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Chief Justice James W. Hardesty
Justice Ron D. Parraguirre
Justice Michael A. Cherry
Justice Nancy M. Saitta
Justice Mark Gibbons
Justice Michael L. Douglas
Justice Kristina Pickering

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

October 26, 2009

Re: ADKT 411

Dear Honorable Supreme Court Justices,

The Nevada Association of Counties (NACO) would like to submit the following comments subsequent to the hearing on ADKT 411 held October 6th for your consideration. NACO remains opposed to the adoption of mandatory statewide caseload standards. We do not believe that such standards are warranted or necessary without clear evidence that indigent defendants are not being provided counsel that meets the threshold established in *Strickland*. There have been few, if any, post-conviction reversals due to ineffective assistance of appointed counsel, nor is there evidence that indigent defendants are being harmed by the current delivery methods employed by the counties.

We urge the Court to follow the logic of the courts in Michigan, New York, Minnesota, Indiana and Mississippi, as illustrated in the filing submitted to the Court by the Nevada District Attorneys Association and the Nevada Advisory Council for Prosecuting Attorneys, in requiring that actual damage be shown before a finding of systemic failure in the provision of indigent defense counsel be reached. Lack of evidence that a systemic problem exists should preclude the imposition of a remedy.

Nevada is a diverse state. In most instances there is not a "one size fits all" protocol that is applicable statewide. We believe that to be true in the provision of indigent defense counsel as well. Therefore, any standards that are adopted by the Court should be to correct a proven deficiency in a particular indigent defense provider system and not imposed statewide.

NACO continues to agree with the Court and the Indigent Defense Commission that the provision of indigent defense is a State responsibility. As you are well aware, the State has

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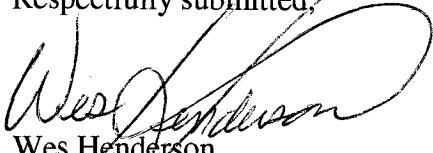
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ADKT 411

placed the burden of providing and funding indigent defense on the counties. Even the counties that utilize the services of the State Public Defender's Office are responsible for the majority of the funding. Any statewide standards that increase the cost of providing indigent defense counsel must be accompanied by a funding source. Failure to provide a source of funding will further impair the counties' ability to provide vital services to all of their constituents.

In closing, we again urge the court not to impose statewide standards absent evidence of indigent defendants being harmed by the current systems of providing indigent defense. We note that the only protestations of inadequate defense counsel are coming from organizations involved in the provision or study of indigent defense counsel. Indigent defense is but one of the many services that counties provide their citizens. Increasing the costs of providing defense by the imposition of caseload standards would restrict the elected leadership of Nevada's counties in performing their duties and providing services to their constituents. We thank the Court for the continued opportunity to participate in the Indigent Defense Commission and ADKT 411.

Respectfully submitted,



Wes Henderson
Government Affairs Coordinator

Cc: Commissioner Joni Eastley
Commissioner John Ellison
Jeff Wells
John Berkich
John McCormick
Indigent Defense Commission Members
NACO Board of Directors