

State of Nevada

Department of Indigent Defense Services

Board Meeting Minutes

Friday September 24, 2020

1:00 PM

Meeting Locations:

OFFICE	LOCATION	ROOM
VIRTUAL ONLY		

Public was able to access the following link: [Join Microsoft Teams Meeting](#) +1 775-321-6111
United States, Reno (Toll) Conference ID: 536 687 474#

1. Call to Order/Roll Call

Vice Chair Professor Anne Traum called the meeting of the Department of Indigent Services Board to order a shortly after 1:00 p.m. on Thursday, September 24, 2020.

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

Board Members Present: Vice Chair Professor Anne Traum, Laura Fitzsimmons, Julie Cavanaugh-Bill, Joni Eastley, Jeff Wells, Drew Christensen, Kate Thomas, Chris Giunchigliani, Dave Mendiola, Lorinda Wichman, and Rob Telles.

Board Members Not Present: Justice William Maupin.

Others Present: Executive Director Marcie Ryba, Deputy Director Jarrod Hickman, Deputy Director Patrick McGinnis, Deputy Solicitor General Craig Newby, Jason Kolenut, Cindy Atanazio, Deputy Attorney General Asheesh S. Bhalla, Suzanne Tallarico, Brian Ostrom and Elko County Public Defender Kriston Hill.

2. Public Comment

Kriston Hill, Elko County Public Defender, expressed concern about the requirement of using LegalServer and requested that the Board not require its use. Ms. Hill stated that Elko had entered into a contract with Tyler Technologies which can interface with the courts. She believes the Elko County Public Defender's Office can provide the reporting required by the Department of Indigent Defense Services using this system. Ms. Hill said she did not believe the counties should be mandated to use LegalServer.

4. Approval of June 17, 2020 and June 29, 2020 Minutes (For Possible Action).

Motion: Approval of Minutes from June 17, 2020 and June 29, 2020.

By: Joni Eastley

Second: Julie Cavanaugh-Bill

Vote: Passed unanimously

5. *Davis v. State* -The Unopposed Motion for Preliminary Approval of the Settlement was Granted. (For Discussion).

a. Update from Craig Newby, Deputy Solicitor General.

Craig Newby, Deputy Solicitor General, provided an update on the Stipulated Consent Judgment ordered by Judge Wilson. Mr. Newby mentioned that there are currently efforts being made to provide notice of the agreement of the parties and that if anyone has concerns about the settlement they would be able to make appropriate filings with Judge Wilson and the First Judicial District Court. A power point was displayed setting forth deadlines created by the settlement. Mr. Newby noted that there had been consultation with the Governor's Office and the parties have agreed to a stipulated monitor. Mr. Newby then introduced Eve Hanan, a Professor at UNLV Boyd School of Law, who will be monitoring the *Davis* lawsuit.

b. Introduction of Professor Eve Hanan, Monitor for the *Davis* lawsuit.

Professor Eve Hanan introduced herself to the Board and advised that she has been in Public Defense since 1999 when she started her career as a Public Defender in the Boston area in an office which was also charged with doing CLE trainings and some quality assurance for panel attorneys in Massachusetts. She stated that she worked in DC and in Maryland for a while where she did litigation support for attorneys in public defender offices around Maryland. Professor Hanan said that she now teaches criminal law at UNLV with her colleague Professor Anne Traum.

6. Update on IFC Requests: (For Discussion and Possible Action).

a. Weighted Caseload Study: Contract Finalized with National Center for State Courts (NCSC).

Director Ryba advised the Board that the contract for the weighted caseload study has been finalized with the National Center for State Courts (NCSC). Director Ryba asked Suzanne Tallarico from NCSC to give a presentation for the Board.

Suzanne Tallarico, Principal Court Management Consultant for National Center for State Courts (NCSC), gave a presentation to the Board outlining how NCSC would be conducting the weighted caseload study. She advised the Board that an advisory committee must be formed, consisting of 15 members, to assist in the direction and creation of the study. Ms. Tallarico informed the Board that she and Director Ryba have discussed this, and she approves of the Department's proposal for members to the advisory committee. Ms. Tallarico informed the Board that the projected time frame for the weighted caseload study will be February or March and last four to six weeks.

Director Ryba requested authority from the Board to form the Advisory Committee for the Weighted Caseload Study. Director Ryba proposed to create the advisory committee of nine attorneys from rural counties, three support staff, one investigator and one to two Board Members.

Jeff Wells made the statement that the county administrators are not necessarily experts in public defense, but they are certainly experts on the budget side. They should be considered so they can explain the recommendations and justification to the counties. Mr. Wells stated that Dave Mendiola, Joni Eastley, and himself would have this expertise.

Suzanne Tallarico said that Jeff Wells made a good point. She encouraged county administrators as an addition to the advisory committee to assist in marketing it upfront. They would also assist to sell the results on the back end. Ms. Tallarico would recommend adding county administrators to the advisory group, but she would not want to give up members on the advisory committee that were going to participate in the study.

Dave Mendiola said he agreed with Jeff Wells and he would appreciate participating so that he can raise his level of knowledge and he could help market the results.

Asheesh S. Bhalla was consulted on the issue of how many Board members could be on the advisory committee without an open meeting law kicking in. Mr. Bhalla noted the if two people from the Board were doing deliberation that would be subject to open meeting law. After further decision with the board members it was determined that the best way to avoid any issue with the open meeting law was to only have one Board member sit on the advisory committee.

Julie Cavanaugh-Bill suggested that they consider a member of the judiciary because the judges have been very interested in what the Board is putting together. Ms. Cavanaugh-Bill stated that she would be willing to volunteer as well.

6. Update on IFC Requests: (For Discussion and Possible Action).

a. Weighted Caseload Study: Contract Finalized with National Center for State Courts (NCSC). (continued).

Laura Fitzsimmons stated it would be more efficient if we go with the categories that are proposed by the consultant. We are entrusting them to undertake the work and they have the experience in this area.

Chris Giunchigliani believed that the Attorney General may be over interpreting the open meeting law. Ms. Giunchigliani stated that you can have an entire board getting information so long as they are not deliberating.

Motion: Motion to authorize Director Ryba and her staff to form the advisory committee for the weighted case load study and that Dave Mendiola be the Board member to sit on the committee.

By: Laura Fitzsimmons
Second: Jeff Wells
Vote: Passed unanimously

b. Data Analyst: Contract Finalized with Dr. Mitchel N. Herian of Soval Solutions, LLC.

Director Ryba informed the Board that the contract was finalized with Dr. Mitchel N. Herian of Soval Solutions, LLC. Dr. Herian was retained to (1) prepare a financial reporting form; (2) Assist with data collection for the weighted caseload study; (3) analyze county maximum contribution pursuant to the Board's adopted formula; (4) Prepare a Client Survey; (5) Fiscal Analysis of BDRs; (6) Wage Salary Survey; and (7) Propose Efficient Means for Appearances in Court.

c. LegalServer: Contract approved with LegalServer. LegalServer will present the software and discuss timelines in November.

Director Ryba informed the Board the contract with LegalServer has been finalized. Important dates were shared with the Board, including: (1) the project initiation phase on October 2; (2) Initial Discovery Phase on October 19; (3) Individualized Project Plan Execution Phase on November 23; (4) the Go Live Phase on March 16, 2021, and (5) the Review and Feedback Phase on March 30, 2021. According to the contract, implementation should be completed by May 1, 2021, and everything should be in line by that time. Director Ryba asked the Board for the green light to continue moving forward.

Director Ryba requested authority to form the Onboarding Team for LegalServer software customization. Director Ryba proposed John Williams from Nevada EITS as the project manager and 2-3 Department employees to be the On Boarding Team.

6. Update on IFC Requests: (For Discussion and Possible Action) (continued).

c. LegalServer: Contract approved with LegalServer. LegalServer will present the software and discuss timelines in November.

Motion: Motion to authorize Director Ryba and her staff to form an Onboarding Team for LegalServer and continuing moving forward as requested.

By: Jeff Wells

Second: Joni Eastley

Vote: Passed unanimously

7. Continuation of Discussion on Proposed Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion).

Director Ryba reminded the Board that during the August Meeting, Chairman Crowell requested that this agenda item be continued to the September Meeting. At the September Meeting Chairman Crowell called for individuals to submit proposed language for the Board to consider when discussing whether to require the use of LegalServer because there was opposition to the Department's proposed language. Director Ryba advised the Board that the Department has not received outside proposals pursuant to Chairman Crowell's request. Director Ryba requested to table this discussion until November. Director Ryba advised LegalServer is slated to educate the Board on the LegalServer software and this discussion may be better suited for after the presentation.

Vice Chair Professor Traum stated they could have a show and tell in November that might give everyone an educated perspective on what it is the LegalServer does.

Drew Christensen stated that in Clark County had the privilege of having a LegalServer presentation and he thinks it would be beneficial for the Board to see how it works before they make a global decision as to the State.

8. Update on Regulations from LCB: (For Discussion).

Director Ryba gave a short history on the status of the proposed regulations. The proposed regulations were originally discussed on January 29, 2020, February 28, 2020, June 17, 2020, and June 29, 2020. In addition, the Department sent a letter to all district court judges on March 4, 2020, letting them know of these regulations and providing them with a copy. The Department posted a copy of the proposed regulations in two locations on our website: (1) on the regulations page and (2) as an attachment on meetings and agendas page. The Regulations have been recently reposted because of the renewed interest. The Board originally had scheduled the workshop on March 26, 2020 and had to cancel March 23, 2020 due to COVID-19. After consulting with Chairman Crowell on March 31, 2020, the proposed regulations were sent to LCB by the Department. The Board/Department is not required to have a workshop prior to sending the items to LCB and the workshop can be held after the regulations are returned from LCB. According to the NRS the regulations should be returned from LCB within 30 days. Our department did submit an amended version on June 17, 2020 and in reaching out to our DAG anticipated receiving them back by

8. Update on Regulations from LCB: (For Discussion) (continued).

September 1, 2020. Once we receive the regulations, we would set up a workshop allowing for a 15-day notice. We will need to give 30-day notice for a public hearing. As of today, the Department still has not received the regulations back from LCB. Director Ryba asked for guidance as to whether the Board would prefer the Department to continue to wait for the regulations from LCB or if workshops should be scheduled.

Vice Chair Professor Traum advised that the Department should wait until the regulations come back from LCB to schedule a workshop. However, this should be readdressed at the October Meeting if the regulations have not been received by the Department from LCB.

Jeff Wells stated that he would rather wait to get it back from LCB. Jeff Wells said he would like to have them for the ability to see exactly what it says from LCB so that we can then hear from rural judges and make a knowledgeable decision.

Joni Eastley wanted to know why it was taking so long for LCB to get the regulations done and was advised that it was probably because of the special sessions that were held.

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

a. Monthly Training Update.

Deputy Director Jarrod Hickman provided a PowerPoint presentation that was divided into two sections so that the Board could see what the Department has been doing with respect to training every month and the conference options DIDS is planning for 2021. The Department has been conducting monthly training with the goal of at least one CLE opportunity per month targeting the rural practitioners. There are currently funding issues and as we work through our delivery method especially with the virtual delivery of CLE, we thought it best to keep the group small at least through the end of the year. When we get a CLE approved through the CLE board, I send out a group email to the primary level rural practitioners as well as posting it to our website under training. As the training date nears a reminder is emailed to the group that has not registered. Deputy Director Hickman felt it was worth pointing out that the attendees have been right around the 20 mark on average and we have gotten some positive feedback. The Department has been providing an evaluation to the participants to ensure the learning objective and that they are involved. As we head into the end of the year credits for substance abuse and ethics become more critical and that is what we will be focusing on in the last three months.

b. Yearly Training.

Deputy Director Jarrod Hickman stated that brings us to our 2021 Indigent Defense conference where we are looking at two potential models. One is a two-day conference at the Las Vegas Boyd School of Law with the goal of obtaining all 13 CLE credits. The other option would be regional one-day training conducted in different parts of the state. After obtaining feedback with a preference for the two-day conference we are requesting the Board's permission to expend the training budget of \$19,836 for a Las Vegas conference. We estimate that there will be between 40 and 50 people and

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

b. Yearly Training.

it most likely not be enough money to pay the full cost for everyone. Our internal discussions as whether it should be the payment method or should be a scholarship that takes into consideration whether offices or attorneys have a training travel budget or whether it should just be a pro rata distribution.

Vice Chair Professor Traum wanted to confirm if the \$19,000 plus dollars was DIDS full budget for the year.

Deputy Director Jarrod Hickman advised that the \$19,836 is the full training budget for attorney training and does not include our internal training budget. That was the purpose of the request for funds from the Interim Finance Committee was to conduct an in-person conference.

Vice Chair Professor Traum stated that she was not sure advising DIDS on how to structure the scholarship or if we should just tell DIDS to go ahead and do it the way it makes sense to the department based on contact with attorneys in the community.

Laura Fitzsimmons said DIDS is in the best position to make those decisions within our budget.

Jeff Wells wanted to know if there was a reason that the conference would be limited to rural practitioners because the law school has lots of big classrooms which could fit large groups even with COVID-19 and then you could come up with a nominal fee. Jeff Wells stated then they could use their public defenders and special public defender training budget which would augment the \$19,000 and we would not have to pay travel expenses and could just drive there and that would make the \$19,000 go further.

Deputy Director Jarrod Hickman said that the Department had that discussion internally and there are two reasons why we decided to target the rural communities first. This will be our first conference, so we are working through the logistics and we thought a smaller number seemed more manageable and give us a better experience to look at providing the larger conference with those ideas the next year. The second part of it was just creating a kind of cohesive or creating connections within the rural communities giving something that is focused to them. The CLE's of late have really garnered some good discussions and the connections between issues that affect the rural communities more uniquely. We thought it is better to approach the first get the experience under our belts and then with the second go-around we open it up to a larger forum.

Laura Fitzsimmons said she agreed with everything Deputy Director Hickman said but wondered if in the context of the rural conference we could just have something with NACJ or whoever sponsor so that the other part of the indigent defenders in Clark County can have some kind of gathering and people can start making those connections. Laura Fitzsimmons stated she understood all the reasons but really thinks that we need to start making those connections because that will endure to the benefit of the rural lawyers.

Vice Chair Professor Traum stated that it is really a nice idea to just both have socializing and networking. Vice Chair Professor Traum wondered if Board could just give a green light to the

9. Update on Training: (For Discussion and Possible Action) (continued).
b. Yearly Training.

Executive Director and Deputy Director Hickman to just carry on with this in the planning of that and get an update at one or our next Board meeting.

Laura Fitzsimmons said that according to what she is reading item B two on agenda under 9 is an action item.

Asheesh S. Bhalla noted just for the record and to make it clear the Board may take action if they want to, they are not required to take action. The Board could defer this with guidance to the staff.

Chris Giunchigliani wanted clarification if it was to become Board policy it may need asterisks in the minutes, so it is easier for staff to pull it out separately. Usually when you have a policy for at least most governing documents that sometimes it is hard to remember when it is a Board policy versus just an action item.

Vice Chair Professor Traum stated that let me go back to the motion as proposed and I do not think I heard proposed it as a policy. It was just a regular action item, so we are not proposing this as policy right now and I think we are ready to vote on that proposal.

Motion: To allow the Executive Director and Deputy Director to disperse the training funds for the annual conference as best determined by them.

By: Laura Fitzsimmons
Second: Jeff Wells
Vote: Passed unanimously

10. Discussion and Confirmation of next Meeting date: (For Possible Action).

Vice Chair Professor Anne Traum confirmed that the next Board Meeting will be conducted on October 22, 2020 at 1pm as previously scheduled. **Chris Giunchigliani** and **Laura Fitzsimmons** advised that they would not be available for the meeting as they would be volunteering at the polls.

11. Public Comment:

There were no public comments from either North or South.

12. Motion for Adjournment

Motion: To adjourn meeting till the next regular scheduled meeting.

By: Chris Giunchigliani
Second: Lorinda Wichman
Vote: Passed unanimously

Vice Chair Professor Anne Traum adjourned the meeting at approximately 2:55 p.m.