

Supreme Court Mandates Transparency When Appointing Counsel

Report from Supreme Court/NSBA Joint Ad Hoc Committee Can Help State Trial Judges Comply with New Rules

by Hon. John F. Irwin

In 2006, at the request of the Nebraska Supreme Court, the Nebraska Minority Justice Committee¹ produced an evidence-based report entitled *Indigent Defense Systems and Fee Structures*, focusing on issues surrounding Nebraska's trial courts' attorney appointment processes. Among other things, the report suggested that Nebraska's trial courts would benefit from objective standards for court appointments and a transparent appointment process. For example, findings indicated a lack of process and transparency:

- Some courts do not maintain lists of attorneys willing to be assigned to indigent defendants.
- Some courts do not have processes for the addition or removal of attorneys for consideration of court appointments.
- Many judges and attorneys recommended that a more transparent and systematic process should be adopted.

Hon. John F. Irwin



Judge John Irwin was appointed in 2011, by Chief Justice Michael Heavican, to Chair the Joint Ad Hoc Committee on Court Appointed Counsel. Judge Irwin is an original member of the Nebraska Court of Appeals, created in 1991. He served as Chief Judge of the Nebraska Court of Appeals from 1998 to 2004; and, as President of the National Council of Chief Judges in 2004 and 2005. He is

active in the areas of court reform and judicial ethics, and is Co-Chair of the Supreme Court/NSBA Nebraska Minority Justice Committee .

- Some attorneys perceive that the current appointment process is subjective and not transparent.

In the Fall of 2011, the Chief Justice created an ad hoc committee² to revisit the issue of court appointed counsel and make recommendations to the Court regarding rules containing standards to guide Nebraska's trial judges when they appoint counsel. With the help of the Nebraska State Bar Association, a committee, composed of court stakeholders, was created and became known as the Joint Ad Hoc Committee on Court Appointed Counsel. The mission of the committee was to develop proposed rules.

Throughout 2012, the Joint Ad-Hoc Committee received input from scores of group and individual stakeholders from across the state about what should be contained in the substance of these proposed rules. Stakeholder groups that were consulted included the Nebraska County Court Judges Association, the Nebraska District Court Judges Association, the Nebraska County Attorneys Association, the NSBA's Executive Council and House of Delegates, the Midlands Bar Association, the Lincoln Bar Association, the Administrative Office of the Courts, the Omaha Bar Association, the Nebraska Criminal Defense Attorneys Association, and the Nebraska Minority Justice Committee.

In early 2013, the Joint Ad Hoc Committee submitted to the Nebraska Supreme Court, a 13 page proposal for adoption and implementation regarding court appointed counsel. Later that year, the Supreme Court posted the Joint Ad Hoc Committee's proposal for comment. On February 12, 2014, the Nebraska Supreme Court adopted Neb. Ct. R. § 6-1525 of the Uniform District Court Rules of Practice and Procedure:

SUPREME COURT MANDATES TRANSPARENCY

§ 6-1525. Appointment of counsel in criminal cases.

(A) Every judicial district shall have a transparent process for appointment of counsel for indigent defendants as provided in Neb. Rev. Stat. §§ 29-3901 to 29-3908.

(B) On or before January 1, 2015, the county court and district court judges of each judicial district shall adopt a local rule for the judicial district regarding appointment of counsel in criminal cases. Such local rule shall be made public and shall include, but not be limited to:

(1) Provision for maintenance of a list of all licensed attorneys who may be expected to accept appointments in criminal cases in the judicial district, and information on obtaining such list from the court;

(2) The judicial district's process for appointments under Neb. Rev. Stat. §§ 29-3901 to 29-3908; and

(3) Information as to how an attorney may be added to or, if permitted, removed from the court-appointed attorney list.

(C) Such local rule shall be governed by § 6-1501.

Similar rules were passed for the county and juvenile courts, Neb. Ct. R. § 6-1467 (Uniform County Court Rules of Practice and Procedure) and Neb. Ct. R. 6-1704 (Uniform Separate Juvenile Court Rules of Practice and Procedure).

To jumpstart the process of trial judges fashioning these transparent processes Judicial Branch Education (JBE) will be sponsoring a session during the 8th Circuit Court of Appeals Judicial Conference, August 6-8, in which judges will convene to conduct an initial exploration of what these rules should look like in their local courts. This programming will facilitate trial courts complying with these new court rules by the January 1, 2015 deadline.

Developing rules establishing a transparent appointment process while allowing judges the discretion necessary to ensure effective assistance of counsel for those unable to afford an attorney, will not only strengthen the trial courts' appointment process but will likewise strengthen trust and confidence in the judicial system. The 13 page proposal created by the Ad Hoc Committee can be an invaluable tool that all trial courts should consider as they move forward formulating standards determined to be most appropriate for the unique circumstances of their individual districts. The proposal can be found at the NSBA website at <http://www.nebar.com/associations/8143/files/Proposed%20Standards%20as%20Posted%20by%20NSC%202.pdf>, and the Nebraska Supreme Court intranet. 

Endnotes

- ¹ The Nebraska Minority Justice Committee (MJC) is a Supreme Court committee - with the Nebraska Supreme Court appointing all the committee members. Since its inception in 2003, MJC operates as a joint effort with the Nebraska State Bar Association and the Nebraska Supreme Court.
- ² Honorable Susan Bazis, Brenda Council, Honorable James Doyle, IV, Mike Fabian, Michael Fenner, Honorable Karen Flowers, Honorable James T. Gleason, John P. Grant, Sandra Hernandez Frantz, Hon. John Irwin, Dennis R. Keefe, Honorable Curtis Maschman, Clarence Mock, James R. Mowbray, Elizabeth Neeley, Tom Riley, Jane Schoenike, Honorable Robert Steinke, Linda Willard, and Honorable Laurie Yardley.

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