



WASHOE COUNTY

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STAFF REPORT
BOARD MEETING DATE: April 26, 2005

DATE: April 22, 2005
TO: Board of County Commissioners
FROM: John Berkich, Assistant County Manager

THROUGH: Katy Singlaub, County Manager

SUBJECT: Possible reconsideration of the composition of the Selection Committee for the Public Defender, to include, but not be limited to, action to create additional seats (voting or non-voting) on the Committee and to appoint interested persons to those seats.

SUMMARY

At its meeting of April 19, 2005 the Board asked that an item be placed on its next agenda to allow it to possibly reconsider the composition of the Selection Committee for the appointment of a Public Defender. The Board does have various alternatives, should it choose to reconsider the composition.

PREVIOUS ACTION

On February 22, 2005 the Board approved the formation of the Selection Committee. On April 19, 2005 the Board asked that an agenda item be placed on its next meeting to allow it to consider suspending its rules to reconsider the Committee composition.

BACKGROUND

On February 22, 2005 the Board approved the formation of the Selection Committee and the process to be used in the final appointment of the Public Defender by the Board pursuant to County Code Chapter 5.439 and NRS 260.010. The composition of the Committee included Commissioners Humke and Sferrazza, Chief Judge Polaha and District Attorney Dick Gammick.

On April 19, 2005 the Board received various comments under public comment expressing concern with the composition and the lack of diversity on the Committee. Subsequently, the Board asked that possible action to reconsider the composition be agendized for this meeting.

As to the composition of the Committee, the Board may consider the following options:

- Take no action and proceed with the selection process with the current membership on the Committee;

- Abolish the current Committee and appoint a new Committee;
- Expand the current Committee by appointing individuals from the attached listing who have expressed an interest in serving;
- Appoint a second Committee from the attached listing whereby the Committee develops a two-stage selection process; or
- Abolish the Committee and the full Board would complete the selection process and make the appointment.

In response to the Board's action and to be sure that all potentially interested applicants have adequate time to apply, staff has revised the schedule for the selection process by extending the deadline for filing until May 13th. (See attached revised timeline dated April 21, 2005.)

Finally, staff has attached letters from the National Association of Criminal Defense Lawyers and from the National Legal Aid and Defender Association, together with a copy of the American Bar Association's "Ten Principles of a Public Defense Delivery System". The letters raise specific concerns, including:

- The Chief Judge's membership on the Committee;
- The fact that more than half of the members are political officials or appointees;
- The District Attorney's membership on the Committee;
- The absence of Committee members from organizations representing minority constituencies; and
- The absence of a representative from the criminal defense bar.

FISCAL IMPACT

Unknown

RECOMMENDATION

Staff recommends that the Board consider expanding the Committee to a membership of seven, thereby appointing three additional members from the attached list of interested individuals.

POSSIBLE MOTION

Should the Board agree with the recommendation, a possible motion would be, move to expand the Selection Committee for the Public Defender by an additional three members selected from the attached list of interested individuals.

PUBLIC DEFENDER SELECTION COMMITTEE CANDIDATES

The following qualified individuals have expressed an interest in becoming members of the selection committee to recommend applicants for the Commission's consideration in the appointment of a new Public Defender.

<u>Name</u>	<u>Title/Position</u>
• Mr. Vito Delacruz, Esq.	Assistant Federal Public Defender
• Mr. Stephen McGuire, Esq.	State of Nevada Public Defender
• Mr. Roberto Puentes, Esq.	Criminal Defense Attorney
• Mr. Herb Santos Sr., Esq.	Criminal Defense Attorney
• Mr. Thomas Vilorio, Esq.	Criminal Defense Attorney
• Ms. Cheryl Field-Lang, Esq.	Criminal Defense Attorney
• Mr. Teo Gamboa, Esq.	Criminal Defense Attorney
• Mr. Patrick Flanagan	Attorney
• Scott Freeman *	Attorney
• Mary Boetsch *	Attorney & Former Head of the State Ethics Committee
• David Gamble *	Administrator for the National Council of Juvenile & Family Court Judges
• Theresa Navarro *	Gang Intervention & Real Estate
• Rayna Brachman *	Family Law Background

* Names submitted per Richard Siegel ACLU



WASHOE COUNTY DEPARTMENT OF HUMAN RESOURCES
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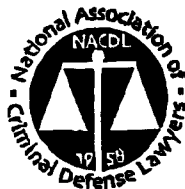
Date: April 21, 2005
To: John Berkich
From: Joanne Ray
RE: Revised timeline for Public Defender Recruitment

Based on the Board's actions on Tuesday, April 19, 2005, the timelines for the Public Defender Recruitment have been revised as follows:

DATE	ACTIVITY
3/23/05 - 5/13/05	Continued Recruitment including advertising on HR Website, Nevada Bar Association (web and direct mail), WRIT publication, and Clark County comparable Bar Association Website
5/03/05	Tentative date for meeting with revised screening committee to review/confirm process
5/13/05	Filing Deadline
5/16/05	Tentative distribution of binders and all candidate materials to Screening Committee members by noon on 5/16/05 to review qualifications of candidates
5/25/05	Screening Committee meets to discuss qualifications of candidates and to identify top candidates to be interviewed by the Screening Committee
5/26/05	HR begins conducting Reference and Background checks on top candidates
6/02/05-6/03/05	Screening Committee interviews top candidates and makes recommendation of top candidates to be interviewed by BCC
6/14/05	BCC interviews top candidates for Public Defender and makes appointment subject to the results of the fingerprint check through State System

Please note that the expanded screening committee may change any of the above based upon their availability and the screening process they identify. The recruitment and selection process will be conducted in accordance with the State of Nevada's Open Meeting Law. If you have any questions or concerns regarding the above, please do not hesitate to contact me.

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April 19, 2005

Via Fax: 775.328.2037
Ms. Katy Singlaub
Washoe County Manager
1001 E. 9th Street
Reno, NV 89512

Re: Washoe County Chief Public Defender Search Committee

Dear Ms. Singlaub,

On behalf of the National Association of Criminal Defense Lawyers,¹ we write to bring to your attention certain deficiencies with the county's chief public defender search committee and to request that the composition of the search committee be changed.

As we understand it, the search committee is composed of two county commissioners, the district attorney, and one area judge. We further understand that all of the members of the commission are men, and that there is no minority representation on the commission. As currently composed, the search committee violates nationally recognized standards on ethics and public defense systems.

NACDL's specific objections to the composition of the search committee include: (1) the involvement of the district attorney; (2) the

¹ The National Association of Criminal Defense Lawyers (NACDL) is the only national bar association working in the interest of public and private criminal defense attorneys and their clients. Founded in 1958, NACDL's mission is to ensure justice and due process for the accused; to foster the integrity, independence, and expertise of the criminal defense profession; and to promote the proper and fair administration of justice. NACDL has more than 13,000 members nationwide—joined by 90 state, local, and international affiliate organizations with another 35,000 members—including private criminal defense lawyers, public defenders, and law professors committed to preserving fairness within America's criminal justice system.

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NACDL

APR 19 2005 10:12AM

number of elected officials serving on the committee; (3) the lack of any women or people of color on the committee; and (4) the absence of criminal defense attorneys on the search committee. We will address each of these objections in turn.

The district attorney, as the adversary of the chief defender, should have absolutely no role in choosing the chief defender. The conflict of interest is clear. For this reason, NACDL ethics opinion 95-1, copy attached, forbids a district attorney from having any involvement in the operation or administration of the public defender's office. The district attorney should be removed from the search committee.

Maintaining the independence of the defense function requires that the process for selecting the chief defender be free of political pressure or political influence. See ABA Ten Principles; Principle 1 and Commentary. The chief defender must be chosen in a manner that ensures that irrelevancies, including political party affiliation and contributions, are not considered. See NLADA Guidelines for Legal Defense Services 2.12. As currently composed, all four members of the commission are elected, political officials. To be appropriately insulated from political influence, or the appearance thereof, less than half of the search committee should be political officials or political appointees.

The search committee for a chief defender should also reflect the community that the defender will serve. See NLADA Guidelines for Legal Defense Services 2.12. According to the census bureau, the population of Washoe County is 73% Caucasian, 17% Hispanic, 2% African American, 2% Native American and 6% mixed race or other. Despite this significant minority population, there are no representatives from minority communities on the committee. Similarly, there are no women on the committee. The committee should be expanded to include representatives from organizations representing these constituencies.


Finally, the absence of a representative of the criminal defense community is particularly troubling to NACDL. Criminal defense is a unique specialty within the bar, and having someone with ongoing experience in this field is essential. For this reason, the committee should be expanded to include at least one representative from the criminal defense bar.

NACDL strongly urges that the composition of the Washoe County Chief Defender Search Committee be reconsidered and that changes be made to bring the committee into compliance with national standards.

Very truly yours,



Barry C. Scheck
President
National Association of Criminal Defense Lawyers



Malia N. Brink
Indigent Defense Counsel
National Association of Criminal Defense Lawyers

Cc: Commissioner Jim Galloway (Via Fax: 775.328.2037)
Commissioner David Humke (Via Fax: 775.328.2037)
Commissioner Pete Sferrazaa (Via Fax: 775.328.2037)
Commissioner Robert Larkin (Via Fax: 775.328.2037)
Commissioner Bonnie Webber (Via Fax: 775.328.2037)

A. Professional independence of criminal defense lawyers and public defenders

The Supreme Court has long stressed the professional independence of criminal defense lawyers. It is a constitutional mandate under the Sixth Amendment's provision for the right to counsel.⁶ The Court said in *Polk County v. Dodson*:

First, a public defender is not amenable to administrative direction in the same sense as other employees of the State. Administrative and legislative decisions undoubtedly influence the way a public defender does his work. State decisions may determine the quality of his law library or the size of his caseload. But a defense lawyer is not, and by the nature of his function cannot be, the servant of an administrative superior. Held to the same standards of competence and integrity as a private lawyer, see *Moore v. United States*, 432 F.2d 730 (CA3 1970), a public defender works under canons of professional responsibility that mandate his exercise of independent judgment on behalf of the client. "A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services." DR 5-107(B), ABA Code of Professional Responsibility (1976).¹¹

11. . . . The rule is "mandatory in character," and a lawyer who violates it would be subject to "disciplinary action" by the Iowa courts. . . . See *Sanchez v. Murphy*, 385 F.Supp. 1362, 1365 (Nev. 1974) ("the personal attorney-client relationship established between a deputy [public defender] and a defendant is not one that the public defender can control. The canons of professional ethics require that the deputy be "his own man" irrespective of the advice or pressures of others. A deputy public defender cannot in any realistic sense, in fulfillment of his professional responsibilities, be a servant of the public defender. He is, himself, an independent officer.

Second, and equally important, it is the constitutional obligation of the State to respect the professional independence of the public defenders whom it engages. This Court's decision in *Gideon v. Wainwright*⁹ established the right of state criminal defen-

dants to be "guiding hand of counsel at every step in the proceedings against [them]."⁶ Implicit in the concept of a "guiding hand" is the assumption that counsel will be free of state control. There can be no fair trial unless the accused receives the services of an effective and independent advocate.⁷ *Dodson* concerned whether the action of a public defender in conducting a criminal defense is "state action" under 42 U.S.C. § 1983, and the Court concluded that it was not. In a case involving prison medical care providers being "state actors," *West v. Atkins*,⁸ the Court elaborated some about *Dodson* in distinguishing between public defenders and prison medical care providers as state actors:

While performing his duties, the public defender retains all of the essential attributes of a private attorney, including, most importantly, his "professional independence," which the State is constitutionally obliged to respect. *Id.*, at 321-322. A criminal lawyer's professional and ethical obligations require him to act in a role independent of and in opposition to the State. *Id.*, at 318-319, 320. The Court accordingly concluded that when representing an indigent defendant in a state

(Cont'd next page)