



**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

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OVERSIGHT REPORT

Rural Counties Update

Report date: August 16, 2022

I. Carson City.

Karin Kreizenbeck resigned her position as the Nevada State Public Defender. We are currently seeking new applicants to fill this position. We have posted the position on our website, the Nevada State Bar has emailed it to its membership, and other groups like NAPD and NACJ have sent it out to their lists. The application period closes September 2, 2022.

DIDS is also in the process of reimagining the functional duties of the State Public Defender. Our vision for the head of the NSPD in the future includes acting as an ambassador -- locally and throughout the state -- building more relationships, educating county management about the opportunities the office can provide, working to expand the duties of the office, and actively recruiting new talent.

In other news, one of the Carson City contract conflict attorneys retired and the county opened up the contract for new applicants. There were at least four applicants who were fully qualified to handle all levels of cases, through category A felonies. There were several other candidates who were less qualified.

Four county judges wrote a letter to the Board of Supervisors recommending Daniel Spence for the contract. Daniel Spence is not qualified by our office to handle Category A or B felonies. In part, this is due to the fact that Spence does not have sufficient jury trial experience. DIDS wrote a letter to the Board of Supervisors which detailed the qualifications of all of the candidates and explained that if the contract were awarded to Spence, a mentor would have to supervise him on all higher level cases. The Board awarded the contract to Spence, despite there being other, fully qualified candidates available. DIDS intends to monitor the situation throughout the contract period.

II. Churchill.

DIDS continues to actively work with Churchill County in building a sustainable indigent defense structure. After the *Davis* lawsuit, Churchill created a county public defenders office. The office included two attorneys and a legal assistant.

Since that time, Churchill has modified its indigent defense plan to include a primary public defenders office, a county alternate public defenders office, and a contract for third-tier conflict cases. The county also added its own Appointed Counsel Administrator to act as the Department's appointee in that role.

Jacob Sommer will continue to be the primary Public Defender for the county. His former deputy, Wright Noel, is now the Alternate Public Defender. And Charles Woodman has contracted to fill the third-tier conflict position. Additionally, Mr. Woodman will act as a mentor/supervisor for Mr. Noel, so that he will be able to accept high category cases and complete his full qualification status. Finally, Sue Sevon, a former court administrator, has accepted the position as Appointed Counsel Administrator.

III. Douglas.

Douglas County has contracted with several new contract public defenders for this fiscal year. Matt Ence and Brian Filter have renewed their contracts. And Martin Hart, Max Stoval, and Nadine Morton have accepted contracts for this new term.

Of note, Nadine Morton chose to pursue the Douglas County contract, rather than renew her previous contract with Nye County. A comparison of the two options reveals a significant disparity in pay and caseloads. Even though Nye County increased their public defender contracts by \$25,000 for the current term, the amount is currently set at \$175,000. Compare that to the Douglas public defender contracts, which were increased earlier this year from \$195,000 to \$265,000. Nye County's caseloads are also reportedly much higher than in Douglas County. (Nye is considering additional and substantial changes to their system.)

IV. Elko.

Elko County currently has a single-tiered system: the Elko County Public Defenders office. There is no second-tier/conflict office nor contracted conflict counsel. DIDS currently serves as the county's Appointed Counsel Program Administrator, even though the county's indigent defense plan states that Elko will contract with an attorney to fill this position.

The lack of a second tier in the system to handle conflict cases and the lack of a contracted Appointed Counsel Program Administrator combine to create some friction in the county's system. The situation places a burden on the limited staff at DIDS to appoint all conflict counsel and approve all appointed counsel billing.

Recently, a judge expressed concern over DIDS appointing conflict counsel from out of the region. These instances have all involved situations where DIDS contacted the attorneys on the regional list, and none were available, before assigning the case(s) to those outside the area. A multiple tier system could alleviate most of these issues.

Finally, DIDS directors had a zoom meeting on August 15, 2022 with several judges who were concerned over what to do with Municipal Court appointments and indigent defense expenses. Their interpretation of NRS Chapter 7 was that it governed all indigent defense systems, county and municipal. Elko's plan does not include any provisions for municipal courts. DIDS has not, to date, concluded that it has authority over municipal indigent defense systems. Although it has considered incorporating them into the plans. Such an action would require approval of the Board and a revamp of each county's maximum contribution formula, at a minimum.

V. Esmeralda County.

To date, Esmeralda has not reported any caseload or time data. We continue to work on this situation.

VI. Eureka.

Nothing to report.

VII. Humboldt.

The former Alternate Public Defender for Humboldt County, Derrick Penny, was temporarily suspended from practice by the Nevada State Bar, for reasons unrelated to his indigent defense work. Humboldt County has now hired a new APD, Maureen McQuillan.

VIII. Lander.

Lander County's contract conflict attorney resigned, and they are looking for a new attorney to fill the spot. The county contacted DIDS regarding wanting us to oversee the process. Lander County's current district attorney (who used to be the contract public defender) lost his re-election bid, and so there was some indication that he might apply for the conflict contract. The regulations, however, prevent him from holding such a contract for 18 months after leaving the prosecutor's office.

IX. Lincoln.

No new information to report.

X. Lyon.

Lyon is another county that only has a single tier system and relies upon appointed conflict counsel to take up all the slack in the system. Lyon also relies upon DIDS to act

as Appointed Counsel Administrator. Since the beginning of September 2021, Lyon County's contract public defender has conflicted off over 200 cases. The average is in excess of 18 cases per month. The result is that it is often difficult to find conflict counsel and often court dates must be continued to accommodate potential appointed counsel.

DIDS has been contacted by judges in this jurisdiction who are concerned with the due process rights of defendants, due to multiple continuances. For some time, DIDS has been encouraging Lyon County officials to add a second-tier contract (or contracts) to their indigent defense plan. The county has reached out to several indigent defense providers, but initially none were willing to enter into a contract which includes mandatory appointments. In follow-up conversations, the county has been resistant to pursuing the matter further. Recently, however, after hearing the concerns of the judiciary, the county has revisited its efforts to contract with one or more attorneys to accept a minimum number of conflict cases each month. One law firm is currently in negotiations to begin a conflict contract starting January 1, 2023.

XI. Mineral.

Mineral County has contracted with a new attorney to act as their primary public defender. The contracted attorney, Kale Brock, was previously qualified to higher level cases under the condition that he would be supervised by a mentor. He was working under the supervision of Mario Walther. We have made inquiries of county officials as to how they are going to provide for this supervision. We are informed that Karl Hylin will take all category A cases.

The county renewed its conflict contract with Karl Hylin. Both contracts included mandatory LegalServer reporting clauses for both contractors. This has been a standing problem with Mineral County, and we are encouraged that the County included this provision. To date, however, we still have no reporting from Mineral. DIDS will continue to address the matter until the county comes into compliance.

XII. Nye.

As noted previously, Nye County recently increased the amount of its public defender contracts, from \$150,000 to \$175,000. And while the Department is encouraged that the Nye County Commissioners recognized the need to increase the value of the contract, other circumstances indicate that the increase was not sufficient to attract attorneys from nearby Clark County.

Nye County's indigent defense plan relies upon five independent public defender contracts. Two of those contracts were available for this fiscal year. (Nadine Morton moved to a Douglas County contract and Alexis Duecker did not renew her contract.) The Commission received only 3 applicants for those two spots. And of the two attorneys who were chosen to take the contracts, one of them immediately backed out of the contract after recognizing the size of the caseload he would inherit. The contract was opened again for applications. Three attorneys have applied again and the matter is on the agenda for the Commissioners meeting on August 16, 2022.

In the interim, the Department has had to manage the transfer of caseloads to the new contract attorney(s), but also had to redistribute a significant number of cases to appointed counsel when the second new contract attorney backed out of the contract. The unexpected withdrawal threatened to leave dozens of defendants without counsel for months before the position could be refilled.

Nye County has been an area of some concern for the Department. The primary reason for this concern has been the high volume of cases and relatively low fee structure. (For comparison, Douglas County public defender contracts now pay \$265,000 and the attorneys carry lower caseloads.) DIDS has been working with county management on ideas for restructuring the system. After this latest problem, and the added expense of paying appointed counsel to take over contract cases, it appears there is a willingness on Nye County's part to explore the creation of a county public defender's office.

A county public defender's office in Nye could offer a number of benefits over the existing system, including: a more stable structure that would offer consistent peer support and backup for court; legal assistants and investigative support for the attorneys; salaries, insurance, retirement, and possible student loan relief; a training ground for new attorneys, so that the system is more sustainable over time; and an overall more flexible system that can better accommodate the vicissitudes of normal events such as employee turn-over, illness, and vacations. The county understands that if they move to a county public defender system, they will also need to either create a conflict office, as well, or contract with private counsel for conflict services. DIDS is encouraged by these latest discussions that Nye County is moving in a positive direction.

XIII. Pershing.

There are two outstanding questions in Pershing County. The first one is that the total amount of defense-related expenses reported to DIDS for reimbursement for the fiscal year is \$195. It seems that either the Pershing County Public Defender is not hiring any experts or investigators, or this amount is underreported.

The second issue is that new information from the county regarding indigent defense expenses for FY 2018 have now been received. Pershing County's maximum contribution formula was previously based upon reporting for years 2019-20. The Board may need to adjust the county's maximum contribution amount accordingly.

Finally, Pershing County has expressed concerns to DIDS that there is some disparity between their budget, and thus their maximum contribution cap, and that of their similarly situated sister counties, Lander and Mineral. The complaint is that Pershing is being punished for having established a county public defender office prior to the *Davis* lawsuit. And so the county was spending more money on public defense, making their maximum contribution much higher than Lander or Mineral.

XIV. Storey.

Please see Carson City report. No additional information to report.

XV. White Pine.

White Pine County has a system similar to Nye County, only somewhat smaller. The county relies upon three contract public defenders to provide indigent defense services. Earlier this year, one of the contractors retired, leaving a gap that needed to be filled by appointed counsel until a new contract attorney could be secured. As Appointed Counsel Administrator for the county, DIDS had to manage the reallocation of cases.

Like Nye County, there was a false start in filling the open White Pine public defender contract, with one attorney initially agreeing to the contract, but then withdrawing. Eventually, after the position being open for over two months, an attorney agreed to take the contract. She also was not qualified by DIDS to take higher level felonies. The difference between the White Pine situation and Carson City's, however, is that there were no other fully qualified attorneys available in White Pine. The county entered into a contract with her, with the understanding that one of the other current contract attorneys would mentor her where necessary.

White Pine County officials have expressed interest in restructuring their indigent defense system. This has included a request from the county for an estimate to build a State Public Defender office in the county. The county is also aware of the need for at least a two-tiered system, to cover conflicts. DIDS has discussed the options of either a county or state public defender system with officials.

XVI. Recommendations.

Based upon the Department's experience over the last ten months, the following are recommendations for possible Board action and/or amendments to the Board's Regulations.

1. That all counties be required to implement at least a two-tiered indigent defense system to better manage the volume of conflict cases. This is especially true in rural areas where it is consistently a challenge to secure appointed conflict counsel in a timely manner.
2. That Municipal Court indigent defense systems, including conflict appointments and expense requests, be incorporated into the DIDS system of regulation, oversight, and support. (And the best path for accomplishing this.)
3. That additional considerations of parity should be considered in determining / amending certain counties' maximum contribution formulas, i.e., the situation in Pershing County.