

**OFFICE OF THE
SPECIAL PUBLIC
DEFENDER**

CLIENT HANDBOOK

Attorney
Office Of The Special Public Defender
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GENERAL CLIENT INFORMATION

WHO WE ARE:

The Office of The Special Public Defender is a specialty office which represents indigent clients who cannot be represented by the Public Defender's Office due to a legal conflict. The department head of the office is attorney JoNell Thomas, who has been appointed by the County Commissioners. We represent people charged with capital murder, murder, and category A felonies that carry a possible life sentence. The SPD is a completely different office from the Public Defender's Office and we are in no way affiliated. All of our attorneys are experienced and trained to handle high level cases.

We are appointed by the court in cases for clients who cannot afford to pay a lawyer. We can represent you only if the court appoints us, based on your financial situation. Once appointed, we work FOR YOU only, and not for the court. Our only job is to give you the best defense possible. Our defense team includes attorneys, investigators, and other staff who may work with your lawyer on your case.

Your assigned attorney will handle your case all the way through trial or negotiations and through sentencing. The office will, if appropriate, file an appeal on your behalf. Additionally, if there are problems with supervised release after sentencing, your attorney will appear with you before the court.

If there are other defendants in your case, we will only represent you. Any other defendants must be represented by their own attorney, either retained (paid) or court appointed.

CONTACTING US:

The office is open from 8:00 a.m. to 5:00 p.m. on weekdays, except holidays. There are blue telephones within the Clark County Detention Center (CCDC) that allow you to call your attorney without the telephone call being recorded. The main line is (702) 455-6265. If you are housed in the Nevada Department of Prisons, we will accept collect calls. You may also leave voice-mail messages on weekdays during business hours.

Your attorneys may call you while you are in jail, visit you by way of video visits, or visit you in person. If you are out of custody, you will meet with us in our offices. Please keep all your appointments. If you need to reschedule, call your attorney or investigator in advance.

It is extremely important that you discuss your case ONLY with your attorney or SPD staff. Do not discuss your case with friends, relatives, cell-mates, other inmates, jail house lawyers, or anyone other than your attorney and SPD staff. Do not discuss your case with visitors or anyone with whom you speak on the silver jail phones.

You have a right of confidentiality concerning your case. Your defense team will not discuss your case with anyone else, including your family or friends, unless you give them permission to do so.

If you are released on bail, or otherwise released from custody, it is very important that we know how to contact you. Please contact your attorney or investigator and provide them your telephone number and address. Please keep us updated if there are any changes to this information.

CCDC:

While your case is pending, if you are in custody, you will likely be held at CCDC or North Valley. The Las Vegas Metropolitan Police Department operates these facilities. If you have problems at either of these jails, let us know. CCDC offers classes and programming for inmates. We encourage you to participate in as many of these programs as possible.

Any write ups or disciplinary action may cause you to receive a more severe sentence.

You may keep legal documents at the jail, but if you co-mingle them with other documents, such as personal letters or artwork, the jail personnel may find that they are no longer “attorney client privileged” documents and may read and/or confiscate them. It is important that you keep your legal documents separated from other papers.

Your attorney will discuss with you whether you should keep certain documents with you or whether they should be stored elsewhere. In general, we recommend that you not keep any sensitive documents in your cell as there is a potential that others, including your cellmate or jail personnel will view or take the documents. Your attorney will keep these documents for you and will bring them to you for viewing during visits. If you prepare a document for your attorney, we advise that you write in clear, bold letters “ATTORNEY CLIENT PRIVILEGED” at the top of each page of the document.

COURT:

Your case will be heard in the Clark County Courts, which are in the Eighth Judicial District Court for the State of Nevada. The main courthouse is located at 200 E. Lewis, Las Vegas, NV 89155. Some early proceedings may take place in other courthouses.

If you are out of custody, NEVER miss a court appearance or arrive late for court. If you have a problem, tell your attorney ahead of time. If you are out of custody, you should be appropriately dressed for court as you will want to make a good impression, as though you are going to a job interview. Shorts, tank tops, or hats are not allowed in court.

WHAT YOU NEED TO KNOW RIGHT AWAY

DO NOT DISCUSS YOUR CASE WITH ANYONE EXCEPT YOUR ATTORNEY OR INVESTIGATOR. Everything you say to your lawyer, investigator, or expert who is working with the SPD, is completely confidential. Anything you say to anyone else about your case is not. You have the absolute right not to discuss your case with any law enforcement officers or prosecutors. If you are contacted by police and they try to talk to you, immediately say that you want your lawyer to be there and do not talk to them about your current case or any other matters.

DO NOT DISCUSS YOUR CASE WITH OTHER INMATES. Do not allow other inmates to read your discovery – this includes your cell mate or inmates who claim to be a lawyer, paralegal, law clerk or otherwise claim to have legal expertise. There are inmates at CCDC who sometimes pass information onto the authorities to get a better deal in their case. Anything you say

to anyone could be used against you. **Do not** believe what you hear from other inmates about what might happen to you. Every case is different, and there are many inmates who spread false rumors about sentencing deals and other matters. Your lawyer will have accurate information.

DO NOT DISCUSS YOUR CASE, THE WITNESSES AGAINST YOU, OR ANY PART OF THE CASE WITH FRIENDS OR FAMILY OVER THE TELEPHONE OR DURING VISITATIONS. CCDC Jail phone calls (the silver phones) and visits are **always** recorded. Detectives and investigators from the DA's office have direct access to these calls and are probably listening to every call, either live as it takes place or by listening to the recordings. These recordings can be used against you during your trial. Other people can be forced to testify about what you say to them. Your own lawyers, and people working for him or her, are the only ones you should talk to about your case (on the blue phone).

PROPER COURT BEHAVIOR: **Do not** attempt to communicate with family or friends in the court, you will be removed and they will be removed from the court. **When your case is called by the judge**, you should stand. If the judge asks you direct questions, it is proper to call the judge "Your Honor," "Ma'am" or "Sir." How you behave in court effects how you are perceived by the judge, jury, bailiff and other court officers.

BEHAVIOR WHILE IN CUSTODY: Any disciplinary actions against you will likely affect the outcome of your case, including your sentence. It is important that you follow the rules at the detention center.

STAGES OF A FELONY CASE IN CLARK COUNTY

WHAT IS A FELONY IN CLARK COUNTY?

You are charged with a felony crime in Clark County. That means that the alleged crime occurred in Clark County Nevada, and the possible sentence is over one year in the Nevada State Prison. A Category A felony has a possible life sentence.

CAPITAL CASES: In some first-degree murder cases, the State may seek the death penalty. These cases have additional steps which your attorney will discuss with you.

INITIAL PROCEEDINGS

INITIAL APPEARANCE IN JUSTICE COURT: Soon after your arrest, you will be brought before a Justice of the Peace. You will be asked if you are the person named in the complaint and if you understand the charges against you.

RIGHT TO COUNSEL: You have the right to have an attorney represent you. If you can't afford to hire an attorney, the Clark County Public Defender will represent you. If there is a conflict with that office, and you are charged with Murder or a Category A felony, the court will contact the Office of Appointed Counsel (OAC) and the court may appoint the Office of the Special Public Defender.

In order to qualify for appointed counsel, the court must determine that you cannot afford to hire an attorney and you must complete a financial affidavit.

DETENTION OR RELEASE: After you have an attorney, the Justice of the Peace will consider your bail amount and/or conditions and terms of supervision if you are released.

BAIL. Bail may be automatically set on some counts; however, the court may review your bail amount at court appearances. In deciding what is an appropriate bail or other conditions of release, the judge will consider factors such as your prior record, ties to the community, any prior failures to appear for court, and employment. The judge will consider if there is evidence that you are a danger to the community, or a flight risk. If you or someone on your behalf is unable to post the bail amount, you will likely get credit for time served if you are later convicted. Your attorney may file a motion for the court to reconsider the bail amount if there is a change in your circumstances.

THE PRELIMINARY HEARING:

The Preliminary Hearing is an evidentiary hearing to determine if there is enough evidence to send the case up to District Court for a trial. The burden on the State at this stage is to establish “probable cause” and this can be done with “slight or marginal” evidence. The credibility of the witnesses is for the jury to decide at the time of trial. You have the right to have a preliminary hearing within 15 days, or you may waive that right to allow your attorney additional time to investigate the case and prepare for the preliminary hearing. Your attorney will assist you in making this decision.

If your case is negotiated prior to the preliminary hearing, you will waive the hearing and proceed to the District Court for entry of plea. There may be other reasons for waiving your Preliminary Hearing. Your attorney will discuss this with you.

THE GRAND JURY:

The State may elect to present your case to the Grand Jury and not proceed with the Preliminary Hearing. If your attorney is provided notice that this may occur, she or he will advise you. You do have a right to testify before the Grand Jury, but your attorney is not entitled to be present during the State's presentation of evidence and your attorney may not examine witnesses or talk to the Grand Jurors. In nearly all cases it is advised that a client not testify before a Grand Jury. Your attorney, however, may ask that evidence that is favorable to you be presented to the Grand Jury by the State. You should discuss this with your attorney.

DISTRICT COURT PROCEEDINGS

ARRAIGNMENT: If the Justice of the Peace or the Grand Jury finds sufficient evidence to send the case to District Court to go to trial, you will appear before the arraignment hearing master to enter a plea of not guilty and set a trial date. You have the right to have a trial within 60 days from the date of the arraignment, but it is often best to waive this right so that your case can be fully investigated and prepared. Work with your attorney to determine if that is in your best interest. Your case will be set for a jury trial.

PRE-TRIAL WRIT OF HABEAS CORPUS: Your attorney will evaluate the evidence presented to the Justice of the Peace or the Grand Jury and will make a determination if there is a legal basis for filing a pre-trial writ challenging the sufficiency of the evidence for the charges. This cannot be filed until the transcript of the presentation is provided to your attorney by the court reporter. You will be provided a copy of this transcript.

DISCOVERY AND INVESTIGATION:

PREPARING YOUR CASE FOR TRIAL: In preparing for trial, your defense team will gather all necessary information to defend your case through discovery and investigation.

WHAT IS DISCOVERY? "Discovery" is the process of getting information from the other side in a court case. "Discovery" is simply a description of evidence against you that the prosecutor must give to your attorney. This also includes evidence that may be in your favor that is within the possession of the State (this is commonly called "Brady" material, based on a case that created the rule) The discovery process lets your attorney get the information he or she needs in order to defend you.

WHAT TYPE OF DISCOVERY DOES THE PROSECUTOR HAVE TO GIVE MY ATTORNEY? The government has to give your attorney copies of any documents that they plan to use against you at trial or that are important to the preparation of your defense; any test results; and any statements that witnesses have given to law enforcement, and any statements you made to law enforcement. Your attorney will also be allowed to look at any physical evidence that the government plans to use against you. The prosecutors must also provide a list of witnesses that they may call in your trial.

WHEN DO WE GET DISCOVERY? After the first disclosure of evidence, your attorney will conduct a file review with the prosecutor to review what evidence the prosecutor has to supplement the first disclosure. Then your defense team will make any appropriate discovery motions. After the discovery is obtained, your attorney and investigator will review the discovery with you. The discovery will help you and your team

determine the strength of the case against you and possible defenses. Decisions about what motions to bring, what investigation to do, and whether or not to try for a plea bargain, often depend on what is in the discovery.

WILL I GET A COPY OF THE DISCOVERY? You can request a copy of your discovery. Keep in mind, you may not be able to receive all of your discovery if you are in custody because some items are videos or audio recordings, some files are extremely large, or some items may include inappropriate materials. Your attorney can discuss all of these things with you and can view the evidence in your case even if you cannot keep a copy. “Discovery” includes police reports, witness statements and forensic testing, and results. Your copy will have the addresses, dates of birth, social security numbers and other private information blocked out. This is called redaction, and is required to be done to prevent others from having access to that private information. Your attorney and investigator have access to all of the information necessary to provide a complete investigation for your case. Do not share your discovery with other inmates –intentionally or carelessly by leaving it in an open area. Additionally, this information should not be shared with your family members. Should even a well-meaning member of your family contact witnesses, it may be seen as witness tampering and may result in additional criminal charges being brought against you or them.

INVESTIGATION: Outside of the discovery, your lawyer and the investigator assigned to your case will explore whether you have any possible defenses. They will also explore other issues that could affect your case. In some cases, but not all, this requires investigation. Investigation varies widely from case to case, and can include locating and interviewing

witnesses, examining scenes, having physical evidence tested and/or hiring experts to assist the defense.

You, your lawyer, and your investigator are a team. What you say to them and any other member of the SPD office or experts hired by your attorney is completely confidential. Work with your team so that we can do the best job possible in defending you. Not every case needs an investigator. Your attorney will explain to you what investigation is appropriate for your case.

ANYTHING YOU TELL YOUR ATTORNEY, INVESTIGATOR, OR OTHER SPECIAL PUBLIC DEFENDER EMPLOYEE IS PRIVILEGED AND WILL NEVER BE DISCLOSED TO THE PROSECUTOR OR ANYONE ELSE, except with your permission. If your case goes to trial, however, your attorney will be required to disclose to the State any evidence or test results you will use in your case or at trial. During the investigation of your case, your legal team will take care to protect all information you give them. It is important that you not discuss any conversations you have with the defense team with other people, including inmates, family members or friends. Remember all meetings with everyone except your defense team are recorded, as are telephone calls, video visits and letters.

MOTIONS:

WHAT IS A MOTION? A motion is a written document that is filed by your attorney or the prosecutor requesting the judge assigned to your case to make a decision. Most motions are written, and include arguments why the judge should grant the request. Some motions come before the trial, such as a motion for a separate trial from your co-defendants. After one party makes a motion, the other side always has the

chance to respond to the motion in writing. The judge will schedule the motion for argument and, if appropriate, for an evidentiary hearing.

TYPES OF MOTIONS:

Pre-trial: Some motions are filed before trial begins. These may be motions to suppress (keep out) evidence that was obtained illegally by police. This may be a confession or physical evidence. Your attorney will decide if there is a legal basis for a motion to suppress. There are many other kinds of pre-trial motions. Ask your attorney which ones might apply to your case.

Motions In limine: These motions are about what evidence should be admitted or kept away from the jury.

Post-trial motions include motions for a new trial, if something went wrong during the trial.

There are many motions that may or may not apply to your case. Your attorney will decide which motions have merit and which motions will be filed.

CAN I APPEAL FROM THE DENIAL OF A MOTION? If the trial judge rules against you on a pretrial motion, it is highly unlikely that you will be able to file an immediate appeal of that decision. The Nevada Supreme Court will hear an appeal only from a “final judgment,” which means that you have to wait until after your trial is over to challenge the judge’s decision on pretrial matters, such as motions. In most cases, if you enter a guilty plea you will be waiving the right to have an appellate court review the decision on a pretrial motion. Your attorney will discuss this with you if you have any questions.

PLEA NEGOTIATIONS AND CHANGE OF PLEA

PLEA NEGOTIATIONS: It is always your decision whether or not to accept a plea bargain or take your case to trial. Your attorney will not make any deals for you without your permission. However, your attorney will find out what kind of an offer the prosecutor is willing to make in your case. Then you can decide what to do, with your attorney's advice. Your attorney cannot accept any negotiation for you. A plea agreement is a deal between you and the prosecutor. The judge is not part of the deal unless the judge agrees to be bound by the terms of the negotiation.

WRITTEN PLEA AGREEMENT: A plea negotiation is completed by your signing a written guilty plea agreement which is also signed by your attorney and the prosecutor. Your attorney will go over this prior to your entering the plea before the judge. As long as the prosecutor makes the recommendation in the plea agreement, he or she has kept the government's side of the bargain. That means you have to keep your side of the bargain, and cannot take back your guilty plea if the judge gives you a different sentence than you hoped for unless the agreement provides otherwise. Most judges follow plea agreements, but the judge can legally sentence you to whatever the sentencing range is contained within the guilty plea agreement.

CHANGING YOUR PLEA: If you decide to change your plea to guilty, or guilty but mentally ill, or an Alford plea, there will be a Change of Plea hearing. If you plead guilty, you are giving up several constitutional rights, which are listed in the plea agreement you signed. The judge will go over every part of your plea to ensure that it is freely and knowingly entered into by you. The judge will make sure you understand the possible

sentences. Additionally, the judge will ask you to admit facts supporting the charges to which you are pleading guilty. If you enter an Alford plea, you do not admit facts of guilt but admit that taking the plea is in your best interest. Alford pleas are not available in all cases and there may be disadvantages to this type of plea. Your attorney will discuss the details about the types of plea with you in detail. Ask your lawyer what to expect from your judge.

TRIAL

IN GENERAL: The Nevada and U.S. Constitution guarantees you the right to a trial by jury in felony cases.

Felony trials can be complicated, and you must help your attorney and other members of your legal team with anything that they ask you. Your attorney has a lot of experience with trials. Decisions regarding the strategy and the presentation of the trial are for your attorney. Your attorney will keep you informed of these decisions and strategies throughout the trial.

YOUR JURY: In Nevada, a jury of 12 people from Clark County will hear your case and decide the facts. You, your attorney, the prosecutor, and the judge will all participate in deciding who should be on the jury. You can give up your right to a jury if you and your lawyer decide you would be better off having the judge decide your case, and if the prosecutor also agrees to waive the jury.

OPENING STATEMENTS: After the jury is selected, the court will give preliminary instructions to the jury. Then each side will get to make a statement to the jury about what the case is about, what the evidence will be, and what the jury will have to decide. Your attorney can give the opening argument at

the beginning of the case or wait until the State has presented their case.

THE PROSECUTION’S CASE: It is the prosecutor's job at a trial to prove that you are guilty. It is not your job to prove you are innocent. If the prosecutor does not prove the charges beyond a reasonable doubt, you must be found not guilty.

The State will call witnesses to testify against you. After the prosecutor questions a witness, your attorney will have the chance to ask that witness questions. This is called cross-examination. **In Nevada, the jurors may also submit questions for the witnesses and the judge can ask questions of any witness.**

YOUR CASE: After the State finishes (rests), your attorney can call any witnesses and present evidence that will help your case. If your attorney feels that the State has not proven its case, the defense does not need to present any evidence for you to be found not guilty. Your witnesses can also be questioned by the prosecutor, the judge and jurors.

YOUR DECISION TO TESTIFY: During your case, you will have to decide if you want to testify. The court will, away from the jury, ask you if you wish to testify or not. Your attorney will prepare you to testify if that is your decision and your attorney will help you in making this decision, including telling you the risks that are involved. **The final decision about whether you testify is yours.**

REBUTTAL: If you put on a defense case, the State may offer additional witnesses or evidence. This is called rebuttal. The State is allowed to do this because they have the burden of proving your guilt beyond a reasonable doubt.

OBJECTIONS DURING TRIAL: Your attorney has to carefully listen to the questions asked by the prosecution so that appropriate objections can be made. This is important for your appeal if you are convicted. If you are talking with your attorney while witnesses are testifying, it will interfere with timely objections. However, you can take notes during trial to share with your attorney.

CLOSING ARGUMENTS: When both sides have presented their evidence, each side gets a chance to tell the jury what they think the evidence means, and how the jury should decide the case. The prosecutor goes first, then your lawyer, and then the prosecutor gets the final word. Again, this is because the State has the burden of proving its case against you.

JURY INSTRUCTIONS: The judge will read the jury instructions to the jurors in open court. The jury instructions are settled before they are read to the jury, and objections are made. The judge tells the jury what the laws are, and what questions they will have to answer about the charges. This packet of instructions will go with the jury during their deliberations.

JURY DELIBERATIONS: The jury will leave the courtroom and try to decide on a verdict. Every single one of the jurors must agree. If they cannot agree on a verdict, then the judge may call a mistrial. A mistrial may mean that you must go through the whole trial process again. If the jury returns a "not guilty" verdict the case is over. If, however, the jury returns a finding of "guilty" to one or more counts contained in the information or indictment, the court will set the case over for sentencing. If you are convicted of first degree murder, the jury will decide your sentence unless both parties agree that the judge should decide the sentence.

SENTENCING

PRE SENTENCE INVESTIGATION REPORT: If you plead guilty or are found guilty after a trial, the case will be referred to the department of Parole and Probation to prepare a presentence report. The case will be assigned to an officer to interview you and review the case and prepare a written presentence report.

Your attorney will generally be with you at the interview by Parole and Probation, and assist and advise you in whether or not to answer certain questions, answering the questions and making the appropriate objections and arguments at your sentencing hearing. The report will be provided to your attorney and you prior to the hearing.

THE SENTENCING HEARING: After a guilty plea or verdict, you will go back to court for sentencing. At the hearing, the judge will ask whether you have read your PSI report, if there are any errors in the information and have you discussed it with your lawyer. The prosecutor and your attorney will argue about what they believe the appropriate sentence should be in your case. You have a chance to speak directly to the judge as well. The judge will ask you if you wish to say anything. It is your absolute right to speak if you want to, but you do not have to. You can say anything you like to the judge about yourself or your case, but you should discuss it with your attorney in advance. Independent of the above, Nevada law also allows victims and those affected by the crime to testify at the hearing as well.

After listening to everyone, the judge will impose your sentence.

APPEALS

If you are convicted at trial, the SPD will appeal your case to the Nevada Supreme court. If you have been sentenced as a result of a plea negotiation, the SPD will evaluate the sentencing for any irregularities and make a determination with you as to whether an appeal will be filed. A Notice of Appeal must be filed within 30 days from the date of filing of your Judgment of Conviction.

POST TRIAL

PROBATION: If the court grants you probation, it means that there is a prison sentence that will be imposed if you violate any of the terms of probation. Work with your probation officer, and follow all of the terms and conditions that the Court imposes. You are still welcome to contact your attorney if you have questions about your case by calling the office and scheduling an appointment.

PRISON: If you are sentenced to a prison sentence, you will be transported within about one to three weeks after your court date to High Desert State Prison, where you will be assigned to a specific facility. If you have any questions during your incarceration, you are welcome to call your attorney. The Special Public Defender accepts collect calls from our prior clients.

POST-CONVICTION PETITION FOR A WRIT OF HABEAS CORPUS: If you decide that you want to challenge your conviction through a post-conviction petition for a writ of habeas corpus, you will be able to get a form for the petition, and a motion for appointment of counsel, from the prison law library. There are strict deadlines for the petition. Our office cannot represent you in post-conviction proceedings.

