

ONSITE VISIT REPORT

Nye County (South)

Visit dates: January 6 and 16, 2025

I. Brief Narrative

Outreach and Compliance Advisor David Schieck traveled to Pahrump to observe Nye County District Court and Pahrump Justice Court. During the course of the onsite visit, several meetings were held with current public defenders and deputy district attorneys concerning the prospect of adding additional attorneys to the rotation of public defenders. Specifically, DIDS had been informed that the posting for new attorneys had yielded three applicants that would be on the County Commission Agenda for January 22, 2025. The three applicants, already on the DIDS attorney list, had limited felony experience, and would not be able to immediately take on full rotation of criminal cases. A number of the conversations with current public defenders concerned how to best utilize the potential of three additional attorneys with limited criminal experience. All three attorneys have been licensed for many years, but not concentrating on felony defense.

Additional conversations occurred regarding appointed counsel mentoring some public defenders on Category A felony cases to increase the level of cases that could be handled without appointing counsel. See Section IV below.

Jason Earnest reported that he is working with lead counsel Clark Patrick on the Esmeralda County capital case and visits were scheduled with the client. He remains of the opinion that the case will not be a capital case at some point, realistically due to the cost of such litigation to Esmeralda County. The preliminary hearing is still scheduled in February, 2025. If the case is bound over on first degree murder and the State files a Notice of Intent to Seek Death Penalty, the cost of preparing the mitigation case will be substantial as the client was only passing through Nevada and all mitigation will require out of state travel or record gathering.

II. Forty-eight (48) Hour hearings.

During the last month the only issue with respect to the 48 hour hearings is whether such hearings are necessary on Sunday when the hearings could have been held on Saturday or could be held on Monday. These concerns follow previous meetings between the Court

and attorneys that worked out a method by which Sunday hearings would not be required, except in rare circumstances. All hearings are being held within the 48 hour time period, but one hearing was held on a Sunday when it was not necessary to do so. It appears that the issue has been resolved with assurances it was not going to be repeated.

III. Facilities for Attorney-client privileged communications.

ICE no longer is housing inmates at the Pahrump Detention Center which has resulted in computers not being available for clients to review digital discovery. This issue came up in the murder case of Stephanie Vazzo. The Court had ordered that she be provided with access to a computer and to remain in Pahrump rather than Tonopah. Counsel had provided a flash drive with the digital discovery including video for the client, however, with the departure of ICE no device with a USB port was available for the defendant to use. The Court directed that an Order be served on the jail to make the necessary computer available. The case is on the verge of resolution so the issue may never come to a head, but I will monitor to see if accommodations were made for Vazzo to view the discovery.

IV. Issues with Appointed Conflict Counsel

Christopher Harrison handled a felony trial in Department 2 (Lane) commencing on January 6, 2025. I was unable to attend the trial, but made inquiries of Chief Deputy DA Brower and the Public Defenders concerning the trial. I was advised that the case had settled after the State rested its case, based on Judge Lane expressing concerns about claims of ineffective assistance of counsel should the case proceed to a jury verdict. This was confirmed to me by several of the public defenders. The case included a B felony for Leaving the Scene of an Accident and there were issues with respect to the chain of custody. Brower had inquired of the Court reporter concerning a transcript but none will be prepared because the case did not go to verdict. A JAVS recording of the trial may be available and I will review same if possible. I hesitate to offer any opinion about the quality of representation without having viewed the JAVS, but the consistent information relayed to me is that Harrison may require mentoring before handling another felony trial. Harrison had questionably waived his client's presence for voir dire and jury selection, failed to serve a subpoena on a State's witness that was released, accused a deputy DA of unethical behavior prompting an angry exchange, and challenged a law enforcement to arrest him because he had prescription medication in his pocket not in a prescription bottle.

My Court Observation Report also discusses an issue with Harrison on a case before Judge Wanker on January 16, 2025. There was a breakdown of communication between Harrison and Judge Wanker that impacted the entry of a fairly straight forward plea.

Harrison is one of the three applicants for a contract set for January 22, 2025.

I have received several indications of issues involving Nadine Morton on appointed cases. Her second chair public defenders, Karl Shelton and Jherna Shahani state that she does not communicate concerning their pending cases; does not appear until late, if at all, for Court appearances; and failed to ask for a continuance when the DA endorsed a new expert two weeks before trial. I spoke with Morton and she acknowledged that she has been very busy, but is only taking rural cases out of Nye County in addition to her Clark County case load. I have observed that she often does not appear on the cases, instead leaving appearances to the public defenders in Pahrump. This is not an effective mentoring formula and I would recommend that she not be appointed as lead counsel with a public defender as second chair in future cases. She is competent and appears to do good work on the cases she is appointed as sole counsel.

I have also received complaints from public defenders concerning cases where Tom Gibson is lead counsel for the purpose of mentoring for experience. Again, mentoring does not mean leaving second chair to make appearances on their own or be responsible for communicating with the client.

V. Interviews and Discussions with Attorneys

The majority of the discussions with the public defenders concerned the possibility of having three additional defenders under contract. The three listed applicants were not qualified to handle felony cases at this point, but could provide a substantial amount of assistance in misdemeanor, juvenile and CPS cases. Without doubt some training and mentoring is going to be necessary for each of three applicants, but the public defenders voiced a willingness to train the new attorneys on the particular unique aspects of criminal defense in Nye County

It was discussed that the three new attorneys would take on most of the new misdemeanor cases until achieving a full caseload and then fall into the standard rotation. A short mentoring period would be necessary, but after such, the three would be able to work into the rotation for in custody 48 hour hearings and on duty defenders.

It was later related to me by Alexis Duecker and Jherna Shahani that they had talked with DA Brian Kunzi about the three new positions and were told by Kunzi that he was going to have the agenda item pulled because the three applicants were not qualified to take positions. If this occurs and the agenda item is pulled Nye County will be in a crisis of criminal defense. The current attorneys are overworked and far outside of compliance with caseload standards, and if there is no help on the horizon I expect that the current defenders will not renew contracts or otherwise exercise self-help to reduce caseloads. The prospect that the District Attorney is inserting himself further into the efforts to

obtain additional counsel is very concerning. The prosecution, like the Court, should be no part of this decision concerning the defense function.

VI. Access to Resources

As discussed above there is an issue with defendants being able to review digital discovery in the Pahrump and Tonopah jails. Defendants are provided with tablets that allow for electronic communication with counsel, but the devices do not have the capability to accept USB transfers or to otherwise download digital discovery for review.

VII. Quality of Representation

The sheer volume of cases being assigned to each of the contract public defenders makes it impossible to comply with the above standards of performance. My observations convince me that the attorneys are attempting to provide the best defense possible and any shortfalls are due to lack of time to devote to each client as opposed to lack of effort. Hopefully the new contracts will ease this caseload problem and the inherent problems caused by the number of cases.

Caseloads are a problem as well as the level of experience for existing and potential public defenders.

VIII. Fair Judicial Treatment

In addition to the caseload numbers, the inability or refusal of the Court to move cases through in a timely manner is a problem. It takes weeks to get cases from bindover to arraignment and then any small glitch results in inordinate delays. Serious consideration should be given to increasing the number of District Court law and motion days. The current scheduling results in calendars that last from 9 in the morning into the evening. This is one of the reasons that experienced attorneys are not willing to enter into contracts with Nye County, preferring hourly appointment to account for the wasted time in Pahrump. The Court refuses to use Senior judges to cover calendars when not available resulting in delays in cases that could have been handled by a senior judge. The two departments will not provide cover for each other to alleviate delays.

IX. Recommendations

The Nye County Plan for the Provision of Indigent Defense Services provides for an “Appointed Counsel Program Coordinator” with the following duties:

“performs such duties and responsibilities as assigned by the Assistant County Manager as are reasonably necessary to oversee the program including **assigning cases on a**

rotating basis among the contract Attorneys to ensure an equitable distribution; monitoring case reporting requirements from attorneys; approving of and overseeing the use of substitute attorneys for the contract Attorneys, and; and all other properly related matters. . . .”

With Nye County adding three (3) additional attorneys to the existing six (6) public defender contracts an onsite Coordinator is essential and would alleviate many of the issues that currently exist. There is a disconnect between Nye County and the public defenders that would be solved if this position could be filled instead of just adding a number of attorneys to the mix. This position would be able to deal with mentoring and training issues.

If the three new positions are not added immediately as well as advertising for more experienced attorneys very quickly (likely at a higher rate than that of the three new contracts) a corrective action plan is going to be necessary to bring Nye County into compliance with *Davis* standards.

X. Next Steps

- Continue to monitor court proceedings and observe when possible trials;
- Observe the selection and/or approval process for new contracts;
- Schedule a trip covering the northern portions of Nye County

Dated, January 19, 2025

David Schieck

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