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FEB 06 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE REVIEW  
OF ISSUES CONCERNING REPRESENTATION  
OF INDIGENT DEFENDANTS IN CRIMINAL,  
JUVENILE DELINQUENCY AND FAMILY  
DEPENDENCY CASES

ADKT 411

THE SECOND JUDICIAL DISTRICT COURT - INDIGENT DEFENSE REPORT  
AMENDED MODEL PLAN 2019

Amended administrative plan for the Second Judicial District Court to meet the requirements set forth in the order entered by the Supreme Court of Nevada on January 4, 2008, in ADKT 411, and as amended periodically thereafter.

**I. OBJECTIVE**

A. This plan takes into account all aspects of and acknowledges the statement of policy presented in the Model Plan developed by the Supreme Court Sub-committee appointed to formulate a Model Plan for Indigent Representation in Nevada.

B. This plan relates to the appointment of trial counsel, appellate counsel in appeals not subject to the provisions of Nevada Rules of Appellate Procedure 3C, counsel in post-conviction matters, counsel in juvenile matters, counsel in certain Family Division matters, the approval of expert witness fees, investigation fees, and attorney fees, and the determination of indigency in the Courts within the Second Judicial District, including the District Court and all Washoe County Justice Courts where applicable.

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1 **II. DEFINITIONS**

2 "Representation" includes by counsel and investigative, expert and other services  
3 assisting counsel.

4 "Appointed attorney" includes private attorneys, both contracted and hourly, Public  
5 Defender, Alternate Public Defender, and staff attorneys of the Public Defender and Alternate  
6 Public Defender's offices in Washoe County.

7 **III. PROVISION OF REPRESENTATION**

8 A. Mandatory Appointment

9 Representation shall be provided for any financially eligible person who:

- 10 1. is charged with a felony;
- 11 2. is charged with a gross misdemeanor in which the prosecution is seeking  
12 jail confinement (incarceration);
- 13 3. is alleged to have violated probation or other supervision and a jail or  
14 prison sentence of confinement may be imposed;
- 15 4. is a juvenile alleged to have committed an act of juvenile delinquency;
- 16 5. is subject to commitment pursuant to NRS 433A.310;
- 17 6. is seeking relief from a death sentence pursuant to NRS 34.724(1);
- 18 7. is in custody as a material witness;
- 19 8. is entitled to appointment of counsel under the Sixth Amendment to the  
20 United States Constitution or any provision of the Nevada Constitution, or when due  
21 process requires the appointment of counsel, or the court is likely to impose jail or  
22 prison confinement;
- 23 9. faces loss of liberty in a case and Nevada law requires the appointment  
24 of counsel;
- 25 10. faces loss of liberty for criminal contempt;



1 D. Number and Qualifications of Appointed Counsel

2 1. One attorney shall be appointed consistent with Section IV and V herein,  
3 except in Capital Cases;

4 2. Two attorneys shall be appointed consistent with Section IV and V  
5 herein, as soon as feasible in all open murder cases which are reasonably believed to  
6 result in a Capital Case;

7 3. At least one of the two attorneys appointed to represent defendants  
8 charged in Capital Cases must meet the minimum standard for lead counsel pursuant to  
9 Nevada Supreme Court Rule 250 and both attorneys appointed must conform to the  
10 performance guidelines or standards as adopted by the Nevada Supreme Court for  
11 Capital Cases.

12 E. Eligibility for Appointed Representation

13 1. All persons found indigent shall be financially eligible for appointed  
14 representation:

15 a. a person shall be deemed "indigent" who is unable, without  
16 "substantial hardship" to himself or herself or his or her dependents, to obtain  
17 competent, qualified legal counsel on his or her own;

18 b. "substantial hardship" presumptively includes all defendants who  
19 receive public assistance, such as Food Stamps, Temporary Assistance for  
20 Needy Families, Medicaid, Disability Insurance, reside in public housing, or  
21 earn less than 200 percent of the Federal Poverty Guideline amount;

22 c. a person is presumed to have a "substantial hardship" if he or she  
23 is currently serving a sentence in a correctional institution or is housed in a  
24 mental health facility or is a minor;

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3. Partial Eligibility

a. If a Court determines a person is able to afford counsel or has retained counsel but cannot be effectively represented due to inability to pay for necessary services such as investigators, experts or other services, the Court shall order these services provided at public expense;

b. The extent and cost of these services shall be determined by the Appointed Counsel Administrator;

c. The determination of the extent and approval of the amounts made by the Appointed Counsel Administrator may be appealed to the Washoe County Manager or his/her designee;

d. The determination of the Washoe County Manager or his/her designee, as to the extent and amount allowable for these fees, may be appealed to the Chief Judge of the Second Judicial District Court.

4. Disclosure of Change in Eligibility

a. Counsel shall advise the Chief Judge of the Second Judicial District Court for matters pending in the district court or the Administrative Judge of a Washoe County justice court for matters pending in a Washoe County justice court of any change in a client(s) eligibility for public payment for representation;

1. if, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation; and

2. the source of the attorney's information is not protected as privileged communication.



1           B.     Determination of Conflict of Interest

2                     1.     The Public Defender shall, as soon as practicable, upon appointment,  
3                     conduct a conflict check to determine whether any conflict of interest exists which  
4                     would prevent representation of the client.

5                     2.     If the Public Defender determines a conflict exists, the Alternate Public  
6                     Defender shall be notified as soon as possible.

7                     3.     The Alternate Public Defender shall undertake representation in all cases  
8                     which are in Washoe County Justice Court unless a conflict check determines a conflict  
9                     of interest exists which would prevent representation of the party:

10                    a.     if the Alternate Public Defender determines a conflict exists, the  
11                    Appointed Counsel Administrator shall be notified by the Alternate Public  
12                    Defender as soon as practicable; and

13                    b.     the Appointed Counsel Administrator shall select counsel from  
14                    the Appointed Counsel Selection Committee ("ACSC") Appointed Counsel list  
15                    to provide representation.

16                    4.     If the Alternate Public Defender is notified that continued representation  
17                    of a party would create a conflict for the Public Defender in cases which are in the  
18                    District Court, the Alternate Public Defender shall file a written Substitution of Counsel  
19                    replacing the Public Defender's office, unless:

20                    a.     the Alternate Public Defender determines that representation  
21                    would create a conflict of interest:

22                    1.     the Alternate Public Defender shall notify the Appointed  
23                    Counsel Administrator as soon as reasonable and provide sufficient  
24                    information for the Appointed Counsel Administrator to determine  
25                    which ASCS Appointed Counsel sub-list (see section V herein) should  
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be utilized to select a qualified attorney to replace the Alternate Public Defender:

(a) upon notification, the Appointed Counsel

Administrator shall:

(1) select attorney(s) pursuant to Section V, appropriate for appointed representation in the case;

(2) prepare a written Substitution of Counsel substituting the selected attorney in place of the Alternate Public Defender, indicating whether the Appointed Counsel appointment is on contract, hourly or capital case basis; and

(3) cause the Substitution of Counsel to be filed in the District Court prior to the first appearance by Appointed Counsel.

b. the Alternate Public Defender requests a hearing in District Court regarding the Public Defender conflict prior to accepting the appointment of representation:

1. if the Court approves the Public Defender's request for relief from representation, the Alternate Public Defender shall file a Substitution of Counsel and undertake representation;

2. if the Court does not approve the Public Defender's request for relief from representation, the Public Defender will continue representation until and unless relief is granted.

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1 C. Assignment of Attorneys

2 1. The assignment of a case to an attorney within the office of the Public  
3 Defender or Alternate Public Defender rests solely within the discretion of the Public  
4 Defender and/or Alternate Public Defender, respectively.

5 2. The assignment of an Appointed Counsel shall be within the Appointed  
6 Counsel Administrator's discretion sole long as her/she acts in accordance with this  
7 plan and specifically Section V, herein.

8 D. Complaints by Clients

9 1. The Public Defender and Alternate Public Defender shall maintain a  
10 system for receipt and review of written complaints made by clients.

11 2. The Appointed Counsel Administrator shall maintain a system for  
12 receipt and review of written complaints made by clients.

13 **V. APPOINTMENT OF PRIVATE ATTORNEYS TO SERVE AS APPOINTED**  
14 **COUNSEL**

15 A. Selection of Appointed Counsel Attorneys

16 1. The Second Judicial District Court - Court Administrator shall establish  
17 the ACSC. The Court Administrator shall, on an annual basis, appoint members to  
18 serve one year terms. The Court Administrator may reappoint members to successive  
19 terms. The Court Administrator may fill unexpired terms at any time when members no  
20 longer are able or willing to serve:

21 a. The ACSC shall be comprised of a minimum of five (5) and a  
22 maximum of seven (7) attorneys licensed to practice law in Nevada who:

23 1. have no pecuniary interest in the outcome of the attorney  
24 selection or performance evaluation process;

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2. have no legal, financial or familial relationship to any attorney whose qualification or performance will be evaluated;

3. are not directly related to any member of the judiciary or prosecution who may be involved in the outcome of any case that would be assigned to the Public Defender, Alternate Public Defender or Appointed Counsel Administrator.

2. The ACSC shall establish the minimum qualifications for all Appointed Counsel, taking into account the additional qualifications required for exceptionally difficult cases with potential life and capital penalties, as well as, unique case types such as juvenile and dependency.

3. The ACSC shall create the Appointed Counsel list with sub-lists including but not limited to, contract, hourly, capital, juvenile and dependency as the ACSC deems appropriate.

4. Attorneys may be selected for inclusion on multiple sub-lists.

5. On an ongoing basis, the ACSC shall:

a. review the Appointed Counsel list and modify membership as the Committee deems appropriate;

b. complete annual performance and qualification reviews of attorneys on the Appointed Counsel list including:

1. annually solicit input from judges, and others familiar with criminal, juvenile and family law matters in which Appointed Counsel are utilized;

2. review any complaints from clients;

3. review the history of participation in continuing legal education and training of all attorney's on the ACSC list making a

1 determination as to the attorneys continued participation as Appointed  
2 Counsel; and

3 4. review the history of participation in continuing legal  
4 education, among other criteria as identified by the ACSC, when  
5 determining the eligibility for and selection of new applicants to be  
6 included on the Appointed Counsel list.

7 B. Contract, Hourly and Capital Case Appointed Counsel Sub-Lists

8 1. Appointed Counsel on Contract

9 a. Washoe County shall contract for appointment of counsel.

10 b. Washoe County Appointed Counsel contract compensation may  
11 be based either on an hourly basis, a flat fee basis, or a combination of both. The  
12 Nevada Supreme Court has determined that flat-fee only contracts are  
13 prohibited, and flat fee compensation must include the opportunity to request  
14 additional fees in other than normal circumstances and for expert and  
15 investigative expenses:

16 1. if part of the contract is based on a flat fee, the contract  
17 should consider, but not be limited to, the following factors:

18 a. the average overhead for criminal defense  
19 practitioners in the locality;

20 b. the number of assignments expected under the  
21 contract;

22 c. the hourly rate paid for all appointed counsel; and

23 d. the ability of the Appointed Counsel to comply  
24 with the Performance Standards of Appointed Counsel, as  
25 adopted.  
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2. Washoe County shall contract with Appointed Counsel only after the attorney has been qualified to enter into such a contract by the ACSC; and

3. the contract must be subject to termination after one year or sooner, if determined by the ACSC that an Appointed Counsel is not abiding by the standard guidelines for qualification of Appointed Counsel; and

4. the payment of fees and expenses of contracted Appointed Counsel by Washoe County shall be governed by contract between counsel and Washoe County subject to appeal as described in III. E. 3. b, c, and d; and

5. the contract shall exclude appointment in cases with the potential of a life or capital penalty.

c. In all cases which cannot be handled by the Public Defender or the Alternate Public Defender, an attorney from the ACSC contract sub-list will be assigned by the Appointed Counsel Administrator, except in cases carrying a potential penalty of life imprisonment or death, post-conviction, or when the Court, or the Appointed Counsel Administrator determines the complexity of the case or the potential penalty necessitates the appointment of an attorney from the ACSC hourly sub-list.

d. contract Appointed Counsel shall be selected in consecutive order from the Appointed Counsel Sub-list by the Appointed Counsel Administrator.

2. Appointed Counsel on hourly and capital case appointments

a. If the Washoe County Public Defender, Alternative Public Defender and contract Appointed Counsel cannot handle the case; or the

1 Appointed Counsel Administrator determines the case is not appropriate for  
2 contract Appointed Counsel to handle, alternative counsel will be selected by the  
3 Appointed Counsel Administrator as follows:

4 1. the Appointed Counsel Administrator shall select  
5 alternative Appointed Counsel, in consecutive order, from the hourly  
6 sub-list; except

7 2. if the nature of the case requires lead counsel be selected  
8 from the capital case sub-list, the Appointed Counsel Administrator, in  
9 consecutive order, shall select lead counsel from the capital case sub-  
10 list;

11 3. the Appointed Counsel Administrator shall select a  
12 second chair counsel for all capital cases: counsel shall be selected next  
13 in order from the hourly sub-list, if the attorney qualifies under Nevada  
14 Supreme Court Rule 250 for second chair selection, or otherwise from  
15 the capital case sub-list.

16 b. The payment of fees and expenses of hourly and capital case  
17 Appointed Counsel shall be approved by the Appointed Counsel Administrator  
18 subject to appeal in the same way as discussed in Section III. E. 3. b, c, and d.

19 3. Delegation of Responsibilities

20 a. Appointed Counsel cannot delegate responsibilities for  
21 representation to another attorney.

22 b. Appointed counsel may receive assistance from associate  
23 attorneys, mentees, or other ACSC qualified attorneys, in carrying out his/her  
24 responsibilities.

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c. All substantive court appearances must be made by an attorney who has been determined to be qualified by the ACSC to handle the type of case involved in the court appearance.

C. Post Conviction

1. The Chief Judge of the Second Judicial District Court shall determine eligibility, using the same standards as discussed herein for determination of indigency, of in forma pauperis applications filed in the District Court for post conviction cases and notify the Appointed Counsel Administrator, if application is granted.

2. In mandatory appointment cases

a. the Appointed Counsel Administrator shall select, in consecutive order, counsel from the hourly post conviction sub-list; and

b. prepare an Order of Appointment for the assigned District Judge's signature.

3. In non-mandatory appointment cases, the assigned District Judge shall notify the Appointed Counsel Administrator, of the Judge's decision to appoint counsel:

a. the Appointed Counsel Administrator shall select, in consecutive order, counsel from the post conviction sub-list; and

b. prepare an Order of Appointment for the assigned District Judge's signature.

4. All attorney fees, investigation, expert or other fees shall be recommended for approval or denial by the Appointed Counsel Administrator to the Chief Judge of the Second Judicial District Court:

a. the fee recommendations of the amount approved for payment shall be presented to the Chief Judge of the Second Judicial District Court by the

1 Appointed Counsel Administrator. The Chief Judge will determine whether to  
2 accept, modify, or reject the Appointed Counsel Administrator recommendation;

3 b. Appointed Counsel Administrator shall prepare the order for  
4 payment by the State Public Defender in accordance with the Chief Judge's  
5 decision.

6 **VI. MENTORSHIP AND TRAINING**

7 A. Mentoring Programs

8 If the ASCS determines justice will be served by selection of attorneys who do not  
9 possess the requisite experience a mentoring program must be established to insure that  
10 the less experienced attorney will be provided supervision and mentoring from an  
11 experienced attorney. An attorney who has not tried a minimum of one felony jury trial  
12 shall not try a felony case without the assistance of an experienced criminal defense  
13 attorney sitting as second chair.

14 B. Annual Training

15 Each member of the ACSC Appointed Counsel List is encouraged to attend annual  
16 Continuing Legal Education in the specific area in which they accept appointments, i.e.  
17 family law, appellate law, post conviction, capital cases, and criminal law.

18 C. Periodic Training

19 Periodic training events will be conducted on issues of interest to Appointed Counsel by  
20 the Public Defender and/or Alternate Public Defender to which members of the  
21 Appointed Counsel List shall be invited.

22 D. Creation and Coordination of Training

23 The Public Defender, Alternate Public Defender and the Appointed Counsel  
24 Administrator shall cooperate to coordinate, schedule and create training events as  
25 described above.



1 **VII. DUTIES OF APPOINTED COUNSEL**

2 A. Standards

3 The representation by Appointed Counsel shall be commensurate with representation by  
4 privately employed counsel. Representation shall be provided in compliance with the  
5 Performance Standards for Representation of Indigent Defendants adopted by the  
6 Nevada Supreme Court.

7 B. Professional Conduct

8 Appointed Counsel shall conform to the highest standards of professional conduct,  
9 including but not limited to the Nevada Rules of Professional Conduct.

10 C. No Receipt of Other Payment

11 Appointed Counsel may not require, request, or accept any payment or promise of  
12 payment or any other valuable consideration for representation under the appointment,  
13 unless such payment is approved by order of the District Court.

14 D. Continuing Representation

15 Once counsel is appointed, counsel shall continue representation until substitute counsel  
16 has filed a Notice of Appearance, an order has been entered allowing or requiring the  
17 person represented to proceed pro se, or the appointment is terminated by court order. If  
18 Appointed Counsel is relieved, such counsel must assist substituted counsel in securing  
19 the file and other necessary information to insure that all deadlines are met, including  
20 those applicable to appeal and post-conviction matters.

21 **VIII. APPOINTED COUNSEL ADMINISTRATOR**

22 A. Selection

23 1. Washoe County will contract with an attorney to serve as the Appointed  
24 Counsel Administrator. The contract terms will be determined by this Plan, Washoe  
25 County and the Appointed Counsel Administrator, but in no event will the Appointed  
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1 Counsel Administrator be directly involved in representation in Appointed Counsel  
2 cases.

3 B. Duties

4 1. The Appointed Counsel Administrator shall have all the duties and  
5 responsibilities stated herein.

6 2. The Appointed Counsel Administrator shall maintain the list of all  
7 attorneys approved by the ACSC broken out into sub-lists for contract and, hourly, in  
8 criminal, post conviction, juvenile, dependency, and capital case types. In addition, the  
9 Appointed Counsel Administrator shall maintain appropriate records of the date and the  
10 cases for each Appointed Counsel who has been appointed.

11 3. The Appointed Counsel Administrator will provide quarterly reports to  
12 the ACSC stating the number of cases which each attorney has been appointed in the  
13 past quarter, and the total number of appointed cases each attorney has open currently.  
14 The Appointed Counsel Administrator will also notify the ACSC of any issues  
15 regarding the performance of any member of the list including, but not limited to, any  
16 complaints from the judiciary regarding the attorney's level of representation of  
17 appointed case clients.

18 4. When notified of the need for representation, the Appointed Counsel  
19 Administrator, shall select, in order and as more fully described herein, the next  
20 available attorney from the list of attorneys qualified to provide representation as  
21 approved by the ACSC.

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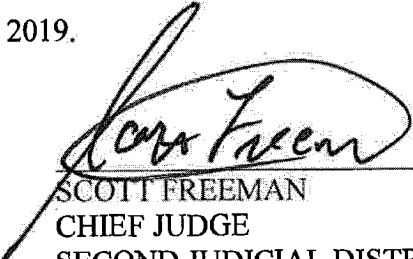
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5. The Appointed Counsel Administrator shall be responsible for approving the claim for payment of each attorney and any expert or other service fees at the conclusion of Appointed Counsel's representation or, if appropriate, periodically during Appointed Counsel's representation, as specifically discussed herein.

Dated this 1 day of February, 2019.

  
SCOTT FREEMAN  
CHIEF JUDGE  
SECOND JUDICIAL DISTRICT COURT