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Memorandum

To: The Nevada Supreme Court
CC: John Berkich, Washoe County; Jeff Wells, Clark County
From: Robert Spangenberg and David Newhouse, The Spangenberg Project
Date: 11/5/2009
Re: Caseload Standards

NOV 09 2009
 TRACEY K. LINDEMAN
 CLERK OF SUPREME COURT
 BY *[Signature]*
 CHIEF DEPUTY CLERK

ADKT 411

This memorandum is in response to concerns expressed by the Nevada Supreme Court and others that our report of July 1, 2009 did not provide recommended caseload standards.

I. The Current Caseload Crisis

Our study shows the aggregate caseloads being carried by Washoe and Clark County public defenders in the fall of 2008 were as follows:

	Non-Murder Felonies	Misdemeanors	Juvenile cases
Washoe ¹	189.6	417.5	237.4
Clark ²	215.4	965.8	335.3

Public defender attorneys in these offices do not have any more available time in their working year to handle additional cases. Thus, it is physically impossible for them to handle more cases than they were handling at the time of our study without additional staff. The performance standards promulgated by the Court and implemented effective April 1, 2009 would require public defenders to engage in a greater amount of work on each case than was being performed in the fall of 2008, prior to the adoption of the performance standards.

¹ *Assessment of the Washoe and Clark County, Nevada Public Defender Offices Final Report, The Spangenberg Group/George Mason University, July 1, 2009, at page 45, Table 20.*

² *Assessment of the Washoe and Clark County, Nevada Public Defender Offices Final Report, The Spangenberg Group/George Mason University, July 1, 2009, at page 36, Table 10.*

II. Caseload Standards

Critics of the study's methodology make a good point: It is premature to adjust the results of the caseloads described by the current study without accounting for those activities that are not being performed. It is essential that any adjustments to the time collected during the study period be based on secondary data collected in a rigorous and statistically defensible manner. We are not prepared to substitute our professional judgment in place of this. Our original plan was to field a secondary survey of attorneys who participated in the study to measure the amount of time necessary to provide effective representation under the new performance standards. Such a survey would have allowed The Spangenberg Project to provide more specific caseload standards to the Court. Towards that end:

- In early March, 2009, The Spangenberg Project proposed to Clark and Washoe Counties that additional time be allowed to field the survey in conjunction with the trainings on the performance standards.
- On March 20, 2009, Clark and Washoe Counties submitted a request to the Court for an extension of time to complete the report until August 15, 2009.
- After the Court's denial of that request, TSP and the counties agreed that a range of caseload standards from other jurisdictions, rather than a specific number, would be used to provide the counties guidance in place of specific caseload standards.

We are confident that reasonable caseload standards for Clark and Washoe County public defenders would fall within the range provided. At a minimum, the ultimate caseloads would fall below the high estimates provided in tables 23 and 24 of the report, restated here:

Case Type	Maximum Annual Caseload per FTE Attorney
Felony A Sex	25
Felony A Other	40
All Felony B	135
Felony C	200
Felony D	350
Felony E	700
Gross Misdemeanor	235
All Other Misdemeanor	500
All Juvenile Delinquency	250

It is likely that the ultimate caseload standards will be different for each county, but in any case, will fall below the standards presented above.

Adoption of these caseload limits would provide a framework within which defenders could begin to practice in accordance with the performance standards of ADKT-411, and a more accurate assessment of the additional time required to practice to these standards could be established through additional evaluation.

As noted in the report, the offices should not use these numbers to establish caseloads for individual attorneys. Rather, staffing levels should be set such that the office does not exceed these caseloads, which allows for the common sense distribution of cases within the office by experienced supervisory staff, as should always be the case.