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**STATE OF NEVADA
2004-2005 BIENNIAL BUDGET REQUEST
EXPANDED PROGRAM NARRATIVE**

Budget Account Title: **NEVADA ATTORNEY FOR INJURED WORKERS**
Budget Account Number: **1013**
Statutory Authority: **NRS 616A.435-616A.465**

SECTION 1 – STATUTORY MANDATE, PROGRAM DESCRIPTIONS/FUNCTIONS, PUBLIC PURPOSE AND CRITICAL NEED

Statutory Mandate - NAIW is established, and its responsibilities are authorized by NRS 616A.435-616A.465.

Program Descriptions/Functions - NAIW ensures due process and equal representation for injured workers seeking workers' compensation benefits along with providing appropriate, accurate, and comprehensive information and assistance to the public regarding Nevada's workers' compensation system.

NAIW represents injured workers by appointment of the Appeals Office or the Department of Industrial Relations Administrator, and performs the myriad of tasks necessary to ensure that the worker can obtain a full and fair decision regarding his entitlement to workers' compensation benefits. NAIW also assists injured workers in obtaining compliance with decisions in their cases.

NAIW also gives procedural advice and provides information about the workers' compensation system to all inquirers, whether by phone, e-mail, or walk-ins. In addition to information contained in NAIW's website, NAIW attempts to educate all entities involved in the workers' compensation arena by distributing pamphlets (both in English and Spanish) statewide to any inquirer, and proactively distributes pamphlets to insurers, employers, media, unions, medical providers, managed care organizations and third party administrators.

NAIW receives no revenue from the General Fund. NAIW's sole source of funding is the Workers' Compensation and Safety Fund.

Public Purpose and Critical Need - NAIW represents injured workers in the Nevada workers' compensation litigation procedure for the purpose of ensuring their equal opportunity to fair hearings of their cases with applicable evidence and law, and NAIW also provides free access to accurate information to all inquirers regarding the Nevada workers' compensation system.

SECTION 2 – NEW PROGRAMS INCLUDED IN THIS BUDGET ACCOUNT

There are no new programs included in this budget account.

SECTION 3 – PERFORMANCE MEASUREMENTS

Since NAIW's job is to try to make hearings for workers' compensation issues as fair as possible for the injured worker, the outcome is not measurable numerically. It is measurable only by professional legal standards, so the NAIW does review the work of the staff. Since NAIW is appointed counsel, it neither chooses its clients nor controls the case facts, and thus whether a case is won or lost does not show whether NAIW has done its job adequately. Therefore, its performance measurements indicate workload more than outcome.

<u>Performance Indicators</u>	<u>Projected FY 02</u>	<u>Actual FY 02</u>	<u>Projected FY 03</u>	<u>Projected FY 04</u>	<u>Projected FY 05</u>
Average monthly statewide active caseload		116	111	115	115
Number of yearly requests for Workers Comp information		2799	3000	3000	3000
Number of Appeals Office case appointments	1560	1586	1622	1570	1575
Number of Appeals Office, District Court, and Supreme Court decisions and settlements granting benefits	782	728	813	725	725
Number of Appeals Office, District Court and Supreme Court decisions and settlements denying benefits	512	561	533	713	713
Number of discovery requests. ("Actual" figure does not include depositions; "Projections" include depositions)		647	655	655	655

There are no significant deviations between planned vs. actual Performance Indicators.

NAIW's existing performance indicators for FY02 are on the attached chart.

NAIW worked hard with consultants to try to develop an outcome measure. NAIW devoted three full days of the time of the NAIW, two supervising attorneys, two supervising legal secretaries, the law office manager, and the accounting technician to drafting new performance indicators in line with the state guidelines with the assistance of the facilitators of the Department of Administration Planning Section.

1. Number of responses to advice calls within one week compared to the number of requests for information.

(Unavailable due to insufficient fields within NAIW's case management database.)

This indicator was changed to one thought to be helpful as a gauge to the job performance of NAIW toward accomplishing its goals of service to its clients and potential clients. Unfortunately, the state of NAIW's database makes it unable to retrieve the necessary information. DoIT prepared a functional requirements study for bid of a redesigned and more effective management database tool for NAIW. Once that is completed NAIW should be able to populate this measure. (E-300).

NAIW received more than 2799 requests for information regarding the Nevada Workers' Compensation system during FY02. Data provided is based on a manual count. More accurate data is unavailable due to insufficient fields within NAIW's case management database.

2. Number of appointment letters/discovery letters sent within one week of appointment divided by the number of AO cases appointed to.

(Unavailable due to insufficient fields within NAIW's case management database.)

Unfortunately, the state of NAIW's database makes it unable to retrieve the necessary information. DoIT prepared a functional requirements study for bid of a redesigned and more effective management database tool for NAIW. Once NAIW has the database tools it should be able to populate this measure. E-300.

In order for NAIW to best move its cases quickly when it is first appointed by the appeals officer, insurer discovery letters should be sent out seeking a copy of all relevant documents in client files from the insurer. As soon as those documents are received then NAIW could contact relevant witnesses, and move forward toward case preparation. However, due to the staff turnover due in part to the excessive workload, one experienced staff member has been required to teach procedure to a new worker following a period of vacancy and creation of backlog. So NAIW has not been able to process initial case documents as promptly as is its goal.

E-277 Request for 3 Additional Staff Members facilitates the accomplishment of the performance indicators. Loss of staff inhibits production and efficiency.

SECTION 4 – WORKLOAD STATISTICS

NAIW workload consists of Appeals Office case appointments, which require: Client and witness interviews, evidence gathering and review, motions and oppositions, discovery (depositions, interrogatories, production), research, written and oral legal arguments, information requests, hearings on procedural issues or on the merits of the cases. It also consists of District Court cases, and Supreme Court cases. Evidence that the workload is far in excess of what can be adequately managed by staff is the high number of cases not completed from one year to the next, the attorney staff turnover, and comparison with other attorneys, all as described below.

Stipulated settlements are negotiated agreements between the parties and attorneys in which each party gives up some of what he believes he is entitled to, and they are drafted in order to effectuate the compromise as completely as possible without causing an unintentional loss or waiver of any rights. Thus the drafting and negotiation of a stipulated settlement agreement takes a substantial amount of attorney time, sometimes more than the preparation and presentation of hearings. However, the agreement allows the parties to avoid the risk of total loss despite their belief in the accuracy of their legal positions.

NAIW's attorneys are bound as appointed counsel to prepare cases as comprehensively as possible in support of its clients' positions and to present them appropriately. Of course, the clear easy cases are not denied by the insurers, and so the difficult to prove issues are those which are litigated. Further, private attorneys may be retained by workers and so NAIW is often appointed to cases or clients previously refused by private attorneys. NAIW works hard to maintain contact with its clients in order to keep those clients aware of case developments.

The longer a case remains open the greater the number of conferences with clients. A case cannot be completed to a decision until the evidence necessary to present to the appeals officer is received, reviewed, and filed, and the legal issues are researched, argued, and decided, and the witnesses are found, heard, and their testimony is taken. Thus many cases cannot be completed without the delay required by the inability to do the necessary work immediately upon appointment. A client initial conference takes an average of one hour; a review of discovery documents from the insurer, two hours; drafting a letter requesting a medical expert's opinion after reviewing the insurer's evidence, one hour; review of the expert's response and of any records received from the client or his physicians, ½ hour; conference with witnesses, one hour; preparation of the claimant's exhibits and hearing memo, one hour; hearing, one hour; review of decision and communication of its effects to the client, ½ hour. The simple case takes a minimum of seven hours of attorney time to complete. Many cases in the new private insurer environment entail formal discovery and motion practice which increase the time necessary by a minimum of four hours each, or more if legal or medical research is required. In addition, district court cases take about 35 hours to research and review evidence, and prepare points and authorities, and review opposing arguments, and present oral argument to the court. Supreme Court cases take even longer to handle than district court cases. Case preparation time is greatly expanded when a different attorney must take over a case: reading the case files, researching the issues, allaying fears of the clients. This is magnified by high turnover.

Motion/Discovery practice has increased dramatically with the expansion of private insurer and employer involvement with separate private attorneys. NAIW has begun to track those workload numbers, but its database cannot yet produce these numbers. The following figures are incomplete and the product of counting documents.

FY00	FY01	FY02
556 (234-CC;322-LV)	977 (472-CC;505-LV)	1002 (482-CC;520-LV)
(Depos not inc.)	(13 Depos took place (7-LV;6-CC))	(18 Depos took place (7-LV; 11-CC))

Depositions are increasingly being taken, not only of experts, but also of claimants and witnesses.

This increased workload is shown in the number of file boxes required to archive files purged of irrelevant documents from our ever-increasing volume per file, as follows:

Number of boxes of case files per calendar year compared to the number of attorneys and Legal Research Assistants and Legal Secretaries.

<u>FY</u>	<u># OF CASES CLOSED AT ALL LEVELS</u>	<u># OF BOXES</u>	<u>AVERAGE CASES PER BOX</u>	<u># OF STAFF*</u>
FY94	2461	146	16.86	21 of 24
FY95	2177	148	14.71	21 of 24
FY96	1871	127	14.73	21 of 24
FY97	1884	155	12.15	22 of 25
FY98	1722	160	10.76	23 of 27
FY99	1459	170	8.58	23 of 27
FY00	1437	170**	8.58	23 of 27

* The Law Office Manager, Account Specialist I, and 2 Administrative Assistant I's are not included since they do not work directly on cases. Note that the NAIW is counted as a full-time attorney though that is not possible.

** Reflects an actual count for Las Vegas and an estimate for Carson City.

Each page in the case files is handled by at least two NAIW staff members, requiring time to perform the tasks associated with the page and time for filing the page in the appropriate case file. Times required to perform the specific tasks vary greatly depending on the type of task, e.g. using as evidence, determining already used as evidence by another party.

A comparison of the Appeals Office case growth to staff attorney growth shows the increased demands upon staff.

FY	AO CASE APPOINTMENTS	AO UNFINISHED CASES AT FY END*	TOTAL AO CASES	# OF ATTORNEYS
83	473	150	623	5
84	738	247	985	6
85	756	386	1,142	6
86	710	394	1,105	6
87	723	371	1,094	7
88	948	378	1,326	7.5
89	833	496	1,329	8
90	838	436	1,274	9
91	1,410	438	1,848	9
92	1,845	737	2,582	10.5
93	2,313	965	3,278	11.5
94	2,333	1,181	3,514	11.5
95	2,100	1,117	3,217	11.5
96	1,742	1,076	2,818	11.5
97	1,592	997	2,589	11.5
98	1,655	739	2,394	11.5
99	1,545	736	2,281	11.5
00	1,443	855	2,298	11.5
01	1,581	1,229	2,810	12.5
02	1,578	1,244	2,822	12.5

* The average carryover from 1994 to 2000 is 52.3% cases; therefore, 1983 to 1993 have been extrapolated at that average carryover of cases.

From 1983 through 2002, NAIW total AO cases grew from 623 to 2822, a growth of 453%. During the same period the NAIW attorney staff handling these cases grew from 5 to 12.5, a growth of 250%. (This assumes the NAIW can handle a half caseload at the same time as active supervision of the staffs of two offices, as well as administration and personnel work.) During this same period, due to caseload and workload growth, the carry-over caseload grew from 24% to 44%, reflecting a sharp increase beginning FY01. The carry-over caseload reflects those cases that are not resolved during the fiscal year and are carried over into the next fiscal year. There are varied reasons a case may not be resolved during the fiscal year which include but are not limited to appointment within a month of the fiscal year end, conflicting/over booked schedules, case complexity, and most importantly, the inability to efficiently handle a caseload that is far in excess of the available time for preparation. A 10-15% carry-over is consistent with a legal caseload. A 24% - 44% carryover is reflective of delay in representation of our clients and means our clients

must wait for their benefits. Clearly NAIW is under-staffed and has not grown to meet the increasing client needs even without addressing the increased workload per case.

The above chart represents a relational comparison between growth in staff and caseloads. It does not consider workload. Workload must be considered in order to ensure adequate representation of appointed clients. Workload is composed of caseload and the legal requirements of the cases. Caseload is Appeals Office level appointed cases added to cases already opened and not yet closed. Legal requirements may be getting evidence, reviewing evidence, discovery, research, drafting legal arguments, court hearings, and/or oral arguments. Therefore, NAIW is currently short more than the added staff it currently seeks in order to adequately handle its clients and statutory mandates: 1 Attorney, 1 Legal Research Assistant, and 1 Legal Secretary II. E-277.

NAIW has 2 Legal Research Assistants to handle all research. It is an impossible task so attorneys have to do much of their own case research.

The effect of this work overload is not only case delay, but also staff turnover, and inability to perform some duties at all, as follows:

Number of cases of compliance pursued divided by the number of Appeals Office, District Court, and Supreme Court decisions or stipulations awarding benefits to clients.

<u>FY</u>	<u>*TOTAL DECISIONS AWARDING BENEFITS</u>	<u># COMPLIANCE PURSUITS</u>	<u>TYPE OF PURSUIT</u>	<u>RESULT</u>
FY97	968	4	complaints	0.4%
FY98	980	1	complaint	0.1%
FY99	739	120	cases followed (2 complaints filed)	16.2%
FY00	722	218	cases followed (no complaints filed)	30.2%
FY01	651	296	cases followed (no complaints filed)	45.5%
FY02	722	310	cases followed (no complaints filed)	43%

* Favorable decisions from the Appeals Office, DIR Non-compliance Hearings, District Court, and Supreme Court.

This is a ratio of the workload resulting from favorable decisions: The ratio of decisions tracked for compliance to the number of decisions awarding benefits. The compliance program was the result of 1995 legislative action. NAIW cannot properly monitor compliance and take steps to enforce compliance pursuant to NRS 616A.465 and NRS 616D.120 absent additional staff. NAIW requests contact from its clients who do not obtain ordered benefits and merely notices insurers with file-stamped copies of orders requiring compliance.

NAIW has maintained an average statewide caseload of more than 80 Appeals Office cases per attorney for more than the past four years and consequently has experienced an overall 62% attorney staff turnover in the past 2 fiscal years, 86% in the Las Vegas office where much of the workload is now located. The average revolving monthly caseload per attorney for FY02 was 128 cases in the Las Vegas office and 87 in the Carson City office. To reduce the Las Vegas caseload, approximately 70 cases were transferred to the Carson City office attorneys. As of this date, January 31, 2003, the Las Vegas office averages approximately 125 cases per attorney and the Carson City office is averaging 85 Carson City cases per attorney. The Carson City attorney Appeals Office level caseload is excessive when added to District Court and Supreme Court. The Las Vegas attorney Appeals Office level caseload is oppressive, and impossible without substantial delay, especially with District Court and Supreme Court. The heavy caseload and the associated workload and backlog, coupled with the comparatively low wages, has led to burnout and low morale. This level of work cannot be sustained. Thus during the just completed biennium plus the six months ending December 2002 NAIW Las Vegas had 7 assigned attorneys, 6 of whom left, and then a replacement

attorney left. One additional attorney, Legal Research Assistant I, and Legal Secretary II are required in order to continue efficient management and to improve the work environment. Each position is to be in the Las Vegas office. E-277.

A new attorney position placed in the Las Vegas office would lower the Las Vegas attorneys' current average caseload to 109 Appeals Office cases per attorney from 125. With the addition of one Legal Research Assistant I position, the attorney support ratio would be reduced from the present 6 attorneys down to less than 4 attorneys per Legal Research Assistant I. This represents research support for 783 Appeals Office cases down to 522 Appeals Office cases per Legal Research Assistant I, respectively. In addition, the Legal Research Assistant's research is primarily involved with District and Supreme Court cases. Anticipated attorney support ratios for the Legal Secretary II would remain relatively constant with one new position.

SECTION 5 -- BUDGET REDUCTIONS

NAIW's budget for the FY04 and FY05 biennium has been reduced by removal of a Legal Research Assistant I position. The following figures represent the estimated savings per fiscal year.

	FY04	FY05
Salary	33,968	35,286
Benefits/Assessments	<u>15,775</u>	<u>16,904</u>
TOTAL	49,743	52,190

SECTION 6 -- ENHANCEMENT UNITS

NAIW is unable to remain within the 2 times rule as constituted by removing many amounts included within the prior budget and at the same time remain efficient and able to adequately represent its clients.

NAIW has no general fund money. The entire budget for NAIW is funded through the Workers' Compensation and Safety Fund. NAIW is an integral part of the workers' compensation litigation system which is only a fair system if NAIW is able to adequately represent injured workers.

The following enhancement units are included in the Executive Budget for this budget account:

E-275 Working Environment and Wage	FY04 \$230,382	FY05 \$128,060
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NAIW, Hearings Division and Victims of Crime are requesting funding to relocate their offices from the Grant Sawyer Building to the Rancho Sahara Corporate Center in Las Vegas. Due to the close working relationship NAIW has with the Hearings Division, NAIW believes it would not be feasible to remain at the Grant Sawyer Building if the Hearings Division were to relocate. On average, each NAIW attorney must be present in court up to three times daily, at the Hearings Division for hearings before the Appeals Officer. The traveling time associated with the commute between the new Appeals Office location and the Grant Sawyer building would be prohibitive. The move, though costly, is much more efficient than staff driving back and forth through the intersection of 93/93 and I15, wasting time money, and risking motor vehicle collisions.

Moving expenses include increase in rent and associated assessments for non-state owned rent, DoIT associated system installation and wiring, T-1 line, ongoing backbone charges, DoIT recommended computer equipment, movers, telephone lines and new furnishings. All secretarial desks, along with library shelving are the property of the Grant Sawyer building and will have to be replaced.

E-277 Working Environment and Wage	FY04 \$213,428	FY05 \$201,817
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NAIW is requesting 3 additional staff: 1 Attorney, 1 Legal Research Assistant and 1 Legal Secretary II in the Las Vegas Office. NAIW-Las Vegas has maintained an average caseload of more than 117 cases per attorney and in NAIW-CC each staff attorney has maintained an average of 86 cases, over the past 4 fiscal years. As a consequence, NAIW has experienced more than 62% attorney staff turnover in the past 2 fiscal years; 86% in the Las Vegas office where much of the caseload/workload is now located. Of 7 NAIW deputies in Las Vegas, 6 and one replacement (for a total of 7) left in the last biennium. The average revolving monthly caseload per attorney for FY02 was 128 cases per attorney in the Las Vegas office and 87 cases per attorney in the Carson City office. The new Legal Research Assistant I position would reduce the current attorney support ratio from the present 6.5

attorneys per LRA to 4.33 attorneys per LRA. Anticipated attorney support ratios for the Legal Secretary II would remain relatively constant with one new position.

E-300 Maximize Internet Technology

FY04 \$144,990

FY05 \$ 17,820

LCB has identified NAIW's case management system as being unable to meet reporting requirement. DoIT has recommended the replacement of NAIW's case management system and has completed a Functional Requirements Study and Cost Estimates. NAIW will do as much as possible to obtain a usable, efficient, case database system with the budgeted funds.

E-500 Accessible, Flexible, Cost-Efficient Government

FY04 \$ 6,452

FY05 \$ 6,452

This decision unit represents a request for additional in-state travel for the Nevada Attorney for Injured Workers for client representation and to efficiently manage and supervise staff in the Las Vegas office to ensure operations and management continuity, all of which affect the quality of legal work produced.

Carson City attorneys have helped handle the Las Vegas office caseload, thus incurring increased travel costs.

E 710 Replacement Equipment

FY04 \$ 54,140

FY05 \$ 17,529

NAIW is requesting the replacement of 2 printers, one in each office at the recommendation of the DoIT replacement schedule; 3 chairs for staff; transcribers and recorders that are worn out and need replacement; continued server software assurance, software upgrades/replacements and DoIT installation charges, replacement of 4 laptops due to be replaced in FY02 per replacement schedule and declined by Legislature in 2001; and a replacement ethernet switch.

E-720 New Equipment

FY04 \$ 69,786

FY05 \$ 2,808

Based upon NAIW's duties and processes, the Department of Information Technology has identified NAIW as one required to have up-to-date operational technology in sufficient amounts for all staff. NAIW relies upon current, up-to-date technology for computerized litigation support in order to oppose insurer and employer attorneys with adequate resources and/or time. This technology enables the attorney, research, and support staffs to perform more tasks in less time than required by traditional methods. Thus, NAIW seeks \$54,140 in FY04 and \$15,529 in FY05 in replacement and \$69,786 in FY04 and \$2,808 in FY05 new technology in additional funding over and above the cap of the two-times rule.

We are requesting 4 client chairs for the Las Vegas NAIW; 6 lateral filing cabinets (2 Carson - 4 Vegas) to enable maintenance of confidentiality; MS Front Page and Front Page software, VPN security protected lines (11) for offsite connection and DoIT installation costs; New Norstar system with voice mail; air conditioning unit for the Las Vegas server room; two heavy volume shredders for destruction of confidential documents; 1-24 port hub, 2660 Cisco router (per DoIT recommendation); printer maintenance for 2 requested replacement printers; and 2 additional drives, one for each server.

SECTION 8 – PROGRAM CHALLENGES

1. Due to the lack of sufficient staffing in the Las Vegas office, NAIW is currently contemplating and faces serious concerns over increased delay in completing its cases or resorting to selective representation. NAIW will make every attempt to continue to provide the level of representation it has provided since inception to all injured workers, as mandated. However, unless the caseloads can be reduced by additional staffing in the Las Vegas office, NAIW may be forced to succumb to enforcing selective representation at a great loss to those that will be left without the assurance of a fair and equitable case result. Delay in adjudication is itself unfair and inequitable.

2. NAIW hopes to obtain a useable, efficient, comprehensive case management database for the requested funds, or at least increase the efficiency of our current system.

DEPARTMENT: Business & Industry 1013
 FUND AND BUDGET ACCOUNT: 101
 Division: Nevada Attorney for Injured Workers
 Date: Fiscal Year: 2002

Expenditures	July 2001		August 2001		September 2001		October 2001		November 2001		December 2001		January 2002		February 2002		March 2002		April 2002		May 2002		June 2002		TOTAL FY '02	
	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget
Major Revenues																										
1 Transfer from CIR																										
GL 4659																										
2 Balance forward																										
from previous year																										
3 Reserve Account																										
Transfer from Hearings																										
GL 4659																										
4 Allocation from Fund 2505																										
Major Performance Indicators																										
Number of Appeals Officer cases																										
1 appointed to represent																										
Number of Appeals Officer																										
2 hearings held																										
Number of Appeals Officer																										
decisions and settlements																										
3 granting benefits to claimant																										
Number of Appeals Officer																										
cases and orders denying																										
4 benefits to claimants																										
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6 benefits to claimants																										
Number of Supreme Court																										
decisions and settlements																										
7 granting benefits to claimants																										
Number of Supreme Court																										
decisions and orders denying																										
8 benefits to claimants																										
9 Revolving caseload per office																										
Non-compliance Records opened																										
10 per office																										
Non-compliance cases opened																										
per office																										
Number of tracked follow-up																										
records contacted																										