

**OFFICE OF THE
SPECIAL PUBLIC
DEFENDER**

**GUIDEBOOK FOR
FAMILY & FRIENDS**

Attorney
Office Of The Special Public Defender
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GENERAL INFORMATION

WHO WE ARE:

The Office Of The Special Public Defender (“SPD”) is a specialty office. We represent 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 a person only if the court appoints us, based on the person’s financial situation. Once appointed, we work for only our client, and not for the court or anyone else. Our only job is to give our client the best defense possible. Our defense team includes attorneys, investigators, and other staff.

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

If there are other defendants in the case, we will only represent our client. 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. Clients who are not incarcerated, and family members, may call us at (702) 455-6265. You may also leave voice-mail messages for attorneys on weekdays during business hours.

If authorized by our clients, appointments may be made for those supporting our clients with the attorney and investigator assigned to the case. Please keep all your appointments. If you need to reschedule, call your attorney or investigator in advance.

Our office is located at 330 South 3rd Street, on the 8th floor. The building is located at the north-west corner of Lewis and 3rd Street, and is directly north of the Regional Justice Center. All parking in the area is paid, at either parking meters or in nearby garages.

Clients who are incarcerated have access to telephones that allow them to call their attorney without the telephone call being recorded. Attorneys and SPD staff cannot place or participate in three-way telephone calls involving jail phones. Doing so would result in both a loss of telephone privileges and would violate the attorney-client privilege.

It is extremely important that you not discuss the case with our client, especially if they are in jail. Calls made on jail phones and video visits are recorded and can be used at trial against the client. If you have questions about the case, please contact the attorney. If the client has given us permission to do so, we will discuss some information with you. Other information must remain confidential. The attorney will explain this to you in more detail.

If your family member or friend is released on bail, or otherwise released from custody, it is very important that we know how to contact him/her. Please provide the attorney or investigator with a current telephone number and address. Please keep us updated if there are any changes to this information.

CCDC:

While a case is pending, most clients are held in custody in the Clark County Detention Center (CCDC) or North Valley. The Las Vegas Metropolitan Police Department operates these facilities.

CCDC is located at 330 South Casino Center Blvd, which is near the Regional Justice Center and our office. Information about the detention center may be found at its website: <http://www.clarkcountynv.gov/ccdc/Pages/default.aspx>.

Information on the website includes details about bail, commissary gift bags, inmate funds, mail and telephone, and visitation rules. Mail may be sent to:

Inmate Name
ID #
Clark County Detention Center
330 South Casino Center Blvd.
Las Vegas, NV 89101

As with phone calls, mail is heavily monitored by the detention center staff and is often provided to the prosecuting attorneys and/or officers investigating the case. You should not discuss the charges, or any other sensitive information, in letters sent to the jail. You may not send stamps, cards with glitter, nude images or sexually explicit items, obscene literature, cards that

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are glued or taped or stapled together, photographs larger than 6" x 8", cards with crayon or white-out, or articles that could be considered a health hazard.

Visitation requires registration with CCDC. You will need a valid photo ID and e-mail address. Visits are by video and times are reserved in advance. You should check the jail's website for details about visitation: <http://www.clarkcountynv.gov/ccdc/Pages/Visitation.aspx>.

COURT:

The 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 (the Regional Justice Center) is located at 200 E. Lewis, Las Vegas, NV 89155. Some early proceedings may take place in other courthouses.

If you attend court proceedings, you must follow the court rules. You will enter the courthouse through the north doors and will be required to go through a metal detector and are subject to possible searches.

Parking near the courthouse is paid, either at a meter or a parking garage. Finding a parking space in the morning can be difficult. Lines at the metal detector and the courthouse elevators can be very long. Please make sure you arrive early and plan for these delays.

You must follow the directions of the courthouse marshals and the marshals and officers located in the courtroom. They will not allow you to have any contact with any inmates who are in custody, including non-verbal communication such as waving. Shorts, tank tops, or hats are not allowed in court. Young children and babies should not be brought to court.

Information about the Eighth Judicial District Court is available here: <http://www.clarkcountycourts.us/>

Many of our cases begin in the Las Vegas Justice Court. Information about that court is available here: <http://www.lasvegasjusticecourt.us/>

WHAT YOU NEED TO KNOW RIGHT AWAY

DO NOT ASK YOUR FAMILY MEMBER OR FRIEND TO DISCUSS HIS/HER CASE WITH YOU. Everything a client says to his/her lawyer, investigator, or expert who is working with the SPD, is completely confidential. Anything a client says to anyone else about the case, including family members, is not. This is especially true for clients who are incarcerated. Every video visit and telephone call made to someone, other than an attorney, is recorded. Every letter is copied and made available to law enforcement and prosecutors.

DO NOT CONTACT WITNESSES OR CONDUCT YOUR OWN INVESTIGATION. Any attempt to contact witnesses or conduct an investigation might be interpreted as witness tampering. If you know information about the case which should be investigated, please contact the attorney assigned to the case and discuss that information with the defense team.

IF YOU ARE CONTACTED BY THE POLICE OR PROSECUTORS to be a witness against the defendant, our office cannot represent you. Any person who is concerned that charges may be filed against him/her may ask that to consult with an attorney, either retained or appointed, before answering questions.

STAGES OF A FELONY CASE IN CLARK COUNTY

WHAT IS A FELONY IN CLARK COUNTY?

Your family member or friend is charged with a felony crime in Clark County. This 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 the attorney will discuss with you.

INITIAL PROCEEDINGS

INITIAL APPEARANCE IN JUSTICE COURT: Soon after arrest, the client will be brought before a Justice of the Peace. He/she will be asked if they are the person named in the complaint and if he/she understands the charges.

RIGHT TO COUNSEL: A defendant has the right to have an attorney represent him/her. If the defendant cannot afford to hire an attorney, the Clark County Public Defender will be appointed. If there is a conflict with that office, and the charge is 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 whether the defendant can afford to hire an attorney and the defendant must complete a financial affidavit.

DETENTION OR RELEASE: After an attorney is appointed or retained, the Justice of the Peace will consider a bail amount and/or conditions and terms of supervision if the defendant is released.

BAIL: Bail may be automatically set on some counts; however, the court may review the bail amount at court appearances. In deciding what is an appropriate bail or other conditions of release, the judge will consider factors such as prior record, ties to the community, any prior failures to appear for court, and employment. The judge will consider if there is evidence that the person a danger to the community, or a flight risk. The attorney may file a motion for the court to reconsider the bail amount if there is a change in circumstances.

If there is no bail or if a defendant is unable to post the bail amount, he/she will likely get credit for pretrial incarceration time served if later convicted.

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. A defendant has the right to have a Preliminary Hearing within 15 days, or may waive that right to allow the attorney additional time to investigate the case and prepare for the Preliminary Hearing.

If the case is negotiated prior to the Preliminary Hearing, the client will waive the hearing and proceed to the District Court for entry of plea. There may be other reasons for waiving the Preliminary Hearing.

THE GRAND JURY: The State may elect to present a case to the Grand Jury and not proceed with the Preliminary Hearing. If the attorney is provided notice that this may occur, she or he will advise the client. A defendant has a right to testify before the Grand Jury, but the attorney is not entitled to be present during the State's presentation of evidence and the defense 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. The attorney, however, may request that the State present to the Grand Jury evidence that is favorable to the defendant.

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, the defendant will appear before the arraignment hearing master to enter a plea of not guilty and set a trial date. There is a 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 the case can be fully investigated and prepared. The case will be set for a jury trial.

PRE-TRIAL WRIT OF HABEAS CORPUS: The defense attorney will evaluate the evidence presented to the Justice of the Peace or the Grand Jury and will make a determination whether 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 the attorney by the court reporter.

DISCOVERY AND INVESTIGATION

PREPARING THE CASE FOR TRIAL: In preparing for trial, the defense team will gather all necessary information to defend the client's 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 a defendant that the prosecutor must give to the defense attorney. This also includes evidence that may be in the defendant's favor that is within the possession of the State (this is commonly called "Brady" material, based on the case that created the rule). The discovery process lets the attorney get the information he or she needs in order to defend the client.

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

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

and defense team determine the strength of the case and possible defenses. Decisions about which motions to file, what investigation to do, and whether to try for a plea bargain, often depend on what is in the discovery.

WILL I GET A COPY OF THE DISCOVERY? With a client's permission, the attorney may review some of the discovery with you, but a decision is made on a case-by-case basis and there are a variety of factors to be considered. Discovery is not a public record and we cannot provide copies.

INVESTIGATION: Outside of the discovery, the defense lawyer and investigator assigned to the case will explore possible defenses. They will also explore other issues that could affect the client's 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 hiring experts to assist the defense.

MOTIONS

WHAT IS A MOTION? A motion is a written document that is filed by the defense attorney or the prosecutor requesting the judge assigned to the case to make a decision. Most motions are written and include arguments why the judge should grant the request. 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 are explained on the next page.

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, such as a confession or physical evidence. The defense attorney will decide if there is a legal basis for a motion to suppress. There are many other kinds of pre-trial motions.

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

Post-trial motions: Some motions, such as a motion for a new trial, are filed to correct the judgment or address other similar matters.

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

CAN A DEFENDANT APPEAL FROM THE DENIAL OF A MOTION? If the trial judge rules against a defendant on a pre-trial motion, it is highly unlikely that he/she 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 the defendant has to wait until after the trial is over to challenge the judge’s decision on pre-trial matters, such as motions. In most cases, if a defendant enters a guilty plea he/she will be waiving the right to have an appellate court review the decision on a pre-trial motion.

PLEA NEGOTIATIONS AND CHANGE OF PLEA

PLEA NEGOTIATIONS: It is always a defendant's decision whether to accept a plea bargain or take the case to trial. The attorney will not make any deals without a client's permission. However, the attorney will find out what kind of an offer the prosecutor is willing to make in the case. Then the client can decide what to do, with the attorney's advice. A plea agreement is a deal between the defendant 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 signing a written guilty plea agreement which is also signed by the defense attorney and the prosecutor. The attorney will go over the plea agreement with the client prior to entry of 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 the client has to keep his/her side of the bargain, and cannot take back his/her guilty plea if the judge gives a different sentence than hoped for, unless the agreement provides otherwise. Most judges follow plea agreements, but the judge can legally sentence a defendant to any sentence within the sentencing range set forth in the guilty plea agreement.

CHANGING THE PLEA: If the defendant decides to change his/her plea to guilty, there will be a Change of Plea hearing. The judge will go over every part of the plea agreement to ensure that it is freely and knowingly entered. The judge will make sure the defendant understands the possible sentences. There are different kinds of pleas which may be available, such as a plea of guilty but mentally ill, or an Alford plea. The

defense attorney can discuss these with you. Ask the lawyer what to expect from the judge.

TRIAL

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

Felony trials can be complicated and require a lot of work by the attorney and defense team. The attorney may have requests of family and friends before and during trial. They will be in touch with you if they need your assistance.

CAN I ATTEND THE TRIAL? Trials are open to the public and you will be able to attend so long as (1) you are not a witness in the case and (2) you follow the court's rules. Witnesses are not allowed to attend trial because of the "exclusionary rule," which is designed to stop people from changing their testimony based upon what other witnesses have said. It is important that you follow all of the rules of the court and that you listen to the judge and courtroom marshal. It is very important that you not talk to any jurors and that you not talk about the case, the defendant, or anyone associated with the case if you are in a place in which a juror or potential juror can hear you.

THE JURY: In Nevada, a jury of 12 people from Clark County will hear the case and decide the facts. The defense team, prosecutor, and judge will all participate in deciding who should be on the jury. A defendant can give up the right to a jury if he/she and the lawyer decides it would be better off having the judge decide the 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. The defense attorney can give the opening statement at the beginning of the case or wait until after the State has presented its case.

THE PROSECUTION'S CASE: It is the prosecutor's job at a trial to prove that the defendant is guilty. It is not a defendant's job to prove he/she is innocent. If the prosecutor does not prove the charges beyond a reasonable doubt, the jury is to find the defendant not guilty.

The State will call witnesses to testify against the defendant. After the prosecutor questions a witness, the defense 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.

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

THE DECISION TO TESTIFY: During the defense case, the defendant will have to decide if he/she wants to testify. The court will, away from the jury, ask the defendant whether he/she wants to testify. The attorney will prepare the defendant to testify if that is his/her decision.

REBUTTAL: If the defense puts 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 guilt beyond a reasonable doubt.

CLOSING ARGUMENTS: After 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 the defense attorney, and then the prosecutor gets the final word. Again, this is because the State has the burden of proving its case against the defendant.

JURY INSTRUCTIONS: Jury instructions tell the jury what the laws are and what questions they will have to answer about the charges. The jury instructions are settled before they are read to the jury, and objections are made. Then the judge will read the jury instructions to the jurors in open court. The 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 everyone 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 the defendant is convicted of first degree murder, the jury will decide the sentence unless both parties agree that the judge should decide the sentence.

SENTENCING

A SENTENCING MEMORANDUM: In some cases, usually in which the judge has discretion to enter one sentence or another, the attorney will prepare a sentencing memorandum which will be given to the judge. The attorney may ask family members and friends to provide letters of support. Please provide these letters to the attorney and do not send them to the judge directly.

THE SENTENCING HEARING: After a guilty plea or guilty verdict, the defendant will go back to court for sentencing. At the sentencing hearing, the judge will ask about a Presentence Investigation Report, which is prepared prior to the hearing. The prosecutor and defense attorney will argue about what they believe the appropriate sentence should be in the case. The defendant will have a chance to speak directly to the judge as well. Family members and friends of the defendant generally cannot talk at the sentencing hearing. 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 the sentence.

APPEALS

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

POST TRIAL

PROBATION: If the court grants the defendant probation, it means that there is a prison sentence that will be imposed if any of the terms of probation are violated. There may be restrictions on items, such as alcohol or guns, in the home of a person on probation, even if they belong to someone else who lives there. Work with the probation officer, and follow all of the terms and conditions that the Court imposes.

PRISON: If the defendant is sentenced to a prison sentence, he/she will be transported within about one to three weeks after the sentencing court date to High Desert State Prison (men) or the Florence McClure Women's Correctional Center (women), where he/she will be assigned to a specific facility. Family and friends will not be able to visit until the defendant is assigned to a permanent facility. The rules for visiting vary depending on which prison has been assigned. More information can be found at the website for the Department of Corrections. <http://doc.nv.gov/Inmates/Visiting/Home/>. You will need to complete an application before visiting will be allowed.

Visitation in prison is much different than visitation at the Detention Center. Visits in prison are in person rather than by video and a longer visit is allowed. Visitors may purchase food and drinks for inmates but may not use paper money, so getting quarters (in a clear plastic bag) in advance is advised. There are strict restrictions on what visitors may wear and what they may bring with them, so carefully review the instructions for visiting on the prison website. Visits are restricted by classification, so there are usually only two days a week that visits will be allowed.

It is critically important that you never bring any kind of contraband, including drugs or cell phones, into the prison. The prison staff will find these items during a search which takes place prior to the visit and they will prosecute anyone who attempts to do this.

Defense attorneys do not have any influence on prison placement. The decision of which prison a defendant is assigned is entirely up to the prison.

YOUR FAMILY MEMBER OR FRIEND NEEDS YOUR SUPPORT.

This is a very difficult time for your family member or friend. Being a defendant in a high-level criminal case is incredibly stressful and upsetting. The most important thing you can do to help is to assure this person that they still have your love and support.

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