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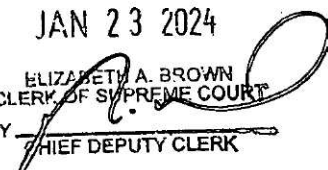
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To: The Supreme Court of Nevada

From: Matthew Pennell

Date: January 22, 2024

Re: Proposed Rule Change Nev. Sup. Ct. R. 49.1.7(a) **ADKT 616**

ISSUE

Recruiting qualified attorneys to rural public defender offices poses unique challenges. Attorneys considering whether to apply for a position in Nevada may perceive the rural areas as lacking the diverse career options and fast-paced lifestyles available in Reno or Las Vegas.

Moreover, our rural communities often face challenges in infrastructure and development as well as essential services. A perception of small-town living, isolation, or lack of entertainment, coupled with limited healthcare options, lack of educational diversity, or minimal amenities can be a significant deterrent for attracting and retaining qualified attorneys and their families.

Further exacerbating this issue, desirable candidates who are seasoned attorneys with the desired skills, experience, and competence to fill these positions are less likely to apply

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for a position in a rural Nevada community when faced with the reality of having to prepare for and take the Nevada bar exam.

Nevada Supreme Court Rule 49.1 allows a pathway for attorneys, licensed in States other than Nevada, to practice in specific public service roles within Nevada's rural governments. Historically, this pathway has proven to be a useful tool in recruiting qualified attorneys to meet the needs of rural public practices that would otherwise struggle to find qualified attorneys. These attorneys can practice under the supervision of the county's Public Defender or other employers designated under the Rule. However, as the Rule currently reads, these attorneys have two years to pass the Nevada bar or their ability to practice abruptly ends at the two-year mark with no ability to extend the provisional license. In the event an attorney is unable to pass the Nevada bar exam and licensing within the allotted time, the employing office loses an attorney who has two years of experience practicing law within that area; an attorney that the office invested great amounts of time and resources in training and developing; an attorney who is likely carrying a large caseload of misdemeanors and felonies, an attorney who has developed rapport with clientele, and is no less qualified to practice criminal law effectively and competently in Nevada.

The office of the Elko County Public Defender hopes Nev. Sup. Ct. R. 49.1.7(a) can be amended to remove the two-year licensing limitation for rural practice, allowing qualified attorneys to practice within Nevada's rural communities and serving the indigent citizens therein, for any period of time in which these attorneys choose to serve those same communities.

DISCUSSION

The Elko County Public Defender's Office Has Only Five of Nine Attorney Positions Filled.

I took office as the Elko County Public Defender on January 4, 2021. In the thirty-four (34) months since taking office, my Office has been fully staffed with attorneys for a total of two (2) months.

The Elko County Public Defender's Office is currently allotted nine full time attorney positions which includes me, one Chief Criminal Deputy, one Chief Civil Deputy, and six Deputy Public Defenders. Currently, our Office has only five of the nine attorney positions filled.

The National Center for State Courts (NCSC) recently completed a report compiling a workload assessment of rural caseloads within Nevada Public Defense offices.¹ The assessment includes a time study of office workloads over a six-week period with analysis of current practices (based on time spent working on cases), a review of case weights in other jurisdictions, and recommendations for quality adjustment processes to ensure sufficient time for effective representation². The assessment "provides evidence of a need for more attorney and staff resources to effectively handle the current workload of Nevada's rural indigent defense."³ The NCSC recommends, "Indigent defense provider offices should be provided with enough attorneys...to represent clients effectively and consistently across rural Nevada."⁴ To achieve this, one option recommended was for

¹ Suzanne Tallarico, M.A. et al, National Center for State Courts, *Rural Nevada Indigent Defense Services Weighted Caseload Study; Final Report* (2023).

²*Id.* at i.

³ *Id.* at ii.

⁴ *Id.*

additional attorneys to be added to defense provider offices.⁵ The NCSC found that Nevada needs an increase of nearly 90 attorneys across the 15 rural counties just to effectively manage the new cases assigned in Fiscal Year 2022-2023.⁶ This includes a recommendation for 17 Indigent Defense Attorneys in Elko County.⁷

Although the NCSC report has identified a need for 17 attorneys in the County of Elko to provide indigent defense, the reality is that our Office is only allotted the nine attorney positions previously outlined, and not all these positions are currently filled. At present, we have five attorneys, along with support staff, tirelessly working to maintain a workload that the NCSC has determined should be handled by 17 attorneys.⁸

NCSC identified four major constraints on a rural office's time.⁹ These constraints include client services, jail visits and associated travel, court visits and associated travel, and reviewing electronic discovery data.¹⁰ The attorneys and support staff in my Office have maintained their resolve and are still dedicated to each client we represent, but added burdens on a limited staff continues to take its toll, including continued staff attrition from overwork and excessive caseloads.

Geographically, Elko County is the second largest county in Nevada, totaling 17,173 square miles of land with a population of 53,702 reported in the 2020 census¹¹. The Elko County Public Defender's Office covers Elko's three departments under the 4th Judicial District Court, a Family Court with 432B and juvenile cases, four specialty courts,

⁵ *Id.*

⁶ *Id.* at 22.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 14.

¹⁰ *Id.*

¹¹ *Elko County, Nevada*, United States Census Bureau, https://data.census.gov/profile/Elko_County,_Nevada.

two Elko Justice and Municipal Courts, and three outlying Justice and Municipal Courts in Carlin, Wells, and West Wendover. The distance for each outlying court is as follows: Carlin, 22 miles; Wells, 50 miles; and West Wendover, 107 miles. It is easy to see how associated travel to outlying courts only exacerbates time constraints on personnel, as a single attorney might find themselves traveling up to four hours, round trip, to attend court in an outlying jurisdiction. Additionally, when an attorney finds themselves in an outlying jurisdiction, they are unlikely to be available for any needs of the office or their other cases while traveling. These tasks often fall to the remaining staff in the office.

Elko's Chief Criminal Deputy Public Defender Position Remains Unfilled.

Nearly one year ago, our office lost a stalwart member of our team. Roger Stewart, our Office's Chief Criminal Deputy Public Defender, passed away November 21, 2022. His passing has left our Office with a substantial skill deficit that has proven difficult to fill. Mr. Stewart served the state of Nevada for over 32 years as a public defender, 27 of those years serving the people of Elko County.

Efforts to hire a new Chief Criminal Deputy Public Defender have been consistently made, with the position being advertised since December 2022. During this time only one qualified applicant was found and offered a position. This applicant was in good standing and licensed as an attorney in the state of Wyoming and had substantial criminal defense experience. However, the applicant eventually declined the offer of employment, primarily due to concerns that preparation for and taking of the Nevada State Bar exam, in addition to a high caseload of Category A/B felonies, would severely impact any time he might have for his family.

The two-year restriction on public defense practice, currently included in Nev. Sup. Ct. R. 49.1.7(a), has become a direct impediment to filling the position of Elko County Chief Criminal Public Defender. But for the two-year restriction, the Chief position would likely be filled.

Recruitment and Retention Difficulties Prevent The Elko County Public Defender's Office From Being Fully Staffed.

The Elko County Public Defender's Office is currently advertising two separate positions, Chief Criminal Deputy Public Defender and Deputy Public Defender. Both positions are posted across multiple local, state, and national recruitment platforms and job search sites, as well as on over fifty (50) law school job boards. While well-advertised, these postings have resulted in few if any applications. Our struggles in finding and hiring qualified attorneys are not unique to Our office, as many rural law offices throughout Nevada, public and private, have the same difficulties attracting new attorneys to their communities. The reality facing rural Nevada is that there is little we can do to effectively compete with Reno or Las Vegas. The proposed rule change to Nev. Sup. Ct. R. 49.1.7(a) would be the best tool to address this struggle.

By amending Nev. Sup. Ct. R. 49.1.7(a), to allow continued rural public defense practice beyond two years, offices like mine will be in a better position to attract and hire qualified attorneys. Allowing out-of-state attorneys to practice public defense in rural communities enhances representation of indigent clientele by bringing diverse perspectives, experiences, and expertise, ultimately enriching the quality of defense provided. Although the ability to temporarily practice in rural Nevada areas is already available to out-of-state attorneys, the two-year limitation acts as a deterrent to long term

employment of experienced, practicing attorneys who could benefit our Office with their acquired skills and knowledge. By allowing attorneys who would otherwise consider a move to rural Nevada, but for the thought of taking Nevada's bar exam, to practice under Nev. Sup. Ct. R. 49.1.7 without the two-year time restriction, recruitment and retention would increase in rural Nevada public defense offices. As our Office has already experienced, applicants have stated that the reality of preparing for, taking, and passing the Nevada Bar Exam within two years of employment, while maintaining a typical caseload, and balancing a healthy work/life balance is perceived as too great a burden.

In addition to the difficulties in recruiting attorneys for Elko, Our office has found that the requirement to pass the Nevada bar exam negatively affects our ability to retain attorneys we have devoted great amounts of time and money to train and develop.

Over the last two years, our Office has had five attorneys leave for opportunities in metropolitan areas. Four of the five attorneys took jobs in the Reno or Las Vegas. Retention remains an ongoing concern as we invest time and money in our attorney's professional development. The proposed amendment would directly improve our ability to retain attorneys practicing under the rural practice provisions as an attorney would be required to serve in a public defender's office within Nevada's rural communities while practicing under Nev. Sup. Ct. R. 49.1.7. Experienced legal practitioners benefit indigent defendants throughout the state by ensuring confident, competent, and consistent representation is readily available at the local level.

In short, the two-year restriction on public defense practice, currently included in Nev. Sup. Ct. R. 49.1.7(a), has become a direct impediment to retain qualified, experienced public defense attorneys in Elko County.

CONCLUSION

Amending Nev. Sup. Ct. R. 49.1.7(a) will help address the unique challenges in recruiting and retaining qualified attorneys to rural public defender offices. This needed amendment will encourage qualified, experienced, competent attorneys to move into our communities with the stability of long-term employment. Therefore, we ask for the two-year time restraint for public defense attorneys practicing in rural Nevada communities be removed from Nev. Sup. Ct. R. 49.1.7(a), as proposed.

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a long, sweeping horizontal line that extends to the right.

MATTHEW PENNELL
Elko County Public Defender
NV Bar# 13298

