

State of Nevada

Department of Indigent Defense Services

Board Meeting Minutes

Friday June 17, 2020

1:00 PM

Meeting Locations:

OFFICE	LOCATION	ROOM
VIRTUAL ONLY		

Public was able to access the following link: [Join Microsoft Teams Meeting +1 775-325-5280](#)
United States, Reno (Toll) Conference ID: 489 458 460#

1. Call to Order/Roll Call

Chairman Crowell called the meeting of the Department of Indigent Services Board to order a little after 1:00 p.m. on Friday, June 17, 2020.

A roll call was conducted and **quorum was established.**

Board Members Present: Mayor Bob Crowell, Laura Fitzsimmons, Rob Telles, Julie Cavanaugh-Bill, Joni Eastley, Jeff Wells, Drew Christensen, Lorinda Wichman, Kate Thomas, Chris Giunchigliani. Justice William Maupin, Professor Anne Traum and Dave Mendiola were not present.

Others Present: Executive Director Marcie Ryba, Deputy Director Jarrod Hickman, Jason Kolenut, Alexis McCurley, Cindy Atanazio, Dagny Stapleton and Franny Forsman.

2. Public Comment #1

There were no public comments from either North or South.

3. Approval of May 8, 2020 Minutes (For Possible Action)

There were no corrections or changes made on the Minutes.

Motion: Approve May 8, 2020 Meeting Minutes

By: Joni Eastley

Second: Laura Fitzsimmons

Vote: Passed unanimously

4. Update on Department: (For Discussion and Possible Action)

- a. DIDS appearance at NACO meeting
- b. Update on Annual Reports
- c. Discussion on budget shortfall

Director Ryba provided a brief overview of the meeting with NACO where they gave a short presentation.

Jason Kolenut gave an update regarding the annual reports/financial forms from the counties, noting that not all counties had provided the Department with the annual reports as of this date.

Jason Kolenut provided a slide presentation of the budget shortfall for the phones and internet. He advised that to make up the shortfall, the Board may move money from Out of State Travel, In State Travel, Commission Travel or Training; however, once the funds are transferred, they cannot be moved back.

Laura Fitzsimmons stated that she would be amenable to continuing to meet virtually in order to save on Commission travel, however she questioned whether there would be additional costs for using Teams. Jason Kolenut clarified that there would be no additional charges, as these costs are already funded. Joni Eastley suggested that in addition to Teams meetings, there be one annual in-person meeting per year. Chris Giunchigliani agreed with the suggestions, but expressed concern regarding cutting training.

Director Ryba clarified that \$19,000 was received from Interim Finance for training and this does not include those funds. The \$15,000 training budget was slated for the Department specifically for training. One of the intended trainings was a trip to Kentucky in the past year. They have the option of either moving part of the training funds to all rural indigent defense attorneys or applying a portion of the existing debt. Chris Giunchigliani commented that applying training dollars, (which may not otherwise be needed internally) to assist counties might not be a bad idea. Chairman Crowell also agreed with the idea of continuing to utilize a virtual meeting format. He suggested a motion be made.

Motion: Continue using Microsoft version of Virtual Teams for meetings with one face-to-face meeting to be held each year.

Discussion:

Discussion ensued regarding transferring funds from the commission travel budget and whether a portion should be saved for the one in-person meeting to be held one time per year. Jason Kolenut advised that it would be difficult to gain approval from the IFC to put the \$4,600 from out of state travel back into that budget category once it is moved to another category. The Commission Travel budget of \$10,655 combined with the Out-of-State Travel budget of \$4,610 does not quite solve the \$20,000 shortfall. As such, there would have to be some reduction in the training budget. If the plan going forward is to meet one time per year face-to-face, there would have to be an estimate of how many people will attend and what the costs would be. The Commission Travel budget could only

4. Update on Department: (For Discussion and Possible Action)(continued)

be reduced by this amount. Laura Fitzsimmons commented that no matter where the in-person meeting is held, there will be a lot more people traveling than is typical.

Chris Giunchigliani asked for a restatement of the exact numbers involved. Jason Kolenut reviewed that the Out-of-State travel budget for FY 2021 is \$4,610, Commission travel is \$10,655 and the training category is \$15,817. The projected shortfall in the information service category and operating at this time is \$20,357. Once money is moved out of the Out-of-State travel budget, it cannot be returned. He suggested taking all or a portion of it. For example, if an out-of-state travel request was to cost \$1,200, that amount should be left in the category, while moving the remaining funds. He noted that the operating budget category is projected to be short beyond \$979 and additional needs will have to be revisited. The immediate needs for information services will come up within the first few months. Laura Fitzsimmons summarized that elimination of Out-of-State travel and Commission travel will only raise \$15,265 with another approximately \$5,000 needed to cover the shortfall. Jason Kolenut concurred.

Laura Fitzsimmons addressed the \$19,000 separate from these amounts for training. Jason Kolenut reviewed that the additional training money was requested in April at the IFC from the contingency fund, related to the time tracking and caseload software that is in the process of being acquired at this time. There is the potential to comingle the dollars, as it is categorized as training. Director Ryba clarified that \$19,000 was specifically budgeted for training of rural attorneys, including per diem costs. The proposal would be to reduce Agency training by \$4,000, because Agency staff can attend and receive the same training that is being put on for rural attorneys. The Department would recommend emptying the Out-of-State Travel, reducing Commission travel and reducing training.

Chair Crowell suggested that the motion be restated/amended.

Motion: Joni Eastley made a motion to utilize the \$10,655 from Commission Travel and the \$4,610 for Out-of-State travel to reduce the shortfall with the remainder to be drawn from in the In-House Training Fund. If revenue is available in any one of these three categories, those funds will be utilized for one in-person meeting during the year.

By: Joni Eastley

Second: Laura Fitzsimmons

Vote: Passed unanimously

5. Submission of Annual Report to Board: (For Discussion and Possible Action)

Director Ryba stated that the Board is required, pursuant to NRS 180.410, to create an annual report for submission to the Nevada Supreme Court, the Legislature and the Office of the Governor by July 1st. The Department is requesting permission to submit the annual report, which has been submitted to Board Members. Input on recommended changes is welcomed.

Motion: Approve submission of Annual Report to Board

By: Joni Eastley

Second: Chris Giunchigliani

Vote: Passed unanimously

5. Submission of Annual Report to Board: (For Discussion and Possible Action)(continued)

Laura Fitzsimmons and Joni Eastley commented on the excellent quality of the report.

6. Update on RFP Request: (For Discussion and Possible Action)

Director Ryba reviewed that previously, there was a request to release the RFP, which was granted, however permission was not necessarily provided to enter into contracts with the winning bidder. Evaluation meetings are scheduled for June 22nd, 2020 to determine the winning bid for the weighted caseload study and June 26, 2020, to determine the winning bid for the data analyst. The Department is requesting permission to enter into the contract once the Evaluation Committee determines the winning bid.

Chairman Crowell invited comments or questions from Board Members. Jeff Wells stated that he and Drew Christensen called to speak with Director Ryba yesterday regarding some concerns on the project. The concern is that whoever is hired to conduct a study will want a baseline set of timekeeping. This baseline timekeeping both by institutional offices as well as private contract attorneys should be based on a more settled timeline. For example, Clark County has not yet resumed jury trials. As such, it will not be possible to track how long each type of specific case category may take. Without good baseline data, it will be difficult for any expert to develop good workload standards moving forward. Secondly, the desired software will not likely be available until March of 2021. Considering the typical delays, it can be assumed that the release will not be until after that date. As a consequence, he worries about jumping into an RFP and a contract that requires them to expend all of the funding by June 30th of next year.

In an effort to get some clarity, Jeff Wells called Jason Frierson the previous day. At that time, Mr. Frierson provided an accurate summary of the problem, which is that the Board's goal is to obtain a quality product. That product will not likely be available until next year. The Board does not want to spend its existing funding until the time is right, but is also concerned regarding losing that funding due to the budget shortfall. Jeff Wells noted that he has not yet heard back from Mr. Frierson with potential advice. His concern is that given the time frame and the uncertainties of the system, they will not be able to obtain a good product. Chairman Crowell agreed that the Board should consider these issues. They will not be able to develop a good product based on the fluctuating conditions caused by the pandemic. Jeff Wells suggested delaying the decision until the next meeting to allow for input from Mr. Frierson. This will also allow time to review the Governor's list of budget cuts. He acknowledged that a longer time frame may require issuance of a new RFP, but one upside is that this may widen the pool of bidders to choose from.

Director Ryba provided more information, noting that the Chairman signed Affidavit A, which stated that they had to execute a contract with a qualified provider for Delphi studies within 12 months after the effective date of the settlement. Her understanding is the case has not yet been settled and as such, the time has not begun to count down. There are a couple of options. If the Board would like to go forward with the RFPs and the Evaluation Committee, the Department could delay its contract on the Delphi study and negotiate additional time, if they are permitted to have the funding

6. Update on RFP Request: (For Discussion and Possible Action) (continued)

extended past June 30th, 2021. If they enter into a contract by July 7th, 2020, they can be on the Board of Examiners agenda to get it approved by August 11th. That was the original hope in regards to the Delphi study. If they do not have the contract negotiated by July 7th, it must alternatively be negotiated by August 4th in order to make the Board of Examiners meeting on September 8th. According to Purchasing, they have the option to get rid of the RFP altogether and reissue it once more information is available. This is a time-intensive process. If they do not go forward with the RFP, they may not have sufficient time to get any information without extension of the funding timeline. The Board may also choose to grant the Department authority to enter into the contract with the winning bid, based on current submissions. If the funding timeline is extended, there would be the potential to negotiate a longer study, aiming for the August 4th date.

Franny Forsman concurred with Director Ryba that the settlement is very close, but has not yet been completed. She commented that no one will be interested in a time study that results with the time required per case being too low, which is likely what would occur when taking straight time records during the pandemic. It is likely that potential vendors are already experiencing these challenges and it would be helpful to understand what adjustments they may be making in their analyses. Studies such as these do not simply report the current times spent by weak indigent defense systems, but provide analysis on how much time should actually be spent. It may be useful to ask additional questions of the vendors to determine how these numbers are adjusted. Based on Director Ryba's comments, they were given 12 months from the date that the case is settled.

Chairman Crowell posed the question as to whether the Board would like to have the evaluations go forward while at the same time postponing the contract issue and speaking with the bidders. This could then be readdressed at the next meeting. Jeff Wells advised that this suggestion be put in the form of a motion.

Chris Giunchigliani stated that based on the discussion thus far, Director Ryba and the Evaluation team have the opportunity to further refine the expectations of the study, including issues related to time. She sought clarification that a potential motion would provide the time to be able to complete this process and bring it back to the Board. Director Ryba said her understanding is that when the confidential individuals look at the RFP in the evaluation process, they must do so based on what was actually submitted. However, when the individuals choose the winning bid, they can further contact them to include additional contract terms. If the study can be conducted on an extended timeline, this could be also be negotiated with the winning bidder.

Chris Giunchigliani sought clarification regarding the requirement on use of the funding by the end of 2021 and whether this is required by statute, IFC requirement or Board of Examiners. Director Ryba said that according to her understanding, it is an IFC requirement, based on the request that it go to the end of the biennium, which is June 30th of 2021. The Department could not request a timeline beyond that date. Chris Giunchigliani surmised that due to the settlement timeline, there may be some leeway, which will lead to a solid study. Director Ryba clarified that at this point, it would be a hurried study. They would not be able to use the LegalServer software, which they hope to have in place by March. Her understanding is that the IFC does not have authority to do anything with money past the date of June 30th of 2021. Chris Giunchigliani suggested the possibility of.

6. Update on RFP Request: (For Discussion and Possible Action) (continued)

getting the item on the list of items to be discussed on the special session call. Laura Fitzsimmons asked if this is the issue Jeff Wells is waiting for input on from Jason Frierson. Jeff Wells said this is one of the issues. In addition, he is frankly waiting for some assurance that the funding would be reinstated for next year, if not used by June 2021.

Motion: Allow the evaluations for June 22nd and June 26th for the weighted caseload study and data analyst to go forward and have staff delay or extend the timeline for entering into a formal contract until there is sufficient time to evaluate current and ongoing impacts of the pandemic.

By: Chairman Crowell

Second: Jeff Wells

Vote: Passed unanimously

7. Update on LegalServer: (For Discussion and Possible Action)

Director Ryba stated that the Department was given permission to contract with LegalServer during the last meeting either via issuance of an RFP or other method. The Department requested and was granted authorization to use an alternative governmental solicitation. This eliminates the need to go through the RFP process. They will be entering into the contract. Based on the anticipated timeline, work will begin on installation in September with a go-live date of February or March 2021. The Department is seeking guidance from the Board on whether a regulation should be created to mandate that rural counties use LegalServer or whether the Board intends to allow each rural system or each county to use LegalServer on a discretionary basis. The Department's understanding is that Elko spent a significant amount of money installing a Justware program, which will not necessarily be a supported format by June 30th, 2021. The Department is reaching out to set up a meeting to determine Elko's intent to use the program. Some personnel indicate that they would prefer to continue to use their current systems. The benefit to a mandatory requirement is the ability to access uniform data. It is evidenced in the Annual Report that the data is not currently uniform. One of the challenges is that there are insufficient funds for integration of information into the system. Current cases could not be automatically pulled in and would have to be manually entered.

Laura Fitzsimmons said that although resistance is understandable, the requirement for use should be mandated. There will be extra work for the counties in the form of training at the onset, but ultimately, the counties will be saving money.

Drew Christensen referred to counties that do not have institutional offices. He asked whether private attorneys in receipt of the contract will have to purchase LegalServer in order to input the data or whether it will be a requirement of the court. Director Ryba stated that the attorneys will be required to enter the data. It is a case management system provided to the counties to in turn provide to all of their attorneys. The State will pay the fee for contract attorneys and public defenders. For attorneys engaged for only a few cases, the counties will provide them the software free of charge.

7. Update on LegalServer: (For Discussion and Possible Action)(continued)

Chris Giunchigliani agreed that use should be mandatory and consistent. Use of various programs throughout the State results in incomplete data collection.

Drew Christensen stated that his agency contracted with Justware over ten years ago, as it was the program used by the Public Defender's Office as well as the Special Public Defenders. Contracted attorneys were provided with internet access to JustWare and would input their own case data. It was soon recognized that having outside sources inputting the information resulted in questionable data. Ultimately the decision was made to keep JustWare for internal staff with lawyers reporting case data "the old-fashioned way." The data was inputted into JustWare by internal staff, which raised the confidence level in terms of accuracy. All the local offices are contemplating which server to use. The ultimate goal is for everyone to be on the same system, so that input of information is consistent. Mandating use is likely the recommended route, but it is important to note that there may be hurdles related to varying preferences of agencies and the actual individuals who are inputting the information. The DA's office had been contracted with JustWare, having an anticipated go-live date this year. As the go-live date was approaching, JustWare pulled the plug and it will no longer be supported. It has become apparent that the preferences of each institution for the software varies. No decisions have been made as yet. The Assistant DA has suggested an appointment to review the capacity and comfort level for the Defense Bar.

Deputy Director Jarrod Hickman shared an additional concern from the Elko perspective. Both the DA and the court is tied into the JustWare system. This provides for a smooth transition with discovery and filings. Their primary concern with utilizing a new system is that they are currently well integrated.

Dagny Stapleton asked about the process of creating the mandate. Would it be put into the regulations as a function of the Board? A concern from the county perspective is the need for more outreach and communication prior to the enactment of a mandate. Director Ryba clarified that there is the option for the submission of data by means other than the JustWare system and that they would make staff available to input the data. Pushback stems from the fact that individuals already have systems in place and do not have sufficient staff to be able to enter all the cases into the new system. The Department is attempting to meet with each county and is encountering the question of whether this will be mandatory. This is the purpose for bringing the issue before the Board. The following questions need to be addressed: Is this going to be mandatory? What is the intention of the Board? What should the Department be communicating to users? Do they have a choice on which system to use?

Jeff Wells asked about the potential for negotiating a bargain basement price with LegalServer, if they intend to utilize the software throughout the county. Perhaps they can win a price point that is attractive enough that counties would be willing to shift. Director Ryba stated her understanding that Aaron Krause of LegalServer has been reaching out to Washoe and Clark Counties to determine whether there is interest in having a unifying system. Mr. Krause informed her that he did not receive feedback regarding looking at LegalServer in these areas. Jeff Wells commented that it may depend on who Mr. Krause spoke with. The IT Department may not be interested in learning a whole new system, since they are accustomed to JustWare. If he were to reach out to the

7. Update on LegalServer: (For Discussion and Possible Action)(continued)

actual Special Public Defender and Public Defender, he may receive a more receptive response. Director Ryba said that she had encouraged Mr. Krause contact the Public Defenders directly, however Mr. Krause did not specifically provide a list of people he reached out to.

Kate Thomas stated that she would facilitate these discussions in Washoe County. The Department has been researching options, but had not made any final determination. If they communicate that the Board is pursuing a similar product for use across the board, this may provide a nudge in the right direction. Washoe County has also been considering E-Defender software.

Drew Christensen pointed out that E-Defender is the company that took over from JustWare. That company offers the E-Defender product as well as an E-Prosecutor product. He asked whether LegalServer also has a prosecutorial product. Director Ryba said she does not believe they have a prosecutorial product, as they are specifically made for public defenders. However, discovery can be emailed directly to the server. It is her understanding that an email address is assigned to each case when it is opened. This address can be provided to the District Attorney. If discovery is sent to that email address, it will automatically be saved within the file. Some public defenders in Washington and Colorado are moving their systems to LegalServer. Drew Christensen stated that Clark County will take a look at this. It would be an advantage if the defense was all on the same platform statewide. Apart from this issue, it should be mandatory via contract requirement that defenders be responsible for keeping accurate statistics on cases.

Kate Thomas suggested that rather than issuing a mandate now, that discussions continue towards adopting a statewide uniform system. When feasible, they can move to a mandate in the future. From the input thus far, there have already been promising discussions.

Director Ryba asked if the Board would prefer signing the contract to allow Washoe County and Clark County to meet with the representative to determine whether they like the server or whether the Board would like staff to continue moving forward with the process. There was general consensus from the Board to move forward with this suggestion. Kate Thomas added if there are price benefits to having the two larger organizations on board, this may assist with the contract processes. Director Ryba stated that holding off on signing the contract will not hinder the process greatly. There is a proposed contract at this time and the Department can reach out to determine interest. There is a requirement that the contract be signed by July 7th, in order to make the August BOE for the September start. A delay would mean an October start.

Drew Christensen posed the scenario where the contract is in place in September and asked what the Department envisions inputting at that time. Director Ryba clarified that they would not necessarily have any information moved over, but would be building the system specifically according to the needs of the Department. If Clark County and Washoe County are interested, they would have their own contracts and data systems. They would not necessarily be tied to the Department's legal server. The Department can reach out to Aaron Krause to ask whether reports could be uploaded from Clark County and Washoe County, if those counties entered into a contract. There have been discussions regarding separate databases. The Department has looked at whether a database could be provided for each county, however this increased the cost significantly. If a

7. Update on LegalServer: (For Discussion and Possible Action)

database is provided for Clark County and Washoe County with the rurals in a separate database, they would all be tied together and set up jointly. She can obtain a bid for this option and provide the information to the Board.

Deputy Director Hickman asked Kate Thomas and Jeff Wells whether they would like to be contacted by Aaron Krause or in the alternative, whom they would like him to contact. Kate Thomas said she is happy to coordinate on behalf of the Public and Alternate Public Defenders in Washoe County. They could include Jeff Wells in a virtual brainstorming session. Jeff Wells suggested that initially, they reach out directly to Drew Christensen. He also suggested participation by Nadia from IT. Drew Christensen said he would be happy to assist with coordination on behalf of the Defense Bar in Clark County. Jeff Wells further suggested that subsequent to that organized meeting, he and Drew Christensen can join with Washoe to discuss price points.

Drew Christensen asked about the software used by the District Attorney's Office in Washoe County. Kate Thomas stated that the Court uses Odyssey. Drew Christensen wondered if there was a coordinated effort in the north to merge both the Prosecution and the Defense for a smooth stream of information. Kate Thomas stated that this is the overall goal. She will coordinate further efforts to gather information. It is good timing that JustWare will no longer be supported, as it forces decision-making.

Drew Christensen said that while he does not want to damage any momentum the Department has in its move toward LegalServer, he is not yet comfortable with the Board instituting a statewide mandate. Kate Thomas asked if the Board is comfortable having Director Ryba move forward with the contract while Clark County and Washoe County pursue LegalServer as an alternative. Director Ryba said she was amenable to that plan. Drew Christensen suggested that they also delay the discussion regarding mandating the LegalServer software statewide.

Joni Eastley stated that she would be opposed to anything that would impose another unfunded mandate on any of the counties. Rural and frontier counties are having particular budgetary problems as a result of business closures and impacts to county revenues. Even if they were not experiencing these budget problems, she would still be opposed to any requirement imposing an unfunded mandated. Director Ryba stated that when the Department went to IFC, they requested and received funds to build and install LegalServer as well as to provide it free of charge to all rural counties. Joni Eastley thanked Director Ryba for the clarification, but wished to reiterate her opposition to any requirements to impose an unfunded mandate. Chairman Crowell voiced agreement with Joni Eastley regarding opposition to an unfunded mandate.

Chris Giunchigliani reiterated the need for a statewide data system used consistently by everyone. Otherwise, the intended goals of capturing data are ineffective. If all entities choose their own systems, there will be increased need for staff to compile the data in its various forms. She sought clarification on the Board's direction. Drew Christensen commented that no one disagrees with the fact that the information has to be captured. The question comes down to the method of collecting it. According to his understanding, LegalServer is controlled by the Department with licenses

7. Update on LegalServer: (For Discussion and Possible Action)(continued)

provided to the various county agency users. There are concerns about allowing outside entities to enter information. The population of attorneys under contract changes from year to year. One solution is to mandate the format in which the cases must be maintained, while the agency controls what information is entered in the database. In essence, the advice would be not necessarily to force a particular software program, but to enforce a methodology by which the cases are tracked.

Chris Giunchigliani asked how the information can be collected in a format that does not cost everyone else more time and money to input it in the desired format. Drew Christensen surmised that the Board can mandate contracted criminal defense attorneys with keeping track of their information in a specified manner. If they fail to follow the mandated process, this results in the jeopardization of their contract. Two relevant components will be the total number of cases and how much work is being performed. This will allow analysis to determine the appropriateness of the reported data. A survey conducted by the previous commission provided no reassurance that the data being reported was accurate. One of the most important functions of this Board is to have an accurate assessment of the data.

In response to a question from Laura Fitzsimmons, Director Ryba confirmed that the Department will be providing licensing free to counties, practitioners and their staff. Laura Fitzsimmons commented that it would not be too much to ask county staff to input the data into the system, rather than the Department having to do so on their behalf. Director Ryba said this is one of the benefits of LegalServer. The Department will be able to get a case capture of everyone hooked into the system. The Department will have snapshots which show details on case activity. This will help to provide assessments on workload capacity. The Department will be able to create charts of data utilizing real-time information. There may be delayed efficacy if the Department is having to input all the data.

Jeff Wells addressed the fact that Washoe and Clark Counties would have to obtain approximately 400 licenses or more on an annualized basis. The counties have finally achieved integration with the District Attorney's Office (albeit with the use of old software). Approximately three months ago, the old central court system was eliminated and replaced. There are 11 justice courts, district court, 81 elected judges, and over 400 attorneys providing defense work. It is no a simple to task to maintain the current integration while simultaneously having to change everything via new programs and procedures. With current budget constraints, spending an additional \$7 to \$10 million may not be feasible.

Laura Fitzsimmons clarified that her comments were specifically in regard to areas with populations under 100,000. The Department will not be pulling in the info from Clark County or Washoe County. Director Ryba clarified that Clark County and Washoe County will still have to report and noted that those two counties have a stopgap not available to other counties in terms of data gathering.

Julie Cavanaugh-Bill stated that she is against a mandate at the current time. She recommends coordinating with counties, rather than simply enforcing a new mandate that may not be a good fit.

7. Update on LegalServer: (For Discussion and Possible Action)(continued)

Chairman Crowell suggested the possibility of delaying this issue until the next Board meeting.

Between now and then, staff can develop a proposed regulation requiring use. Input on the proposed regulation could then be gathered from public defenders and counties. Laura Fitzsimmons agreed and suggested a motion be made toward this suggestion. Jeff Wells concurred with the proposed motion, but asked for confirmation that the Department assist in coordination with a meeting with the Public Defender group, IT and LegalServer. Director Ryba confirmed that the Department will send a follow-up email after the meeting.

Motion: Delay action on this agenda item until the next Board meeting. By the next meeting, the Department will draft a regulation for review by the Board and stakeholders. Ensure that the regulation states that access to the software is provided to the counties and Public Defense attorneys at no cost.

Discussion:

Kate Thomas questioned whether the proposed motion will assist the Director in executing the contract. Director Ryba clarified that there is no hindrance in moving forward. The Department is paying for up to 100 users at one set price.

Laura Fitzsimmons suggested that the Board cease use of the word “mandate,” and replace it with “require.” Julie Cavanaugh-Bill asked for clarification on the difference in verbiage. If use of the program is required, it is also mandated. Laura Fitzsimmons stated that in every county session and study group, there has been pushback on the concept of unfunded mandates for everything. There is a lack of confidence in many counties that the State will require case standards in contracts without stepping up to pay for it.

Julie Cavanaugh-Bill said she would like to know which counties have expressed concerns regarding use of a required, uniform system. Director Ryba stated that the Department is in the process of reaching out to all of the counties to set up virtual meetings. Thus far, some counties have responded. Some have requested that the Department speak to the attorneys directly and some are willing to meet with the Department along with the county manager. The predominant question has been whether this is a requirement. The Department was unsure how to respond, which is the purpose for today’s discussion. While a regulation is not required, staff is willing to draft a proposed regulation for discussion at the next meeting. The Department is seeking the Board’s direction as to whether it expects counties to use the software or whether it will be considered discretionary. Chairman Crowell stated that this is why it is important to have draft language regarding the requirements for use of the software.

Director Ryba commented that participants of the Delphi study will be required to use either LegalServer or software provided by whoever is chosen. The Department felt that since a work study was being conducted and would be a catalyst for learning the software, it might be most beneficial to record their time in this manner. The Department remains open and cognizant of the concerns.

7. Update on LegalServer: (For Discussion and Possible Action)(continued)

Laura Fitzsimmons addressed Julie Cavanaugh-Bill's concern and the Chair's pending motion by pointing out that it would be helpful to have draft language on the proposed requirement for circulation before the next meeting.

Julie Cavanaugh-Bill stated that she has received feedback on the standards. A workshop was promised but subsequently cancelled due to the pandemic. The standards were then submitted to the Legislative Bureau, leaving many people to feel left out of the process. It is important to avoid a perception that the Board is unilaterally drafting requirements without taking all the comments into consideration.

Chairman Crowell stated that the motion would provide extra time as well as providing something in writing for consideration and input. He asked the Board for input on how they wished to proceed. Julie Cavanaugh-Bill concurred with earlier recommendations to hold off on taking formal action and allow Director Ryba to move forward with the contract and continue the conversations. Discussion ensued regarding restatement of the motion.

Motion: Table this agenda item until the next Board meeting while allowing the Department to continue making progress on the contract with LegalServer. The Department will draft a proposed regulation for review by the Board at its next meeting.

By: Joni Eastley

Second: Chairman Crowell

Vote: Passed unanimously

8. Update on Training: (For Discussion)

Deputy Director Hickman stated that Clark County Public Defenders Christy Craig and Nancy Lemcke have agreed to put on their Arguing for Pretrial Release after Valdez-Jimenez training for the Agency attorneys. Dates include June 26th, July 16th and July 17th. This is a participation-type CLE with a workshop, resulting in two CLE hours. As of right now, the June 26th date is full, July 16th has five confirmed participants and July 17th has two confirmed participants. This is part of a long-term strategy in terms of CLE provisions for attorneys in the rurals. The goal is to provide at least one CLE per month at no cost to attorneys. The idea board in the office is nearly full of potential new topics. Conversations are ongoing with John Lambrose (phonetic) regarding potential August and September dates. The goal is to provide the once per month trainings to assist the Agency in obtaining its accredited CLE provider status with the CLE Board while at the same time fulfilling one of its statutory requirements in terms of training for attorneys in rural counties.

In line with the request from the Interim Finance Committee, they are looking to establish a conference. It would be more desirable to have it face-to-face, with the ability to host indigent defense providers and attorneys from all over the state at one location, not only for CLE credits, and training-type conference, but also to facilitate an exchange of ideas. Toward this goal, the Department has reached out to Professor Traum regarding the potential to have the first conference at the law school. This may be the most cost-effective option. The funds from IFC would go toward travel per diem so that attorneys could attend at no cost. The anticipated time frame is spring of 2021, depending upon conditions surrounding the pandemic and travel restrictions. Once the travel

8. Update on Training: (For Discussion)(continued)

restrictions are eased, the Department is working to develop the formal organized training program specifically for new attorneys coming into the system. The goal is to initially cover the basics with a long-term goal of a trial-type bootcamp. It would be a week-long course covering trial skills.

Deputy Director Hickman addressed current budget limitations and noted that paying for CLE providers is a challenge. He asked input from Board members regarding effective CLE providers who may be willing to provide services free of charge. There are a number of such providers already lined up. For example, Christy Craig, Nancy Lemcke and John Lambrose have agreed to provide service at no cost.

9. Update on Regulations: (For Discussion and Possible Action)

Deputy Director Hickman stated that the proposed regulations are currently with the Legislative Counsel Bureau (LCB). The Department last made contact with them on June 11th. He read the response as follows: "Due to current circumstances, the process for drafting regulations can be delayed." The purpose for submission to the LCB was not for unilateral action, but to ensure that the Department met a specific deadline. Once substantive changes are received from the LCB, the intent remains that a workshop be held to discuss other ideas and collect public comment. The Department has continued to meet with county stakeholders with respect to regulations. The feedback is being considered in relation to the proposed regulations to identify potential problems and solutions.

One of the significant issues relates to judicial independence in terms of payment of extraordinary fees and case expenses without judicial approval. This has been addressed in the bill draft request from the last meeting, which substantially changes Chapter 7. They must plan for the eventuality that these requests are not approved and passed. This analysis required a reexamination of how they are dealing with the issue of payment of extraordinary fees and case expenses. One of the concerns is that the case law on regulations essentially provides deference to agencies, so long a regulation does not conflict with existing statutory authority. Chapter 7, 7.125, 7.135 and 7.145, which vests the authority for counsel appointed to a defendant, also requires them to go through the judiciary to collect payment for these types of fees. The challenge is to get regulations in conformance with existing statute while also accomplishing the Department's goals for compliance with the *Davis* Settlement.

Page 11, lines 20-22 of the settlement requires that contracts address getting payment of extraordinary costs completed without judicial approval and that case-related expenses be funded separately, also without judicial approval from the contract itself. One of the powers vested in the Board is to develop a formula for the maximum contribution of accounting to be paid for indigent defense services. One potential solution is to build budgets through the formula for maximum county contribution. Draft language was sent out yesterday. Deputy Director Hickman screen-shared the draft language with meeting participants.

One of the potential solutions in dealing with judicial independence related to payment of extraordinary fees and case-related expenses is to build it in for the maximum county contribution. This would remove it as a cost for the counties. The first portion of the language reads that the

9. Update on Regulations: (For Discussion and Possible Action)(continued)

maximum county contribution will be the average of Fiscal Year 2018/19 minus expenses related to murder cases and capital cases; and for counties with populations less than 100,000, those case-related expenses plus the percentage equal to the lesser of either the West Region Consumer Price Index or the union-negotiated cost of living increase. Essentially, this will be taken out of the county's contribution. It is then roped back in to ensure that the minimal constitutional requirements for indigent defense are met by making this a State obligation in Subsection 2. The language there states, "*Case-related expenses for counties whose population is less than 100,000 shall be a charge against the State, budgeted to the Department and administered pursuant to the county's plan for the provision of indigent defense by the Department or the Department's designee.*" This language is in line with the bill drafts request submitted for Chapter 7 at the last meeting, which states that the county's plan governs how expenses are submitted and paid. The language, "Department or the Department's designee," was intended to address administrators where counties are providing these services via the contract method, so that the Department could actually be the administrator. In instances where the county has already set up a public defender office, there is already a person available to be accountable for the fiscal expenditures of the Public Defender's office.

The Public Defender and the county would essentially serve as the designee pursuant to that plan. Subsection 3 contains clarification regarding counties who opt in to the State Public Defender for death penalty cases and/or direct appeals. The language makes it clear that those cases for counties who are opt in are charges against the state and are excluded from the county's contribution. This provides clarity that if a county opts in, the cost will be provided by the State and not the county itself. The overall goals are to meet the requirements of the *Davis* litigation as well as what the Department originally set out in its proposed regulations and standards. This is a potential workaround to the issue in Chapter 7 and existing statutory law. It is being submitted for discussion as to how it can be improved. The Department would like to submit it with the proposed regulations in preparation for workshops and public comment.

Chairman Crowell asked about the possibility that LCB will say that the current law does now allow this to occur at this time under Chapter 7. Deputy Director Hickman said the concern in terms of judicial independence is that the current proposed regulation simply addresses judicial independence in terms of payment of these types of expenses. The goal is to remove that from the judiciary. However, because Chapter 7 requires this action by the judiciary currently, the Department is looking at other ways to do it. The proposal presented squares with the Board's financial powers, in that it must develop a formula that sets a county's maximum contribution. If removed from the county's contribution, it must still be provided in order to ensure that minimum constitutional obligations are met. The proposal provides this workaround. It is also in line with existing case law. The Sixth Amendment cited a 1969 case of a death penalty case bankrupting a county. Because the statutes were drafted in a specific way, those expenses were required to be borne by that county. The case notes also indicated that if the legislature had developed a way to obligate the state to pay for these types of expenses, the case outcome would have been different. With AB81 requiring that a maximum contribution be set for the counties, this provides a means to accomplish the goal.

Motion: Transmit the regulation dealing with the maximum amount of county contribution for indigent defense services under 180.320 of the Nevada Revised Statutes.

By: Chris Giunchigliani

Second: Kate Thomas

Vote: Passed unanimously

10. Discussion and Announcement of Dates for Future Meetings: (For Possible Action)

Director Ryba said that there have been requests from Board members to set the meetings out for a significant period of time for scheduling purposes. She proposes that for the next year, they schedule monthly meetings, in order to be able to reserve rooms and to allow individuals to keep their calendars open. Meetings would be scheduled on the fourth Thursday of the month, except for November and December.

Motion: Adopt Years 2020 and 2021 meeting dates as recommended by Staff.

By: Joni Eastley

Second: Laura Fitzsimmons

Discussion:

Jeff Wells commented that once the Board completes the legislation and the contracts, it may not need monthly meetings. He and Drew Christensen will be attending the Clark County Criminal Justice Coordination Counsel meeting July 23rd. Jeff Well is Chair of the Domestic Violence Subcommittee and is required to make presentations. Rob Telles stated that the July 23rd date does not work for him, either. Joni Eastley agreed to move the July 23rd meeting. She would prefer to set all the meetings, as they have the option to cancel them, if they are not needed. Chris Giunchigliani suggested scheduling the July meeting for the 22nd and amended her motion.

Motion: Adopt Years 2020 and 2021 meeting dates as recommended by Staff, with the exception that the July meeting be held on the 22nd.

By: Joni Eastley

Second: Laura Fitzsimmons

Vote: Passed unanimously

Chairman Crowell stated that he is exiting his employment position at the end of the year but will ensure that the conference room will be available until his departure. He will remain on the Board for a couple of years.

11. Public Comment:

There were no public comments from either North or South.

12. Items of Interest for Future Agenda Items

Chair Crowell invited Board members to submit items for future agendas. There were no items suggested. He added that this will be a standing agenda item moving forward.

13. Adjournment

Chairman Crowell adjourned the meeting at approximately 2:45 p.m.

DRAFT