
Rural Nevada Indigent Defense Services Weighted Caseload Study Focus Group Summary

PROJECT STAFF

John Douglas

Brian Ostrom

Shannon Roth

Suzanne Tallarico

**COURT CONSULTING DIVISION | NATIONAL CENTER FOR STATE
COURTS**

January 2021



Introduction

As a precursor to the time study that will be conducted for the Rural Nevada indigent legal service providers, the National Center for State Courts conducted focus groups with three attorney groups, including rural public defenders, contract attorneys and conflict attorneys. A total of twenty-one attorneys participated in the focus groups, that were conducted via Zoom between December 10 and 18, 2020.

The purpose of the focus groups was to inform the NCSC about the variations in their workload demands, time constraints and whether and how responses to the COVID-19 pandemic has impacted their ability to adequately represent their clients. It is anticipated that the information from the focus groups will also help the NCSC project team better describe the data from the time study.

Focus Group Themes

Three primary questions were posed to the focus group participants. First, we asked whether they feel they have sufficient time, without working overtime, to attend to all aspects of their job. Second, we asked what the greatest constraints on their time is; and third, we asked whether and how the COVID-19 pandemic has changed the way their work is conducted. The results are presented below.

Is their sufficient time to engage in all aspects of your work without having to work overtime on a regular basis?

All of the focus group participants indicated that the work ebbs and flows, so there is never a “typical week or month;” however, there were variations in perceptions of workload across the three groups. Public defender participants were

more likely to indicate feeling as though they are “never caught up.” These sentiments did not come from a defeatist attitude, but rather a realistic attitude. They all agreed that they do not have enough time in a day to get their work done, and they all described working long days and most weekends just to stay on top of the work. One participant summed up what all of the participants were saying this way: “When I first started, I worked all the time; now I work less; you just learn to be more efficient.” As a group, the public defenders noted that the high workload levels lead to frustration at not being able to do more for their clients. One participant noted that “Early on, I was stressed that I could not keep up with everything. You just need to learn to live with not getting everything done.”

Contract attorneys were more likely to indicate that their workloads are generally manageable, but that they can sometimes get out of hand. Depending on where they are located, these attorneys have contracts that amount to an approximate half-time job or a full-time job, which might account for their sentiment regarding their workload levels. To a person, contract attorneys all agreed that it is hard to predict when cases will be assigned, and they may come one at a time, or in groups. Given this, a contract attorney may find him/herself working seven days each week for ten to twelve hours per day; but when caseloads drop, they could be working much less. Overall, contract attorneys agreed their workloads are manageable.

Conflict attorneys saw their workloads more similarly to contract attorneys. Many of the conflict attorneys work in multiple jurisdictions, so their work may be impacted by virtue of the location of the case to which they have been assigned, often requiring more travel time to meet with a client and/or attend court hearings.

One attorney summed up the work in this way “As far as general workload is concerned, I feel that we are very busy and occasionally it can be overwhelming, but not to the extent of many other offices across the country that you hear horror stories about. We are fortunate to have the resources that we do, so I can understand why it has been and likely will continue to be difficult to find attorneys in the rural counties that are willing to take on indigent defense given the amount of work, lack of resources, and high expectations.”

When you think about your work, what are the greatest constraints on your time?

Four major categories arose from the discussion of the greatest time constraints associated with representing indigent clients in the rural counties of Nevada, including: client services, jail visits and associated travel, court visits and associated travel, and reviewing electronic discovery data. Each issue will be discussed in order.

Client Services. Several the attorneys indicated that they spend more time on “social work” activities than they do on legal work. Contract attorneys and public defenders were the most likely to report spending a lot of their time tracking down and enrolling clients in services, such as mental health or substance abuse treatment programs. Similarly, attorneys work with clients ensuring they appear in court, helping to reinstate driver’s licenses, having interlock systems installed in cars, connecting them with computers to attend virtual court hearings, obtaining transportation to work, meetings and other services and in simply helping their clients navigate the criminal justice system.

Focus group participants said they feel this aspect of the job is as important as the legal services they provide, because following terms and conditions of placement, such as obtaining a job or attending treatment is often the difference between living in the community and being locked up for a technical violation. Working to obtain services for clients is also extremely challenging for rural indigent attorneys, because services are limited, mass transportation is non-existent and many clients do not have adequate means of communication, including phone service or computer access. Some attorneys enlist the assistance of office workers, such as paralegals or secretarial support, but in the end, most of this work is done by the attorney.

Jail Visits and Associated Travel. All attorney groups listed jail visits and travel associated with them is an extremely time-consuming, but critical component of their job. Finding time to travel to the jail, locating clients, finding private places to meet and completing the necessary paperwork to meet with a client combine to make meeting with detained clients a time-consuming task.

Due to the COVID-19 restrictions, some jails are allowing detainees to meet with attorneys over Zoom or by telephone, but several of the participating attorneys expressed conflicting feelings about these options. As one attorney stated “Video visitation in rural jails would be really great and could increase the number of attorneys who could take a case. On balance though, I prefer to look people in the eyes when I talk to them and this is a big limitation of video interactions.” Another participant made a strong case for meeting with clients in person at the jail, noting that the clients don’t know the attorneys and have no reason to trust them, so meeting with them in person

provides the ability to begin establishing that trust relationship.

Court Hearings and Associated Travel. Similar to the discussion relating to jail visits and travel, rural indigent defense service providers spend a lot of time traveling to and from court and attending court hearings. At a minimum, all attorneys have to juggle hearing dates and times in district and justice courts; and in some cases, they cover more than two court locations. Most indigent defense service providers attend arraignments, initial appearances and bail/detention hearings, as these are the most likely places from which to obtain newly assigned cases. While this practice has significant benefits, including quickly connecting an attorney and client, it is also a time-consuming process. In one rural court location, each of the three attorneys spends a full week of their time in court, just to ensure that individuals to whom they might be assigned have their rights protected. And once a court session has ended, attorneys reported that they typically have a lot of phone calls to make and new cases for which to prepare, making court days very long days.

Attorneys indicated that it is difficult to get other work done while waiting in court, so much of the waiting time is lost. Courts also have different practices regarding the order in which they call cases. In one location, public defender cases are prioritized by the court, so attorneys in that court can get in and out of court in a reasonable amount of time; other attorneys indicated that courts in which they work are just the opposite and prioritize paid attorneys' cases over the indigent cases.

Another factor exacerbating the court schedule is that some jurisdictions have multiple justice and district courts. For example, in Douglas county there are two district courts and two justice courts,

so juggling court schedules can be very difficult. Several attorneys also noted that having clients in specialty courts can be difficult on both the attorney and the client. For clients, transportation is always an issue for indigent defendants as there is no public transportation available. Some attorneys indicated they give rides to clients to attend drug court and other treatment services, but this is not sustainable. It is not unusual for rural indigent clients to give up on drug court because of these transportation limitations.

Three public defender participants indicated that they regularly spend time in specialty court meetings and hearings. These participants noted that they really don't do anything for their clients during these sessions, and wondered aloud why non-lawyers could not participate instead.

Reviewing Electronic Data. Obtaining, storing and reviewing electronic data has become one of the most onerous tasks in which indigent defense attorneys engage. Not only does the review of electronic data take hours, but depending on the court, the information may be delivered to the attorney at the last minute, with little or no time to effectively review it. For example, watching police body camera footage is a necessary, but time-consuming task. The entire footage has to be reviewed at least once to determine what information is available, and then it has to be reviewed again, often several times, to clearly understand what evidence exists. In a single case, it is not unusual to have ten hours of body camera footage to review. Other types of digital data can also be time consuming to review, such as social media data and digital information such as text messages. As one attorney stated: "All pieces of data must be read or listened to and much of which will, in the end, not be useful but you don't know until you've reviewed the information." Another attorney agreed

with the degree of scrutiny needed to review electronic data: "Watching relevant footage is hard. First, you have to locate the relevant footage (on C-ROM), then watch everything that may be relevant. I may get questions if something occurs at arraignment; if the judge asks if I've reviewed the camera footage, I don't want to say 'no.' This takes a lot of time. This is true of body or police dashboard cameras, surveillance camera footage and cell phone data review (social media, text messages), especially used in probation violations."

How, if at all, has your work changed as a result of COVID-19?

There is significant variation in the way the rural courts have responded to the COVID-19 pandemic. Some counties have effectively closed courthouses and are doing most of their hearings via Zoom or other similar virtual meeting platforms; some counties have closed, reopened, then closed again and still others are conducting business as usual, with no changes implemented to address pandemic-related concerns. In some counties, the District Court has remained open for court business while the Justice Court is limited to Zoom hearings only.

Some courts closed in-person interactions for all but essential hearings in the early months of 2020, but then opened later in the summer; others closed later in the year and still others have not made changes to hearing and trial schedules at all. In terms of the in-person interactions, variation occurs here as well. In some courts, everyone is expected to wear a mask and social distance unless they are the attorney questioning a witness. In other courts, hearings and trials continue to be held in person with no social distancing requirements and no mask requirements. In still other locations, the court has essentially shut

down and all business is conducted via Zoom.

Holding hearings via Zoom has been met with mixed assessments by attorneys. Several attorneys raised concerns about holding hearings or trials virtually. First, they argue, it is difficult to see if a witness is being coached in their testimony. Second, if the attorney and client are in different locations, it is difficult to have a side conversation with the client, making representation that much more difficult. Third, many clients don't have computers or smart phones, so in locations where courts are limiting in-person hearings, attorneys have clients come to their offices to participate in Zoom hearings with the court. This is done at some peril to the health of all parties involved. The concern of contracting or spreading COVID-19 is exacerbated when clients are detained in one of the jails in which inmates are not required to wear masks. On the positive side, attorneys report that judges have made hearing schedules more flexible, so they spend less time in court and less time in hearings in general. Also, eliminating the need to travel to court, especially for status and other short-term hearings saves a lot of time for attorneys in large rural counties. Virtual hearings have also been beneficial to defendants who live outside of the county in which they have been charged with a crime as they can attend all court hearings without having to find transportation.

In some jails, sheriff's departments are prohibiting detained clients from being seen in person; so to engage with a client, the attorney must call the jail, ask for the defendant, and then wait for the defendant to call them back – all of which can take several hours, if not days. Once contact is made, holding case-related conversations over the phone can be challenging, time-consuming and of lower quality than meeting face-to-face. Some attorneys, and

defendants, worry that jail phone lines are not secure, so the information transfer is not complete. Also, competition for phone time in jails may put pressure on inmates to hurry a conversation, which is not always in their best interest. Finally, communicating by phone prohibits an attorney and his/her client from reviewing documents or other evidence and information.

In some jails where Zoom has been made available to inmates and their attorneys, communication is better, and time is saved by eliminating the need to travel to the jail.

In the end, rural courts in Nevada and the indigent defense providers who practice in those courts have found a range of ways in which to keep the criminal justice system moving during a more than one-year pandemic. While there are mixed reviews by attorneys on some of the work-arounds that have been implemented, many agree that some form of virtual court activity is likely to remain in the courts post-pandemic, which could be beneficial to everyone involved, by reducing the need to travel to court and by reducing waiting for your case (or cases) to be called.

Summary

Focus group findings revealed that, while there are differences in the workload demands across the three groups of attorneys who provide indigent defense services in rural Nevada, the issues that demand most of their time, the biggest constraints to getting their work done and how the work has changed as a result of COVID-19 are all pretty consistent.

The public defenders appear to have the most onerous workload; however, even they indicated that it could

be much worse, when compared to public defenders in other locations across the country.

The attorneys participating in these focus groups indicated that there are four areas of work that take up most of their time: finding and coordinating client services, such as mental health or substance abuse treatment; conducting jail visits; time in court hearings and trials; and reviewing electronic data, such as police body camera footage and social media output. While they agree this is all part of their jobs, the amount of time some of these activities require is exacerbated by the fact that they practice in rural jurisdictions with limited services, far distances between court and jails and the explosion of forensic use of electronic data.

Finally, attorneys discussed the impact of the COVID-19 pandemic on their work. While varied across the state, courts, jails and attorneys are making concessions to keep work flowing during the pandemic. Some attorneys are concerned about issues of due process when engaging in virtual hearings and others are concerned about health safety issues related to being in close proximity with clients during Zoom meetings, but they are all finding ways to make the new normal work.