

Agenda Item 3

Attachment

April 28, 2022 Minutes

State of Nevada
Department of Indigent Defense Services
Board Meeting Minutes/Workshop

Thursday, April 28, 2022

1:00 PM

Meeting Location:

OFFICE	LOCATION	ROOM
Virtual Only	Zoom	

1. Call to Order/Roll Call

Acting Chair Mendiola called the meeting of the Board on Indigent Defense Services to order shortly after 1:00 p.m. on Thursday, April 28, 2022.

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

Board Members Present: Acting Chair Dave Mendiola, Laura Fitzsimmons, Joni Eastley, Drew Christensen, Commissioner Cassie Hall, Kate Thomas, Allison Joffe, Bevan Lister, and Harriet Cummings were present. Chris Giunchigliani, Jeff Wells and Justice William Maupin were not present.

Others Present: Executive Director Marcie Ryba, Deputy Director Thomas Qualls, Cynthia Atanzio, Bet-Nimra Torres, Jaime Hamtak and Jo Nell Thomas.

Director Ryba advised the Board that Harriet Cummings will be a few moments late.

2. Public Comment

Written correspondence had been presented as public comment to the Board regarding Mr. Clark.

Acting Chair Mendiola stated that we should hold off nominating a new chair until Harriet Cummings joins the meeting. We will move on to item three approval of the January 26, 2022, minutes. If there are no comments or changes, I will welcome a motion.

3. Approval of January 26, 2022, Minutes (For possible action).

Motion: Approval of Minutes from January 26, 2022.

By: Kate Thomas

Second: Laura Fitzsimmons

Vote: Passed unanimously

Acting Chair Mendiola stated that since we are waiting for Harriet Cummings to join the meeting, we will move on to item five.

5. Review 4th Monitor Report, Second Quarterly County Data Report, and Oversight Update: (For discussion only and possible action).

Deputy Director Qualls notified the Board that Professor Hanan's 4th monitor report had been postponed to allow the Department to finish the second quarterly reporting and would be available at the next Board meeting. The second quarterly reporting vastly improved and will assist in building our budget, our *Davis* compliance and with the upcoming legislature. In providing oversight one of our main goals from the beginning has been relationship building, trust building and getting everyone onboard with our vision of reimagining what indigent defense can look like across the state. The Director and I have been travelling to the rural counties to establish these relationships and obtain information on how the systems actually work. The rest of the counties will be visited in the next six weeks, and all should be completed by the end of the fiscal year.

Acting Chair Mendiola asked if there were any questions or comments. We can now move back to item four as Harriet Cummings has joined the meeting.

4. Board Business (For discussion and possible action).

Acting Chair Mendiola commented that Chair Anne Traum has been appointed a Federal District Court Judge and has resigned from the Board. The next item would be to open nominations for a new Chair.

Laura Fitzsimmons nominated Dave Mendiola as chair.

Motion: That Dave Mendiola Become Chairman of the Indigent Defense Board.

By: Laura Fitzsimmons

Second: Kate Thomas

Vote: Passed unanimously

Chair Mendiola stated that the next item will be to nominate a vice-chair and he nominated Laura Fitzsimmons.

Motion: That Laura Fitzsimmons Become Vice-Chair of the Indigent Defense Board.

By: Chair Dave Mendiola

Second: Rob Telles

Vote: Passed unanimously

6. Bill Draft Submissions. (For discussion only and possible action).

Director Ryba commented that with Anne Traum's resignation, Harriet Cummings was appointed by the Chief Justice of the Supreme Court to fill the vacancy. Discussion of deadlines for the BDRs: May 20th for non-budgetary and September 1st for Budgetary BDRs. Proposed changes would include language that the Board make recommendations to the Executive Director concerning the department budget. The other change would be to create authority that allows the Board to set hourly rates for indigent defense providers.

Vice-Chair Laura Fitzsimmons commented that the hourly rates have been the same for 25 years. The question would be that somebody is going to pay for it and probably as part of underlying legislation. The state would probably have to supplement because the counties are capped.

Director Ryba stated that the state is already picking up some of the increased expense as the market has increased the rate in several of the rural counties. Some counties are contracting with individuals at a rate that is higher than the statutory amount.

Deputy Director Qualls wanted to add something to that. The Feds and the CPI panel did a big survey in 2017 and they raised their rates and tied them to CPI and that goes up automatically every year. There have only been two adjustments in the last 30 years and indigent defense falls at the lower end of the funding political spectrum. Possible ideas could be to track what the Feds are doing and set it at that rate and tie it to the CPI somewhere in the statute, so it goes up automatically. The other would be as Director Ryba mentioned which is to bring it in house and have the Board set it with similar guidelines and tie it to the cost-of-living index.

Joni Eastley questioned if it would be possible to include in the statute that we would set the rate but not specify the rate and could we just get the authority to change the rates through resolution?

Chair Mendiola commented that from a county's perspective it would not be good for the Board to set the rates. If the rate increases would be covered under the regulations as far as the maximum contribution, then the county would not have a problem with that.

Director Ryba advised that is what we are trying to do to increase the regulatory authority of this Board so that the Board can set the hourly rate by regulation.

Chair Mendiola stated that if you go out and meet with different counties on all aspects of their indigent defense services you going to hear that the market demands a higher rate.

Bevan Lister stated that he has some real concerns with this discussion and would be highly opposed to setting some sort of a continuous raise tied to CPI. When discussing parity even though the state might kick in and cover this cost, if we increase the hourly rates to our indigent defenders, where are we going to get district attorneys. Our district attorneys don't make anywhere near \$100 an hour or \$125 or even \$75. They are covering all the prosecution plus all the other legal needs for the counties.

Deputy Director Qualls stated that just to clarify the rate is for appointed counsel and not salaried public defenders which would be the equivalent of a district attorney. The rate is for conflict counsel that are appointed outside of that system. The \$100 an hour sounds like a lot but that is not money in their pocket and must cover all their overhead. In discussing parity, we are doing a salary survey that covers both organized public defender offices, contract public defenders and compare that with what prosecutors are making in that area as the *Davis* settlement requires. We must look at the fact that these amounts must cover all the overhead and the prosecutor's overhead is completely paid for. It is across the board in the rurals where both salaries and hourly rate are not sustainable, and it is a huge factor in why we are seeing a shortage of indigent defense lawyers across the state.

Director Ryba stated that she wanted commissioner Lister to know one thing that's been pointed out is the maximum contribution formula will insulate the rural counties from any sort of increase. This Board set the maximum contribution for each of the rural counties so any kind of increase like the hourly rate would be absorbed by the state if the county goes over the maximum contribution.

Bevan Lister acknowledged that he appreciated that but on the other side lawyers in the rural communities are few and far between. If they can make more working a part-time job, than they would be working as an elected official why would they go through an election process for district attorney. There are potentially no candidates for district attorney and so that is where the question of parity comes in and at what point do we price ourselves out of having local elected officials.

Chair Mendiola acknowledged that was a good point, but not sure that there is anything this Board can solve. In Humboldt County our public defender has been here some 20 years and not making as much but close to the district attorney. The deputy district attorneys were making a lot more than our alternate public defenders, so we had to do some adjustments to get in line but again this is about contract attorneys.

Drew Christensen stated that he would like to make a comment. There have been discussions in Clark County, and we had to consider whether we would like this to be a Board or legislative decision. Some members of this Board may have conflicts with some of those discussions because of the fiscal impact it may have. It should not be tied to the CPI the discussion needs to happen and I'm open to what is the best mechanism to move that number forward.

Director Ryba confirmed that this point would be discussed later. The department has signed a contract with Dr. Mitch Herian and part of what he is going to do is review overhead costs similar to what was done with the Federal system. As we continue to have this discussion, Dr. Herian should be able to present us with some options so the Board can make the decision.

Vice-Chair Fitzsimmons commented that this is key, and the Director has told us about deadlines, and we want to make sure we have the ability if the decision needs to be made by this Board, we don't want to miss the deadline for the legislature.

Joni Eastley stated that even when we can pay them something we can't get them to come out to the rural counties.

Chair Mendiola stated that in Humboldt County with different job descriptions and classifications it reflects with the market bears. In our case we compare county size and similar jobs. In this particular case we are talking about the comparison of the level of fees in the marketplace which the market is going to drive and CPI is part of that. We must be able to pay them and make it worth their time and for the sake of discussion we ought to have the authority to set some parameters or minimums which can be figured out later.

Director Ryba stated that the recommended changes that are non-budgetary are due May 20th. The first change would be to NRS 180.320 1(f) to read "for the Board to make recommendations to the Executive Director" rather than for the Board to review and approve. The other change is to NRS 180.410 which say, "the Director's duty is to establish the proposed budget and submit to the Board for approval". We want to remove the language submit to the Board for approval which is

inconsistent with NRS 353.205. Finally, we request to submit the non-budgetary BDRS and hold off on the other changes that are not due until September 1st.

Drew Christensen stated that he would make a motion consistent with Director Ryba's comments to go forward with the non-budgetary BDRS. The meeting in Tonopah would be a good time to continue the discussion as we may have more information.

Motion: To go Forward with Non-budgetary BDR Requests and Post-pone Budgetary BDRS for More Discussion.

By: Drew Christensen

Second: Vice-Chair Laura Fitzsimmons

Vote: Passed unanimously

Director Ryba gave an overview of the next three BDRs, one is the timeframe in which attorney bills must be paid extending from 60 to 90 days. The next area is regarding grants which changes wording from must to may as recommended by the Governor's Finance Office. The final is we want to add a confidentiality statute which sets forth language that records or information received by the department would be protected by attorney client privilege and is confidential from public records requests. We want this to extend to complaints that the Board receives except as may be necessary for the performance of our oversight functions.

Motion: To Recommend the Changes Described by Director Ryba to the Non-budgetary Items to go Forward in the Form of a BDR From the Board.

By: Kate Thomas

Second: Drew Christensen

Vote: Passed unanimously

Director Ryba stated that it has been proposed or requested that this Board submit a BDR to allow private practice of law for part-time deputy public defenders in the Nevada State Public Defender's office. It is currently allowed in county public defender offices pursuant to NRS 260.04 subsection 4. This is feedback we have obtained from our oversight where a full-time public defender may not be warranted. Some of the counties are struggling to get attorneys to cases.

Vice Chair Fitzsimmons wanted to clarify that we are talking about a full-time deputy state public defender where they are getting all the benefits and still being able to have a private practice. The concern would be they may short their public defender caseload in favor of getting the hourly pay.

Director Ryba commented that she did not disagree but the way that is written it has to be a part-time employee. Some rural counties have small caseloads and do not warrant a full-time public defender. They would be expected to work the appropriate number of hours and would have a full-time supervisor monitoring to ensure they comply. We want to inform the Board of the feedback we are receiving from the rurals.

Thomas Qualls wanted to add that in visiting White Pine where there is concern about the number of competent attorneys that deputy district attorneys are allowed to have their own private practice as long as it doesn't conflict with their official duties. Feedback received from district judges was

that may be the inability to have any kind of private practice is an impediment to getting competent public defenders.

Vice-Chair Fitzsimmons suggested possibly putting this off as there is a lot going on until maybe next session as we don't have enough information going forward. We should defer to the people in the rural counties who are dealing with this, and perhaps suggest we wait and see how everything else is going because in certain ways this is a big change and not sure if it is warranted.

Director Ryba agreed that would be a great idea to hold off as we are expecting the NCSC weighted caseload study to tell us how many attorneys would be needed in each of the rural counties. If it comes out that many rural counties are coming out only needing half an attorney, we could discuss it at that point.

Chair Mendiola suggested that we table this for the time being and bring it back up at the June Board meeting.

Director Ryba stated that the final changes that we are recommending involve prison cases to ensure prompt payment for appointed counsel. We are recommending that the language be modified so the funding could be moved into the state public defender's budget. The second recommendation which is open to discussion is for state prisons cases in a county where the population is less than 100,000 people be moved to the venue of Carson City where there is a state public defender's office. A lot of the prison cases are coming out of Ely State prison and White Pine is suffering from a shortage of indigent defense providers. Many cases are high A felony cases and there is a shortage of individuals who can take these cases.

Vice-Chair Fitzsimmons commented that Carson City judges and the First Judicial District would probably not be happy about this because of transport, housing, and shuffling. Should it be that the State Public Defender go out if the Attorney General's (AGs) office is prosecuting rather than the individual indigent defenders in those counties?

Director Ryba stated that is the other option and with the current shortage of attorneys the State Public Defender's office has taken on a murder case. We have started discussions with the AGs and need to approach the First Judicial. Again, this is just a discussion point to start off and see what direction the Board would like us to go.

Chair Mendiola commented that what Vice-Chair Fitzsimmons described was on his mind with respect to transfer of those prisoner's which is usually a big issue even to do it 60 miles up the road here in Humboldt County. Would it make more sense on the surface to have the public defender go to the prison? All are good points made by Vice-Chair Fitzsimmons.

JoNell Thomas wondered about capital representation if the killing is within the prison those are often death penalty cases and are you going to have people meet the qualifications to handle those in the smaller jurisdictions. You are also going to run into some venue issues if the prison is a big part of the small community. Finding a jury in this case might be difficult, and these factors should be considered when deciding on this.

7. Budget: (For discussion only and possible action).

Director Ryba was excited to inform the Board that some of the *Davis* counties had been reimbursed pursuant to this Board's maximum contribution after approval at the Interim Finance Committee (IFC). After closing out the third quarter reporting, some *Davis* counties have met their maximum contribution. None of the non-*Davis* have met their maximum contribution but we have requested funds for case-related expenses. We submitted our final work program for the remainder of the 1.2 million that was set aside for the *Davis* counties as the deadline was yesterday.

Vice-Chair Fitzsimmons reminded the Board that she would not be able to attend the June Board meeting and wanted to commend Director Ryba and her staff for the work that has gone into getting to this point. There has been a credibility issue in the rural counties because we say we are going to do all this stuff and you are not going to have to pay more and legitimately there was suspicion. Overtime what you are doing now is really going to make a difference for how we interact with the rural counties and most importantly for the delivery of indigent defense services so thank you.

Chair Mendiola stated he wanted to mirror those comments. A lead public defender who has been around for a long time had a lot of bad feelings about the previous efforts and has come so far mainly because of the work that you all have done and now he gets it. He really feels that the department is putting in place all of the things that really need to be done to make sure that we're providing the very best defense for these clients. He is very impressed so hats off to you.

Director Ryba reminded the Board that the budget is confidential, and the department has started the process of building the budget. Did the Board have any recommendations of what they would like to see in the budget. We have some recommendations that we would like built in the budget starting with a holistic resource center within our department providing numerous in-house resources for the rural counties. A holistic research center will provide the same level of care that is provided in Washoe and Clark County. We would also like to build a complex litigation unit to handle death penalty cases and financial white-collar crimes that aren't run-of-the-mill and provide resources to the public defenders. We are still pursuing moving appeals to the State Public Defender to lighten the load of the trial attorneys in the rural counties. Finally, a quick pause to introduce Jaime Hamtak who replaced Jason Kolenut and will be assisting in building our budget.

Chair Mendiola stated that he wanted to welcome Jaime to the team and looked forward to working with her. He wanted to comment that he loved all three ideas but the one that steps out is the holistic resource center. It is difficult in the rurals to find social workers or caseworkers as they are so booked or overworked it is a difficult prospect. He wanted to thank Kate Thomas and Washoe County who helped out recently with something along those lines. It worked out quite well. The complex litigation unit is also a great idea. We have been fortunate in Humboldt County because we have a guy who has been around 28 years, but he will be retiring soon.

Joni Eastley questioned how do you replace those people?

Chair Mendiola commented there is a way of doing it, but it goes back to the discussion of wages and compensation as a whole. They will come but there is not a lot of them in the pool.

8. Training and Externship Update: (For discussion only and possible action).

Deputy Director Qualls advised that the Annual Conference is scheduled in Las Vegas for May 26th and 27th and we are going to provide 11 hours of CLE credit for attendees. Our big goal is building this statewide coalition and there is nothing like being face to face with people to form relationships. We filled both externship spots with one going to the Elko Public Defender's office and the other to the Nevada State Public Defender's Office.

9. Update from the Department: (For discussion only and possible action).

Director Ryba stated that we had re-upped the contract with Dr. Mitch Herian who will doing a salary survey which will include what an hourly salary should be. He is going to determine if there is a shortage of public defenders in the rural counties and then will be working on what type of pipelines would work to encourage individuals to come to rural Nevada. Finally, he will assist with determining with our short staff how we can really provide effective oversight for the entire State of Nevada. We are hoping Dr. Herian will be able to provide some recommendations at the June meeting.

10. Scheduling of Future Meetings (For discussion only and possible action).

Chair Dave Mendiola stated that we have the June 16, 2022, meeting scheduled in Tonopah. It will start at 1:00 p.m. Reservations should be made if you haven't done so already. If any members will need to be reimbursed, please contact DIDS.

Director Ryba wanted to add that the department did have funding available to reimburse Board members for their travel and room so let us know ahead of time so we can prepare the travel forms.

Chair Dave Mendiola requested to know if there were any public comments.

11. Public Comment.

Joni Eastley stated that she had a question and regarding the written comment from the beginning of the meeting are we going to respond to that or how do we handle that?

Director Ryba confirmed that we did receive written public comment and Kate Thomas did have a response for that.

Kate Thomas advised the Board that Mr. Clark's case was pertaining to their Public Defender's office and his case had been dismissed in the district court. It should be further noted that the Public Defender's office had repeatedly provided Mr. Clark with all of his files upon multiple requests.

There were no additional public comments.

12. Adjournment.

Chair Dave Mendiola adjourned the meeting at approximately at approximately 2:32 p.m.