

CARSON CITY AUDIT COMMITTEE
Minutes of the November 20, 2012 Meeting
Page 1

DRAFT

A regular meeting of the Carson City Audit Committee was scheduled for 3:00 p.m. on Tuesday, November 20, 2012 in the Community Center Sierra Room, 851 East William Street, Carson City, Nevada.

PRESENT: Chairperson Michael Bertrand
Vice Chairperson William Prowse
Member Kenneth Brown
Member John McKenna
Member Robert Parvin

STAFF: Nickolas Providenti, Finance Department Director
Shari Russell, Accounting Manager
Randal Munn, Chief Deputy District Attorney
Kathleen King, Deputy Clerk / Recording Secretary

NOTE: This excerpt is provided at the request of Finance Department and City Manager's Office staff. A recording of the entire proceedings, the committee's agenda materials, and any written comments or documentation provided to the recording secretary during the meeting are part of the public record. These materials are available for review, in the Clerk's Office, during regular business hours. A full set of minutes will be presented to the Audit Committee for review and approval.

1 - 2. CALL TO ORDER AND ROLL CALL (3:00:12) - Chairperson Bertrand called the meeting to order at 3:00 p.m. Roll was called; a quorum was present.

7. PRESENTATION, DISCUSSION, AND POSSIBLE ACTION TO ACCEPT THE PUBLIC DEFENDER COST AND UTILIZATION STUDY PREPARED BY MOSS-ADAMS, LLC (3:19:10) - Chairperson Bertrand introduced this item. Mark Steranka, of Moss-Adams, LLC, provided an overview of and background information on this item. He presented the draft cost and utilization study which was included in the agenda materials in conjunction with displayed slides. He responded to questions of clarification at various points throughout the presentation.

In response to a question, Mr. Steranka estimated a savings of \$100,000 to \$370,000 "depending on ... the decision ... on the number of attorneys." He clarified "that range narrows depending on the level of resource to that." He expressed the opinion that six to seven attorneys are legitimate. "There are certainly trade offs. There are economic trade offs versus overall resource level trade offs." In response to a further question, Mr. Steranka explained that "under the current model, the courts contract with three conflict attorneys." He assumed that "under a contracted model, the courts would contract with six or seven contract attorneys. So the administration is comparable. There are going to be more parties involved which ... would be legitimate to say would increase administrative effort." Mr. Steranka suggested that corresponding increases to administrative costs would "depend [on] whether you'd need more people to do it. ... there would certainly be more administrative effort associated with that just by the mere fact that you have more resources you're contracting with." Mr. Steranka acknowledged the understanding that, under the current model, the costs of any appeal to the Nevada Supreme Court are covered by the Nevada State Public Defender's Office. He further acknowledged that "this is just strictly taking what's happening today and applying what we paid for it and what we could have paid for it, possibly, by doing it a different way." He further acknowledged other variables which would be subject to speculation relative to impact.

CARSON CITY AUDIT COMMITTEE
Minutes of the November 20, 2012 Meeting
Page 2

DRAFT

He agreed that it would be “just as easy to speculate that we could save \$400,000 or we could end up paying \$40 million, depending upon ... the roll of the dice in the future. But, if we went with the public defender’s office and the model stayed the same, which is a big assumption, we wouldn’t have that upside risk.”

(4:02:15) Nevada State Public Defender (“NSPD”) Diane Crow introduced herself, for the record, and referred to the materials which were provided to the committee members and staff prior to the start of the meeting. In response to a question, she was uncertain as to the number of appeals over the past five years or the associated costs. She offered to research the information and provide it at a later date.

In response to a question, Mr. Steranka advised of the intent “to update the draft to reflect some of the information provided by the NSPD’s Office and ... the courts ... Relative to a regional model, all-state model,” Mr. Steranka respectfully noted “that’s not part of our scope. If the City wanted to look at it, we could certainly help, ... but those aren’t ... within your current ability to do ...”

Based on the presentation, Chairperson Bertrand noted a trend “of counties moving toward either a contract model or doing it themselves.” In response to a question, Ms. Crow advised that Pershing and Humboldt Counties “opted out ... four years ago and Pershing County contacted [the NSPD] two years ago for a bid and that’s when Carson City was on the edge of not knowing what to do. Ultimately, [the NSPD] could not provide ... a bid amount because [she] didn’t know if Carson City was going to be in or out ... So, they stayed with their county public defender. Shortly thereafter, the District Attorney filed a murder case. The county public defender went to the county commissioners and said, ‘I’m not qualified to do this. I can’t handle this case by myself.’ They had to hire an attorney out of Reno at \$100 an hour to travel back and forth and hold his hand. So, yes, there have been regrets.” Ms. Crow pointed out that she has “been the NSPD for 23 years. And every time a county has pulled out, it’s mostly based on political reasons.”

Member Parvin acknowledged the costs presented, but was uncertain as to “what the problem was in the first place.” He expressed appreciation for the five-year summary, but a preference to have known the number of cases processed and the number handled by the contract attorneys. Mr. Steranka explained the reluctance to consider cases “because there are so many different types ...; they’re so varied in nature and really ... getting caught in trying to make judgments relative to cases. ... we’re at a disadvantage in that we don’t have full information from the conflict attorneys on what all they have handled so we don’t have a complete and accurate picture of the whole mix.” In response to a further question, Mr. Steranka reiterated that the auditors were not able to get the information from either the courts or from the conflict attorneys. Ms. Crow explained that the NSPD does not forward cases to the conflict attorneys; the courts do. “The process is, the court will appoint the State Public Defender. When we get enough information in the police reports or as to witnesses, victims and that sort of thing, if any of those witnesses, victims are clients of the State Public Defender, then we have a conflict and we send a motion to the court saying this is why we can’t represent this current defendant and then the court will appoint it to the conflict attorneys, the three as a group and one of the secretaries, then, just rotationally passes out the cases, is my understanding.” In response to a further question, Ms. Crow expressed the understanding that “when we looked at this back in 2007, the court actually did a calculation and the court calculated, then, that the State Public Defender handled 85 percent of the cases and the three conflict attorneys handled five percent each for the other 15 percent.” Ms. Crow was uncertain as to whether the ratio has changed over the last five years.

In response to a previous question, Mr. Steranka’s assistant advised that 1205 hours were spent on state appeals in the last year, done by two attorneys in the NSPD’s office. In response to a question, Ms. Crow explained that cases handled by the District Attorney’s Office could not be compared to cases handled by

CARSON CITY AUDIT COMMITTEE
Minutes of the November 20, 2012 Meeting
Page 3

DRAFT

the NSPD. She explained that “the ... District Attorney’s Office has control over what they charge and how they charge it. We get what we get. We’re caught in the middle between the District Attorney’s Office and our client. We have a duty to our client to advocate zealously for they want to see happen which is, most of the time, not terribly realistic but we work between the two. The District Attorney’s Office has the power to either negotiate a case or not negotiate a case and the increase in hours that we’ve seen has been because there’s been less negotiation. The City can foresee increased trial costs because we’re not going to recommend to our client that they plead guilty to a crime if there’s no benefit in pleading guilty, whereas they can take it to a jury trial. They may win, they may lose, but then they still have the appeal process if there’s any mistakes made. The ... prosecutor, the DA’s Office, has a list of elements in each crime ... that they have to prove. It’s just rote ... We have to use a little creativity to figure out why there’s a defense to this case. There may be, there may not be, but we have to go out and do the investigation. I have two full-time investigators for Carson City and Storey County. The Storey County investigation is ... minimal at best. ... And their time is calculated in the cost that you see in the report. It’s not just the attorney hours. The District Attorney’s Office has an in-house investigator. They also have a hundred-plus-man Sheriff’s Office that goes out and does the original reports and can follow up on all the other reports. So, our time ... that we have to spend on a case is pretty much determined by the District Attorney’s Office and, with a lack of negotiation ongoing, the hours go up.” In reference to the materials provided by the NSPD’s Office, Ms. Crow pointed out that “you can see that the cost per hour has gone down while the hours have gone up to Carson City.”

(4:16:59) Deputy District Attorney Mark Krueger thanked the Moss-Adams, LLC representatives and the committee for conducting the audit. He emphasized the importance of everyone understanding that “this is about providing the best indigent defense at the most reasonable cost to the City.” Mr. Krueger commended Mr. Steranka’s objectivity and recognition that “there are other factors ... that make it difficult because of the subjective nature of some of the underlying issues.” In consideration of the questions asked, Mr. Krueger noted that the “scales of justice are always offset ... because the State has a higher burden of proof to prove its case beyond a reasonable doubt. And those words, ‘beyond a reasonable doubt,’ ... take on a huge burden. ... long before anybody at the Public Defender’s Office, any defense counsel, long before anybody even knows, we have to make that initial determination: is this a case that we can prove. And that’s our general policy; charge what you can prove, make them plead to the top count. So if you’re trying to charge what you can prove and it’s proved beyond a reasonable doubt, you’re going to put a lot of work up front. We’re going to make a good, clean charge, make a reasonable negotiated offer, and if it has to go to trial, we’ll go to trial. Then, throughout the course of the trial, we provide all the evidence ... to the defense. ... After that, there is an appellate process. We touched on this appeal issue and the cost. Remember that the Public Defender’s Office has two appellate deputies inside. Other counties and this City could contract with a private contract attorney to include appellate costs. But, at the end of the day, when all the appeals are exhausted, there’s one little appeal that happens and it’s a writ of ineffective assistance of counsel. ... The defense counsel, whoever it is, whether it’s a private contract attorney, whether it’s the Public Defender’s Office, they don’t ... have to sit on that because they’re the ones being accused of being ineffective. So that means the court appoints yet another attorney. But the State continues to handle those ineffective assistance counsel cases which means we have additional work at the end. So, we’ve got to work up front, we’ve got the same amount of work during the course of this trial, and then we have additional work at the end. Yet, we have the same amount of attorneys to handle all of this in addition to the appeals.”

Mr. Krueger advised of having come from Lyon County “where they do have one of these contracts in place and it works very efficiently and there aren’t any complaints out there. In fact, with such a geographically dispersed county, it actually has assisted the ... county as a whole.” He further advised that

CARSON CITY AUDIT COMMITTEE
Minutes of the November 20, 2012 Meeting
Page 4

DRAFT

“in Lyon County, with those three contract attorneys, we did more jury trials than Carson City did in the last five years. So to say that ... those people can’t cover those costs ... in that contract amount just is not right.” Mr. Krueger advised that “the first option or the third option are both potential cost savings. And that’s what’s important ... the cost savings with legitimate indigent defense.” He further advised that any licensed attorney is “per se qualified to be a defense counsel.” He acknowledged the subjectivity associated with the word “qualified,” and clarified that capital murder cases require a special qualification under the Nevada Supreme Court rules. In response to a question, he advised that the Carson City District Attorney’s Office has lost full-time employees “in nearly every budget” over the last five years. He was uncertain as to whether the loss represented attorneys or support staff, and offered to research the matter. He advised that he is in the process of updating the District Attorney’s Office case management software. “When we get [the software upgraded] ... we should have the ability to pull some of the data ... out of the system.” Mr. Krueger further advised that the District Attorney’s Office is “making changes to the way that we have been processing cases in Carson City and, by making those changes, we should actually see increased efficiency, both at the District Attorney’s Office, at the courts, and through any defense counsel.”

In response to a question, Mr. Steranka reviewed the costs associated with the NSPD services, at page 6 of the draft report. In response to a further question, Ms. Crow reviewed the costs, reflected at page four of her report. In response to Mr. Krueger’s presentation, she advised that the NSPD’s Office receives a number of “phone calls ... from disgruntled defendants in Lyon County. ... [She] has also received calls from the district court judges in Lyon County that they are not happy with the service that they have out there. But then, commissioners look at bottom line costs, not necessarily quality, and [she] asked Carson City to definitely look at quality.”

Chairperson Bertrand entertained public comment and, when none was forthcoming, a motion. In response to a question, Mr. Steranka reiterated that the report included in the agenda materials had yet to be finalized. He further reiterated the intent to incorporate some of the NSPD’s information, and suggested the committee take action “with the understanding as to how the report would be amended which is the recommendations are going to be the same. There is just going to be a broader range of potential cost savings reflecting both 6 and 7, which it does today, but both the budgeted and the refunded amounts plus some slightly higher expenses which makes the cost savings lower, which is reflected here. So, same report with just some additional data.” Vice Chairperson Prowse noted that Ms. Crow had offered to provide information relative to appeals. Mr. Steranka acknowledged that this information could be incorporated as well.

In response to a question, Mr. Munn provided direction with regard to the committee’s possible action and a brief discussion followed. Chairperson Bertrand again entertained a motion. **Vice Chairperson Prowse moved to accept the draft report Public Defender Cost and Utilization Study, with the inclusion of the items discussed during this meeting, with the understanding that the report’s recommendations will remain the same, to be passed on to the Board of Supervisors with the approval by the audit committee. Member Brown seconded the motion.** Chairperson Bertrand entertained discussion. Member Parvin expressed the opinion that “some of the recommendations ... would be very fine in terms of ... negotiat[ing] with the State for better prices, but when you change the data, the recommendations may not be the same and ... we’re going too far in deciding the answer before we have the question.” A brief discussion followed, and Chairperson Bertrand called for a vote on the pending motion. **Motion carried 3-2.**