



*The unwavering voice for public defense throughout the nation*

*Tim Young*  
*Chair, Steering Committee*

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Nick Marano, Carson City Manager  
Carson City Hall  
201 North Carson Street, Suite 2  
Carson City, Nevada 89701

Dear City Manager Marano,

The National Association of Public Defense (NAPD) is a membership organization exclusively dedicated to improving the right to counsel throughout the United States<sup>1</sup>. With over 40 organizational memberships and 6,500 members, NAPD brings together a community of public defender professionals (attorney and non-attorney) working in a variety of public defense delivery systems in order to create and disseminate practical, relevant solutions to the many challenges threatening poor people's access to justice. As an organization of practitioners, our membership is "the expert" on public defense issues, and we appreciate the opportunity to share our collective experience on the flat-fee contracts that you are considering in Carson City.

NAPD endorses the American Bar Association's *Ten Principles of a Public Defense Delivery System*<sup>2</sup> as the structural foundation for effective public defense delivery. Of course, the effective delivery of public defense services is absolutely essential to the ability of the larger criminal justice system to provide outcomes that are fair, accurate, swift and final. Public defenders provide representation for at least 80% of the jurisdiction's accused.

Flat fee contracts are explicitly rejected in the commentary of ABA *Principle #8*: "Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative, and other litigation support services." There are additional footnotes to elaborate upon this recommendation in the *Ten Principles*; and the NAPD firmly supports its rejection of flat fee contracts.

Flat fee contracts that fail to account for workload, provide access to the resources that are required to deliver effective legal representation (many times these resources can only be identified during the course of the case) or set performance standards set the stage for the tragic miscarriage of justice for clients, either through the wrongful conviction of an innocent person or the inappropriate sentence for a low-level offender. Additionally, there is a risk to the county for failing to provide reasonable oversight in the constitutional

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<sup>1</sup> Much more information about the National Association for Public Defense can be found online:

[www.publicdefenders.us](http://www.publicdefenders.us)

<sup>2</sup> The *Ten Principles*, along with commentary are online:

[http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf)

obligation to provide effective defense services.<sup>3</sup> Further, flat fee contracts place qualified attorneys in the uncomfortable position of struggling to both provide these honorable services without the resources that it requires and protect the ethical and professional standards that are required of them as lawyers.


ABA *Principle #8* requires parity: “There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. As in any “system,” the entire operation is only as strong as its weakest part. NAPD encourages you to take a broad view of the criminal justice system when considering a public defense delivery model, and to bring the resources and accountability that is required of prosecutors to the defense function.

Fifty years after the US Supreme Court recognized the right to counsel as, “fundamental and necessary,” there remains grave systemic failure in providing competent counsel to those who need it most. NAPD wants to change that by working together to bring the opportunity for justice to our clients, improve working conditions for defenders, implement cost-effective and evidence-based policies, and increase public confidence in the justice system. We believe flat fee systems fail to meet the Supreme Court's mandate.

NAPD has a wealth of intellectual capital among its members – virtually all of whom are public defenders or non-attorney public defender professionals. From individual assigned attorneys to contract lawyers, to defender programs or state oversight bodies, we encourage you to take advantage of the experience and knowledge that we can share.

Please be in touch if there is any way we can support your effort to create an effective public defense system in Carson City.

Most sincerely,



Justine M. Luongo, Member, Steering Committee  
Deputy Attorney-in-Charge of the Criminal Practice of The Legal Aid Society, New York, NY



Tim Young, Chair, Steering Committee  
Director, Office of the Ohio Public Defender

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<sup>3</sup>*Wilbur v City of Mount Vernon, Dist. Court, WD Washington 2013.* The cities of Mount Vernon and Burlington were found liable for the constitutional deprivation of the right to counsel, ordered to remedy the matter and placed under a 3 year oversight by the federal court.