

State of Nevada

Department of Indigent Defense Services

Board Meeting Minutes

Wednesday, April 28, 2021

1:00 PM

Meeting Locations:

OFFICE	LOCATION	ROOM
VIRTUAL ONLY		

Public was able to access the following link: Join Zoom Meeting

<https://us02web.zoom.us/j/85160337106?pwd=SDZodEo3UoJiK3A1S2NkdKxJNGsxdz09>

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1. Call to Order/Roll Call

Chair Professor Anne Traum called the meeting of the Board on Indigent Defense Services to order a shortly after 1:00 p.m. on Wednesday, April 28, 2021.

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

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

Others Present: Executive Director Marcie Ryba, Deputy Director Jarrod Hickman, Deputy Director Thomas Qualls, Jason Kolenut, Cindy Atanazio, Alexis McCurley, and Deputy Attorney General Sophia Long.

2. Public Comment

There were no public comments from the North or South.

3. Approval of February 24, 2021 Minutes (For possible action).

Motion: Approval of Minutes from February 24, 2020.

By: Joni Eastley

Second: Jeff Wells

Vote: Passed unanimously

4. Update on the Department (For discussion and possible Action).

a. New Hire: Thomas Qualls, Deputy Director

Director Ryba introduced Thomas Qualls as the new hire for the Deputy Director position and expressed excitement on getting him out to the rural counties for introductions.

b. Annual Reporting Due May 1

Director Ryba wanted to remind the Board that Annual Reports are due for the counties on May 1st. The Department has been reaching out to the counties to inform them of this and we will be following up to make sure that everyone is submitting their reporting in the upcoming days.

i. Plans for the Provision of Indigent Defense Services – Contact with Counties

Director Ryba advised the Board that the Department has been actively working on the plans for the provision of indigent defense services. It has been our goal to appear at the Board of Commissioner's meetings. The Department has been working on some of the county's plans and as they become available, we are hoping to add them to the agenda for the Board to review and approve if appropriate. It is our hope to add them to our website so that counties that may not have a county manager can copy these plans and use them as a reference.

c. Update from April 26 Board Meeting

Director Ryba stated that per the attachment provided our budget tentatively closed but is subject to change before the end of the legislature. Items to be determined were \$75,000 for the *Davis* monitor which has been approved and \$25,000 for training and resources for indigent defense attorneys. The final addition was 1.2 million dollars earmarked in the IFC Contingency Account in each year of the 2021 through 2023 biennium to fund the 10 *Davis* rural counties per the stipulated consent judgment.

Joni Eastley confirmed the approval of the funds and expressed her surprise.

Director Ryba advised that a meeting is scheduled with the Director of the Governor's Finance Office on May 20th to receive more clarification and guidance on how the funds can be used and will provide that information to the Board.

Laura Fitzsimmons commented that was an incredible amount of work and the devotion that you put into the budget. All of you started out with nothing and look where you have got.

Joni Eastley stated that she would like to dog pile on that comment.

Jeff Wells stated he believed it was Chair Traum's letter that did the trick.

Chair Traum commented that Director Ryba's testimony was excellent, and she was glad that they got the message. Chair Traum was wondering if Director Ryba could explain what she thought it might look like in terms of a process and how it might play out over a year.

Director Ryba stated that she believed it was this great Board and great Governor that helped get the funding and not necessarily our department. We had a lot of help to be able to get there. As to how this will play out, we are actively reaching out to the counties and helping them build their plans. Part of our duty is to help them estimate the cost of the plan. Counties that use the contract method are encouraged to add an appointed counsel court administrator and we will be reaching out to Drew Christensen and Krista Meier to try and determine what would be needed for that and the estimated cost. We believe this could provide a lot of solutions for the counties and the cost difference could be covered by the state. When a plan is created, we can estimate how much we think it is going to cost. On a quarterly basis the counties will be submitting their fiscal reports and once they reach their maximum amount, we will request reimbursement from the Interim Finance Committee. Some great things are happening in the counties. Nye County for example is planning on putting funding in an independent budget for experts and investigators and we are hoping they will be able to do that.

Joni Eastley commented well done.

Chair Traum expressed that it would probably be a slow roll out and is hoping with the process a hard request and data will filter into a budget request that might be granted on the front end and a lot easier to administrate and not violate *Davis*. It is great to see the evolution that is happening in the counties with rising to the occasion and being role models for each other.

d. Bill Draft Request Update

Director Ryba commented that she received information the bill draft was exempt from the legislative deadline and that LCB informed the Department that they expect our bill draft request to come out soon. If the Board can recall we are trying to get rid of caps for certain cases and trying to create separation between appointment and selection of counsel. We are attempting to change how funding is provided to indigent defense attorneys rather than going through the judge they can go through our department or their appointed counsel administrator. We expect the bill draft to come out sometime prior to May 1st and will forward to the Board when it is received.

e. Processing of Applications for List of Contract and Appointed Counsel

Deputy Director Hickman wanted to remind the Board that the application to verify or determine eligibility arises under statute 184.30 subsection 1b. The Department took several steps to notify attorneys of the registration process: Nevada Lawyer's blast, sent out notice through the AOC to rural judges, and through Drew Christensen and Krista Meier. We utilized the Bar Associations, our website and individual county contacts. A notice was also posted in the May issue of the Nevada

Lawyer Magazine. We took a wide approach to the notice process in preparation of county plans. The Department developed a conditional approval with a mentor, after modeling after Clark and Washoe County. Neither mentors nor mentees will receive additional compensation for participating in the program. In no instance shall an attorney who has not tried at least one felony trial be permitted to try a felony case without an experienced defense attorney mentor sitting as second chair. Rather than an outright denial or approval there be conditional approval where in the highest case category the non-capital A felonies, high B's where we are requiring the younger attorney be supervised in accordance with Nevada Rule of Law of Profession Conduct 5.1. Moving forward there are two options, one is to leave it as the power to determine eligibility to set conditions that is out of principal of administrative law. The second option is when it comes time to form permanent regulations, we make conditional approval or a mentor program explicit in the regulations. Another issue that we see deals with the language that neither mentor nor mentee will receive compensation if we are applying that outside a firm context. Is that an economic disincentive and as we are developing plans with the counties look and see if that is a possibility to addressed within that plan.

Jeff Wells commented that in Clark County even with the large number of cases that go to trial are relatively small, probably half of 1% of all cases go to trial. How does that work in the rural counties, smaller counties that even with the one trial rule it might take years to get to one trial.

Deputy Director Hickman replied that we do not have the hard data to provide that information and thinks it might be antidotal across the board.

Chair Traum questioned in terms of fulfilling the requirements or if granting conditional approval for a year have you anticipated a way of cataloging what they have done over the year? It might not be a trial but other work in trying to figure out on your one-year anniversary you are now likely to be approved or your conditional approval keep going for a while longer.

Deputy Director Hickman stated that in the responding letter to the application it details the terms of the condition and includes a sentence that once the experience requirements are met to provide notice to the Department. The individual experience requirements include a waiver provision for similar experience or other skills may be viewed as meeting the requirement. No new application is required, just provide the Department with the information you think meets the requirement and we will look and see if we can make a determination.

Chair Traum wanted to comment on Jeff Well's point regarding the lack of trials is important and that contested motions may be useful. Depending on who is in the category junior attorney and waiting to be a full-fledged attorney there may be training targeting those individuals. The point to keep in mind is we will need to be thinking about the permanent regulations in late summer. Should we flag whether we should tuck something in that makes it explicit this conditional approval? Even if it just says you could also get conditional approval subject to conditions set by the Department then no one is surprised.

Deputy Director Hickman stated that the temporary regulations are set to expire in November, and we will be starting the process enough in advance to set the workshop and public hearing. As we go through particular issues in the counties, we are keeping a list that may be workshop discussion points in terms of tweaking the regulations.

Drew Christensen stated the Deputy Director Hickman and Director Ryba have been going round about the conditional approval. Luckily in Clark we do not face that issue with the volume of lawyers we have. The point of the conditional approval was just that dynamic that in some counties the only people applying really do not meet the requirements of the category A felony. It is difficult to approve them even though statistically the category A felony will probably not go to trial it still could. You would hate to see a young lawyer in a position to have the case set for trial and not know the logistics or strategies that should be in play. In Clark County we had to make exceptions to the no compensation for mentors nor mentees because you do not want a young lawyer even on a smaller category B, C kind of case in a first trial by themselves. Maybe this could be a consideration for the discussion Director Ryba has with the finance people. Use some of that money in the event that an attorney faces that situation or problems likely to compensate that mentor or senior attorney to sit second chair. There is a variety of things we have done to compensate for that specific scenario.

Chair Traum stated that she appreciated the comment and thinks it is right to have enough wiggle room to be able to fit the situation as well as the case. It is important to be listening to what the attorneys are saying as they get through the first year and make sure they are on the right track for approval and getting the right amount of supervision. I image if we are starved for attorneys, we may be starved for mentors to do the work.

f. Update on Training: Annual Conference April 22-23

Deputy Director Hickman stated that we had just concluded our two-day CLE conference and from our perspective believe it was a success. We had more attendees than we originally anticipated. Over the day and a half, we provided 10 CLE credits and there were three presentations. There were 106 participants in attendance. On the 23rd it was an all-day CLE covering cross-examination with a 112 in attendance. We provided a survey and on the 22nd most people were satisfied with the presentation and on the 23rd the overall ratings were excellent. The Board was informed of scheduled upcoming CLEs. The conference went off very well and we received an unsolicited email stating the following “that was an amazing conference last week and everyone in the office really got a lot out of it and it was the most applicable and useful CLE that I have been to in years. Congratulations on a very impressive first CLE conference”.

Chair Traum commented that is wonderful and that Deputy Director Hickman, Director Ryba, and Thomas Qualls worked with a lot of people to pull the conference together including the help of the Washoe County and Clark County Public Defenders. There was a nice energy with the urban experts teaming up with the rural county attorneys doing it together. It was a nice model which I am sure will be repeated and there was a lot of thought that went into it and obviously it was a huge success. Congratulations, and I think the lawyers really appreciate the community forming and the bonding that is happening and connection through these trainings and meetings and other sort of consultation opportunities that DIDS has created. DIDS is doing a lot in different ways, running the Department, lobbying, legislation work and getting this stuff off the ground which are great accomplishments.

Director Ryba wanted to follow up that it was great to see attorneys in the State in the chat room and get to know each other. Hopefully, we can all get together next year and meet each other in

person. She wanted the Board to know that we purchased the NACDL 2019-2020 sample motions on CD rom and sent to all the contract or public defenders in the rural counties. It was sent with a letter introducing ourselves again and letting them know of our SOAR program which is the outreach program putting them in touch with students helping them investigate certain cases that they have and telling them of our first Fridays and our CLE calendars. We are exploring the possibility of purchasing Larry Posner's book for each office in the rural counties and each county's indigent defense provider throughout the State including Washoe and Clark because of the positive feedback from across the State.

Drew Christensen commented that he was able to attend the webinar on Thursday. He stated that it was fantastic and feels that DIDS is bringing the State together, not just acting within the counties but Statewide. I really enjoyed it and that when we finally meet in person, we will make better connections and gain a comfort level for reaching out. Kudos.

Deputy Director Hickman commented that the last thing that I would like to send a hearty thank you to all that participated, John Arrascada, Julia Murray, Mario Walther, and the rest of the planning or steering committee for the training. It was all very useful information which culminated in a really good event. Not sure if we can say thank you enough.

Chair Traum stated it was really a nice team effort and with so much going on a really great team effort all the more impressive.

5. **Schedule In-Person Meeting. Starting June 1**

a. **Directive 44 - suspensions of certain provisions of Open Meeting Law set forth in Directive 006 will terminate June 1.**

i. **Zoom/Telephonic appearance still permitted by Board Members.**

b. **Schedule Board Meeting in one location for entire Board.**

i. **Proposal: September 29 meeting and review of County Plans**

6. **Confirmation on Next Meeting: May 26, 2021 at 1 pm.**

Director Ryba stated that Deputy Attorney General (DAG) Sophia Long has provided us with Directive 44 which shows that the suspensions of aspects of the Open Meeting Law (OML) are going to terminate June 1st. Starting June we will be having in-person meetings again with the understanding that Zoom, and telephonic appearances will still be allowed by members. There will have to be a physical location of where we are going to have the meeting. We have reached out to schedule a location, but each organization is creating their own opening plan, so we have not been able to schedule it. We are requesting that if you are planning on traveling to Carson or Vegas and will be requesting reimbursement that you reach out to Cindy Atanzio beforehand because we have a limited travel budget and we are running up to the end of the fiscal year. With that we have two requests - vacate the May 26th meeting or possibly move it. In Las Vegas on May 26th there is a swearing in for all new bar members and we are hoping to attend and spread information about our department and let them know they can apply to be on our list if they are interested in providing

indigent defense in the rural counties. Then proceed with the meeting on June 23rd which would be in-person and start the discussion of having a Board meeting where the entire Board is in one location. We are proposing that our September 29th Board meeting be that meeting as the county plans are due September 3rd and there may be several plans to review, and it may be fitting to have all together.

DAG Long commented that regarding the upcoming June meeting, pursuant to OML there only needs to be one physical location. Whether it is Carson or Vegas there need be only one physical location which will need to comply with safe COVID practices. Another thing that is coming down the pike is AB253 which we expect to pass but not by June 1st and that gives the Board the options to continue their meetings virtually again with no physical location requirements. However, there are other requirements if you want to continue to have meetings virtually with the main concern being public comment which must be done in real time. It does not say anything about email, and I think that is fine it is basically that the public be able to comment in real time. There is also a provision that if the Board likes that can add that somebody could supply a pre-recorded public comment as well.

Joni Eastley requested that DAG Long repeat that bill number.

DAG Long answered AB253.

Jeff Wells moved to suspend the May Board meeting.

Motion: To Suspend the May Board Meeting per Director Ryba's request.

By: Jeff Wells

Second: Chris Giunchigliani

Vote: Passed unanimously

Chair Traum confirmed that the next Board meeting would be June 23rd and wanted to clarify with DAG Long that if we do have a single location, we could have Zoom as well.

DAG Long would recommend one physical location and the Board members can attend via Zoom or telephonically. The current OML now for Board members is that you all can participate and hear each other in real time.

Chair Traum confirmed that even with one location there could be a second location with Zoom access until the bill passes. Regarding travel, there have been a few members who traveled in the past, and you should indicate if you want to travel, or you can still use Zoom for the June meeting as we are still in the middle of a budget crunch. That may influence your decision but either way let Cynthia know if traveling is one of your goals. Shall we continue with comments about the in-person meeting in September because the issue there is we will have money in the 2022 fiscal budget funds to travel but still limited. We should be thinking about a location where the least amount of people has to travel and some of us may have reimbursed travel and will not seek it from the Department.

Jeff Wells commented that he had suggested pre-covid to go to one of the rural counties because it would be easier for rural judges, attorneys and prosecutors who may want to join us. It was tentative scheduled in Tonopah, and I would still make that recommendation.

Chris Giunchigliani agreed that we should go out to one of the rurals and we could look at carpooling and other things we could do to save the Department money.

Laura Fitzsimmons stated that in honor of our departed past chairman I think he would want us to go Tonopah. It would be a nice pilgrimage and great to get together.

Joni Eastley stated yes, he did. He was born here, and I think he lived here till he was in the 5th grade.

Chair Traum stated that there appeared to be an appetite for Tonopah, and it would be helpful to know who would be putting in for travel reimbursement. Hopefully, September is far enough out, and we should be a little more back to normal and the weather should be good by then.

Laura Fitzsimmons commented that hotel space may be limited, and could we ask someone to check and see the availability of rooms and if we can get a group rate.

Joni Eastley graciously offered to take care of that.

Chair Traum suggested that it might make sense to move the September meeting to a Thursday as Wednesday falls in the middle and may be harder for people getting there for a Thursday or Friday morning meeting.

Jeff Wells stated that if you move it to Thursday, people could travel Wednesday afternoon or after work. Have the meeting on Thursday and give everyone a chance to go home on Friday.

Director Ryba said that she received a note that the NACO Annual Conference is September 27th through September 29th so we may not want that to overlap.

Chair Traum reiterated that the 30th may be a good day and wanted to know if any of the Board member will be attending the NACO Annual Conference and would the 30th work for them.

Dave Mendiola commented that he was going to suggest that it would need to be Thursday so that they could attend both.

Chair Traum questioned if it would be better to hold the meeting Thursday afternoon so people could get there Thursday morning.

Dave Mendiola said that would work because the NACO Annual Conference will end in the morning, and that they could probably leave early.

Joni Eastley questioned where the NACO Annual Conference is being held.

Dave Mendiola stated that it had not been decided yet and they were considering Churchill.

Jeff Wells stated that maybe they should have it in Tonopah.

Chair Traum commented that sounds like a tentative plan and we will act on that and hear more details later. Confirmation of our next meeting will be June 23rd at 1pm.

7. Public Comment.

There were no public comments from the North or South.

8. Adjournment:

Chair Traum adjourned the meeting at approximately 2:00 p.m.