

August 5, 2021

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

Dear Board Members:

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 Nevada's Rural Counties.¹ We are writing in regard to the findings of the court-appointed Monitor in her first quarterly report, dated July 1, 2021 (the "report"). We appreciate the exceptional work that has gone into the report, both by Professor Hanan's team and the Department of Indigent Defense Services ("Department").

Progress To Date

We recognize substantial progress has been made due to the efforts of the Department and Board. According to the report, the Department has taken key steps to reduce financial disincentives and ensure independence of indigent defense counsel. Under the statutory amendments set forth in AB480, selection of Rural indigent defense counsel has been shifted from the judiciary to the Department. The legislation removes compensation and reimbursement caps that had previously created economic disincentives to meaningful assistance of counsel. The Board's temporary regulations set forth clear requirements for Rural Counties to submit indigent defense plans that should comply with Nevada law and the *Davis* Consent Judgment. The report acknowledges the Department's model contract which should standardize contract terms for the provision of indigent defense across Nevada's counties. Notably, the model contract is based on the National Legal Aid and Defender Association ("NLADA") template. Finally, the report shows that the Department has developed a formula for the maximum amount a county is required to pay for the provision of indigent defense services. State contributions covering county costs exceeding the maximum county contribution amounts are essential to the success of Nevada's reforms and compliance with the terms of the *Davis* Consent Judgment.

¹ The *Davis v. Nevada* Consent Judgment defines the "Rural Counties" as Churchill, Douglas, Esmerelda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye, and White Pine Counties.

Challenges Anticipated

Although the Department has not met certain stipulated interim deadlines set forth in Section V. B. of the *Davis* Consent Judgment, Plaintiffs acknowledge the explanations for delays noted in the report. Aside from the interim deadlines, the report indicates certain significant challenges to long-term compliance with the Consent Judgment.

First, the report highlights the significant challenges posed by the COVID-19 pandemic to a representative Delphi workload study. Specifically, court and detention facility closures impacted attorney workloads and the study administrators did not conduct site visits. The report indicates that the study has been extended until June 2022 in order to gather representative data. Of course, the delays to the study necessarily impact the Department's ability to quickly establish maximum caseload standards. In the next phase of the rural Delphi study, it is essential that criminal defense attorneys from Nevada's urban counties are included in the iterative process. Plaintiffs recognize that the ultimate caseload standards will necessarily be different between urban and rural counties due to issues like travel time required to meet with clients. However, certain aspects of criminal defense are consistent regardless of whether the client is prosecuted in an urban county or a rural one. As a result, many practices of urban criminal defense attorneys are relevant in the rural context as well. The purpose of the *Davis* Consent Judgment is to improve the quality of indigent defense services in the rural counties. If only rural county lawyers are included in the rural Delphi study, the level of services about which Plaintiffs sued will merely be reinforced.

Second, the Monitor's report expresses concern over the Department's dependence on Interim Finance Committee ("IFC") work program approval to expend the \$1.2 million earmarked for indigent defense. If approval is delayed or denied, the Monitor anticipates risk that counties will be unable to find resources necessary to comply with Departmental regulations. Any failure by the State to fund a system of indigent defense that complies with Departmental regulations would put the State out of compliance with the terms of the *Davis* Consent Judgment. Non-compliance with the Consent Judgment could result in significant fiscal consequences for the State that far outweigh the costs of adequately funding indigent defense in the Rural Counties at this time.

Finally, the report notes the Department's own budget is likely insufficient to carry out its oversight responsibilities and analytical needs. Without sufficient resources to carry out its basic obligations, the Department will be unable to effectively manage Nevada's system of indigent defense, the State and Governor will violate the terms of the Consent Judgment, and our client class will suffer. We trust the Board and Department agree and will consider the Monitor report findings as they develop future budget requests.

The Monitor's report recommends the *Davis* parties meet and confer to clarify specific terms of the Consent Judgment and resolve open questions. Plaintiffs agree with the Monitor's recommendation and look forward to resolving these issues with Defendants, the Department, and the Board. We look forward to future reports from Professor Hanan on the State's progress reforming its system of indigent defense.

Sincerely,

/s/ Matt Cowan

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