and frequency of crimes committed, and availability of qualified defense attorneys. A one-size-fits-all approach to indigent defense will not work.

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- Uncertainties caused by a recent United States Supreme Court decision. The Court's recent ruling in *Rothgery* will require further modifications in how and when indigency is determined and counsel appointed. Costs associated with providing indigent defense will increase as a result of this decision.

NACO is a willing partner in helping to improve the system used to provide competent representation for indigent defendants. In our June 16th letter to the Rural Issues Subcommittee NACO recommended that the state fully fund indigent defense in a manner that would allow counties to act individually or collectively to develop a system for the provision of indigent defense services that best suits each county's particular circumstances. NACO further recommended the creation of a statewide Indigent Appellate Counsel Service to provide counsel to indigents during appellate and other post-conviction relief.

The NACO Legislative Committee is developing our Bill Draft Requests for the upcoming 2009 Session of the Nevada Legislature. At a meeting scheduled for July 11, this committee will discuss using one of NACO's five BDRs to address the future of the indigent defense system. NACO's Board of Directors is scheduled to meet August 29 to approve a final list of BDRs.

Nevada's counties, as is the state, are experiencing difficult fiscal challenges with the downturn in the economy. Demands for services are up while revenue is down. We are confident the recommendations being made by the Indigent Defense Commission will lead to a workable system to provide the constitutionally mandated defense counsel for indigent defendants. However, implementing the recommended changes will likely require action by the Nevada Legislature. Nevada's counties lack the resources and, quite possibly, the authority to implement improvements to the indigent defense system on their own. Therefore, we respectfully urge the Court to delay ordering changes in the system until July 1, 2009. This will allow time not only for the Commission and Subcommittee to finalize their recommendations to the Court but also for any legislative actions required to implement them.

Sincerely,



Jeffrey Fontaine
Executive Director

CC: Via Email
The Honorable Joni Eastley, Nye County Commissioner
The Honorable John Ellison, Elko County Commissioner
Mr. John McCormick, Administrative Office of the Courts