



**The Spangenberg Project**  
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**FILED**

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

April 14, 2009

Mr. John Berkich  
 Assistant County Manager  
 Washoe County  
 P.O. Box 11130  
 Reno, Nevada 89520

ADKT 411

Dear Mr. Berkich:

Thank you for your letter of April 13, 2009 forwarding questions from the Nevada Supreme Court and Washoe and Clark Counties regarding the present case weighting study. As we understand these requests, the Court wishes to know whether it is possible to provide a report based on the data from the original time study conducted in the fall of 2008, presuming that the second survey of attorney practices under the new performance standards is either postponed until next year or abandoned. To the extent that the second study is not conducted now, both the Court and counties wish to know the effects on our substantive findings and the cost of both the present report and any future survey.

We believe it is important to put these requests in context. Nationwide, there have been few case weighting studies of jurisdictions that are alleged to face significant case overloads or that suffer from a substantial lack of resources, as Clark and Washoe counties likely do. The reason for proposing the survey instrument was to adjust the raw caseload standards resulting from the time study to account for the performance standards promulgated by ADKT-411, rather than simply estimating a proper standard from current practice. Indeed, a report that only provides information about the current level of performance should *not* be used as a measure of acceptable representation without evaluating the need for adjustments to the numbers. Where we have adjusted caseload standards in other jurisdictions, we have done so in consultation with local attorneys who have extensive experience representing the indigent.

One of the most important results of a case-weighting study, particularly one that contemplates adjustments to ensure adequate representation, is to provide a sound foundation to adequately budget for and set caseload limits for public defender organizations. Although a study that does not include these adjustments can still be informative, and while we can still provide comparisons to similar jurisdictions we have studied, we feel that the performance standards of ADKT-411 present an opportunity to provide very specific adjustments to the time study results. So, whether we conduct the second survey now and use those results as the basis to adjust caseload standards, or provide a report shortly with the attorney survey to follow, we think it imperative that the attorneys' estimates of their necessary effort under the new performance standards be incorporated into the case weights. In short, to produce the most reliable case weighting standards, the proposed survey of attorneys should be completed; this

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can be done presently or over the course of the next year once the attorneys develop a greater understanding of the practical implications of ADKT-411.

Against this backdrop, we propose two alternate scenarios that would provide the Court – and the counties – with the best, most dependable results. First, we could deploy the attorney survey now, analyze the results, and produce a draft report by July 7, 2009 that incorporates the attorneys' estimates into case weighting standards. Presuming that comments to the draft are received by July 28, 2009, we could submit a final report by August 15, 2009.

*Mason* { Alternatively, we could analyze the data from the original time study of last year, compare those results to standards in analogous jurisdictions in which we have worked, and provide a draft report by June 1, 2009 for review. Assuming that comments are received by June 15, 2009, we could provide a final report by July 15, 2009.

Under this second scenario, we would *strongly* recommend that the second attorney survey be conducted, that it be conducted within a year (e.g., by April of 2010), and that we then adjust the caseload standards to match actual practice on the ground in light of the new performance standards. In fact, in many ways this two-step report is the better approach. We recognize that it may be difficult for attorneys to estimate the amount of additional time necessary to implement the provisions of ADKT-411 before they have had experience working with the new standards. Postponing the survey, then, would provide us with better-informed answers to the questions raised, and, by fielding the survey within a year, the attorneys would still recall their workloads as they existed during the time study period.

There is no cost savings in pursuing the second option above and then abandoning the attorney survey. Although we would produce a final report one month earlier than originally proposed, most of the work in preparing the survey has already been performed. Moreover, we are already nearing the upper limit of expenses on this contract and will be finishing the project for Nevada out of our own funds. (We expected this would occur when transitioning from The Spangenberg Group to The Spangenberg Project at George Mason University, so it is not a serious concern.) To be sure, postponing the attorney survey until next year would necessitate an additional expense, but we are willing to work with you to ensure that the survey, added analysis, and adjusted report are completed cost-effectively. At this time it is difficult to say exactly how much that expense would be, but we cannot imagine it totaling more than 15-20 percent of the cost of the current study.

We would be pleased to speak with you or others of your choosing to supplement this response or answer any questions that may exist. We will await further instructions and look forward to working with you in completing this project.

Sincerely,

Jon B. Gould  
Executive Director and Professor