

**State of Nevada**  
**Department of Indigent Defense Services**  
**Public Hearing and Board Meeting Minutes**

**Thursday, November 2, 2023**

**1:00 PM**

**Meeting Location:**

OFFICE	LOCATION	ROOM
	Virtual via Zoom & Capitol Building 101 North Carson Street, Carson City, NV 89701, Guinn Room	

**1. Call to Order/Roll Call**

**Chair Mendiola** called the meeting of the Board on Indigent Defense Services to order shortly after 1:00 pm, on Thursday, November 2, 2023.

Cynthia Atanzio advised the meeting was being recorded and conducted roll call. A **quorum was established**.

**Board Members Present:** Chair Mendiola, Vice Chair Laura Fitzsimmons, Jeff Wells, Chris Giunchigliani, Kate Thomas, Joni Eastley, Harriett Cummings, Lorina Dellinger and Jarrod Hickman.

**Members not present:** Allison Joffe and Justice William Maupin.

**Others Present:** Executive Director Marcie Ryba, Deputy Director Thomas Qualls, Deputy Director Peter Handy, Chris Arabia, DAG Sophia Long, Professor Eve Hanan, Angela Cook, Susan Bush, Suzanne Tallarico and Cynthia Atanzio.

**2. Public Comment**

**Chair Mendiola** opened the line for public comment. There was no public comment.

**3. Introduction of New Board Members (For discussion).**

**Chair Mendiola** introduced Angela Cook and Susan Bush to the Board.

**4. Approval of the Minutes (For possible action)**

**Chair Mendiola and Jeff Wells** explained that they would be abstaining from the vote as neither was present at the meeting on August 3, 2023.

**Motion: Approval of the Meeting Minutes for August 3, 2023**

**By: Joni Eastley**

**Second: Chris Giunchigliani**

**Vote: Passed Unanimously**

**Chair Mendiola** stated we are moving to number six and then we will come back to the public hearing. Number six is the National Center for State Courts Rural Nevada Indigent Defenses Services weighted caseload that we have been waiting for a long time.

## **6. National Center for State Courts (“NCSC”) Rural Nevada Indigent Defense Services Weighted Caseload Study. (For discussion and possible action).**

**Suzanne Tallarico** discussed the workload project with the Board. NCSC used LegalServer data for the first nine months, looked at other time studies that had been developed for indigent defense providers and held Delphi studies and focus groups. That information was taken together to develop the case weights that we finally ended up with. We built our models once we have case weights which are the average case processing times and apply those to the number of cases coming in. We get estimates of what that workload would be and then multiply that case weight by those types of cases. A reasonable year value or the number of days that attorneys will work is 220 days at eight hours a day. This was removing weekends, 11 holidays, 25 days for leave and four days for continuing education. We allowed for one hour a day of non-case related work such as entering time into LegalServer and other administrative duties, and 40 minutes travel time per day. We applied the case weights to the model using the year value and came up with 90 attorneys and that would generate a two to one ration for support/administrative staff in multi-attorney offices. We were unable to find literature to recommend any standards, but we are adding social workers to be incorporated into the staff in the counties. They do a lot of work that supports what the attorneys do instead of attorneys doing the work.

**Chris Giunchigliani** confirmed that the year value was 220 days figured at eight hours a day and one hour of that is for administrative work.

**Suzanne Tallarico** confirmed that was correct and 40 minutes for travel and added that looking at the Rand case weights they did not include all the case types that are included in the LegalServer database but using what we could and applying those Rand case weights rather than 90 new attorneys it says you would need 500 attorneys.

**Chair Mendiola** stated he did not have a question, but a comment. Coming from the rural county’s perspective, even your report is daunting. We still have the maximum contribution in place so even if we did, for example Humbolt County needed to bring on three new attorneys, etc., that is under the maximum contribution which is good news. The commissioners would say that is great and appreciate that but from experience with the state historically suddenly it becomes an unfunded mandate and one day the legislature walks away from the funding, and we are sitting out there having to pick up the costs.

**Director Ryba** advised it has been important to go to the rural counties and sit with the leaders of the community advising that this workload study would be coming out. In sharing the numbers, we believe that they expected that there is going to be some big needs in certain areas. Some areas are just fine and in some of our rural counties the indigent defense systems that are set up are insufficient to cover the workload that this study sets forth. Counties like Elko will need 16.4 and Lyon County will need 12, Nye County will need 12 and possibly more in Carson City. Each time we have gone out to those rural counties, we make sure that they understand the maximum

contribution formula and we have taken steps to do everything we can to protect the rural counties. We believe that the state has upheld their end of the promise to pay these additional costs.

**Chair Mendiola** stated that the work that has been done to date through the legislative process has really put us in a good position and while it is still daunting, we have got good news to report to our county commissions.

**Chris Giunchgliani** wanted to clarify with Director Ryba that in AB518 where it allows if you are underfunded to go back to the contingency, does it say shall grant or does it say they may?

**Director Ryba** explained that in AB454, section one and subsection two says, “amounts that are not an obligation of the county pursuant to subsection one must be paid from money appropriated to the department after the appropriation for such compensation and expenses is exhausted, money must be allocated from the reserve for statutory contingency for the payment of such expenses”.

**Chris Giunchgliani** replied that is good language and the main thing is to make sure that adequate money is put into the account in the first place as that would become your secondary hidden barrier.

**Director Ryba** said the other positive is with the support of the governor’s office we have \$3.5 million in our budget each year of the biennium for reimbursement. By taking what the counties thought they were going to spend under their current plans we prepared our budget request knowing that this caseload study was coming out. We expected expenses would increase and AB518 was proposed through the legislature, and it set aside \$6 million per year.

**Chair Mendiola** asked if anyone had any other questions before we move on to item B of six. Item B is to adopt guidelines setting forth the maximum workloads for attorneys providing indigent services. We may need to make changes down the road but if there are not any other questions may I get motion to adopt the guidelines set forth by the NCSC study.

**Jeff Wells** requested to ask a question before we vote. We as a Board want to establish a timeline because I liked their study and think they did a great job. There are not 90 attorneys to run off into rural Nevada and I do not want to create a vote that adopts these without some level or phase to allow folks and the counties the opportunities to make this work.

**Director Ryba** replied that she would address this. Pursuant to the consent judgment this Board must follow the requirements that we have a deadline for compliance within 12 months of the workload study. The regulations we are proposing require the county plans, which are due in May, to specify to this Board how they plan to comply with this. The department is going to spend the next couple of months meeting with the rural counties and working on modifying their plans for compliance. We may need to update Professor Hanan and the parties if we do not feel that this will be completed but we are going to work with the rural counties and help implement their plans.

**Deputy Director Qualls** stated that he wanted to address an accidental misstatement. It is not 90 extra attorneys needed in the rurals. That is a total number, it is approximately 30 additional attorneys that are needed under the study. The number is still daunting and there are not 30 indigent defense lawyers waiting to take those spots, the number of attorneys that are needed are not 90.

**Joni Eastley** stated that it does not matter if it is 30 or 90 when you live in a frontier county where it is difficult or almost impossible for you to get one extra attorney. 30 is just as daunting as 90.

**Chris Giunchigliani** wanted to know when we discuss as a Board some solutions for attracting and retaining attorneys because there could be monetary ties to that, and I would assume it would have to be a legislative appropriation.

**Director Ryba** stated that we can schedule that at the next meeting as AB518 set aside funding for us to comply with *Davis* so we can request part of the \$6 million for that compliance internally. We plan to set an agenda item of what we can offer new graduates to come to the rural counties.

**Chris Giunchigliani** stated that she liked the idea of student loan forgiveness. When at the legislature she explained how they gave extra credit on your PERS retirement and that becomes an incentive for those that are qualified and may be another potential discussion.

**Jeff Wells** stated he understood the Director's explanation, but what would be the next step if the rural counties modified their plans and were not able to get people to come even with all the bills we offer. I am not objecting to adopting, so you meet the guideline, but I want to recognize we are going to have a problem filing all 30 positions in a year despite what the consent decree says.

**Motion: Adopt the Weighted Caseload Study Done by NCSC with the Correction Noted by Staff.**

**By: Chris Giunchigliani**

**Second: Joni Eastley**

**Vote: Passed Unanimously**

**Chair Mendiola** commented that was a great conversation, and it will be interesting to have the discussion about incentives because the counties and the state are dealing with this on every front, and it is a huge challenge.

**Director Ryba** reminded the Board that at the last meeting we held a workshop and then sent our regulations to LCB. As discussed, many of the regulations we are proposing are specifically required by law. The new bills that we have put in place are the hourly rate we have set for appointed counsel, compliance with the county plan or that caseload requirement because of the stipulated consent judgment. We are amending some language to make it clearer and then repealing the regulatory maximum contribution formula because it has been placed in statute.

**Chair Mendiola** stated I am going to formally open a public hearing. Time is 1:38 pm on the proposed regulations of the Board on Indigent Defense Services Chapter 180 of the Nevada Administrative Code, LCB file number R033-23 for discussion and possible action. Are there any questions from the Board before I turn it out to the public.

**5. Public Hearing of Proposed Regulations of the Board on Indigent Defense Services, Chapter 180 of the Nevada Administrative Code, LCB File No. Ro33-23 (For discussion and possible action).**

**Chair Mendiola** reached out for any public comment relative to these proposed regulations.

**Director Ryba** commented that while we are waiting for public comment, I want to let the Board know that a copy of this Notice and Regulation was sent to the State Library Archives and Public Records. It was updated to the Nevada State website, our Department of Indigent Defense Services website and made available at our department for inspection.

**Chair Mendiola** thanked Director Ryba and called out for any public comment on the proposed regulations.

**Chair Mendiola** opened the line for public comment. There was no public comment. Hearing none, the chair requested a motion to adopt the proposed regulations.

**Motion: Adopt the Proposed Regulations as Presented.**

**By: Laura Fitzsimmons**

**Second: Jarrod Hickman**

**Chair Mendiola** stated that we have a first and a second to adopt the proposed regulations. Questions?

**Chris Giunchgliani** stated just a quick one on section two subsection four. This is where you work with the counties to revise their plan if they do not have enough attorneys in place for that.

**Director Ryba** replied yes. Regulations that we are trying to clarify are issues the department has run into with the nationwide crisis and shortage of indigent defense providers. Some rural counties are reliant on attorneys that are not able to take on the whole array of legal problem code cases. There is an issue with attorneys not qualified to handle category A and B felonies. If a county chooses to contract with an individual that is not experienced to handle that level of case, we are requesting that they put a provision in their plan for the process of finding appropriate co-counsel.

**Chris Giunchgliani** mentioned that secondly Ms. Tallarico recommended that we look at social workers, which I agree. Does any of this have to reflect that decision or is that at a later point?

**Director Ryba** replied that Suzanne Tallarico made a staffing recommendation. There have been no studies done on how many social workers are needed by attorneys, so she is unable to give us a staffing ratio, but she does recommend that offices hire social workers.

**Chris Giunchgliani** stated then Juvenile Justice is probably another area that we might not have the qualified individual so the plan would have to be modified to let you know that if they were dealing with an adolescent.

**Director Ryba** replied that we are modifying that in section eight, and we did add a requirement that they must be skilled in juvenile defense and modified what requirements we are asking of them if they are doing juvenile representation.

**Jeff Wells** said he had one more question for Director Ryba. I was wondering if we have had it reviewed to make sure we are not doing an improper delegation of a spending item by setting the

same hourly rate as the criminal justice act panel because we did not set that. The statute assigned the Board the duty of doing it, so I just wondered if our DAG ruled on that.

**Director Ryba** asked DAG Sophia Long for an opinion on that.

**Jeff Wells** commented that this legislature empowered this Board to set the minimum compensation. The regulation that we are adopting punts that responsibility to the Criminal Justice Act (CJA). Is that an improper delegation because the legislature empowered this Board to do it.

**DAG Long** replied that she thinks there are two things that can happen right now. Since your Board is fairly new and since you are dealing with these studies, I think it is okay to punt but at some point, you are going to have to put this in a regulation because that is what your Board is supposed to do. Right now, in the regulation it says the Board will adopt.

**Director Ryba** advised DAG Long that she thinks Mr. Wells is talking about the hourly rate for appointed counsel. What is being proposed is to change it to the prevailing rate paid by the CJA panel. It has a cost-of-living increase that happens every year and would make the rural areas competitive with the Federal work that is being completed.

**Jeff Wells** wanted DAG Long to know that he wanted to make sure that the Board is allowed to do that because technically this Board is supposed to set the rate and not defer to someone else.

**DAG Long** stated that if you have had this discussion about the rate and what the rate should be and if you agree with that rate, I think it satisfies this Board's duties.

**Chair Mendiola** stated that I have a motion and a second and if there are no additional questions, all those in favor please signal by aye. Motion passes.

**Motion: Adopt the Proposed Regulations as Presented.**

**Vote: Passed Unanimously**

**Chair Mendiola** advised we will move on to number seven, budget and legislative update starting with A. That is FY23 final reimbursement of indigent defense expenses to the counties totaling \$3,265,972.92.

#### **7. Budget and Legislative Update. (For discussion and possible action).**

**Director Ryba** advised getting to good news for FY23 our final reimbursements for indigent defense for our rural counties was over \$3.2 million. That represents that with the minimum standards this Board promulgated, the actions of the rural counties have improved their indigent defense in the amount of \$3.2 million dollars and confirms we are moving toward positive change.

**Chair Mendiola** advised that we are officially closing the Public Meeting on the proposed regulations.

**Director Ryba** stated that we have not had the opportunity to go through and review all FY24 quarter one reporting. White Pine County has met their maximum because they opted into the State

Public Defender's Office and paid the yearly rate in advance. We have submitted two work programs which we hope will be scheduled for the December IFC. In the first work program we are requesting funding for an oversight department in the amount of \$626,335. The second request is to set forth \$89,300 for a training budget which is a concern of the *Davis* monitor. For compliance with the workload standards, we are requesting \$113,000 to continue stipends for students at Boyd School of Law to work in the rurals as we have proof that this concept works. Finally, we are asking for additional funding to cover the increase in the cost of LegalServer and the hope is to have funding to provide Westlaw or an online research service to all attorneys that are taking cases in the rural counties creating incentive to use LegalServer.

**Chair Mendiola** thanked Director Ryba for that report. We will move to item eight oversight and *Davis* update, and I believe Deputy Director Quall is going to cover this.

#### **8. Oversight and *Davis* Update.** (For discussion and possible action).

**Deputy Director Qualls** advised that the 10<sup>th</sup> Report from the *Davis* monitor highlights the achievements which Director Ryba has covered. The weighted caseload is complete and now approved by this Board. A hearing on AB518 for funding to further comply with the *Davis* judgment is scheduled for December. We have discussed the proposed regulation regarding the hourly rate and reimbursement to the counties. We continue to do oversight, which is a daunting piece of our mandate, and we have requested funds for additional oversight staff. DIDS has been working on a rural capital defense plan to comply with the ABA death penalty guidelines and that report is included in your handout. We continue to monitor and work with the counties, and we have incorporated the municipal courts into our workload. The pipeline ideas we have discussed are a piece of the puzzle in complying with the workload standards and how we get more people from the University into the rural counties where the shortage of indigent lawyers is the worst.

**Chair Mendiola** thanked Deputy Director Qualls and asked if Professor Hanan would like to make any comments.

**Professor Hanan** replied I put a lot in the report, but I appreciate everything that the department is doing. Their funding requests under AB518 make a lot of sense and I share some of the concerns with how we are going to attract new lawyers in the rural counties and that is probably going to require some additional strategies that I know Director Ryba and her team are thinking about.

**Chair Mendiola** thanked Professor Hanan and asked the Board if there were any questions for Deputy Director Qualls.

**Deputy Director Qualls** stated moving on to section B, the FY24 quarter one data reports look different and that is to answer several concerns from Professor Hanan regarding full compliance with the *Davis* mandate. In simple terms we needed more granular data with more details from each office as opposed to bulk data and that is what we have presented in Excel format. The private workload that Director Ryba collected in her surveys was included in this report.

**Chair Mendiola** asked if the Board had any questions. With no questions he advised Deputy Director Quall to continue.

**Deputy Director Qualls** stated that the last thing is our oversight efforts. We advocated for the rule change for Supreme Court rule 495 which was adopted by the Supreme court. There is a carve out in the statutes that allows for law students under an organized or under supervision of an organized public defender office can actually go to court and handle cases and do limited practice under that circumstance. If they were interning and practicing under this limited license, they could continue to do that work until they pass the bar.

**Chair Mendiola** asked if the Board had any questions, and we will now move on to item nine.

#### **9. Training Update. (For discussion and possible action).**

**Deputy Director Handy** stated that tab 13 has a summary of our training for the last few months and our upcoming training. We have had some great speakers including Dr. Dunbar from UNR speaking about bias and the criminal justice system. We had a social worker speak about how to get clients through the system if they have mental health issues. We are going to be talking about mental health awareness in the upcoming months, and we have Jacob Sommer who is going to give a speech on civility and ethics to close out the year. We have started planning our 2024 annual conference and had our first advisory committee meeting with members around the state. We are taking it into the rurals and looking for space in beautiful Elko, Nevada sometime in May and the theme will be DUI since those are the most charged cases throughout the state in the rural counties.

**Chair Mendiola** asked if there were any questions about the training.

**Deputy Director Handy** advised that there was a question in the chat from Franny Forsman. Can the rest of the bar be notified of our training? He replied he would be more than happy to provide it, but we do limit it to defense bar practitioners only. I can provide that to the Federal Public Defender when I provide it to the structured offices and everybody on our list.

**Chair Mendiola** thanked Deputy Director Handy again. If there are no further questions, we will move on to item 10 and that is the upcoming meetings. Item A the next meeting is scheduled for February 1, 2024, at 1:00 p.m. and that will be virtual. We are going to discuss item B, the request to move the May 2, 2024, Board meeting to June 2024.

#### **10. Upcoming Meeting. (For discussion and possible action).**

**Chair Mendiola** discussed meeting dates in June. The June meeting was scheduled for June 6 at 9 am in Lake Tahoe, Nevada.

**11. Public Comment.** (This public comment period is for any matter that is within the jurisdiction of the public body. No action may be taken upon a matter raised under the public comment period unless the matter itself has been specifically included on the agenda as an action item. The Chair or Vice-Chair of the Board will impose a time limit of three (3) minutes.)

There was no public comment.

#### **12. Adjournment.**

Chair Mendiola adjourned the meeting at 2:19 p.m.