



A CENTURY OF SERVICE

# Office of the County Manager

500 S Grand Central Pky 6th Fl • Box 551111 • Las Vegas NV 89155-1111  
(702) 455-3530 • Fax (702) 455-3558

Virginia Valentine, P.E., County Manager  
Phil Rosenquist, Assistant County Manager • Jeffrey M. Wells, Assistant County Manager

October 5, 2009

Supreme Court Justice Michael Cherry  
Supreme Court Justice Michael Douglas  
Supreme Court Justice Mark Gibbons  
Supreme Court Justice James Hardesty  
Supreme Court Justice Ron Parraguirre  
Supreme Court Justice Kris Pickering  
Supreme Court Justice Nancy Saitta

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

RE: ADKT No. 411 Hearing: October 6, 2009

Dear Justices:

Clark County takes very seriously its obligation to provide effective and zealous representation for those accused of committing a crime, and we applaud the Court for its ongoing efforts to improve the provision of indigent defense in Nevada.

The County, however, has consistently adhered to its opposition to the creation of an arbitrary numeric caseload standard. And, while the recent Spangenberg report provides some guidance on caseloads, the report itself has so many internal inconsistencies and mathematical errors it cannot provide a foundation from which realistic Nevada caseload numbers could be established. For our purpose today, I will address just two issues in the report. One, the clear absence of Nevada based specifics and practice variations as it relates to their suggested caseload ranges, and secondly, the report's own dicta against importing national numbers or numbers from other jurisdictions.

The Spangenberg report itself acknowledges that national case load standards should not be adopted for a specific jurisdiction because the national standards do not account for local conditions and practices. On page 51, Spangenberg states:

"These NAC caseload standards composed in 1973 are still often cited but never, in TSG's experience, monitored or enforced in any public defender program in the country. Although the NAC standards have historically served as a useful comparison tool for individuals and organizations advocating for attorney

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

09-31719

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And on page 52,

“Although national caseload standards are useful in certain contexts, Spangenberg recommends that they not be used to draw conclusions about specific jurisdictions.”

Just as Spangenberg acknowledges that national standards should not be used to establish local jurisdiction specific standards, they also admonish that standards from even seemingly similar jurisdictions should not be applied in any other jurisdiction.

On pages 52-53, Spangenberg states:

“ Please note that, as discussed throughout, direct comparisons between jurisdictions cannot take into account all of the different factors ... In some cases, the case type equivalents between jurisdictions are not exact ... and the severity of potential sentences and charging practices are unique to each jurisdiction ...”

During the 12-week timekeeping phase of the project, Spangenberg tracked 96 attorneys in Clark County who entered a little over 40,000 hours of time. In Table 10 on page 36, Spangenberg utilized the time data along with actual case dispositions to determine the “Annual Dispositions per FTE Attorney” in Clark County. They conclude that an average Public Defender in the Clark County Public Defender’s office is able to handle 99.9 felony A’s, or 133 felony B’s or 316 felony C’s and D’s etc., for a composite average of 215.4 cases per attorney.

This table does a good job of determining how long a case is currently taking – but it provides absolutely no guidance on how long a case should take. This distinction is most dramatically evidenced by simple math. Table 10 indicates that each attorney was resolving cases at the annual aggregate rate of 215.4 cases per attorney. This indicated a capacity to handle 18,524 cases (86 non-murder attorneys in the time study times 215.4). Yet, for the twelve month period ending at the same time as the time study, the Public Defender’s office was only assigned 16,245 felony cases and after eliminating cases which were subsequently transferred to conflict counsel or private counsel, the office only handled 14,181 cases, over 4,000 fewer cases than “capacity”. Stated alternatively, since they had the capacity to handle 4,000 more cases, one could infer they also had more time to spend on each case handled – yet there was no analysis or guidance as to how much additional time should have been spent on any type of case.

The Spangenberg report indicates that without additional study, they don’t actually have a conclusion as to how long a case in Nevada should take. At page 54, Spangenberg states:

“What the caseload standards should be so that attorneys have sufficient time to represent their clients while meeting ADKT 411 are still to be seen ...” (emphasis applied)

In a valiant effort to create a projected number of attorneys “needed”, Spangenberg ignores its own admonition to not use standards from other jurisdictions, and in Tables 22 and 23, pages 53-55, it does just that. Table 22, page 53 shows the calculated caseloads for four different non-Nevada jurisdictions. The various low and high estimates of these four jurisdictions are then transferred into Table 23 to project Clark County’s attorney need. It should be noted that in preparing Table 23, neither the Clark County specific time records nor the time per disposition calculated from that data is utilized. In fact, it is virtually impossible to determine where the high and low numbers in Table 23 come from, even when considering the numbers from the other jurisdictions.

Because of the peculiarities of Nevada criminal law, the actual 12-week time study separately kept track of felony C’s and D’s, and further subdivided felony B’s into those with a maximum sentencing range over and under 10 years. The other jurisdictions do not have this distinction so in these tables Spangenberg ignored all of the Nevada specific data. Table 22 shows that C & D felonies were combined in the other jurisdictions and the felony B’s were grouped together.

Most of the calculated projected “need” for additional attorneys is derived from the misapplication of Nevada felony B charges. For example, in Nevada, Burglary is defined as a category B felony. It is punishable by anywhere from 1 to 10 years, regardless of whether the burglary took place at a residential property, or commercial property. In Arizona, it is a class 4 felony to burglarize a commercial property, punishable by anywhere from 1.5 to 3 years. It is a class 3 felony to burglarize a private residence, punishable by anywhere from 2.5 to 7 years. In Colorado, it is a class 4 felony to burglarize a commercial property, punishable by anywhere from 2 to 6 years, while it is a class 3 felony to burglarize a private residence, punishable by anywhere from 4 to 12 years. So, for example, in Clark County, if someone steals a \$30 shirt from WalMart they are routinely charged with a class B felony while in many other jurisdictions that same shoplifting conduct is frequently charged as a misdemeanor and even when it is charged as a felony it would be the equivalent of a C or D felony in Nevada, not a class B felony.

In Table 23, Spangenberg utilized 6,132 class B felonies, and all Nevada B felonies were treated as if they took the same amount of time as the more serious B felonies in the other designated jurisdictions. While this comparison might work for a crime like robbery, which is a class B or class 2 felony in all of these jurisdictions, the calculation is completely inaccurate when almost 5,000 or 80% of the B felonies in Clark County were the equivalent of a class C, D or even class E felonies in the model jurisdictions. The problem is further exacerbated when you consider that the number of class B felonies assigned to the Clark County Public Defenders office last year was greater than the total number of all other felony classes combined. The failure to adjust these workload numbers for the Nevada specifics on class B felonies considering the substantiated number of B felonies relative to the total caseload renders the calculation of needed attorneys in Table 23 virtually meaningless.

A second cost containment policy required all departments to come up with 5% budget reduction plans – again, this policy was not applied to the Public Defender's office. In fact, that same theoretical 5% reduction along with some additional revenue has been provided to the office to create at least 3 new Attorney positions. It is my understanding that after the next bar results are released this month, the Public Defender's office will be adding 6 or 7 new Attorneys to its staff.

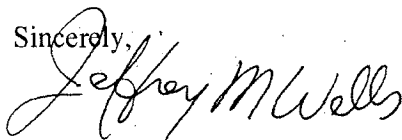
Understanding that Clark County does not want a numeric caseload number – what do they want? First, as acknowledged by the US Department of Justice's 2001 Indigent Defense Series, before one can establish a caseload standard, even for budgetary decisions, some agreement has to be reached on what a case is and Clark County supports the Court adopting a uniform definition of a case. A definition to be used by all agencies involved, including the Courts.

Clark County would also seek the Court's assistance on a couple of structural items that would greatly assist with the workload issues in the Public Defender's office. Historically, there was one rural circuit track that funneled into just two district court departments. The circuit covered NLV, Henderson and the rural justice courts. Currently the district court assigns cases from these same Justice Courts to eighteen (18) different departments, not two. Each of these eighteen departments receive cases from an outlying justice court and also from one of the LV justice courts. This makes the Public Defender scheduling very difficult. An attorney who has an assignment in NLV is also going to have cases scheduled in up to 18 different district courts. If however, all non Las Vegas Justice Court cases went to just a few district court departments, the simple freedom from being in multiple places at the same time would greatly assist the attorney workload demands.

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In conclusion, Clark County appreciates that the Court has taken on this important challenge and we look forward to the adoption of a definition of a case. However, we urge you to reject the concept of an artificial fixed maximum caseload because we firmly believe it creates far more serious problems than it resolves.

Sincerely,



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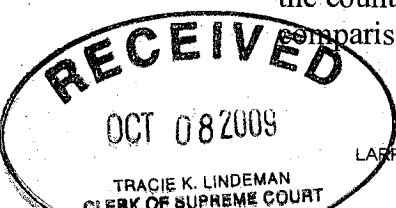
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This complete disregard of Nevada specifics is emblematic of what is wrong with much of the Spangenberg report. In fact, Clark County would submit that there is no practical way that this report provides the foundation for the Court to establish caseload standards for Nevada. The report itself acknowledges that not only did they not make a Nevada specific recommendation – they acknowledge that they cannot make such a specific recommendation. Spangenberg has also advised this Court that it should not incorporate numbers from other jurisdictions for the very problems the class B discussion clearly evidences. Nor should the Court simply adopt an aggregate average felony caseload number. See page 54:

“The aggregate numbers in these categories are not caseload standards and should not be used in place of standards developed for the more specific case types for determining staffing needs.”

Clark County has consistently held the belief that a numeric caseload standard should not be adopted and nothing in the Spangenberg report has changed this position. Effective representation is not determined by how many cases an attorney is handling. It is determined by how competent the attorney is and by how zealously the attorney actually represents each individual defendant. An effective attorney handling multiple cases does not somehow become ineffective on all of his cases simply because an accounting at the end of the year shows he handled a couple of cases above some magic number.

The Spangenberg report acknowledges this fact simply stating on page 49,

“Caseload standards ... are not appropriate for measuring the quality of representation provided to clients in any individual case.”

While it is clear that the report cannot, and should not, be used to establish caseloads, the exercise is still valuable. This report, just like some of the reports from other jurisdictions where formal caseloads were not adopted, can and will be useful in the budgetary discussions for staffing in the Public Defender’s office.

Clark County, both through its Commissioners and the County Management office, is committed to providing a constitutionally sound defense for those who cannot otherwise afford it.

I know the Court is well aware of the national economic situation, and its effect on the economy and budgets in Nevada and Clark County. And while Clark County would not suggest that budget concerns trump the 6<sup>th</sup> amendment, I think it is important to let this Court know about some of the efforts that Clark County has undertaken to continue to insure that quality defense is being provided. Last year, Clark County alone spent over \$34 million on indigent defense. This amount is more than is spent in several entire states including some with larger populations.

One of Clark County’s most effective cost containment policies has been a hiring freeze. This hiring freeze along with some limited layoffs has created a vacancy rate of over 12% of our workforce. However, recognizing the importance of indigent defense, this hiring freeze has not been applied to the Public Defender’s office and they have been allowed to fill all Attorney and Investigator positions.



A second cost containment policy required all departments to come up with 5% budget reduction plans – again, this policy was not applied to the Public Defender’s office. In fact, that same theoretical 5% reduction along with some additional revenue has been provided to the office to create at least 3 new Attorney positions. It is my understanding that after the next bar results are released this month, the Public Defender’s office will be adding 6 or 7 new Attorneys to its staff.

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