

Recorder's Office Cover Sheet

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Department: County Manager



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- Agreement
- Contract
- Grant
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FILED

NO. 2023. 103

6/9/2023

DATE

DOUGLAS COUNTY CLERK
MINDEN, NV

CONTRACT FOR INDIGENT LEGAL SERVICES MS MS DEPUTY

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA

AND

MATTHEW ENCE

This Contract for Indigent Legal Services (the "Contract") is entered into by and between Douglas County, a political subdivision of the State of Nevada ("County"), and Matthew Ence ("Attorney"). The County and Attorney are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WHEREAS, County, from time to time, requires the professional services of independent contractors; and

WHEREAS, it is deemed that the services of Attorney are both necessary and desirable and in the best interests of County; and

WHEREAS, Attorney represents that Attorney is licensed to practice law in the State of Nevada, is in good standing with the State Bar of Nevada, and is duly qualified, equipped, staffed, ready, willing and able to perform and render the legal services required by the County.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein made, the County and Attorney mutually agree as follows:

1. TERM AND EFFECTIVE DATE OF CONTRACT. The Contract will become effective on July 1, 2023, and will remain in effect until **June 30, 2024**, unless earlier terminated pursuant to the terms of this Contract. This Contract replaces the remaining term of any previously executed contract between Attorney and County.

2. INDEPENDENT CONTRACTOR STATUS. The Parties agree that Attorney, Attorney's associates and employees shall have the status of an independent contractors and that this Contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted, to the parties, including that Attorney is not a Douglas County employee and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the independent contractor or the County to the public employees' retirement system;
- (5) Accumulation of vacation leave or sick leave;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

Attorney and County agree to the following rights and obligations consistent with an independent contractor relationship between the Parties:

- a. Attorney has the right to perform services for others during the term of this Agreement.
- b. Attorney has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- c. Attorney shall not be assigned a work location on County premises.
- d. Attorney, at Attorney's sole expense, will furnish all equipment and materials used to provide the services required by this Agreement.
- e. Attorney, at Attorney's sole expense, has the right to hire assistants as subcontractors, or to use Attorney's employees to provide the services required by this Agreement.
- f. Attorney or Attorney's employees or contract personnel shall perform the services required by this Agreement, and Attorney agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Attorney.
- g. Neither Attorney nor attorney's employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.
- h. County shall not require Attorney or Attorney's employees or contract personnel to devote full time to performing the services required by this Agreement.

Attorney further certifies the following:

- i. Contactor is licensed by the State Bar of Nevada to provide legal services to members of the public and agrees to maintain the required professional license to practice law in active status and in good standing for the State of Nevada.
- j. Attorney understands that Attorney is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Attorney understands that an IRS Form 1099 will be filed by County for all payments County makes to Attorney.

3. SERVICES TO BE PERFORMED. On an as-needed basis, the Attorney will provide professional legal services including the following:

- A. The Attorney will represent adult criminal defendants that a Court in Douglas County has determined to be indigent. The representation will include all stages of the criminal proceedings including bail hearings and other court appearances, appeals and revocation of probation or parole, but not post-conviction proceedings.
- B. The Attorney will provide legal representation for a child alleged to be delinquent or in need of supervision where a Court orders the appointment in accord with NRS Chapter 62A.
- C. Attorney agrees to perform the services of an attorney for a child, parent, or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.
- D. If at any time during the representation of a person the Attorney has reason to believe the person is not indigent, the Attorney must immediately notify the Court.

E. If at any time during the representation of a person the Attorney has reason to believe that there is a legal ethical conflict with that representation, the Attorney must immediately notify the Court.

F. If a defendant who is requesting appointed counsel due to indigence has contacted Attorney concerning retaining that Attorney for representation, that Attorney will not be obligated to accept that appointed case. The Attorney must notify the appropriate court, by letter, of the contact with the indigent defendant prior to the proposed appointment, and the next firm in the rotation will be appointed.

G. The Attorney shall perform all duties required under the Nevada Revised Statutes and by the Nevada Department of Indigent Defense Services, including standards of performance, record keeping, time keeping and reporting requirements. However, in no event shall the Attorney be required to provide any information that would compromise client confidentiality, prejudice the rights or defense of any eligible client or violate any provision of the Nevada Rules of Professional Conduct.

4. Standard Of Work.

A. In providing legal representation as set forth in Section Three, Attorney must provide those services in a professional, competent, and effective manner. This includes, but is not limited to, interviewing the client, appearing at all Court hearings or providing coverage for those Court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations. Attorney shall:

- (1) Provide zealous, competent representational services in all cases;
- (2) Comply with the requirements of the Nevada Department of Indigent Defense Services and the Nevada Indigent Defense ("DIDS") Standards of Performance and not accept cases for which the Attorney is not approved by DIDS;
- (3) Comply with all applicable laws and regulations;
- (4) Comply with the Nevada Rules of Professional Conduct; and
- (5) Comply with the Douglas County Plan for the Provision of Indigent Defense Services (attached as Exhibit "A").

B. Attorney agrees to staff and maintain an office in Douglas County, Nevada. Attorney agrees to furnish a telephone number for use after normal office hours in any emergency that may arise where Attorney's services are requested pursuant to the terms of this Contract to the Justice Courts, District Courts and District Attorney. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of Attorney's practice as required by this Contract are the sole responsibility of Attorney and are a part of Attorney's compensation pursuant to Section 6 of the Contract.

C. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

D. Attorney agrees to furnish to County a copy of the DIDS Eligible Provider Approval Letter (Exhibit "B") verifying the category of cases Attorney is authorized to accept.

5. PAYMENT FOR SERVICES.

A. **For Fiscal Year 2023-2024:** Attorney agrees to provide the services set forth in Paragraph 4 at a cost not to exceed Two Hundred Sixty-Five Thousand Dollars (\$265,000.00) through the term of this Contract. Payment shall be made by the County to the Attorney in four quarterly payments of \$66,250.00 to be paid on or before July 1, 2023, October 1, 2023, January 1, 2024 and April 1, 2024.

B. For legal services related to a child's welfare when a parent or other person is alleged to have abused or neglected a child, and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128, Attorney will be paid supplemental fees at the statutory rate for any work performed beyond ten (10) hours per case for appointments pursuant to NRS 128.100.

C. The Attorney may secure payment for extraordinary investigative costs, expert witness fees, forensic services, translators, laboratory analysis, or other legally necessary services if authorized in advance by the Douglas County Indigent Services Coordinator. Attorney understands and agrees that the reimbursement of these extraordinary costs is subject to the limits and requirements of NRS 7.135. Attorney agrees to submit invoices within ten days of the end of the prior month in which any extraordinary costs or other expenses were incurred and for which reimbursement is requested from the County. County will pay invoices it receives within a reasonable time. However, in no event will Attorney be reimbursed or receive payment for travel expenses or any form of per diem expense.

D. The compensation specified above is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court may, for the reasons specified in NRS 7.125(4), award extraordinary fees to Attorney in a particular matter, which are over and above the compensation specified provided that the statutorily prescribed procedures contained in NRS 7.125(4) are complied with.

6. TERMINATION OF CONTRACT.

A. Either Party may terminate this Contract without cause, provided that a termination shall not be effective until 90 calendar days after the Party has served written notice upon the other Party. All monies due and owing up to the point of termination of the Contract shall be paid by County, and all pending cases that were produced for this Contract must be immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Attorney will be reduced to the proportionate number of days worked by the Attorney. The Attorney must reimburse the County for any funds received to which they are not entitled due to the termination of the Contract.

B. If Attorney should be unable to perform any or all of the duties required by reason of illness, accident or other cause beyond Attorney's control, and the disability exists for a period beyond ten (10) judicial days, Attorney must provide, at Attorney's own expense, a substitute attorney (which could include other contract attorneys) to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of the Attorney's duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this Contract, and the respective duties, rights and obligations of this agreement will terminate.

7. **PROFESSIONAL LICENSE.** Attorney agrees to maintain his or her professional license to practice law in active status and in good standing for the State of Nevada. Attorney promises and agrees to notify the County Manager if Attorney is brought before the State Bar of Nevada on any ethics charge or if Attorney is arrested for any crime. Failure to maintain this license to practice law will result in the immediate termination of this Contract.

8. **GENERAL LIABILITY INSURANCE.** Douglas County's liability coverage will not extend to the Attorney and Attorney is required to acquire and maintain general liability insurance in the minimum amount of \$1,000,000 during the term of this Contract at Attorney's sole expense. Proof of insurance must be sent to the Douglas County Manager. Such proof of insurance must be provided at least annually throughout the term of this Contract and Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such insurance.

9. **LEGAL MALPRACTICE INSURANCE.** Attorney agrees to acquire and maintain malpractice insurance in the minimum amount of \$250,000 per claim and \$500,000 aggregate claims during the term of this Contract at Attorney's sole expense. Proof of malpractice insurance must be sent to the County within five (5) business days upon request. Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such malpractice insurance.

10. **NONAPPROPRIATION.** Nothing in the Contract will be construed to provide Attorney with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Attorney will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Attorney. Attorney will have no claim of any sort to the unexpended funds.

11. **CONSTRUCTION OF CONTRACT.** The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court. The Parties mutually agree to not seek punitive damages against either Party.

12. **COMPLIANCE WITH APPLICABLE LAWS.** Attorney promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws. County will not waive and intends to assert all available NRS chapter 41 liability limitations.

13. ASSIGNMENT. Attorney will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the Douglas County Indigent Defense Services Coordinator and must meet the qualifications under the Nevada Department of Indigent Services to represent the charged individual. If the Attorney wishes to have a substitute attorney appear for him or her due to vacation, illness or personal family matter, then the Attorney may do so and is responsible for paying the substitute attorney. There is no requirement to have the Douglas County Indigent Defense Coordinator approve such substitution if the substitution is for less than twenty-five judicial days per calendar year.

14. COUNTY INSPECTION. The accounting records and expense invoices of Attorney related to the Contract will be subject to inspection, examination and audit by the County, including, the County Manager and Chief Financial Officer to audit and verify the expenses claimed by Attorney.

15. DELEGATION OF AUTHORITY. The Judges of the Ninth Judicial District Court and the Justices of the two Townships are expressly designated the authority to oversee and implement the provisions of this Contract. Such designations include the development of factors for determining whether a person is indigent and all other properly related matters related to the appointment of indigent defense counsel. The Douglas County Indigent Defense Services Coordinator is expressly designated the authority to oversee and implement the provisions of this Contract. This authority includes the assigning of cases on a rotating basis among attorneys to ensure an equitable distribution, ordering/requiring monthly time summaries from attorneys, and preparing vouchers for the quarterly payments due to Attorney. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

16. INDEMNIFICATION OF COUNTY. To the fullest extent permitted by law, Attorney shall indemnify, hold harmless and defend County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Attorney, its officers, employees and agents arising from or relating to this Contract. Attorney will defend, hold harmless and/or indemnify County against such claims. Notwithstanding the obligation of Attorney to defend County as set forth in this paragraph, County may elect to participate in the defense of any claim brought against County because of the conduct of Attorney, its officers, employees and agents. Such participation shall be at County's own expense and County shall be responsible for the payment of its own attorney's fees it incurs in participating in its own defense.

17. MODIFICATION OF CONTRACT. The Contract and any attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

18. AUTHORITY. The Parties represent and warrant that they have the authority to enter into this Contract.

19. STANDARD OF CARE. Attorney will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of Attorney's profession currently practicing under similar conditions and in compliance with the standards established by the Nevada Department of Indigent Defense Services and as required under the terms of this Contract.

20. **THIRD PARTY BENEFICIARY.** Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party, or to otherwise allow a third party to assert a cause of action against either Attorney or County.

21. **NOTICES.** All formal notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

To County: Douglas County
Attn. County Manager
Post Office Box 218
Minden, Nevada 89423
Telephone (775) 782-9821

To Attorney: Matthew Fnee
1662 U.S Hwy 395, Suite 104
Minden, NV 89423
Telephone (775) 783-8501

IN WITNESS WHEREOF, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby

Attorney

By: 

Matthew Fnee, Esq.

5/1/23
(Date)

Douglas County

By: 

Jennifer Davidson

6/8/23
(Date)

Board of Indigent Defense Services

Approved 10/06/2021



The Douglas County Plan for the Provision of Indigent Defense Services

Adopted 9/16/2021

I. STATEMENT OF POLICY

A. Authorities:

1. NRS 180.320(2)
2. Nevada Department of Indigent Defense Temporary Regulation Section 23
3. In the matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT No. 411

B. Objectives

1. The objective of this Plan is to provide for equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services of appointed counsel, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense. The plan and any attorneys providing indigent defense services pursuant to this plan must be free from political and undue budgetary influence and be subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.

II. DEFINITIONS

- A. "Appointed Attorney" includes private attorneys, both contracted and hourly.
- B. "Appointed Counsel Program Coordinator" performs such duties and responsibilities as assigned by the County Manager as are reasonably necessary to oversee the program including assigning cases on a rotating basis among the contract Attorneys to ensure an equitable distribution; monitoring case reporting requirements from attorneys; approving of and overseeing the use of substitute attorneys for the contract Attorneys, and; all other properly related matters. As the Department of Indigent Defense's designee, this position will work in coordination with the Department of Indigent Defense Services to ensure requested data is provided to the Department.
- C. "Representation" includes counsel and investigative, expert and other services.

III. PROVISIONS OF REPRESENTATION

- A. Mandatory: Douglas County shall provide representation for any financially eligible person who:

1. Is charged with a felony or gross misdemeanor;
 2. is charged with a misdemeanor where jail time is mandatory or the prosecutor is seeking jail time;
 3. is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;
 4. is a juvenile alleged to have committed an act of delinquency or alleged to be a child in need of supervision;
 5. is party to a dependency case where termination of rights is a possibility;
 6. is subject to commitment pursuant to NRS 433A.310;
 7. is in custody as a material witness;
 8. is entitled to appointment of counsel under the Sixth Amendment to the U.S. Constitution or any provision of the Nevada Constitution, or when due process requires the appointment, or the judge is likely to impose jail time;
 9. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
 10. faces loss of liberty for criminal contempt;
 11. has received notice that a grand jury is considering charges against him or her and requests appointment of counsel.
- B. Discretionary: Whenever a court determines that the interests of justice so require, representation may be provided for any financially eligible person who:
1. Is charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized;
 2. is a party to a dependency case in which termination of parental rights is a possibility;
 3. is or has been called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 4. any other case in which the court determines in the interest of justice appointment of counsel is appropriate.

C. Timing of Appointment of Counsel: Counsel shall be provided to eligible persons:

1. within 72 hours as soon as feasible after their first appearance before a judge;
2. when they are formally charged or notified of charges if formal charges are sealed; or
3. when a Justice of the Peace or District Judge otherwise considers appointment of counsel appropriate

D. Number and Qualifications of Appointed Counsel:

1. one attorney shall be appointed consistent with Section 4 and 5 herein, except Capital Cases;
2. two attorneys shall be appointed consistent with Section 4 and 5 herein, as soon as possible in all open murder cases which are reasonably believed to result in a Capital Case;
3. at least one of the two attorneys appointed to represent defendants charged in Capital Cases must meet the minimum standard for lead counsel pursuant to Nevada Supreme Court Rule 250 and both attorneys appointed must conform to the performance guidelines or standards as adopted by the Nevada Supreme Court for Capital Cases.

E. Eligibility for Appointed Representation:

1. Financial Eligibility:

- (a) a person shall be deemed "indigent" who is unable, without "substantial hardship" to himself or his dependents, to obtain competent, qualified legal counsel on his or her own;
- (b) "substantial hardship" is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in public housing, or earn less than 200 percent of the Federal Poverty Guideline;
- (c) a defendant is presumed to have a "substantial hardship" if he or she is currently service a sentence in a correctional institution or housed in a mental health facility or is a minor;
- (d) defendants not falling below the presumptive threshold for indigency will be subject to a more rigorous screening process to determine if his or her particular circumstances, including seriousness of charges being faced, monthly expenses,

and local private counsel rates, would result in a “substantial hardship” were they required to retain private counsel.

2. Screening for Eligibility: Within 48 hours, the Court Administration, through Pretrial Services, or Appointed Counsel Coordinator, shall conduct screening for financial eligibility and provide a recommendation to the court with regard to eligibility of the defendant for the services of appointed counsel based upon the provisions set forth above. Appointed Counsel may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility.
3. Automatic Eligibility: A minor alleged to have committed an act of juvenile delinquency, or alleged to be a child in need of supervision is automatically eligible for appointed counsel because the presumption of indigency always accompanies any charges filed against a minor.

IV. APPOINTMENT OF PRIVATE ATTORNEYS

A. System of Selection for Court Appointed Counsel Attorneys

1. Annually, Douglas County will recruit attorneys to provide indigent defense services on a contract basis.
2. Recruitment will take place during the spring of each year, with annual contracts beginning July 1st of each fiscal year.
3. Attorneys interested in providing indigent defense services on a contract basis will provide Letters of Interest for consideration.
4. Attorneys must demonstrate compliance with the standards and regulations of the Board of Indigent Defense Services pertaining to training, education, and qualifications by submitting an application to the Department of Indigent Defense Services.
5. The Appointed Counsel Coordinator shall establish an Appointed Counsel Selection Committee (ACSC) to review the qualifications of applicants for contract or hourly appointments, to review the list of attorneys from which appointments are made in hourly cases, to determine which attorneys shall be recommended for appointments.
6. The committee shall be made up of five (5) members who:
 - (a) have no pecuniary interest in the outcome of the attorney selection or performance evaluation process;

- (b) have no legal, financial or familial relationship to any attorney whose qualification or performance will be evaluated;
 - (c) are not directly related to the judiciary or any prosecution function; and
 - (d) have an interest in the variety of types of cases that are represented by the appointed counsel lists to be selected by the Committee.
7. On an ongoing basis, the Committee shall:
- (a) meet at least once a year and shall solicit input from judges, and others familiar with the practice of criminal defense, juvenile law and family where appointed counsel are utilized;
 - (b) review any complaints from clients;
 - (c) review the history of participation in training of each applicant and each contract or hourly attorney receiving appointments; and
 - (d) determine eligibility and recommendation of appointed counsel for new and continued participation.
8. While appointed counsel may receive assistance from associate attorney's, participants in a mentorship program, or other attorneys deemed qualified by the ACSC, in carrying out his/her responsibilities, appointed counsel cannot delegate responsibilities for representation to another attorney. All substantive court appearances must be made by an attorney who has been determined to be qualified by the ACSC.
9. Complaints from clients, judges or the public about representation by appointed counsel shall be transmitted to the Coordinator for consideration by the ACSC in evaluation of appointed counsel.

B. Contract Attorneys

1. Douglas County shall contract for appointment of counsel;
2. Douglas County contract attorney compensation may be based on a flat fee, an hourly basis, or a combination of both. If the contract is based on a flat fee, the contract should consider, but not be limited to, the following factors:
 - (a) the average overhead for criminal defense practitioners in the locality;

- (b) the number of assignments expected under the contract;
 - (c) the hourly rate paid for all appointed counsel; and
 - (d) the ability of the appointed attorney to comply with the Performance Standards for Appointed Counsel as adopted and amended by the Nevada Supreme Court.
3. Douglas County shall contract with attorneys as appointed counsel only after the attorney has been qualified to enter into such a contract by the ACSC; and
 4. The contract must be subject to termination annually or sooner, if determined by the ACSC that a contract attorney is not abiding by the standard guidelines for qualification of appointed counsel; and
 5. The payment of fees and expenses of contracted appointed counsel by Douglas County shall be governed by contract between counsel and Douglas County.
 6. The contract shall exclude appointment in cases with the potential of a life sentence and capital cases.

C. Hourly and Capital Case Attorneys:

1. If contract counsel cannot handle the case; or the Appointed Counsel Program Coordinator determines the case is not appropriate for contract counsel to handle, alternative counsel will be selected by the Appointed Counsel Program Coordinator as follows:
 - (a) The Appointed Counsel Program Coordinator shall select this alternative appointed counsel, in consecutive order, from the hourly list, except
 - (b) If the nature of the case requires lead counsel be selected from the Capital Case list, the Appointed Counsel Program Coordinator, in consecutive order, shall select from the Capital Case list;
 - (c) The Appointed Counsel Program Coordinator shall select Second Chair counsel for a capital case: counsel may be selected next in order from the Hourly list, if the attorney qualifies under Supreme Court Rule 250 for second chair selection, or the Capital Case list.
2. The payment of fees and expenses of Hourly and Capital Case appointed attorneys shall be approved by the Appointed Counsel Program Coordinator.

(a) Such invoices shall be submitted no later than ten days after the end of the month in which the services were rendered.

(b) The Coordinator shall approve for payment all reasonable attorney's fees requested. In reviewing for reasonableness, the Coordinator may consider factors such as: the average case times as determined by workload analysis, time and skill required, complexity of the case, and experience and ability of the Qualified Attorney(s). The Coordinator may request additional information where necessary. In the event the Coordinator denies or modifies the request, an explanation shall be provided to the Qualified Attorney, with a copy to the County Manager and the Department of Indigent Defense Services, as to why the denied portion was not reasonable. Such denials shall be subject to judicial review pursuant to NRS 7.135.

D. Compensation of Court Appointed Counsel: Douglas County agrees to pay contract attorneys and/or panels of private attorneys up to the sum of One Hundred Ninety-Five Thousand Three Hundred and thirty-three Dollars and thirty-three Cents (\$195,833.33) per year. The County will make the payment to contract attorneys and/or panels of private attorneys on a quarterly basis on the first day of the first month of the quarter.

E. Conflict of Interest Checks: Appointed Counsel shall, as soon as practicable, upon appointment, conduct a conflict check determining if any conflict of interest exists that would prevent representation of the defendant. If appointed, counsel determines that such a conflict exists, the appointed counsel shall bring this information as soon as possible to the relevant court. In no instance, shall a single attorney or law firm be appointed to represent co-defendants in a case. The Douglas County District Attorney's office shall have no authority to determine or recommend whether or not the appointed counsel has a conflict of interest.

F. Payment of Fees and Expenses of Appointed Counsel: Douglas County agrees to budget for case-related expenses in the amount of \$100,000. Attorneys may secure reimbursement for extraordinary investigative costs, expert witness fees or other necessary services. Any payment for extraordinary costs or fees shall be paid only when submitted and approved by the Appointed Counsel Program Coordinator.

1. Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:

(a) Pre-authorization: Case-Related Expenses expected to exceed two thousand five hundred dollars shall be submitted to the Coordinator for pre-authorization. The request shall include an explanation of why the expense is reasonably necessary to provide Representational Services

2. Reasonableness Review: All Case-Related Expenses are subject to the Coordinator's review for reasonableness. Invoices shall be submitted for such review no later than thirty days following the termination of the representation. Any requests for expenses not timely submitted shall be waived.
- G. Privileged Communications: County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or otherwise privileged communications between indigent criminal defense client and appointed counsel.
1. Within the Judicial Law Enforcement Center (JLEC) in Minden, private meeting rooms are available for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.
 2. Within the Tahoe Township Justice Court in Stateline, private meeting rooms are available for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.
- H. Complaints by Clients: Appointed Counsel shall maintain a system for receipt and review of written complaints made by clients. Appointed Counsel shall make publicly available the policy and procedure for receiving and reviewing written complaints. This system shall not interfere with a person's ability to avail themselves of the complaint process provided by the Department of Indigent Defense Services (DIDS) or Nevada State Bar.

V. TRAINING

- A. Appointed Counsel must meet all requirements for training and experience as promulgated in the Nevada Department of Indigent Defense Services regulations.

VI. DUTIES OF INDIGENT DEFENSE COUNSEL

- A. Standards of Performance. Services rendered by Appointed Counsel shall be commensurate with those rendered if counsel privately employed by a person. Representation shall be provided in a professional, skilled manner guided by applicable regulations; laws; Nevada Rules of Professional Conduct; and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2008 Nevada Supreme Court Order in Administrative Docket 411, or the same as may be amended. Additionally, Appointed Counsel must advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless doing so is the client's best interest. Appointed Counsel must make all reasonable efforts to meet with the client within seven

days following the assignment of the case and every thirty days thereafter unless there are no significant updates in the client's case.

- B. Continuity of Representation: Douglas County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants so that the same Appointed Counsel represents a defendant through every state of the case without delegating the representation to others, except that administrative and other tasks that do not affect the rights of the defendant.
- C. Workload Standard: The workload of an Appointed Counsel must allow the Appointed Counsel to give each client the time and effort necessary to ensure effective representation. Any Appointed Counsel who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the Appointed Counsel's competence, diligence, or representation of clients. Douglas County will provide the maximum workload guidelines as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.
- D. In Custody Arraignments: The Appointed Counsel Program Coordinator shall ensure the provision of Representational Services for all Eligible Clients who are in custody and require a bail hearing. If the Coordinator is unable to assign an attorney to be present at initial appearances and arraignments, the Coordinator may be present. Either the assigned attorney or Coordinator must be prepared to address appropriate release conditions in accordance with relevant statute, rules of criminal procedure and caselaw. If the Coordinator provides these services, they should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of the defendant. This plan ensures the presence of counsel at all other critical stages, whether in or out of court.
- E. No Receipt of Other Payment: Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment unless such payment is approved by order of the court.
- F. Private Practice of Law: Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to the contract.
- G. Use of Client Surveys: Appointed Counsel shall maintain a system for providing Client Surveys to their clients. Appointed Counsel shall make publicly available the policy and procedure for providing surveys. This system shall not interfere with a person's ability to avail themselves of the Client Survey form provided by the Department of Indigent Defense Services (DIDS).

- H. Caseload Reporting: Appointed Counsel shall report caseload data and times as promulgated in the Nevada Department of Indigent Defense Services regulations.

VII. APPOINTED COUNSEL PROGRAM COORDINATOR

- A. Selection: Douglas County will contract with a lawyer to serve as the Appointed Counsel Program Coordinator. The terms of this contract will be determined by this plan, Douglas County, and the Appointed Counsel Program Coordinator, but in no event will this Appointed Counsel Program Coordinator be directly involved in direct representation in appointed counsel cases.

- B. Duties:

1. The Appointed Counsel Program Coordinator shall have all the duties and responsibilities stated in the various sections of this plan.
2. The Appointed Counsel Program Coordinator shall maintain the list of all attorneys approved by the ACSC for contract, hourly, and capital case appointment. In addition, the Appointed Counsel Program Coordinator shall maintain appropriate records to reflect the cases and dates to which each attorney has been appointed.
3. When notified of the need for representation, the Appointed Counsel Program Coordinator, shall select, in order and as more fully described herein, the next available attorney from the list of those attorneys qualified to provide representation as approved by the Committee in accordance with Section 4 of this Plan. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Coordinator shall provide prompt notice and a proposed order confirming selection of counsel to the Appointing Authority – i.e., the Judge, Justice, or Master presiding over the court in which the Eligible Client’s charges are pending.
4. The Appointed Counsel Program Coordinator 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.
5. The Appointed Counsel Program Coordinator will work with the Department of Indigent Defense Services to provide any information requested.

VIII. EFFECTIVE DATE

- A. The Douglas County Plan for the Provision of Indigent Defense Services is approved on this the 16th day of September, 2021.

Steve Sisolak
Governor



Marcie Ryba
Executive Director

Jarrold Hickman
Deputy Director

Thomas Qualls
Deputy Director

**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578
Phone: (775) 687-8490 | dids.nv.gov

June 11, 2021

Mr. Matthew Ence
Ence Law, LTD.
1662 U.S. Highway 395 North, Suite 104
Minden, Nevada 89423

RE: Application for list of eligible providers

Dear Mr. Ence,

Thank you for submitting your application for inclusion on the Department's list of eligible indigent defense providers. In turn, counties will use the list to select counsel for contracts or panels of appointed counsel as part of their plan for indigent defense services. NRS 260.070. County plans will be submitted to the Board on Indigent Defense Services by September 3, 2021. Until plans are submitted and approved, it is anticipated that appointments will occur in the usual manner.

Date of Application: May 18, 2021

Jurisdictions: Douglas

Categories Approved: (1) Misdemeanor; (2) Gross Misdemeanor and Category E, D, C, and B (for which the maximum penalty is 10 years or less) felonies; (3) Category B (for which the maximum penalty is 10 years or more) and non-capital Category A felonies; and (4) Juvenile.

If you disagree with this determination, you may submit a request for reconsideration within 30 days of receipt of this notice. Please include the basis for the reconsideration in the request. The Board on Indigent Defense Services will review any request for reconsideration submitted at the next scheduled meeting.

Sincerely,

/s/ Jarrold Hickman
Jarrold Hickman
Deputy Director

Douglas County State of Nevada

- CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

gth day of June, 2021

By *Emmy Dombrowski* Deputy