

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

MEMORANDUM

FILED

TO: Justices of the Nevada Supreme Court

COPY: Supreme Court Clerk's Office

FROM: John McCormick

DATE: April 10, 2009

SUBJECT: Performance Standards Questions from Public Defenders

APR 10 2009
TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

The following questions regarding the implementation of the ADKT 411 Performance Standards have been forwarded to me by Jeremy Bosler, Jennifer Lunt, and Diane Crow pursuant to the Court's request during the ADKT 411 Hearing on April 7, 2009.

- (1) Current statute on pre-preliminary hearing discovery does not contemplate complete discovery. ADKT 411 says defense counsel should examine "all discovery," and "evidence likely to be introduced at trial," before recommending plea negotiations. How does the Court want to address this apparent inconsistency? (Note: AB399 of the 2009 Legislative Session may address this issue)
- (2) Attorneys who practice in rural Nevada said that a client's refusal to answer questions in the Parole and Probation (P&P) Pre-Sentence Investigation (PSI) process, even on the recommendation of counsel, has been used to score the defendant non-cooperative and recommend a term of incarceration. ADKT 411, Standard 4-18 requires counsel to protect the client's interest in the PSI process. How do we get P&P to understand the ethical obligations of counsel and keep them from penalizing the defendant for following counsel's advice?
- (3) What if counsel has no resources or time to investigate, before the preliminary hearing, an offer from the prosecutor? Can counsel be compelled by the court to proceed? Can the prosecutor withdraw from negotiations and penalize the client for counsel's efforts to comply with ethical rules?
- (4) We all know that P&P is working with reduced staffing levels and resources. Will the courts grant sufficient time for defense counsel to review and correct the PSI before sentencing? If the PSI is not produced in time for defense counsel and his/her client to review, should an in-custody client be forced to stay in custody longer to allow defense counsel to comply with ethical obligations?

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- (5) Standard 4-10(d) appears to contemplate a trial memorandum. Will defense counsel be forced to preview defense theories in context of the memo and prejudice the defendant's ability to proceed?
- (6) ADKT 411 requires the review of the Final Judgment for errors. It is not the current policy of the Second Judicial District (and other Districts) to provide judgments to defense counsel. What position will the Supreme Court take to assist in compliance?
- (7) Confidential work space is difficult, if not impossible, to find in some courthouses. Is the Court going to direct the lower courts to allow confidential communications, as practicable, so that attorneys don't have to choose between ethics and communication with clients?

Please contact me with any questions or concerns at x41703 or jmccormick@nvcourts.nv.gov.
Thank you.

Castillo, Linda

From: McCormick, John
Sent: Friday, April 10, 2009 9:06 AM
To: All Chambers; Castillo, Linda; Lindeman, Tracie
Cc: Sweet, Robin; Titus, Ron
Subject: ADKT 411 Performance Standards Questions from PDs

Attachments: Standards PD Questions Memo.pdf

Good Morning,

Attached please find a memo I have prepared pursuant to the Court's request at the Tuesday, April 7, 2009, ADKT 411 hearing that Jeremy Bosler, Jennifer Lunt, and Diane Crow forward their questions regarding the ADKT 411 Performance Standards to the Court.

Thank You,
John



Standards PD
Questions Memo.pdf..

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