



The Nevada Supreme Court's Indigent Defense Order (ADKT 411) – An Overview

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Indigent Defense Commission

- The Court convened the Indigent Defense Commission (IDC) under the Chairmanship of Justice Michael Cherry in April/May 2007 to examine and make recommendations regarding the delivery of indigent defense services in Nevada.
- The IDC filed its initial report with the Court in November 2007.



The First ADKT 411 Order

- ❑ The Court issued its first ADKT 411 Order on January 4, 2008, pursuant to the Court's inherent authority to regulate the legal practice in Nevada (SCR 39).
- ❑ The Order contained performance standards, a requirement to remove judges from the appointment of counsel process, and recommended that all rural counties use the State Public Defender's Office.
- ❑ The Order also required all jurisdictions to file a plan for the appointment of counsel with the Court by May 2007.
- ❑ The Order approved the voluntary request from Clark and Washoe Counties to conduct weighted caseload studies, in order to determine appropriate public defender caseloads.



March ADKT 411 Hearing and Order

- After objections were filed with the Court by several groups, including district attorneys, rural judges, and the counties, a hearing was held in March 2007, resulting in an Order on March 21, 2007.
- The Order required that new members be added to the IDC, the performance standards be reconsidered, and the Commission's Rural Subcommittee be reconstituted to re-examine the issues in Rural Nevada.



Interim Work

- ❑ The District Attorneys and Defense Bar worked with the IDC to revise the performance standards.
- ❑ The Rural Subcommittee reconvened and developed new, refined recommendations.
- ❑ Clark and Washoe Counties, and the cities in urban jurisdictions, formulated and began to implement plans to remove judges from the process of appointment for conflict counsel, and reformed their contract attorney systems.



July 8, 2008, ADKT 411 Order

- The Court ordered that reworked performance standards be reviewed by the Rural Subcommittee, and stayed the implementation of the standards until October 2008.



October 16, 2008, ADKT 411 Order

- This Order set the final performance standards to be implemented in April 2009, and granted Clark and Washoe Counties' request that they be given until May 2009 to complete their weighted caseload studies.
- A training on the standards for judges, public defenders, district attorneys, and conflict/contract counsel was developed in order to aid in the implementation of the standards.



Performance Standards

- ❑ Preamble: Standards are guidelines and do not overrule *Strickland v. Washington*.
- ❑ Standards included for capital, felony/misdemeanor, and juvenile case types.
- ❑ Standards can be adjusted and applied as necessitated by each individual case.



January 6, 2009, ADKT 411 Hearing

- The Rural Subcommittee presented its final report.
- Washoe and Clark Counties reported that they were on track to complete their study by May.



Rural Subcommittee Recommendations

- The Rural Subcommittee presented five recommendations:
 1. The State of Nevada should accept its constitutional responsibility and totally fund indigent defense services in every county, via reimbursement.
 2. Each county should remain free to choose its own indigent defense delivery model provided that the model complies with the performance standards, any contemplated caseload standards, and is subject to the oversight of an independent board.
 3. The State must create and fund an independent oversight board to ensure accountability and independence for public defense.



Rural Subcommittee Recommendations Continued

4. The Supreme Court should adopt the Rural Subcommittee proposed language regarding the appointment of counsel and payment of fees in rural Nevada to ensure the avoidance of the appearance of impropriety.
5. The Nevada State Public Defender's Office must be completely and totally funded by the State, and must be independent in the executive branch.



Rural Subcommittee Report

- The State Public Defender's Office has never been adequately funded, nor has it had adequate staffing or training, and it does not have the necessary independence as a part of the Department of Health and Human Service.



Rural Subcommittee Report

- ❑ NACO offered a bill to require the State to fund indigent defense in full (AB45 – which did not pass).
- ❑ Report contains an analysis of the delegation of the funding responsibility to the counties, authored by several national organizations.
- ❑ The current delivery of indigent defense services in Nevada cost approximately \$46,000,000



March 26, 2009, ADKT 411 Order

- ❑ The Court denied Washoe and Clark Counties' request for any deferral of the implementation date of the performance standards until July 1, 2009.
- ❑ The Court scheduled another hearing re: PD Offices' performance standards training for April 7, 2009.



May 7, 2009, ADKT 411 Order

- The Court denied Washoe and Clark Counties' request for an extension of time to complete the weighted caseload study, and required the study be filed with the Court by July 1, 2009.



Spangenberg Report/Caseload Study

- The Spangenberg Group's (TSG) weighted caseload study of the Clark and Washoe County Public Defender Offices was filed on July 1, 2009.
- Report concludes: "...it is clear to TSG that the public defenders in Washoe and Clark counties will be unable to comply with requirements of AKDT 411.... TSG has arrived at a clear conclusion that until sufficient resources are dedicated to the public defender offices in Clark and Washoe counties... it will be impossible to measure the additional amount of time necessary to comply with the new performance standards."



October 6, 2009, ADKT 411 Hearing

- The Court heard from Bob Spangenberg regarding the Report and also heard from members of the Commission, public defenders, district attorneys, and the public regarding the Report and potential caseload standards.



December 17, 2009, ADKT 411 Order

- The Court ordered the full Indigent Defense Commission to reconvene and reexamine the issue of caseload limits in Nevada in light of the Spangenberg Report and all information from the October 6, 2009, hearing.
- The next IDC meeting is scheduled for February 25, 2010.