

**State of Nevada
ADVISORY COUNCIL FOR
PROSECUTING ATTORNEYS**

100 North Carson Street
Carson City, Nevada 89701

Patricia D. Cafferata, Executive Director
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NOTICE OF PUBLIC MEETING AND AGENDA (rev. 1/8/18 TMS)

Organization: Advisory Council for Prosecuting Attorneys

Date and Time of Meeting: January 17, 2018 at 10:00 a.m.

Place of Meeting: Video Conferenced Between:

Attorney General's Office
Mock Courtroom Room
100 N. Carson Street
Carson City, Nevada

Attorney General's Office
Sawyer Building, Room 3315
555 E. Washington Avenue
Las Vegas, Nevada

Please Note: The Advisory Council for Prosecuting Attorneys may: 1) take agenda items out of order; 2) combine two or more items for consideration; or 3) remove an item from the agenda or delay discussion related to an item at any time. Reasonable efforts will be made to assist and accommodate physically handicapped persons, who wish to attend this meeting. Please contact Patricia D. Cafferata, Advisory Council Executive Director, at (775) 684-1136 or pcafferata@ag.nv.gov in advance, so that arrangements can be made.

1. **Call to Order and Roll Call.**
2. **Attorney General Adam Laxalt's Welcome. Self-introduction of members present.**
3. **Public Comment. Discussion Only.** Action may not be taken on any matter brought up under this agenda item, until scheduled on the agenda of a future meeting for possible action.
4. **Discussion and for possible action to approve the November 20, 2017 minutes.**
(Attachment One (1) – Minutes of November 20, 2017 meeting.)
5. **Discussion and for possible action on co-sponsor of \$1,000 to the 2018 Nevada Government Civil Attorneys Conference at Lake Tahoe May 16-18, 2018.**
6. **Report on Summary of Evaluations from 2017 Prosecutors Conference.**
(Attachment Two (2) – Summary of Evaluations.)

7. **Discussion and for possible action on topics for 2018 Prosecutors Conference agenda.**
(Attachment Three (3) – Summary of Questionnaire’s Answers.)
8. **Briefing on new training on investigation and prosecution of domestic violence cases.**
Nicole O’Banion, Attorney General’s Domestic Violence Ombudsman.
9. **Discussion and for possible action on review of NVPAC website:** <http://nvpac.nv.gov/>
(Attachment Four (4) – Copies of relevant pages from website):
 - A. Mission Statement *(1 page)*
 - B. FAQs *(2 pages)*
 - C. Performance Measures *(2 pages)*
 - D. Nevada Domestic Violence Prosecution Best Practices Project *(30 pages)*
 - E. ABA Standards for Criminal Justice – The Prosecution Function *(18 pages)*
 - F. 2014 NV Opinion Digest *(First page attached; remainder of document online)*
http://nvpac.nv.gov/uploadedFiles/nvpacnvgov/Content/Resources/2014NV_Opinion_Digest.pdf
 - G. Model Policy Standard Operating Procedure for the Enforcement of Protection Orders against Domestic Violence *(8 pages)*
 - H. Model Domestic Violence Protocol for Law Enforcement *(First page attached; remainder of document online)*
http://nvpac.nv.gov/uploadedFiles/nvpacnvgov/Content/Resources/Topics/NV_Model_DV_Protocol_Law_Enforcement.pdf
 - I. Held to a Higher Standard: Ethical Considerations for Public Lawyers *(1 page)*
 - a. Sources of Ethical Duties and Limitations *(1 page)*
 - b. The Ethical Prosecutor *(2 pages)*
 - c. The Ethical Government Civil Attorney *(1 page)*
 - d. Additional Ethical Considerations for all Public Lawyers *(1 page)*
 - e. Ethical Considerations – Conclusion *(1 page)*
 - f. Ethical Considerations – Footnotes *(3 pages)*
 - J. Your Rights and Responsibilities as a Crime Victim and Witness *(Not attached – please view online)*
[http://nvpac.nv.gov/uploadedFiles/nvpacnvgov/Content/Resources/2018_RightsResponsibilitiesCrimeVictimOrWitness_Rev.%2001\(3\).pdf](http://nvpac.nv.gov/uploadedFiles/nvpacnvgov/Content/Resources/2018_RightsResponsibilitiesCrimeVictimOrWitness_Rev.%2001(3).pdf)
10. **Meetings tentatively set for 2018 at 10:00 a.m. in the Attorney General’s offices in Carson City and Las Vegas:**
 - **April 18, 2018.**
 - **July 12, 2018.**
 - **October 17, 2018.**

11. **Public Comment.** Discussion only. Action may not be taken on any matter brought up under this agenda item, until scheduled on the agenda of a future meeting for possible action.

12. **Adjournment.**

In accordance with NRS 241.020, this agenda was posted on or before 9:00 a.m. January 10, 2018 online at www.nvpac.nv.gov and at the following locations:

- Office of the Attorney General, 100 N. Carson Street, Carson City, NV 89701
- Office of the Attorney General, 5450 Kietzke Lane, Suite 202, Reno, NV 89511
- Office of the Attorney General, Grant Sawyer Building, 555 E. Washington Ave., Las Vegas, NV 89101
- Legislative Building, 401 N. Carson Street, Carson City, NV 89701
- Nevada State Capitol Building, 101 N. Carson Street, Carson City, NV 89701
- Nevada State Library, 100 N. Stewart Street, Carson City, NV 89701

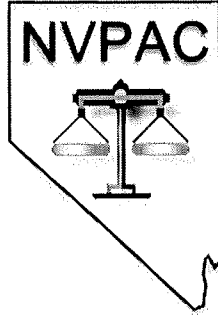
Meeting materials may be requested from Patricia D. Cafferata, Advisory Council Executive Director, at (775) 684-1136 or pcafferata@ag.nv.gov, and obtained from the Office of the Attorney General at any of the first three (3) office locations listed above.

Attachment One (1)

to

Advisory Council for Prosecuting Attorneys Agenda
January 17, 2018

Minutes of November 20, 2017 Meeting



State of Nevada
ADVISORY COUNCIL FOR PROSECUTING
ATTORNEYS

100 North Carson Street
Carson City, Nevada 89701

Patricia D. Cafferata, Executive Director
pcafferata@ag.nv.gov
775-684-1136

MEETING MINUTES

Organization: Advisory Council for Prosecuting Attorneys

Date and Time of Meeting: November 20, 2017 at 10:00 a.m.

Place of Meeting: Video Conferenced Between:

Office of the Attorney General
Executive Conference Room
100 N. Carson Street
Carson City, Nevada 89701

Office of the Attorney General
Grant Sawyer Building
555 E. Washington Ave., Suite 3315
Las Vegas, Nevada 89101

Attendees:

Adam Laxalt, Attorney General, Chair
A.J. Delap
Arthur Mallory
Chris Hicks
Karl Hall
Robert Sweetin
Steve Wolfson
Patricia Cafferata, Executive Director

1. Call to Order and Roll Call.

(Agenda Item No. 1)

The meeting was called to order at 10:00 a.m. Roll call was taken by Heather Cooney. A quorum was present.

2. Attorney General Adam Laxalt's Welcome. Self-introduction of members present.

(Agenda Item No. 2)

Attorney General Adam Laxalt welcomed the members and everyone introduced themselves.

3. **Public Comment. Discussion Only. Action may not be taken on any matter brought up under this agenda item, until scheduled on the agenda of a future meeting for possible action.**

(Agenda Item No. 3)

No public comment.

4. **Discussion and possible action to approve the minutes of the September 27, 2017 meeting.**
(Agenda Item No. 4) (Attachment One (1) – Draft Meeting Minutes.)

Chris Hicks moved to approve the minutes for September 27, 2017. Robert Sweetin seconded the motion, and the motion passed unanimously.

5. **Discussion and possible action on Prosecutors Conference September 27 – 29, 2017.**

(Agenda Item No. 5)

A synopsis of the Prosecutors Conference was reported by Patricia Cafferata, according to the compiled evaluation sheets. The presentations on *Impaired Driving under Marijuana*, the animal cases and prosecutions, and the crash reconstruction were particularly popular break-out sessions.

Chris Hicks made a suggestion to apply the Raggio award to a northern nominee again in September 2018, to remedy any travel expenses for a southern candidate at Lake Tahoe. Hicks explained that the north's nomination was presented at the Laughlin Conference, and while Judge David Clifton was honored to receive the award, he had to travel to Laughlin to accept it. The group agreed that the Raggio award should be given to a recipient in the area where the conference is held.

6. **Discussion and possible action on Prosecutors Conference at Lake Tahoe in September 2018.**

(Agenda Item No. 6)

Topics and issues to include at the Prosecutors Conference at Lake Tahoe were discussed among attendees. The recommendations include:

- a. To have the more popular presentations repeated, such as Marijuana and Impaired Driving, along with new content;
- b. To have an email circulated among attorneys and the Attorney General's Office to solicit suggestions on what to include that would focus the attention to different areas of law statewide for district attorneys and prosecuting attorneys;
- c. To have northern District Court Judges or Justices of the Peace present at the conference to provide diversity and a from-the-bench perspective to the prosecuting attorneys;
- d. Invite seasoned defense lawyers to attend the conference to provide an alternative viewpoint on a specific theme; and
- e. For a member of a joint task force to discuss how a case develops jurisdictionally from a task force level before being sent to a district attorney.

7. Discussion and possible action on additional trainings for prosecutors.

Agenda Item No. 7)

The Traffic Safety Training for DUI of marijuana has been presented in the 15 rural counties. This training will restart for 2017-2018, and the grant for this training now includes Washoe County. Traffic Safety Resource Prosecutor (TSRP) Chris Halsor now has the software and equipment to offer webinars. He successfully presented his first webinar, which covered marijuana, approximately one week ago. Additional trainings for the rural District Attorneys are planned for the north and south. A list of prosecutions trainings from Clark and Washoe County District Attorneys for 2018 was recommended to be distributed to prosecutors. AG Laxalt added that the internal education classes that the AGO offers also be sent to any prosecuting attorneys that would be interested in attending the trainings.

8. Discussion and possible action on proposed legislation for the 2019 session.

(Agenda Item No. 8)

Discussion deferred until next meeting.

9. Meetings set for 2018 at 10:00 a.m. in the Attorney General's offices:

(Agenda Item No. 9)

- **January 17, 2018**
- **April 18, 2018**
- **July 12, 2018**
- **October 17, 2018**

10. Public Comment. Discussion Only. Action may not be taken on any matter brought up under this agenda item, until scheduled on the agenda of a future meeting for possible action.

(Agenda Item No. 10)

Arthur Mallory mentioned that the Governor has been sued by the ACLU regarding legal representation of indigents in the rural counties. There are multiple issues that are of concern to the rural counties, including allegations about one defendant in Churchill County that were untrue, and yet Churchill County is not a party in the lawsuit, nor were they served – they just saw a copy of the lawsuit.

11. Adjournment.

(Agenda Item No. 11)

Attorney General Adam Laxalt adjourned the meeting.

Minutes respectfully submitted by Taylor Musselman and Tarah Sanchez, Office of the Attorney General.

Attachment Two (2)

to

Advisory Council for Prosecuting Attorneys Agenda
January 17, 2018

*Summary of Evaluations – 2017 Prosecutors
Conference*

SUMMARY OF EVALUATIONS 2017 PROSECUTOR'S CONFERENCE

✦ **The four MOST INFORMATIVE SESSIONS, in order:**

- 1) A Prosecutor's Guide to Understanding Recreational Marijuana
- 2) Trial Advocacy: Trials of the Century **tied with** Update on 2017 Legislative Session for Prosecutors
- 3) What Prosecutors Can Learn from Crash Reconstruction

✦ **The four BEST PREPARED SPEAKERS, in order:**

- 1) Todd Winegar
- 2) Chris Halsor
- 3) Jennifer Noble **tied with** Michael Bolenbaker

✦ **The four LEAST HELPFUL SESSIONS, in order:**

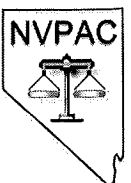
- 1) Prison Classifications and Good Time Credits
- 2) View from the Bench: How to be Successful in Court
- 3) The Latest News on Marijuana **tied with** Storytelling to Win Over the Jury

✦ **REPORT on different formats, speaker, panel discussions, and round tables:**

- Improvement on the organization of equipment, e.g. microphone setup (and asking all speakers to be sure to use the microphone), ensuring that the speaker can see his/her PowerPoint while presenting, and giving the speakers a copy of their PowerPoint notes so they can reference them, if needed.
- Better preparation of panel discussions, e.g. give the panelists general topics to discuss in the event that there are no questions.
- Either less breakout sessions *or* longer breakout sessions on important topics, e.g. the legislative update (**several commented on this topic needing more time**)
- The majority of attendees indicated that they enjoyed the variety of different formats, speakers, panel discussions, and round tables.
- Several attendees reported that they did not like the information presented by the judges (specifically "unprepared, opinionated, appeared that they did not want to be there"); a few attendees commented the opposite.

✦ **SUGGESTED IMPROVEMENTS for next conference:**

- Start later (7am too early)
- More content on Day 2 so that the conference ends earlier on Friday
- Breakout sessions relevant to City Attorneys and Attorney Generals
- Provide attendees with a directory of everyone's contact information
- End when speaker is done versus allowing "filler talk"
- Wifi capabilities
- Smaller room so that speakers can be heard clearly
- Quieter facility
- More energy and demonstrations of persuasion and storytelling from speakers
- Include more speakers from other Nevada jurisdictions
- Offer CLE sessions during golf tournament *or* offer another activity
- More audience involvement



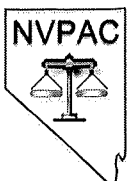
SUMMARY OF EVALUATIONS 2017 PROSECUTOR'S CONFERENCE

✦ **SUGGESTED TOPICS for next conference - bolded** denotes topic was suggested by one or more attendees:

- **Contact District Attorneys and find out what topics are currently in need of being addressed, e.g. what issues they face on a daily basis**
- **Updates on marijuana laws/DUIs**
- **Work/life balance**
- Misdemeanor crimes
- Prepping witnesses with little time
- Specialty courts
- Voir dire
- Body cameras
- Celebrity speaker, e.g. Gerry Spence or prolific District Attorney
- Analysis of financial records
- Successful habeas cases
- Jury selection in real and practical way, rather than generic psychological
- Creative evidentiary arguments
- Current trends in criminal law
- More specific techniques for prosecutors; prosecuting specific types of cases
- Charging cases
- Law enforcement investigation
- Media relations
- Tips for working with “bad judges”
- Discovery obligations for preliminaries and trials and how they differ
- Alcohol use among attorneys
- Use of smart phone in trial preparation
- Topics relevant to the audience that signs up (e.g. one commented that this year’s guardianship presentation was not practical to most of the attorneys in attendance)
- How to pick a jury
- “Wall stops”
- Discovery and preliminary testimony when outside agencies contact law enforcement regarding trafficking but say “keep me out of your report”
- Advanced evidence: admission of evidence/statements in co-conspirator cases
- Crawford issues and testimonial statements
- Prosecution of domestic battery cases with uncooperative or lack of victims

✦ **SUGGESTED LOCATIONS for next conference, in order:**

- 1) Lake Tahoe
- 2) Las Vegas
- 3) Elko



Attachment Three (3)

to

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*Summary of Questionnaire's Answers – 2018
Prosecutors Conference*

SUMMARY OF QUESTIONNAIRES
RE: PROSECUTORS CONFERENCE IN 2018

(Data from 11 completed questionnaires)

✦ **Suggestions for the MOST MEANINGFUL TOPICS (all):**

- Domestic violence
- Trial advocacy
- Statewide discovery
- Statewide criminal prosecution rules
- The use and implementation of policy, procedure and protocol in regard to discovery
- Public records requests involving the subject of bodycam footage
- Surveillance evidence
- Methods of altering cell phone video
- Addicts possessing firearms and if those cases are prosecuted
- Standard jury instructions
- Using PowerPoint
- How to keep your boss happy

✦ **Suggestions for the TOP THREE CRIMES, in order:**

- Sexual assault
- Misuse of drones
- Child sexual assault (one respondent commented “specifically evidence and testimony without using the child”)
- Other crimes which had more than one vote:
 - Domestic violence
 - Impaired driving – marijuana
 - Opioid crisis

✦ **Suggestions for the TOP THREE TRIAL ADVOCACY TOPICS, in order:**

- Evidentiary matters
- Jury instructions
- Expert witnesses

✦ **Suggested TYPES OF SPEAKERS, in order:**

- Judges – Appellate Court and Nevada Supreme Court
- U.S. Attorneys
- Street Deputy Law Enforcement Officers
- Other types of speakers which had more than one vote:
 - State/Federal Task Force Participants, specifically domestic violence and FBI/DEA
 - Defense lawyers
 - Judges – Justice Court and District Court

✦ **Suggestions for the BEST MONTH FOR THE CONFERENCE, in order:**

- September
- No preference
- August

SUMMARY OF QUESTIONNAIRES
RE: PROSECUTORS CONFERENCE IN 2018

(Data from 11 completed questionnaires)

- May
- June

- ✚ **Is receiving all the REQUIRED HOURS FOR CLES important?**
 - All but three respondents indicated YES

- ✚ **Is Wednesday through Friday GOOD DAYS?**
 - All respondents (except one who didn't answer this question) indicated YES

- ✚ **Suggestions for OTHER ACTIVITIES to be included:**
 - Include an event on the lake – e.g. a hike in lieu of golf
 - Break-out sessions
 - Hands-on skills

- ✚ **ADDITIONAL COMMENTS:**
 - Always like the Conference in the 2nd week of September

Attachment Four (4)

to

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Copies of relevant pages from website: A-1

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The Nevada Advisory Council for Prosecuting Attorneys is a state agency with a broad statutory mandate under NRS 241A.070. The mission of the Advisory Council is:

- To provide leadership on legal and public policy issues related to the duties of prosecutors;
- To enhance communication and cooperation among prosecutors and the judiciary, law enforcement, state and local government, the bar, and other public and private organizations concerned with the administration of justice;
- To provide training, education, resources and support to prosecutors and their support staff, law enforcement, government agencies, and the citizens of the State of Nevada; and
- To foster professionalism and competency among the offices of prosecutors in the State of Nevada by providing a forum for communication and cooperation.

The members of the Advisory Council are dedicated to the accomplishment of this Mission by developing consensus on legal and public policy issues of statewide significance to prosecutors. The Mission will be implemented competently and professionally while adhering to the highest ethical standards of the legal profession.

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Who prosecutes crime in Nevada?

The Attorney General is the chief law enforcement officer in Nevada with primary responsibility to ensure that the laws of the state are uniformly and adequately enforced (see NRS chapter 228), while the elected district attorney in each county is the chief law enforcement officer who prosecutes all crimes committed within his or her respective county (see NRS chapter 252). The elected or appointed city attorney prosecutes misdemeanor crimes that occur within the city limits of an incorporated city (NRS 266.470), while the United States Attorney for the District of Nevada represents the United States of America in the prosecution of federal crimes committed in our state.

The term "prosecutor" is used herein for both the Attorney General, district attorneys, city attorneys, and their respective deputies. For further information on the United States Attorney for the District of Nevada, please see the U.S. Department of Justice website at www.usdoj.gov/usao/nv/.

Is the only responsibility of the prosecutor to convict criminals?

The prosecutor's primary responsibility is not to win cases but to see that justice is done. *Berger v. United States*, 295 U.S. 78 (1935); see also NDAA National Prosecution Standard § 1.1, 2nd Ed. 1991. The prosecutor should at all times be zealous in the need to protect the rights of individuals, but must place the rights of society in a paramount position in exercising prosecutorial discretion. NDAA National Prosecution Standard § 1.3, 2nd Ed. 1991.

How does a prosecutor decide to charge someone with a crime?

The prosecutor shall refrain from prosecuting a charge not supported by probable cause. Nevada Rule of Professional Conduct 3.8(a). Furthermore, the prosecutor in exercising charging discretion should require sufficient admissible evidence to support a conviction. ABA Prosecution Function Standard § 3-3.9(a); NDAA National Prosecution Standard § 43.6(a), 2nd Ed. 1991.

Does the prosecutor have any responsibility to victims of crime?

Victims of crime have a constitutional right to be:

- Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;
- Present at all public hearings involving the critical stages of a criminal proceeding; and
- Heard at all proceedings for the sentencing or release of a convicted person after trial.

Nevada Constitution Article I, Section 8.

Victims of crime also have statutory rights, which include:

- Right, upon written request, to notice of any release of defendant from pre-trial custody, amount of bail, and disposition of charges [NRS 178.5698];
- Right to secure waiting areas at court separate from those used by jurors, defendants and their families [NRS 178.5696(1)];
- Right to an attendant to provide support in court during testimony [NRS 178.571];
- Right to notice of the date of sentencing [NRS 176.015(4)] and to be heard at sentencing after the defendant and/or his counsel speaks [NRS 176.015(3)];
- Right to notice of the disposition of harassment and stalking cases [NRS 200.601(1)] and a certified copy of any no contact order imposed as a condition of sentencing [NRS 200.601(2)];
- Right to notice within 30 days of the defendant's conviction under NRS 205.980 and resulting civil liability for damage to the victim's property [NRS 205.980(3)]; and
- Right, upon written request, to notice of the date of any meeting to consider the defendant for parole and to submit documents and be heard at the meeting [NRS 213.130(4)].

To the extent feasible and when it is deemed appropriate by the prosecutor, the prosecution should provide an orientation to the criminal justice process for victims of crime and should explain prosecutorial decisions . . . and provide certain services. NDAA National Prosecution Standards §§ 26.2-26.3, 2nd Ed. 1991.

There are additional specific statutory rights for victims of certain sexual offenses:



- Certain criminal justice information that reveals the identity of a victim of certain sexual offenses is confidential and can only be disclosed for preparation of the defense absent good cause or waiver by the victim [NRS 200.3771;]
- A victim of certain sexual offenses may, upon written request, choose a pseudonym to be used instead of the victim's name on all files, records and documents of the case [NRS 200.3772]; and
- A victim of certain sexual offenses has a right to notice of the disposition of the case and to a certified copy of any no contact order imposed as a condition of sentencing [NRS 200.3784].

Does the prosecutor have any responsibility to the defendant?

In order to accord the defendant a fair trial as guaranteed by the Due Process Clause, the prosecutor has a duty to provide the defense with evidence that is favorable to an accused if it is material to guilt or punishment (i.e., creates a reasonable doubt that does not otherwise exist). *Brady v. Maryland*, 373 U.S. 83 (1963); see also Nevada Rule of Professional Conduct 3.8(d); NDAA National Prosecution Standard § 25.4, 2nd Ed. 1991. The prosecutor shall make reasonable efforts to assure the accused is advised of the right to counsel (i.e., *Miranda v. Arizona*, 384 U.S. 436 (1966)). Nevada Rule of Professional Conduct 3.8(b).

Does the prosecutor have any responsibility in dealing with the media?

A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding; . . . Nevada Rule of Professional Conduct 3.6(a). The prosecutor should strive to protect both the rights of the individual accused of a crime and the right of the public to know . . . [and] maintain a relationship to the media that will facilitate the appropriate flow of information to the public. NDAA National Prosecution Standards §§ 33.1-33.2, 2nd Ed. 1991.

What do I do if I am unhappy with a judge or a prosecutor?

The Attorney General and district attorneys are elected public officials, placed in office by the citizens of the state and each county. The Attorney General respects each district attorney's prosecutorial discretion. The most expedient recourse is to complain directly to the district attorney since, as an elected official, he or she has an interest in constituent service.

If you wish to file a complaint against a prosecutor or any public officer or employee (except a judge) regarding an alleged violation of the Nevada Ethics in Government Law (see NRS chapter 281A), please contact the Nevada Commission on Ethics at www.ethics.nv.gov. If you wish to file a complaint against a prosecutor or any lawyer regarding an alleged violation of the Nevada Rules of Professional Conduct, please contact the State Bar of Nevada at www.nvbar.org.

If you wish to file a complaint against a judge regarding an alleged violation of the Nevada Rules of Judicial Conduct, please contact the Nevada Commission on Judicial Discipline at www.judicial.state.nv.us.

Who enforces Nevada's Open Meeting Law?

The Nevada Open Meeting Law was enacted in 1960 to ensure that the actions and deliberations of public bodies be conducted openly (see NRS chapter 241). The Attorney General investigates and prosecutes violations of the Open Meeting Law. For additional guidance, please see the Attorney General's website at www.ag.state.nv.us.

Do prosecutors have any other responsibilities?

The Attorney General serves as legal counsel to the Executive Branch of Nevada's state government (NRS 228.110), while the district attorneys serve as legal counsel to their respective counties (see NRS chapter 252) and the city attorneys serve as legal counsel to their respective municipalities (NRS 266.470).

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PERFORMANCE MEASURES

Success in prosecution cannot be measured simply by conviction rates. Performance measures must be representative of the duty of the prosecutor to see that justice is done. Performance measures serve several important functions for prosecutors:

- Performance measures give prosecutors evidence to support and justify their funding requests.
- Performance measures can correct mistaken public perceptions or refute inaccurate information provided to the public.
- Performance measures can help with overall office management and the efficient administration of justice.

The American Prosecutors Research Institute has developed a new framework for prosecution goals, objectives and performance measures predicated on the following:

- [Prosecution Goals, Objectives and Performance Measures \(pdf\)](#)

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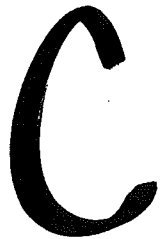
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[Advisory Council Members](#)

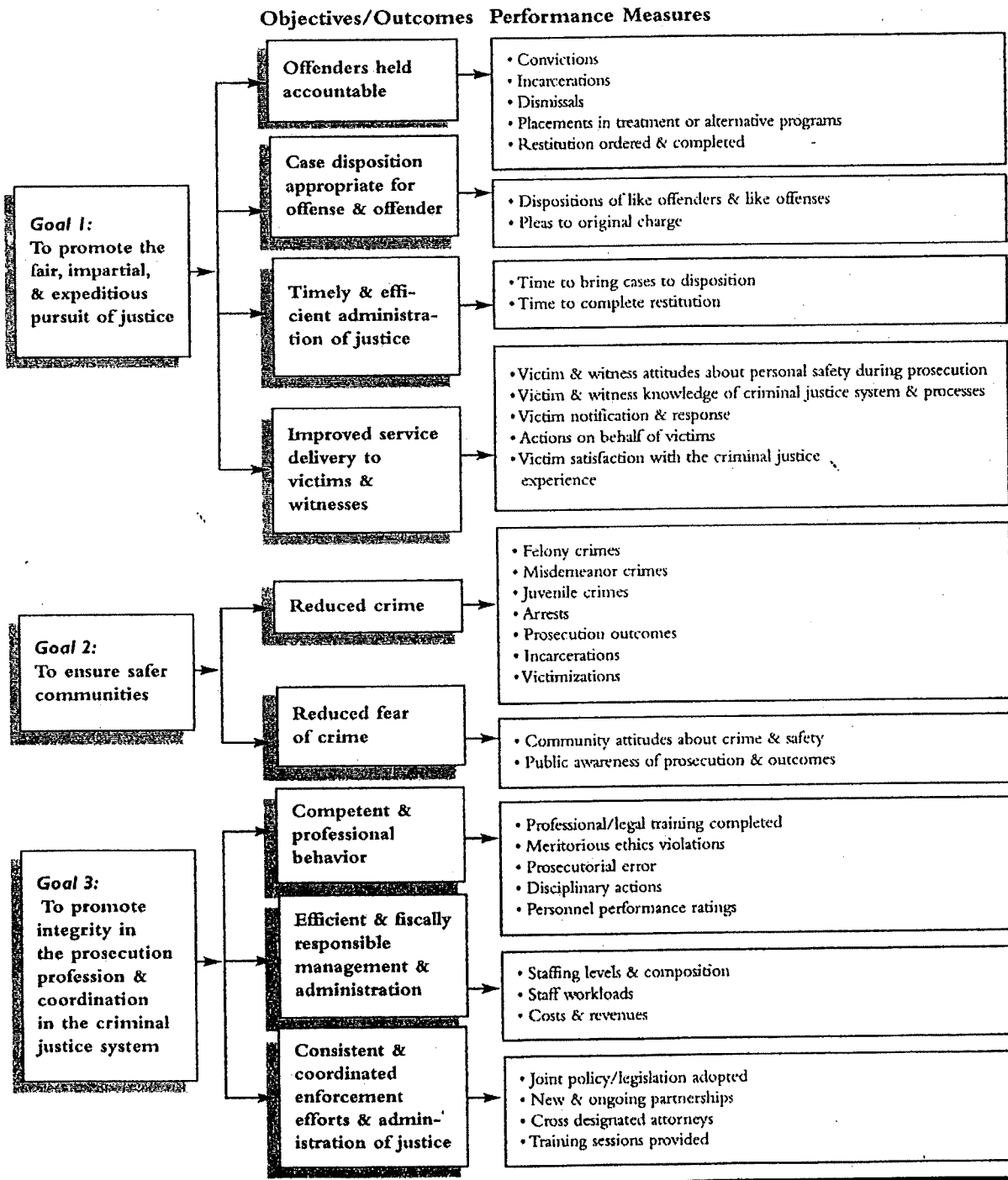
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[FAQs](#)

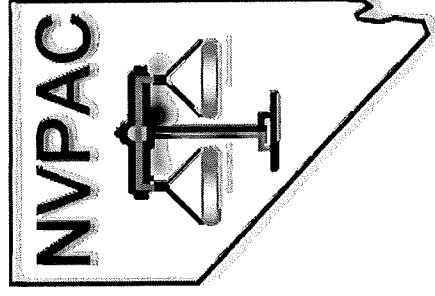
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PROSECUTION GOALS, OBJECTIVES, AND PERFORMANCE MEASURES



Nevada Domestic Violence Prosecution Best Practices Project

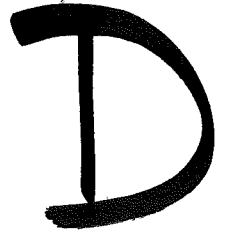


Brett Kandt

Executive Director - Nevada Advisory Council for Prosecuting Attorneys

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The Role of the Prosecutor

“Henceforth there shall be in every County a sober, discreet and religious person appointed by the county court to be Attorney for the Queene to prosecute and implead in the lawe all criminall offenders and doe all things necessary or convenient as an attorney to suppress vice and immoralitye.”

Connecticut, 4 Colonial Records 468 (1704).

The Prosecutor's Primary Responsibility

Not to win a case, but to see that justice is done.

Berger v. United States, 295 U.S. 78 (1935); *see also* NDAA National Prosecution Standard § 1.1, 2nd Ed. 1991.

Project Goals

- Although prosecution is just one component of a coordinated community response to the crime of domestic violence, prosecutors are in a unique position to spearhead efforts to improve the criminal justice system's handling of domestic violence cases.
 - Project to enhance Nevada's ability to provide safety for victims and accountability for perpetrators through system improvement and the promotion of best practices in the prosecution of domestic violence cases throughout the state.
-

Project Goals continued

- Project to promote consistency in the prosecution of domestic violence, recognizing that each jurisdiction is unique in its demographic and geographic composition and available resources.
 - Project to complement the *Nevada Model Policy and Standard Operating Procedure for the Enforcement of Protection Orders against Domestic Violence* and the *Nevada Model Domestic Violence Protocol for Law Enforcement*.
-

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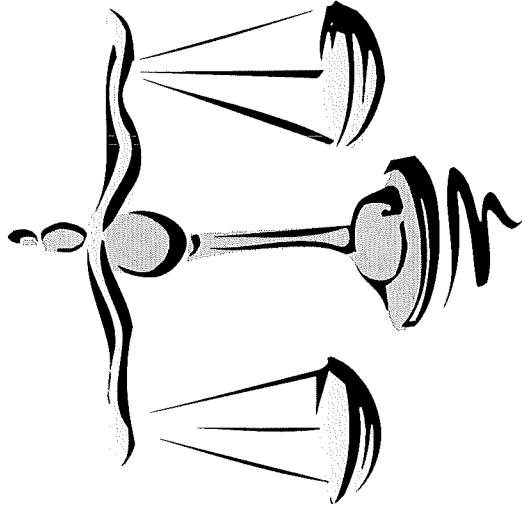
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Best Practice Guidelines



Goals of Prosecution

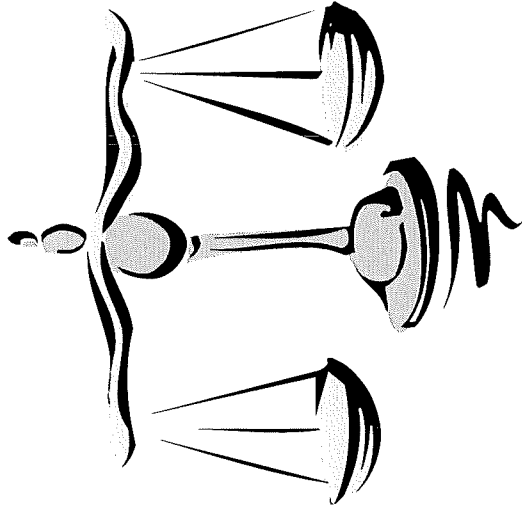
The goals of prosecution in domestic violence cases are:

- To protect the victim from additional acts of violence committed by the perpetrator;
 - To reduce the exposure and/or possible injury to children or other family members from domestic violence;
 - To deter the perpetrator from committing continued acts of violence in the community and hold him accountable for his actions;
 - To create a general deterrence to domestic violence in the community; and
 - To serve justice.
-

Core Strategies

1. Specialization
 2. Early and Consistent Contact with Victims
 3. Evidence-Based Prosecution
 4. Speedy Prosecution
 5. Working With Victim Advocates
 6. Coordinated Community Response
-

Prosecutorial Discretion



Basis of Charging Decisions

- The prosecutor shall refrain from prosecuting a charge not supported by probable cause.
 - The prosecutor should require sufficient admissible evidence to support a conviction (i.e., proof beyond a reasonable doubt).
 - The prosecutor should only file charges that adequately encompass the offense(s) believed to have been committed and rationally address the nature and scope of alleged criminal activity.
-

Filing Charges in Domestic Violence

Cases

Prosecutor should review all the facts of the case in light of the following:

- Existence and seriousness of the injuries and/or threats
 - Use of a weapon (including furniture or other household objects)
 - Any history of violence by either party
 - Vulnerability of the victim
-

Filing Charges continued

Prosecutor should review all the facts of the case in light of the following:

- Presence and proximity of children at the location of the violence
 - Careful determination of the identity of the dominant aggressor, if any
 - Potential lethality in the context of the relationship as a whole
 - Strength of the case and the ability to prove beyond a reasonable doubt - corroborating evidence
-

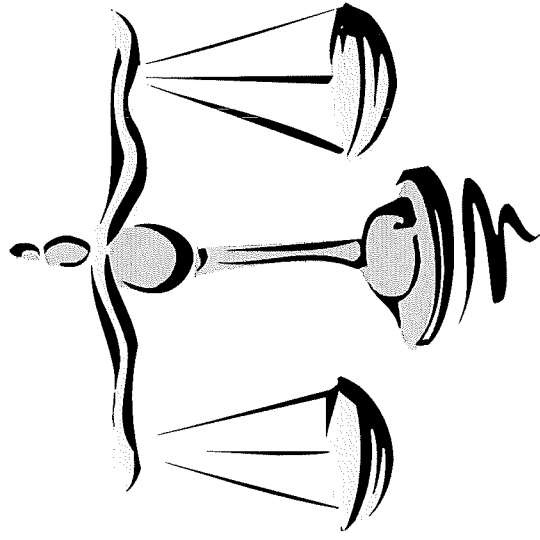
Case Preparation

- Ascertain Victim's Whereabouts - CONFIDENTIAL
 - Document Victim's Injuries and Signs of Physical Contact
 - Build on Police Investigation
 - Statements of Witnesses
 - Physical Evidence
 - Pleadings and Transcript From Protection Order Proceedings
 - Ascertain Defendant's Criminal History and/or History of Domestic Violence
-

Arraignment/Bail Conditions

- The prosecutor should recommend any conditions of release necessary for the victim's safety.
 - In most circumstances, release of the defendant on his own recognizance should be opposed based on the continued risk of danger posed in domestic violence situations.
-

Responsibility Towards Victims



Protecting the Victim

The prosecutor, in conjunction with the victim advocate, should make every effort during the pendency of the case to protect the safety of the victim. These efforts should include, but are not limited to the following:

- Confidentiality of the Victim's Address [NRS 174.234(5)]
 - Personal Service of Subpoenas
 - Transportation to Court
 - Designated Waiting Areas in Court
 - No Contact Orders
 - Child Custody Considerations
-

Rights of Victims of Crime

Victims have a constitutional right to be:

- Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;
- Present at all public hearings involving the critical stages of a criminal proceeding; and
- Heard at all proceedings for the sentencing or release of a convicted person after trial.

Nevada Constitution Article I, Section 8.

Statutory Rights of Victims of Crime

- Right, upon written request, to notice of any release of defendant from pre-trial custody, amount of bail, and disposition of charges [NRS 178.5698]
 - Right to secure waiting areas at court separate from those used by jurors, defendants and their families [NRS 178.5696(1)]
 - Right to an attendant to provide support in court during testimony [NRS 178.571]
 - Right to notice of the date of sentencing [NRS 176.015(4)] and to be heard at sentencing after the defendant and/or his counsel speaks [NRS 176.015(3)]
-

Statutory Rights continued

- Right to notice of the disposition of harassment and stalking cases [NRS 200.601(1)] and a certified copy of any no contact order imposed as a condition of sentencing [NRS 200.601(2)]
 - Right to notice within 30 days of the defendant's conviction under NRS 205.980 and resulting civil liability for damage to the victim's property [NRS 205.980(3)]
 - Right, upon written request, to notice of the date of any meeting to consider the defendant for parole and to submit documents and be heard at the meeting [NRS 213.130(4)]
-

Recommended Notification

The prosecutor's office should be responsible for notifying the victim, when possible, in a timely fashion of developments in the case, including, but not limited to, the following:

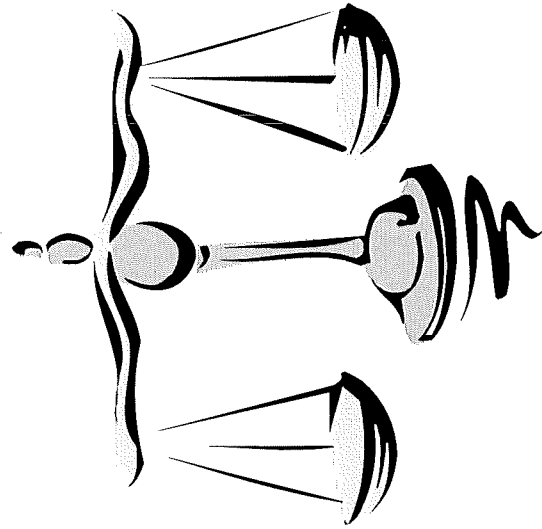
- Nature and type of charges filed;
 - *Any* changes in the defendant's custodial status, including any short term release;
 - Date, in advance, of any court hearing in which the victim may have an interest, including bail hearings and sentencing; and
 - Outcome of all court appearances at which the victim was not present, including continuances, bail hearings, and motions.
-

The Reluctant Victim

- In the event the victim is reluctant to participate, prosecutors should keep in mind the goals of prosecution.
- The prosecutor should at all times be zealous in the need to protect the rights of individuals, but must place the rights of society in a paramount position in exercising prosecutorial discretion.

NDAAs National Prosecution Standard § 1.3, 2nd Ed. 1991.

Dispositions



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Negotiated Pleas

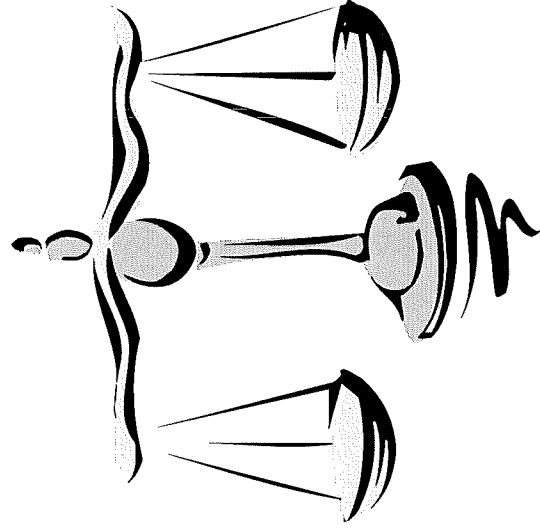
NRS 200.485(7) prohibits plea bargains unless it is determined that the charge cannot be proved at the time of trial. Before negotiating any plea, the prosecutor should consider the following factors:

- Realistic assessment of the possibility of successful prosecution without a plea;
 - Seriousness of the offense;
 - Prior criminal history of the defendant;
 - Victim's input;
 - Any history of violence in the relationship and the probability of recurrence; and
 - Any other relevant circumstances.
-

Sentencing

- The prosecutor's sentencing recommendations should be commensurate with sentences for other violent crimes
 - Suspended Sentences
 - Restitution
 - Counseling and Treatment Programs - NRS 200.485 mandates counseling for a battery that constitutes domestic violence pursuant to NRS 33.018.
-

Best Practice Implementation



A Coordinated Community Response

- Jurisdictions form multidisciplinary implementation teams and use free technical assistance to identify and achieve local goals by building one or more Best Practices into the current infrastructure, given existing limitations in each jurisdiction.
 - Use Safety and Accountability Audit process not as an evaluation tool to identify shortcomings in the current practices of a jurisdiction, but rather as an implementation tool for system improvement.
-

Pilot Sites

- City of Henderson
 - City of Reno
 - Churchill County
 - Eureka County
 - Humboldt County
-

Disclaimer

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ABA STANDARDS FOR CRIMINAL JUSTICE

THE PROSECUTION FUNCTION

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PART I. GENERAL STANDARDS

Standard 3-1.1 The Function of the Standards

These standards are intended to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of the prosecutor to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

Standard 3-1.2 The Function of the Prosecutor

(a) The office of prosecutor is charged with responsibility for prosecutions in its jurisdiction.

(b) The prosecutor is an administrator of justice, an advocate, and an officer of the court; the prosecutor must exercise sound discretion in the performance of his or her functions.

(c) The duty of the prosecutor is to seek justice, not merely to convict.

(d) It is an important function of ~ prosecutor to seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, he or she should stimulate efforts for remedial action.

(e) It is the duty of the prosecutor to know and be guided by the standards of professional conduct as defined by applicable professional traditions, ethical codes, and law in the prosecutor's jurisdiction. The prosecutor should make use of the guidance afforded by an advisory council of the kind described in standard 4-1.5.

Standard 3-1.3 Conflicts of Interest

(a) A prosecutor should avoid a conflict of interest with respect to his or her official duties.

(b) A prosecutor should not represent a defendant in criminal proceedings in a jurisdiction where he or she is also employed as a prosecutor.

(c) A prosecutor should not, except as law may otherwise expressly permit, participate in a matter in which he or she participated personally and substantially while in private practice or non-governmental employment unless under applicable law no one is, or by lawful delegation may be, authorized to act in the prosecutor's stead in the matter.

(d) A prosecutor who has formerly represented a client in a matter in private practice should not thereafter use information obtained from that representation to the disadvantage of the former client unless the rules of attorney-client confidentiality do not apply or the information has become generally known.

(e) A prosecutor should not, except as law may otherwise expressly permit, negotiate for private employment with any person who is involved as an accused or as an attorney or agent for an accused in a matter in which the prosecutor is participating personally and substantially.

(f) A prosecutor should not permit his or her professional judgment or obligations to be altered by his or her own political, financial, business, property, or personal interests.

(g) A prosecutor who is related to another lawyer as parent, child, sibling or spouse should not participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer. Nor should a prosecutor who has a significant personal or financial relationship with another lawyer participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer, unless the prosecutor's supervisor, if any, is informed and approves or unless there is no other prosecutor authorized to act in the prosecutor's stead.

(h) A prosecutor should not recommend the services of particular defense counsel to accused persons or witnesses unless requested by the accused person or witness to make such a recommendation, and should not make a referral that is likely to create a conflict of interest. Nor should a prosecutor comment upon the reputation or abilities of defense counsel to an accused person or witness who is seeking or may seek such counsel's services unless requested by such person.

Standard 3-1.4 Public Statements

(a) A prosecutor should not make or authorize the making of an extra judicial statement that a reasonable person would expect to be disseminated by — of public communication if the prosecutor knows or reasonably should know that it will have a substantial likelihood of prejudicing a criminal proceeding.

(b) A prosecutor should exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor from making an extra judicial statement that the prosecutor would be prohibited from making under this standard.

Standard 3-1.5 Duty to Respond to Misconduct

(a) Where a prosecutor knows that another person associated with the prosecutor's office is engaged in action, intends to act or refuses to act in a manner that is a violation of a legal obligation to the prosecutor's office or a violation of law, the prosecutor should follow the policies of the prosecutor's office concerning such matters. If such policies are unavailing or do not exist, the prosecutor should ask the person to reconsider the action or inaction which is at issue if such a request is aptly timed to prevent such misconduct and is otherwise feasible. If such a request for reconsideration is unavailing, inapt or otherwise not feasible or if the seriousness of the matter so requires, the prosecutor should refer the matter to higher authority in the prosecutor's office, including, if warranted by the seriousness of the matter, referral to the chief prosecutor.

(b) If, despite the prosecutor's efforts in accordance with section (a), the chief prosecutor insists upon action, or a refusal to act, that is clearly a violation of law, the prosecutor may take further remedial action, including revealing the information necessary to remedy this violation to other appropriate governmental officials not in the prosecutor's office.

PART II. ORGANIZATION OF THE PROSECUTION FUNCTION

Standard 3-2.1 Prosecution Authority to be Vested in a Public Official

The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline.

Standard 3-2.2 Interrelationship of Prosecution Offices within a State

(a) Local authority and responsibility for prosecution is properly vested in a district, county, or city attorney. Wherever possible, a unit of prosecution should be designed on the basis of population, caseload, and other relevant factors sufficient to warrant at least one full-time prosecutor and the supporting staff necessary to effective prosecution.

(b) In some states, conditions such as geographical area and population may make it appropriate to create a statewide system of prosecution in which the state attorney general is the chief prosecutor and the local prosecutors are deputies.

(c) In all states, there should be coordination of the prosecution policies of local prosecution offices to improve the administration of justice and assure the maximum practicable uniformity in the enforcement of the criminal law throughout the state. A state association of prosecutors should be established in each state.

(d) to the extent needed, a central pool of supporting resources and personnel, including laboratories, investigators, accountants, special counsel, and other experts, should be maintained by the state government and should be available to assist all local prosecutors.

Standard 3-2.3 Assuring High Standards of Professional Skill

(a) The function of public prosecution requires highly developed professional skills. This objective can best be achieved by promoting continuity of service and broad experience in all phases of the prosecution function.

(b) Wherever feasible, the offices of chief prosecutor and staff should be full-time occupations.

(c) Professional competence should be the basis for selection for prosecutorial office. Prosecutors should select their personnel without regard to partisan political influence.

(d) Special efforts should be made to recruit qualified women and members of minority groups for prosecutorial office.

(e) In order to achieve the objective of professionalism and to encourage competent lawyers to accept such offices, compensation for prosecutors and their staffs should be commensurate with the high responsibilities of the office and comparable to the compensation of their peers in the private sector.

Standard 3-2.4 Special Assistants, Investigative Resources. Experts

(a) Funds should be provided to enable a prosecutor to appoint special assistants from among the trial bar experienced in criminal cases, as needed for the prosecution of a particular case or to assist generally.

(b) Funds should be provided to the prosecutor for the employment of a regular staff of professional investigative personnel and other necessary supporting personnel, under the prosecutor's direct control, to the extent warranted by the responsibilities and scope of the office; the prosecutor should also be provided with funds for the employment of qualified experts as needed for particular cases.

Standard 3-2.5 Prosecutors Handbook: Policy Guidelines and Procedures

(a) Each prosecutor's office should develop a statement of (i) general policies to guide the exercise of prosecutorial discretion and (ii) procedures of the office. The objectives of these policies as to discretion and procedures should be to achieve a fair, efficient, and effective enforcement of the criminal law.

(b) In the interest of continuity and clarity, such statement of policies and procedures should be maintained in an office handbook. This handbook should be available to the public, except for subject matters declared "confidential," when it is reasonably believed that public access to their contents would adversely affect the prosecution function.

Standard 3-2.6 Training Programs

Training programs should be established within the prosecutor's office for new personnel and for continuing education of the staff. Continuing education programs for prosecutors should be substantially expanded and public funds should be provided to enable prosecutors to attend such programs.

Standard 3-2 Relations With Police

(a) The prosecutor should provide legal advice to the police concerning police functions and duties in criminal matters.

(b) The prosecutor should cooperate with police in providing the services of the prosecutor's staff to aid in training police in the performance of their function in accordance with law.

Standard 3-2.8 Relations With the Courts and Bar

(a) A prosecutor should not intentionally misrepresent matters of fact or law to the court.

(b) A prosecutor's duties necessarily involve frequent and regular official contacts with the judge or judges of the prosecutor's jurisdiction. In such contacts the prosecutor should carefully strive to preserve the appearance as well as the reality of the correct relationship which professional traditions, ethical codes, and applicable law require between advocates and judges.

(c) A prosecutor should not engage in unauthorized ex parte discussions with or submission of material to a judge relating to a particular case which is or may come before the judge.

(d) A prosecutor should not fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to the prosecutor's position and not disclosed by defense counsel.

(e) A prosecutor should strive to develop good working relationships with defense counsel in order to facilitate the resolution of ethical problems. In particular, a prosecutor should assure defense counsel that if counsel finds it necessary to deliver physical items which may be relevant to a pending case or investigation to the prosecutor, the prosecutor will not offer the fact of such delivery by defense counsel as evidence before a jury for purposes of establishing defense counsel's client's culpability. However, nothing in this Standard shall prevent a prosecutor from offering evidence of the fact of such delivery in a subsequent proceeding for the purpose of proving a crime or fraud in the delivery of the evidence.

Standard 3-2.9 Prompt Disposition of Criminal Charges

(a) A prosecutor should avoid unnecessary delay in the disposition of cases. A prosecutor should not fail to act with reasonable diligence and promptness in prosecuting an accused.

(b) A prosecutor should not intentionally use procedural devices for delay for which there is no legitimate basis.

(c) The prosecution function should be so organized and supported with staff and facilities as to enable it to dispose of all criminal charges promptly. The prosecutor should be punctual in attendance in court and in the submission of all motions, briefs, and other papers. The prosecutor should emphasize to all witnesses the importance of punctuality in attendance in court.

(d) A prosecutor should not intentionally misrepresent facts or otherwise mislead the court in order to obtain a continuance.

(e) A prosecutor, without attempting to get more funding for additional staff, should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the interests of justice in the speedy disposition of charges, or may lead to the breach of professional obligations.

Standard 3-2.10 Supercession and Substitution of Prosecutor

(a) Procedures should be established by appropriate legislation to the end that the governor or other elected state official is empowered by law to suspend and supersede a local prosecutor upon making a public finding, after reasonable notice and

hearing, that the prosecutor is incapable of fulfilling the duties of office.

(b) The governor or other elected official should be empowered by law to substitute special counsel in the place of the local prosecutor in a particular case, or category of cases, upon making a public finding that *this* is required for the protection of the public interest.

Standard 3-2.11 Literary or Media Agreements

A prosecutor, prior to conclusion of all aspects of a matter, should not enter into any agreement or understanding by which the prosecutor acquires an interest in literary or media rights to a portrayal or account based in substantial part on information relating to that

PART III. INVESTIGATION FOR PROSECUTION DECISION

Standard 3-3.1 Investigative Function of Prosecutor

(a) A prosecutor ordinarily relies on police and other investigative agencies for investigation of alleged criminal acts, but the prosecutor has an affirmative responsibility to investigate suspected illegal activity when it is not adequately dealt with by other agencies.

(b) A prosecutor should not invidiously discriminate against or in favor of any person on the basis of race, religion, sex, sexual preference, or ethnicity in exercising discretion to investigate or to prosecute. A prosecutor should not use other improper considerations in exercising such discretion.

(c) A prosecutor should not knowingly use illegal means to obtain evidence or to employ or instruct or encourage others to use such means.

(d) A prosecutor should not discourage or obstruct communication between prospective witnesses and defense counsel. A prosecutor should not advise any person or cause any person to be advised to decline to give to the defense information which such person has the right to give.

(e) A prosecutor should not secure the attendance of persons for interviews by use of any communication which has the appearance or color of a subpoena or similar judicial process unless the prosecutor is authorized by law to do so.

(f) A prosecutor should not promise not to prosecute for prospective criminal activity, except where such activity is part of an officially supervised investigative and enforcement program.

(g) Unless a prosecutor is prepared to forgo impeachment of a witness by the prosecutor's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present the impeaching testimony, a prosecutor should avoid interviewing a prospective witness except in the presence of a third person.

Standard 3-3.2 Relations With Victims and prospective Witnesses

(a) A prosecutor should not compensate a witness, other than an expert, for giving testimony, but it is not improper to reimburse an ordinary witness for the reasonable expenses of attendance upon court, attendance for depositions pursuant to statute or court rule, or attendance for pretrial interviews. Payments to * witness may be for transportation and loss of income, provided there is no attempt to conceal the fact of reimbursement.

(b) A prosecutor should advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to counsel whenever the law so requires. It is also proper for a prosecutor to so advise a witness whenever the prosecutor knows or has reason to believe that the witness may be the subject of a criminal prosecution. However, a prosecutor should not so advise a witness for the purpose of influencing the witness in favor of or against testifying.

(c) The prosecutor should readily provide victims and witnesses who request it information about the status of cases in which they are interested.

(d) The prosecutor should seek to insure that victims and witnesses who may need protections against intimidation are advised of and afforded such protections where feasible.

(e) The prosecutor should insure that victims and witnesses are given notice as soon as practicable of scheduling changes which will affect the victims' or witnesses' required attendance at judicial proceedings.

(f) The prosecutor should not require victims and witnesses to attend judicial proceedings unless their testimony is essential to the prosecution or is required by law. When their attendance is required, the prosecutor should seek to reduce to a minimum the time they must spend at the proceedings.

(g) The prosecutor should seek to insure that victims of serious crimes or their representatives are given timely notice of: (i) judicial proceedings relating to the victims' case; (ii) disposition of the case, including plea bargains, trial and sentencing; and (iii) any decision or action in the case which results in the accused's provisional or final release from custody.

(h) Where practical, the prosecutor should seek to insure that victims of serious crimes or their representatives are given an opportunity to consult with and to provide information to the prosecutor prior to the decision whether or not to prosecute, to pursue a disposition by plea, or to dismiss the charges.

Standard 3-3.3 Relations With Expert Witnesses

(a) A prosecutor who engages an expert for an opinion should respect the independence of the expert and should not seek to dictate the formation of the expert's opinion on the subject. To the extent necessary, the prosecutor should explain to the expert his or her role in the trial as an impartial expert called to aid the fact finders and the manner in which the examination of witnesses is conducted.

(b) A prosecutor should not pay an excessive fee for the purpose of influencing the expert's testimony or to fix the amount of the fee contingent upon the testimony the expert will give or the result in the case.

Standard 3-3.4 Decision to Charge

(a) The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor.

(b) Prosecutors should take reasonable care to ensure that investigators working at their direction or under their authority are adequately trained in the standards governing the issuance of arrest and search warrants and should inform investigators that they should seek the approval of a prosecutor in close or difficult cases.

(c) The prosecutor should establish standards and procedures for evaluating complaints to determine whether criminal proceedings should be instituted.

(d) Where the law permits a citizen to complain directly to a judicial officer or the grand jury, the citizen complainant should be required to present the complaint for prior approval to the prosecutor, and the prosecutor's action or recommendation thereon should be communicated to the judicial officer or grand jury.

Standard 3-3.5 Relations With Grand Jury

(a) Where the prosecutor is authorized to act as legal adviser to the grand jury, the prosecutor may appropriately explain the law and express an opinion on the legal significance of the evidence but should give due deference to its status as an independent legal body.

(b) The prosecutor should not make statements or arguments in an effort to influence grand jury action in a manner which would be impermissible at trial before a petit jury.

(c) The prosecutor's communications and presentations to the grand jury should be on the record.

Standard 3-3.6 Quality and Scope of Evidence Before Grand Jury

(a) A prosecutor should only make statements or arguments to the grand jury and only present evidence to the grand jury which the prosecutor believes is appropriate or authorized under law for presentation to the grand jury. In appropriate cases, the prosecutor may present witnesses to summarize admissible evidence available to the prosecutor which the prosecutor believes he or she will be able to present at trial. The prosecutor should also inform the grand jurors that they have the right to hear any available witnesses, including eyewitnesses.

(b) No prosecutor should knowingly fail to disclose to the grand jury evidence which tends to negate guilt or mitigate the offense.

(c) A prosecutor should recommend that the grand jury not indict if he or she believes the evidence presented does not warrant an indictment under governing law.

(d) If the prosecutor believes that a witness is a potential defendant, the prosecutor should not seek to compel the witness's testimony before the grand jury without informing the witness that he or she may be charged and that the witness should seek independent legal advice concerning his or her rights.

(e) The prosecutor should not compel the appearance of a witness before the grand jury whose activities are the subject of the inquiry if the witness states in advance that if called he or she will exercise the constitutional privilege not to testify, unless the prosecutor intends to judicially challenge the exercise of the privileges to seek a grant of immunity according to the law.

(f) A prosecutor in presenting a case to a grand jury should not intentionally interfere with the independence of the grand jury, preempt a function of the grand jury, or abuse the processes of the grand jury.

(g) Unless the law of the jurisdiction so permits, a prosecutor should not use the grand jury in order to obtain tangible, documentary or testimonial evidence to assist the prosecutor in preparation for trial of a defendant who has already been charged by indictment or information.

(h) Unless the law of the jurisdiction so permits, a prosecutor should not use the grand jury for the purpose of aiding or assisting in any administrative inquiry.

Standard 3-3.7 Quality and Scope of Evidence for Information

Where the prosecutor is empowered to charge by information, the prosecutor's decisions should be governed by the principles embodied in standards 3-3.6 and 3-3.9, where applicable.

Standard 3-3.8 Discretion as to Noncriminal Disposition

(a) The prosecutor should consider in appropriate cases the availability of noncriminal disposition, formal or informal, in deciding whether to press criminal charges which would otherwise be supported by probable cause; especially in the case of a first offender, the nature of the offense may warrant noncriminal disposition.

(b) Prosecutors should be familiar with the resources of social agencies which can assist in the evaluation of cases for diversion from the criminal process.

Standard 3-3.9 Discretion in the Charging Decision

(a) A prosecutor should not institute, or cause to be instituted, or permit the continued pendency of criminal charges when the prosecutor knows that the charges are not supported by probable cause. A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction.

(b) The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that sufficient evidence may exist which would support a conviction.

Illustrative of the factors which the prosecutor may properly consider in exercising his or her discretion are:

- (i) the prosecutor's reasonable doubt that the accused is in fact guilty;
- (ii) the extent of the harm caused by the offense;
- (iii) the disproportion of the authorized punishment in relation to the particular offense or the offender
- (iv) possible improper motives of a complainant
- (v) reluctance of the victim to testify
- (vi) cooperation of the accused in the apprehension or conviction of others; and
- (vii) availability and likelihood of prosecution by another jurisdiction.

(c) A prosecutor should not, be compelled by his or her supervisor to prosecute a case in which he or she has reasonable doubt about the guilt of the accused.

(d) In making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or

to a desire to enhance his or her record of convictions.

(e) In cases which involve a serious threat to the community, the prosecutor should not be deterred from prosecution by the fact that in the jurisdiction juries have tended to acquit persons accused of the particular kind of criminal act in question.

(f) The prosecutor should not bring or seek charges greater in number or degree than can reasonably be supported with evidence at trial or than are necessary to fairly reflect the gravity of the offense.

(g) The prosecutor should not condition a dismissal of charges, nolle prosequi, or similar action on the accused's relinquishment of the right to seek civil redress unless the accused has agreed to the action knowingly and intelligently, freely and voluntarily, and where such waiver is approved by the court.

Standard 3-3.10 Role in First Appearance and Preliminary Hearing

(a) A prosecutor who is present at the first appearance (however denominated) of the accused before a judicial officer should not communicate with the accused unless a waiver of counsel has been entered, except for the purpose of aiding in obtaining counsel or in arranging for the pretrial release of the accused. A prosecutor should not fail to make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel.

(b) The prosecutor should cooperate in good faith in arrangements for release under the prevailing system for pretrial release.

(c) The prosecutor should not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing.

(d) The prosecutor should not seek a continuance solely for the purpose of mooting the preliminary hearing by securing an indictment.

(e) Except for good cause, the prosecutor should not seek delay in the preliminary hearing after an arrest has been made if the accused is in custody.

(f) The prosecutor should ordinarily be present at a preliminary hearing where such hearing is required by law.

Standard 3-3.1 Disclosure of Evidence by the Prosecutor

(a) A prosecutor should not intentionally fail to make timely disclosure to the defense, at the earliest feasible

opportunity, of the existence of all evidence or information which tends to negate the guilt of thy accused or mitigate the offense charged or which would tend to reduce the punishment of the accused.

(b) A prosecutor should not fail to make a reasonably diligent effort to comply with a legally proper discovery request.

(c) A prosecutor should not intentionally avoid pursuit of evidence because he or she believes it will damage the prosecution's case or aid the accused.

PART IV. PLEA DISCUSSIONS

Standard 3-4.1 Availability for Plea Discussions

(a) The prosecutor should have and make known a general policy or willingness to consult with defense counsel concerning disposition of charges by plea.

(b) A prosecutor should not engage in plea discussions directly with an accused who is represented by defense counsel, except with defense counsel's approval. Where the defendant has properly waived counsel, the prosecuting attorney may engage in plea discussions with the defendant, although, where feasible, a record of such discussions should be made and preserved.

(c) A prosecutor should not knowingly make false statements or representations as to fact or law in the course of plea discussions with defense counsel or the accused.

Standard 3-4.2 Fulfillment of Plea Discussions

(a) A prosecutor should not make any promise or commitment assuring a defendant or defense counsel that a court will impose a specific sentence or a suspension of sentence; a prosecutor may properly advise the defense what position will be taken concerning disposition.

(b) A prosecutor should not imply a greater power to influence the disposition of a case than is actually

(c) A prosecutor should not fail to comply with a plea agreement, unless a defendant fails to comply with a plea agreement or other extenuating circumstances are present.

Standard 3-4.3 Record of Reasons for Nolle Prosequi Disposition

Whenever felony criminal charges are dismissed by way of nolle prosequi (or its equivalent), the prosecutor should make a record of the reasons for the action.

PART V. THE TRIAL

Standard 3-5.1 Calendar Control

Control over the trial calendar should be vested in the court. The prosecuting attorney should advise the court of facts relevant in determining the order of cases on the court's calendar.

Standard 3-5.2 Courtroom Professionalism

(a) As an officer of the court, the prosecutor should support the authority of the court and the dignity of the trial courtroom by strict adherence to codes of professionalism and by manifesting a professional attitude toward the judge, opposing counsel, witnesses, defendants, jurors, and others in the courtroom.

(b) When court is in session, the prosecutor should address the court, not opposing counsel, on all matters relating to the case.

(c) A prosecutor should comply promptly with all orders and directives of the court, but the prosecutor has a duty to have the record reflect adverse rulings or rulings which the prosecutor considers prejudicial. The prosecution has a right to make respectful requests for reconsideration of adverse rulings.

(d) Prosecutors should cooperate with courts and the organized bar in developing codes of professionalism for each jurisdiction.

Standard 3-5.3 Selection of Jurors

(a) The prosecutor should prepare himself or herself prior to trial to discharge effectively the prosecution function in the selection of the jury and the exercise of challenges for cause and peremptory challenges.

(b) In those cases where it appears necessary to conduct a pretrial investigation of the background of jurors, investigatory methods of the prosecutor should neither harass nor unduly embarrass potential jurors or invade their privacy and, whenever possible, should be restricted to an investigation of records and sources of information already in existence.

(c) The opportunity to question jurors personally should be used solely to obtain information for the intelligent exercise of challenges. A prosecutor should not intentionally use the voir dire to present factual matter which the prosecutor knows will not be admissible at trial or to argue the prosecution's case to the jury.

Standard 3-5.4 Relations With Jury

(a) A prosecutor should not intentionally communicate privately with persons summoned for jury duty or impaneled as jurors prior to or during trial. The prosecutor should avoid the reality or appearance of any such communications.

(b) The prosecutor should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

(c) After discharge of the jury from further consideration of a case, a prosecutor should not intentionally make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service. If the prosecutor believes that the verdict may be subject to legal challenge, he or she may properly, if no statute or rule prohibits such course, communicate with jurors to determine whether such challenge may be available.

Standard 3-5.5 Opening Statement

The prosecutor's opening statement should be confined to a statement of the issues in the case and the evidence the prosecutor intends to offer which the prosecutor believes in good faith will be available and admissible. A prosecutor should not allude to any evidence unless there is a good faith and reasonable basis for believing that such evidence will be tendered and admitted in evidence.

Standard 3-5.6 Presentation of Evidence

(a) A prosecutor should not knowingly offer false evidence, whether by documents, tangible evidence, or the testimony of witnesses, or fail to seek withdrawal thereof upon discovery of its falsity.

(b) A prosecutor should not knowingly and for the purpose of bringing inadmissible matter to the attention of the judge or jury offer inadmissible evidence, ask legally objectionable questions, or make other impermissible comments or arguments in the presence of the judge or jury

(c) A prosecutor should not permit tangible evidence to be displayed in the view of the judge or jury which would tend to prejudice fair consideration by the judge or jury until such time as a good faith tender of such evidence is made.

(d) A prosecutor should not tender tangible evidence in the view of the judge or jury if it would tend to prejudice fair consideration by the judge or jury unless there is a reasonable basis for its admission in evidence. When there is any substantial doubt about the admissibility of such evidence, it should be tendered by an offer of proof and a ruling obtained.

Standard 3-5.7 Examination of Witnesses

(a) The interrogation of all witnesses should be conducted fairly, objectively, and with due regard for the dignity and legitimate privacy of the witness, and without seeking to intimidate or humiliate the witness unnecessarily.

(b) The prosecutor's belief that the witness is telling the truth does not preclude cross-examination, but may affect the method and scope of cross-examination. A prosecutor should not use the power of cross-examination to discredit or undermine a witness if the prosecutor knows the witness is testifying truthfully.

(c) A prosecutor should not call a witness in the presence of the jury who the prosecutor knows will claim a valid privilege not to testify.

(d) A prosecutor should not ask a question which implies the existence of a factual predicate for which a good faith belief is lacking.

Standard 3-5.8 Argument to the Jury

(a) In closing argument to the jury, the prosecutor may argue all reasonable inferences from evidence in the record. The prosecutor should not intentionally misstate the evidence or mislead the jury as to the inferences it may draw.

(b) The prosecutor should not express his or her personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant.

(c) The prosecutor should not make arguments calculated to appeal to the prejudices of the jury.

(d) The prosecutor should refrain from argument which would divert the jury from its duty to decide the case on the evidence.

Standard 3-5.9 Facts Outside the Record

The prosecutor should not intentionally refer to or argue on the basis of facts outside the record whether at trial or on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.

Standard 3-5.10 Comments by Prosecutor After Verdict

The prosecutor should not make public comments critical of a verdict, whether rendered by judge or jury.

PART VI. SENTENCING

Standard 3-6.1 Role in Sentencing

(a) The prosecutor should not make the severity of sentences the index of his or her effectiveness. To the extent that the prosecutor becomes involved in the sentencing process, he or she should seek to assure that a fair and informed judgment is made on the sentence and to avoid unfair sentence disparities. In the sentencing process, he or she should seek to assure that a fair and informed judgment is made on the sentence and to avoid unfair sentence disparities.

(b) Where sentence is fixed by the court without jury participation, the prosecutor should be afforded the opportunity to address the court at sentencing and to offer a sentencing recommendation.

(c) Where sentence is fixed by the jury, the prosecutor should present evidence on the issue within the limits permitted in the jurisdiction, but the prosecutor should avoid introducing evidence bearing on sentence which will prejudice the jury's determination of the issue of guilt.

Standard 3-6.2 Information Relevant to Sentencing

(a) The prosecutor should assist the court in basing its sentence on complete and accurate information for use in the presentence report. The prosecutor should disclose to the court any information in the prosecutor's files relevant to the sentence. If incompleteness or inaccuracy in the presentence report comes to the prosecutor's attention, the prosecutor should take steps to present the complete and correct information to the court and to defense counsel.

(b) The prosecutor should disclose to the defense and to the court at or prior to the sentencing proceeding all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

2014 Nevada Supreme Court Opinion Digest

Recontrust Co. v. Zhang, 130 Nev. Adv. Op. No. 1 (January 30, 2014) – On an appeal and cross-appeal from judgment and orders entered following reversal and remand by a panel of the Court in a real property dispute, the Court vacates and remands for the district court to decide the lender's equitable subrogation claim, which neither the trial nor the prior appeals resolved.

Gonzales-Alpizar v. Griffith, 130 Nev. Adv. Op. No. 2 (January 30, 2014) – On an appeal and cross-appeal from a final determination concerning a complaint for divorce, the Court affirms in part and reverses in part, ruling that 1) a spousal and child support order entered by a family court in Costa Rica is not enforceable in Nevada under the Uniform Interstate Family Support Act (UIFSA); 2) because the existence of the parties' premarital agreement was not disclosed to the Costa Rican court issuing the support order, the award for spousal support should not be recognized in Nevada as a matter of comity; and 3) the child support award may be recognized under the doctrine of comity, and the Court remands for the district court to make factual findings on Griffith's claim that the child support was obtained through fraud because Gonzales-Alpizar misrepresented Griffith's income and assets to the Costa Rican court.

Torres v. Goodyear Tire & Rubber Co., 130 Nev. Adv. Op. No. 3 (January 30, 2014) – The Court affirms a post-judgment order refusing to award compound post-judgment interest, ruling that NRS 17.130(2), the statute that provides a default interest rate for judgments, does not authorize compound interest, but rather only allows for the award of simple interest on judgments.

Liberty Mut. v. Thomasson, 130 Nev. Adv. Op. No. 4 (February 6, 2014) – The Court vacates and remands a district court order transferring venue of a petition for judicial review in a workers' compensation matter, ruling that 1) NRS 233B.130(2)(b), which provides that a petition for judicial review of an agency determination must be filed in Carson City, the aggrieved party's county of residence, or the county where the agency proceeding occurred, is a mandatory jurisdictional requirement; and 2) because Liberty Mutual is not a resident of Washoe County, the Second Judicial District Court lacked jurisdiction to consider its petition for judicial review and should have dismissed it rather than transfer venue (remanded to the district court with directions to dismiss petition).

DTJ Design v. First Republic Bank, 130 Nev. Adv. Op. No. 5 (February 13, 2014) – The Court affirms a district court summary judgment, certified as final under NRCP 54(b), in a lien foreclosure action, ruling that, regardless of whether a foreign firm employs a registered architect, NRS 623.349(2) and NRS 623.357 mandate that the firm be registered in Nevada in order to maintain an action on the firm's behalf.

Preciado v. State, 130 Nev. Adv. Op. No. 6 (February 13, 2014) – The Court affirms a jury conviction of voluntary manslaughter with the use of a deadly weapon, ruling that while the district court erred in failing to record numerous bench and in-chambers conferences and in failing to excuse for cause a prospective juror who was equivocal about her impartiality, these errors were harmless. The Court stresses that bench and in-chambers conferences should be memorialized either contemporaneously or by allowing counsel to make a record afterward; and that a prospective juror who is

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**Model Policy
Standard Operating Procedure
For the Enforcement of
Protection Orders against Domestic Violence**

**Endorsed by the Nevada Sheriffs and Chiefs Association
Lovelock, NV September 27, 2001**

Recognizing the escalatory nature of domestic violence, effective enforcement of protection orders against domestic violence constitutes homicide prevention. Accordingly, this model policy is intended to serve as a guide for law enforcement executives in formulating a written procedure relative to their respective departments to govern the enforcement of these orders.

I. Purpose

The purpose of this policy is to provide police officers with standard operating procedures for enforcing valid domestic violence protection orders issued in Nevada or any other state, Indian Tribe, territory or possession of the United States, Puerto Rico or the District of Columbia when that order is violated in your jurisdiction.

II. Policy

It shall be the policy of this department to provide all victims of domestic violence, regardless of their place of residency or origin, with the fullest protection of the law and to enforce the terms of their protection orders within this jurisdiction. **Any violation of a protection order is at least an indirect threat of harm, which requires the adverse party to be held in custody for at least 12 hours before being admitted to bail, pursuant to NRS 178.484.**

III. Full Faith and Credit

The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 U.S.C. 2265 and Chapter 33 of the Nevada Revised Statutes, require that valid foreign domestic violence protection orders be recognized and enforced as if they were issued by a court in this state. A foreign order is to be enforced pursuant to Nevada law even if:

- A. The applicant in a foreign protection order would not be eligible for a protection order in Nevada.



- B. The foreign order grants the named applicant more relief than the person would have received under Nevada's protection order statute.

IV. Definitions

A. The term "protection order" includes any injunction or other order issued by judicial authority for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person. There are two primary forms of protection orders against domestic violence, the temporary protection order and the extended protection order.

1. In Nevada the temporary protection order is generally valid for 30 days or until the scheduled court appearance indicated in the order.
2. In Nevada the extended protection order is effective for a maximum of one year and is issued at a court hearing prior to the expiration of a temporary order. Some foreign protection orders may have an indefinite expiration date.
3. Orders from other jurisdictions may not resemble Nevada protection orders in format and may be valid for varying periods of time.

NOTE: Officers should enforce a foreign protection order based upon the expiration date in the order.

B. "Foreign" protection orders include any protection order issued by any other state, Indian Tribe, territory or possession of the United States, Puerto Rico or the District of Columbia.

C. "Applicant" means the person named in the protection order as the party to be protected from the adverse party. Other jurisdictions may use terms such as protected party, plaintiff, petitioner, etc.

D. "Adverse party" means the person named in the protection order who must refrain from contacting the person named as the applicant in the protection order. Other jurisdictions may use terms such as suspect, defendant, respondent, etc.

E. A "mutual protection order" is an order that purports to restrict both parties. The applicant for a protection order is entitled to relief (e.g., protection and enforcement). Officers should be aware that the adverse party is entitled to relief **only if:**

1. The adverse party has filed a written request for a protection order; **and**
2. The court has made a specific finding that the adverse party was entitled to a protection order. (See NRS 33.020 and 18 U.S.C. 2265.)

V. Responding Officers Procedures

When responding to an incident involving the violation of a domestic violence protection order, the officer should take the following enforcement actions:

A. Immediate Actions at the Scene

1. Ensure the safety of all involved.
2. Seek medical attention, if necessary.
3. Safeguard the applicant from further abuse.
4. Secure and protect the crime scene.
5. Secure any firearms or other dangerous weapons for safekeeping.
6. In accordance with departmental policy and applicable law, arrest the adverse party for offenses committed in the officer's presence and other offenses committed at the scene for which the officer has probable cause (felonies, gross-misdemeanors, domestic battery, protection order violations).

B. Determine whether a protection order exists and is authentic.

1. The officer should make every reasonable effort to corroborate the existence of a protection order. In determining that a protection order exists, the officer may rely upon:
 - a. A copy of an order for protection against domestic violence that has been provided to the officer.
 - b. An order for protection against domestic violence that is included in the repository for information concerning orders for protection against domestic violence pursuant to NRS 33.095 or in any national crime information database.
 - c. Oral or written confirmation from a law enforcement agency or court in the issuing jurisdiction.
 - d. The statement of a person protected by a protection order that the order remains in effect, included in an examination of the totality of the circumstances.
2. An officer shall determine that a protection order is authentic if the order contains:

- a. The names of the parties' involved and specific terms and conditions that the adverse party must comply with.
 - b. Information indicating that the protection order has not expired.
 - c. Information indicating that the court which issued the protection order had legal authority to issue the order as evidenced by a certified copy of the order, a file stamped copy of the order, an authorized signature or stamp of the court which issued the order or another indication of the authority of the court which issued the order.
3. An officer may determine that a protection order is authentic based on an examination of the totality of circumstances.
 - 4.
- C. Assess whether the adverse party has been served, notified or otherwise informed of the terms and conditions of the protection order.
1. If the order is a foreign protection order, the officer should presume that the adverse party has been served, notified or otherwise informed.
 2. If the order is a Nevada order, the officer should determine whether the adverse party has been served, notified or otherwise informed by utilizing any or all of the following:
 - a. Documentation contained in the applicant's copy of the protection order.
 - b. Nevada repository for protection orders.
 - c. NCIC protection order file
 - d. Communication with the court or law enforcement agency in the issuing jurisdiction.
 - e. Statements of the applicant.
 - f. Statements of witnesses, including children, family members or neighbors.
 - g. Statements of the adverse party.
 - h. An examination of the totality of the circumstances at the scene.

NOTE: The fact that an order has not been registered or included in the repository for information concerning orders for protection against domestic violence pursuant to NRS 33.095 or in any national crime information database

is not grounds for a law enforcement officer to refuse to enforce the terms of the order unless it is apparent to the officer that the order is not authentic.

NOTE: For information concerning enforcement of orders served by mail, see Attorney General Opinion No. 2001- 31.

- D. If the officer cannot verify that the adverse party was served with the protection order or informed of the terms and conditions of the order, the officer shall:
1. Serve a copy of the order if available, or
 2. Follow the steps outlined in section VI for notification.
- E. Determine if probable cause exists to believe that the adverse party has violated the protection order.
1. Review the terms and conditions of the protection order.
 2. Establish probable cause for violation of the terms and conditions of order by the adverse party by utilizing any or all of the following:
 - a. Statements of the applicant.
 - b. Statements of the adverse party.
 - c. Statements of witnesses, including neighbors or children.
 - d. Corroborating evidence obtained through the investigation.
 - e. Any other factor that leads the officer to believe a violation of the protection order has occurred.
- F. If, pursuant to B, C and E above, the officer determines that an authentic protection order has been served/noticed and that probable cause exists that the order has been violated, the officer shall:
1. If the adverse party is present, arrest the adverse party for violation of the terms and conditions of the protection order (and for any other violations committed at the scene); or
 2. If the adverse party has fled the scene:
 - a. Make every effort to immediately locate and arrest the adverse party.

- b. If the adverse party cannot be located, take a report and submit for an arrest warrant and/or an investigation in accordance with department policy.
3. Conduct risk assessment and provide assistance to the applicant for their immediate safety.

NOTE: NRS 178.484 requires that a person arrested for violation of a protection order shall be held in custody for at least 12 hours before being admitted to bail if the arresting officer determines that the violation is accompanied by a direct or indirect threat of harm. As set forth in section II (Policy), any violation of a protection order is at least an indirect threat of harm.

NOTE: NRS Chapter 33 provides immunity to a law enforcement officer who enforces an order for protection against domestic violence issued by the court of another state, territory or Indian tribe based upon a reasonable belief that the order is valid or who refuses to enforce such an order based upon a reasonable belief that the order is not valid (NRS 33.090).

G. AN OFFICER SHALL TAKE THE FOLLOWING ACTIONS IN ALL CASES:

1. Conduct risk assessment and provide assistance to the applicant for their immediate safety.
2. Provide the applicant with the information concerning assistance required by NRS 171.1223, including referring the applicant to the appropriate court, advocacy organization or community services for safety planning.
3. Take a report and conduct a follow up investigation according to department policy.
4. Document and report any indirect or direct threat against the applicant/victim by the adverse party and make a reasonable attempt to notify the applicant of the threat.

VI. Notification of Protection Order

Pursuant to NRS 33.070 and Attorney General Opinions 2000-02 and 2001-31, in the event an officer is conducting a standard wants and warrants check on an individual and is advised by the communications section that an active NCJIS protection order file "hit" exists for the individual and the protection order has not been served, the officer shall notify the adverse party of the protection order by taking the following actions:

- A. Verify the identity of the adverse party.
- B. Obtain the specific terms and conditions of the order and write them on the corresponding form provided by the department.
- C. Give the completed form to the adverse party or orally inform the adverse party of the terms and conditions of the order.
- D. Provide the adverse party with a copy of the appropriate set of notices (temporary or extended).
- E. Have the adverse party sign the notification form if practicable. If the adverse party refuses to sign the form, write, "refused" on the signature line.
- F. Inform the adverse party of the name, location and hours of the issuing court to obtain a copy of the order.
- G. Inform the adverse party that the adverse party now has notice of the provisions of the protection order and that a violation of any terms and conditions of the order will result in the adverse party's arrest.
- H. Request that the communications center update the protection order file with:
 - 1. Date and time notification was provided to the adverse party.
 - 2. The name and identification number of the officer who gave the notification.
 - 3. Information from the protection order hit concerning the terms and conditions of the order.
- I. Upon completion of the notification form, the issuing officer will also complete a report for the department's files.
- J. If at any point during this process the adverse party makes a threat against the victim, the officer shall make a reasonable attempt to notify the victim and document the threat in the officer's report.

VII. Communication Section Responsibilities

- A. Receive and maintain hard copies or electronic files of active protection orders that contain provisions pertaining to locations in the jurisdiction, including applicant's residence, place of employment, childcare, school or other locations.
- B. Provide available information concerning status and/or content of protection orders in the Repository, upon request by law enforcement personnel.

C. Following notification pursuant to Section VI above, update the State Enter Notice Screen (SENS) with the following information:

1. The date and time that notification was provided to the adverse party.
2. The name and identification number of the officer who gave notification.
3. Information from the protection order concerning the terms and conditions.

VIII. Violations of Federal Law.

A. If a foreign protection order is violated in Nevada, it is likely that there has also been a violation of federal law. These federal laws include but are not limited to:

1. Interstate travel to commit domestic violence, 18 U.S.C. 2261
2. Interstate stalking, 18 U.S.C. 2261A
3. Interstate violation of an order of protection, 18 U.S.C. 2262
4. Illegal possession of firearms and ammunition, 18 U.S.C. 922 (g) (8)

B. The officer should refer these violations to the appropriate federal authorities in accordance with departmental procedures (e.g., contact the US Attorney's Office, Federal Bureau of Investigation, Bureau of Alcohol, Tobacco & Firearms, Bureau of Indian Affairs, etc.).

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MODEL DOMESTIC VIOLENCE PROTOCOL FOR LAW ENFORCEMENT

INTRODUCTION

This protocol is intended to act as a guide for Nevada law enforcement agencies in development or revision of departmental policies for investigation and enforcement of domestic violence crimes. This protocol is broad in scope and is intended as a resource document for an agency to utilize those sections that meet the specific needs of the agency.

This protocol is not intended to address every situation or every issue. It is not intended to substitute for individual officer discretion or individual departmental policies that are consistent with state law.

This protocol embodies a commitment to pursue effective intervention in domestic violence incidents. It is intended to serve as a guide in promoting victim and officer safety and abuser accountability. This policy recognizes that law enforcement response is a critical part of a coordinated and concerted community effort to address the problems of domestic violence.

Domestic Violence *Policy*

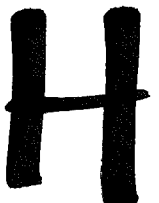
The purpose of this policy is to establish procedures for the investigation of domestic violence incidents as part of the law enforcement function. This policy will address investigative procedures, protocols, and tools for domestic violence incidents encountered by law enforcement personnel as part of their law enforcement duties.

The underlying philosophy of this policy is that active intervention by law enforcement in the form of a pro-arrest policy and thorough, evidence based investigations are the most effective means for law enforcement to address domestic violence situations.

Officers shall respond to domestic violence as they would to any other crime. However, the relationship between the victim and the accused creates additional responsibilities. Officers must provide special assistance, including efforts to protect and inform the victim of domestic violence services available to them.

Personnel must also be aware of the various protection orders, mandatory arrest rules and investigative procedures related to domestic violence. This policy was prepared to assist personnel with these tasks.

Officers must also be keenly aware of the high potential for danger and violence in domestic violence situations. Domestic violence presents officers with some of the most volatile situations they will encounter. These situations frequently involve



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HELD TO A HIGHER STANDARD: ETHICAL CONSIDERATIONS FOR PUBLIC LAWYERS

By Brett Kandt, Executive Director

Robert Bolt's play A Man for All Seasons is based on the true story of Sir Thomas More, the 16th-century Lord Chancellor of England who was executed for refusing to affirm the Act of Supremacy which would make King Henry VIII the supreme head of the Church of England. Confronted by men who subvert the law for their own benefit, Sir Thomas is willing to die rather than compromise his belief that no one is above the law and everyone is equal before the law. This principle is underscored in an exchange in act 1, scene 7:

Margaret: Father, that man's bad.

More: There is no law against that.

Roper: There is! God's law!

More: Then let God arrest him.

Roper: Sophistication upon sophistication!

More: No, sheer simplicity. The law, Roper, the law. I know what's legal – not what's right. And I'll stick to what's legal.

Roper: Then you set man's law above God's!

More: No, far below; but let me draw your attention to a fact – I'm not God. The currents and eddies of right and wrong, which you find such plain sailing, I can't navigate. I'm no voyager. But in the thickets of the law, oh, there I'm a forester. I doubt there's a man alive who could follow me there, thank God . . .

Alice: While you talk he's gone!

More: And go he should, if he was the Devil himself, until he broke the law!

Roper: So now you'd give the Devil the benefit of law!

More: Yes! What would you do? Cut a great road through the law to get after the Devil?

Roper: I'd cut down every law in England to do that!

More: Oh? And when the last law was down, and the Devil turned round on you – where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast – man's laws, not God's – and if you cut them down – and you're just the man to do it – d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.[1]

The story of More's unwavering conviction that only the rule of law can protect man from the tyranny of others is a powerful one, and in many ways it illuminates the ethical considerations that must guide the public lawyer serving as either a criminal prosecutor or an attorney in government civil practice. This article focuses on those ethical duties that are unique to the public lawyer, since they are essential to upholding the responsibility that comes with representing the sovereign.

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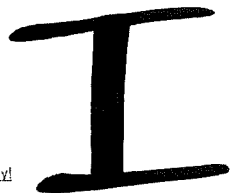
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Like all attorneys, public lawyers must adhere to the Nevada Rules of Professional Conduct (RPC) and are subject to discipline by the Nevada Supreme Court for any violations of those rules. Public lawyers also have specific statutory responsibilities: depending upon whether an attorney is in the service of the Attorney General, a district attorney, or a city attorney, these responsibilities originate in NRS Chapter 228 (Attorney General duties), NRS Chapter 252 (district attorney duties) or NRS 266.470 (city attorney duties). However, they may be further defined throughout the Nevada Revised Statutes, by local charter or ordinance, by relevant case law, or by opinions of the Attorney General. National standards, if applicable, may provide further guidance.[2]

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THE ETHICAL PROSECUTOR

The Role of the Prosecutor – Seeking Justice

The prosecutor is held to a higher standard than other attorneys in our legal system due to the great responsibility that comes with the position. As the United States Supreme Court proclaimed in *Berger v. United States*:

The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. [3]

Exercising Prosecutorial Discretion

The prosecutor's authority to exercise discretion in charging decisions is a key component of our criminal justice system.[4] RPC 3.8(a) requires that the prosecutor refrain from prosecuting a charge not supported by probable cause, while national standards establish that a prosecution should only proceed on the basis of sufficient admissible evidence to support a conviction.[5] Prosecutorial discretion is subject to constitutional constraints such as equal protection and due process.[6] The prosecutor should only file charges that adequately encompass the offense or offenses believed to have been committed and that rationally address the nature and scope of the alleged criminal activity.[7] National standards specify a number of factors the prosecutor should consider, and factors that should not be considered, in charging decisions.[8]

Responsibilities to Victims

The pursuit of justice includes, in no small part, justice for victims. Crime victims in Nevada are accorded several constitutional and statutory rights in criminal proceedings.[9] However, justice cannot be achieved for victims, and victims cannot properly exercise their rights, without programs to inform them and assist them in navigating the justice system. While the prosecutor does not represent victims, available resources should be allocated to victim assistance programs in accordance with statutory requirements and national standards. [10]

Fairness in Discovery

While there are specific statutory responsibilities imposed upon the prosecutor in criminal procedure that fall within the scope of RPC 3.4, the most fundamental duty is the U.S. Supreme Court's pronouncement in *Brady v. Maryland* that due process requires the timely disclosure of all material evidence possessed by the prosecution team that is favorable to the defense.[11] The Brady rule is codified in RPC 3.8(d), requiring disclosure of all evidence known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.[12] The duty encompasses impeachment evidence as well as exculpatory evidence.[13] Evidence is material when there is a reasonable probability that had the evidence been available to the defense, a different verdict would have resulted.[14] The duty of the prosecutor to disclose Brady material is present even if the defendant has made no request for the material.[15] The prosecutor has an affirmative duty to learn of any favorable evidence known to any party acting on the State's behalf in a case.[16] The duty to disclose Brady material is a continuing one, applicable pre-trial, during trial and even post-trial.[17]

Fairness at Trial

In addition to constitutional limitations on the exclusion of jurors,[18] prosecutors are subject to intense scrutiny of statements at any stage of trial that may constitute prejudicial misconduct. The standard is "whether a prosecutor's statements so infected the proceedings with unfairness as to make the resulting conviction a denial of due process." [19] Since it is reversible error if a prosecutor's misconduct violates the right to a fair trial, it is vital that the prosecutor be familiar with extensive Nevada case law analyzing prosecutorial misconduct to avoid such pitfalls.[20]

Trial Publicity

The prohibition on extrajudicial statements set forth in RPC 3.6(a) extends to statements by the prosecutor in a criminal proceeding likely to increase public condemnation of the accused.[21] Prosecutors are further required under RPC 3.8(f) to exercise reasonable care to prevent any party acting on the State's behalf in a case from making extrajudicial statements prohibited under Rule 3.6.[22] "The prosecutor should strive to protect the both the rights of the individual accused of a crime and the right of the public to know." [23] Rule 3.6(b) specifies the type of actual information directly relevant to a case that is appropriate for disclosure, while national standards provide further detail on what information may or may not be appropriate for disclosure in a criminal proceeding.[24]

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THE ETHICAL GOVERNMENT CIVIL ATTORNEY

Knowing Who the Client Is

The ethical duties of the government civil attorney are predicated upon a clear understanding of who the client is. The duties articulated in RPC 1.13, regarding the representation of an organization acting through its duly authorized constituents, apply to the representation of a government entity.^[25] The attorney therefore represents the government entity acting through the government officials that are the entity's duly authorized constituents; the immediate attorney-client relationship exists between the attorney and the government officials acting in their official capacities on behalf of the government entity. However, in Nevada this representation carries a special responsibility under RPC 1.13(f):

In dealing with an organization's . . . constituents, a lawyer shall explain the identity of the client to the constituent and reasonably attempt to ensure that the constituent realizes that the lawyer's client is the organization rather than the constituent.

Therefore, in Nevada the attorney has an affirmative duty to communicate to each government official with whom he or she has an immediate attorney-client relationship that the client is the government entity, not the official. Only by clearly establishing the boundaries of the attorney-client relationship and communicating that information can the attorney provide effective representation.

Government officials have a fiduciary duty to act in the public's best interest, and the attorney-client relationship between the government official and the attorney is tempered by this broader duty to the public. ^[26] The government civil attorney is held to a higher standard as a result, and has a corresponding duty to act in the best interests of citizens in the course of representing the government client. The attorney fulfills that duty primarily by providing timely and competent legal advice and representation to government officials and by the enforcement of Nevada law, which can limit the government entity's liability and protect taxpayer money.

Confidentiality of Information

Because transparency and accountability in government are essential to a free society, the government civil attorney must carefully balance the public's right to access with any legal or ethical constraints on his or her ability to disclose information or otherwise engage in public discourse. RPC 1.6 generally restricts the disclosure of information related to the representation of a client; however, subsection (b)(6) permits disclosure if required by another law. Nevada's public records law (NRS Chapter 239) and open meeting law (NRS Chapter 241) clearly fall within the scope of RPC 1.6(b)(6), but these are limited in turn by certain statutory exceptions, such as those for privileged attorney-client communications and attorney work-product. ^[27]

RPC 1.6(b) works in tandem with RPC 1.13(b), regarding the referral to a higher authority of violations of law by someone acting on behalf of an organization. The comments to ABA Model Rule 1.13 reflect a different standard for the government civil attorney in determining how to proceed under the Rule, attributable to the attorney's duty to act in the best interests of citizens in the course of representation:

In a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved.^[28]

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ADDITIONAL ETHICAL CONSIDERATIONS FOR ALL PUBLIC LAWYERS

Conflicts of Interest

While RPC 1.7 requires all attorneys to refrain from the representation of clients whose legal interests are adverse, this ethical dictate does not necessarily preclude the Attorney General, district attorneys, and city attorneys from representing numerous agencies within a government entity, in various capacities, consistent with their respective statutory responsibilities. Nor does the representation of an administrative agency which combines investigative, prosecutorial and judicial functions necessarily constitute a conflict of interest.[29]

RPC 1.11 places specific limitations on current and former public lawyers from participating in matters in which an attorney participated "personally and substantially" before moving into or out of public service.[30] The Rule permits screening to avoid imputed disqualification; however, in criminal prosecutions vicarious disqualification may be the appropriate action, depending upon the specific facts involved:

[Vicarious disqualification may be warranted in extreme cases where the appearance of unfairness or impropriety is so great that the public trust and confidence in our criminal justice system could not be maintained without such action. Such an extreme case might exist even where the state has established an effective screen precluding the individual lawyer's direct or indirect participation in the prosecution.][31]

Communicating with Unrepresented or Represented Persons

Although prosecutors and government civil attorneys serve the interests of all citizens, they do not represent private parties (or government employees in personnel matters) and should take care when interacting with the public in any capacity (including education outreach) to ensure that constituent service does not run afoul of any legal or ethical constraints. They must be vigilant against any potential violation of RPC 4.2 – the no-contact rule[32] – or RPC 4.3, especially in matters where the interests of a private party may be adverse to the interests of the government. When initiating a prosecution, RPC 3.8(b) further requires that the prosecutor make reasonable efforts to assure the accused is advised of the right to counsel and afforded a reasonable opportunity to obtain counsel, while RPC 3.8(c) prohibits the prosecutor from seeking to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons.[33]

The Consequences of Ethical Violations

Prosecutors enjoy absolute immunity for acts that are "intimately associated with the judicial phase of the criminal process" and qualified immunity for acts deemed investigative or administrative in nature.[34] Government civil attorneys also generally possess statutory and common law immunity in the performance of their duties.[35] Nevertheless, an ethical violation by a public lawyer can have serious ramifications for citizens. Prosecutorial misconduct may result in a mistrial or reversal on appeal – or worse, a wrongful conviction. A failure to provide competent legal representation to government officials may result in liability for the government entity and cost taxpayers money. When public lawyers err it can also undermine confidence in government and the justice system.

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In *A Man for All Seasons*, Sir Thomas More's dedication to the rule of law forms the basis of his moral code and guides his actions. As a result, More holds himself to a higher standard than his contemporaries, and even his king. Nevada's public lawyers are likewise held to a higher ethical standard in representing the sovereign and enforcing Nevada's laws for the protection and benefit of its citizens.

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[1] Robert Bolt, *A Man for All Seasons* 65-66 (Random House 1962).

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[2] See, e.g., American Bar Association (ABA) Prosecution Function Standards (3d Ed. 1993); National District Attorneys Association (NDAA) National Prosecution Standards (2d Ed. 1991).

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[3] 295 U.S. 78, 88 (1935), cited in *Williams v. State*, 103 Nev. 106, 110, 734 P.2d 700, 703 (1987); see also RPC 3.8 (Special Responsibilities of Prosecutor); ABA Prosecution Function Standard § 3-1.2 (3d Ed. 1993); NDAA National Prosecution Standard § 1.1 (2d Ed. 1991).

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[4] *Wayte v. United States*, 470 U.S. 598, 607 (1985); see also NDAA National Prosecution Standards §§ 42.1 and 43.1 (2d Ed. 1991). NDAA National Prosecution Standard § 1.3 provides that "[t]he prosecutor . . . must place the rights of society in a paramount position in exercising prosecutorial discretion."

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[5] ABA Prosecution Function Standard § 3-3.9(a) (3d Ed. 1993); NDAA National Prosecution Standard § 43.3 (2d Ed. 1991); see also ABA Model Rule of Professional Conduct Rule 3.8 cmt. 1 (2002).

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[6] *Wayte v. United States*, 470 U.S. at 608.

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[7] ABA Prosecution Function Standard § 3-3.9(f) (3d Ed. 1993); NDAA National Prosecution Standard § 43.2 (2d Ed. 1991).

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[8] ABA Prosecution Function Standard § 3-3.9(b) (3d Ed. 1993); NDAA National Prosecution Standards §§ 42.3, 42.4, and § 43.6 (2d Ed. 1991).

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[9] Victims of crime have a constitutional right to be:

- Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;
- Present at all public hearings involving the critical stages of a criminal proceeding; and
- Heard at all proceedings for the sentencing or release of a convicted person after trial.

Nevada Const. art. I, § 8. Statutory rights include NRS 178.5698; NRS 178.5696(1); NRS 178.571; NRS 176.015(3) and (4); NRS 200.601(1) and (2); NRS 205.980(3); and NRS 213.130(4).

[10] NDAA National Prosecution Standards §§ 26.1-26.7 (2d Ed. 1991)

[11] 373 U.S. 83, 87 (1963), cited in *State v. Bennett*, 119 Nev. 589, 599-603, 81 P.3d 1, 8-10 (2003).

[12] See also ABA Prosecution Function Standard § 3-3.11 (3d Ed. 1993); NDAA National Prosecution Standard § 25.4 (2d Ed. 1991).

[13] *United States v. Bagley*, 473 U.S. 667, 676 (1985).

[14]

Strickler v. Greene, 527 U.S. 263, 281 (1999).

[15]

United States v. Agurs, 427 U.S. 97, 107 (1976).

[16]

Kyles v. Whitley, 514 U.S. 419, 437 (1995).

[17]

Imbler v. Pachtman, 424 U.S. 409, 427 n.25 (1976).

[18]

Batson v. Kentucky, 476 U.S. 79 (1986); *Miller-El v. Dretke*, 545 U.S. 231 (2005).

[19]

Darden v. Wainwright, 477 U.S. 168, 181 (1986); see also *Anderson v. State*, 121 Nev. 511, 517, 118 P.3d 184, 187 (2005).

[20]

See, e.g., *Moser v. State*, 91 Nev. 809, 544 P.2d 424 (1975); *Collier v. State*, 101 Nev. 473, 705 P.2d 1126 (1985); *Williams v. State*, 103 Nev. 106, 734 P.2d 700 (1987); *McGuire v. State*, 100 Nev. 153, 677 P.2d 1060 (1984); *Yates v. State*, 103 Nev. 200, 734 P.2d 1252 (1987); *Howard v. State*, 106 Nev. 713, 800 P.2d 175 (1990); *Lord v. State*, 107 Nev. 28, 806 P.2d 548 (1991); *Lisle v. State*, 113 Nev. 540, 937 P.2d 473 (1997); *Evans v. State*, 117 Nev. 609, 28 P.3d 498 (2001); *Rowland v. State*, 118 Nev. 31, 39 P.3d 114 (2002); *Anderson v. State*, 21 Nev. 511, 118 P.3d 184 (2005); *Pantano v. State*, 22 Nev. 782, 138 P.3d 477 (2006); *Rose v. State*, 123 Nev. 24, 163 P.3d 408 (2007). The cited cases provide a good overview on prosecutorial misconduct at trial; further information on relevant Nevada case law is available from the Nevada Prosecution Advisory Council.

[21]

The limitations of the Rule are aimed at extrajudicial statements that can violate the right to a fair trial, specifically: (1) comments likely to influence the outcome of a trial, and (2) comments likely to prejudice the jury venire. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991).

[22]

See also ABA Model Rule of Professional Conduct Rule 3.8 cmt. 5, 6 (2002); ABA Prosecution Function Standard § 3-1.4 (3d Ed. 1993).

[23]

NDA National Prosecution Standard § 33.1 (2d Ed. 1991).

[24]

NDA National Prosecution Standards §§ 34.1-34.2 (2d Ed. 1991); see also ABA Model Rule of Professional Conduct Rule 3.6 cmt. (2002).

[25]

See ABA Model Rule of Professional Conduct Rule 1.13 cmt. 9 (2002) ("The duty defined in this Rule applies to governmental organizations.").

[26]

See, e.g., *U.S. v. deVegeter*, 198 F.3d 1324, 1328 (11th Cir. 1999) (public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public's best interest); see also NRS 281A.020(1)(a) (public office is a public trust and shall be held for the sole benefit of the people).

[27]

See, e.g., NRS 241.015(2)(b)(2) (open meeting law exception for attorney-client gathering of quorum); Op. Nev. Att'y Gen. No. 2001-37 (December 31, 2001) (limits of work-product doctrine).

[28]

ABA Model Rule of Professional Conduct Rule 1.13 cmt. 9 (2002).

[29]

See, e.g., Op. Nev. Att'y Gen. No. 97-01 (January 16, 1997).

[30]

See also ABA Model Rule of Professional Conduct Rule 1.11 cmt. (2002).

[31]

Collier v. Legakes, 98 Nev. 307, 310, 646 P.2d 1219, 1221 (1982).

[32]

See also *Faison v. Thornton*, 863 F.Supp. 1204, 1213 (D.Nev. 1992) (scope of no-contact rule); *Palmer v. Pioneer Inn Assocs.*, 118 Nev. 943, 960-61, 59 P.2d 1237, 1248 (2002) ("managing-speaking agent test" for organizations); *Byers v. City of Reno*, 628 F.Supp. 182, 183 (D.Nev. 1986) (no-contact rule applies to all employees in action brought against unknown employees); *Erickson v. Newmar Corp.*, 87 F.3d 298, 302 (9th Cir. 1996) (no-contact rule applies to opposing party's expert witnesses).

[33]

See also ABA Prosecution Function Standard § 3-3.10(a) and (c) (3d Ed. 1993); NDAA National Prosecution Standards §§ 24.1-24.5 (2d Ed. 1991).

[34]

Imbler v. Pachtman, 424 U.S. at 430 (1975); *Van de Kamp v. Goldstein*, 129 S.Ct. 855, 861 (2008).

[35]

NRS 41.032; see also *County of Washoe v. District Court*, 98 Nev. 456, 458, 652 P.2d 1175, 1176 (1982).

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