

September 11, 2024

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VIA E-MAIL

Nevada Board of Indigent Defense Services
 896 W. Nye Lane, Suite 202
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Re: Davis v. Nevada Consent Judgment Compliance

Dear Board Members:

The undersigned counsel represent the certified Plaintiff class in *Davis v. Nevada*, in which our clients challenged the State and Governor’s failure to provide constitutionally sufficient representation to indigent criminal defendants in certain of Nevada’s rural counties. We write to express our growing concern regarding the State’s willingness and ability to comply with the terms of the consent judgment entered on August 11, 2020 (the “Consent Judgment”).

Specifically, the *Davis v. Nevada* Independent Monitor’s Thirteenth Report, dated August 19, 2024 (the “Monitor Report”), highlights the significant risk that several counties will be found out of compliance with the workload standards established by the Board by the fast-approaching November 2, 2024 deadline. As set forth in the following table, the Monitor Report shows that each of Churchill, Douglas, Lyon, Nye, and White Pine counties currently lack sufficient full time equivalent attorney resources to meet the Department’s workload standards.

County	Total number of FTE attorneys needed	Current number of FTE attorneys	Shortage of FTE attorneys
Churchill	7.4	2.4	5
Douglas	8.8	4 (lost one attorney)	4.8 (County disagrees, setting FTE hours at 2,200 per year per attorney)
Lyon	12	Unclear	Unclear
Nye	12.0 (Department reviewing case data)	6	6 (depending on review of case data)
White Pine	3.3 (perhaps additional attorney hours needed if attorneys travel from Carson City and Las Vegas)	1 NSPD attorney; 2 on-call NSPD attorneys (temporary) 1 FTE+ contract (1,800 hours) 1 conflict attorney	< 1 FTE (Note: NSPD received permission for an 800-hour contract)

Monitor Report at 17.

In connection with these findings, the Monitor Report recommends that the State should intervene with corrective action plans or appointed counsel in those counties not currently offering competitive contracts.¹ In addition, the Monitor Report makes clear that insufficient staffing at the Nevada State Public Defender’s office (“NSPD”) will likewise effectively deny sufficient representation in those counties relying on the NSPD either voluntarily or via corrective action by the Department. The Monitor Report also recommends that the Department continue to explore ways to reduce attorney workloads through an investment in support services.²

The Monitor Report further details other areas where the State risks non-compliance with the Consent Judgment, including with respect to sufficient budgetary resources for oversight, training, and universal data collection and reporting.³

We are also concerned that recent changes in staffing at the Department could further impede the ability of the State to come into compliance with the Consent Judgment.

As this Board knows, if the State refuses to fulfill its constitutional and statutory obligations to adequately fund the Department, it risks subjecting itself to: (1) violating the terms and spirit of the *Davis* Consent Judgment; and (2) independent litigation risk similar to that posed by the *Davis* class action. The factual record and precedent set by *Davis* would considerably expedite the filing of such an action. As you know, we have estimated that plaintiffs’ attorneys’ fees and costs could easily exceed \$10 million to carry an action through discovery and trial. We believe Nevada’s money would be better spent on ensuring that its criminal legal system is constitutional for all indigent defendants in the State.

We therefore urge the Board and the State to work diligently and collaboratively toward compliance with the terms in the Consent Judgment to help ensure that Nevada fulfills its constitutional, statutory, and judicially-enforceable obligations to adequately fund and oversee indigent defense throughout the State.

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¹ *Monitor Report* at 21.

² *Id.*

³ *Id.* at 6-8.

Sincerely,

Matthew R. Cowan
Partner
of O'MELVENY & MYERS LLP

Emma Andersson
Deputy Director, Criminal Law Reform Project
American Civil Liberties Union

Christopher Peterson
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Franny Forsman
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cc: Office of the Governor for the State of Nevada
Craig Newby, Esq.