



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

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(775) 687-8490 | www.dids.nv.gov

Oversight Report – Death Penalty Cases & Plan

10.24.23

Introduction.

The ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases call for each jurisdiction to adopt and implement a plan which formalizes the means by which the jurisdiction will provide high quality legal representation in all death penalty cases. (See Guideline 2.1)

The Guidelines set forth that this Capital Representation Plan should set forth how the jurisdiction will conform to each of the ABA Capital Guidelines. All elements of the Plan should be structured to ensure that counsel defending death penalty cases are able to do so free from political influence and under conditions that enable them to provide zealous advocacy in accordance with professional standards.

Guideline 3.1 establishes that an agency independent of the judiciary should be in charge of ensuring that each capital defendant in the jurisdiction receives high quality legal representation. DIDS is perfectly positioned to create and oversee this plan. Indeed, its mandate naturally includes such oversight. Accordingly, DIDS has drafted a Nevada Rural Capital Defense Plan and has been discussing with the counties their plans for handling death penalty cases under Nevada SCR 250.

NSPD Opt-in & General DP Plan Information.

The following counties are currently opted into the NSPD for death penalty case coverage: Churchill, Humboldt, Lander, and White Pine. The NSPD has currently contracted with two death penalty qualified attorneys for coverage of these cases. Recruitment efforts continue for more contractors.

Over the last several weeks, the Department has reached out to all rural counties to identify their mandatory lists of death-penalty qualified attorneys. We discovered that most lists are outdated, or possibly non-existent.

SCR 250 also requires that a death penalty qualified attorney be appointed to all first degree murder (or open murder) cases in which the district attorney has not affirmatively stated they won't seek the death penalty. While the Department understands the purpose

and intention of this rule, including continuity of representation should a *notice of intent to seek the death penalty* be filed, this rule presents a substantial challenge to rural courts.

In short, there are limited death-penalty qualified attorneys in Nevada to cover all open/first degree murder cases in which the prosecutor is silent on the intent to seek the death penalty. And this complicates establishing a county-by-county plan for what the courts will do when these cases.

The Department is in the process of trying to incorporate these plans into each of the counties' indigent defense plans.

In the meantime, there is one county in which the Department has some concerns about a current death penalty case. We are actively monitoring it.

Pershing County.

There is a capital murder case currently pending in Pershing County, and the Department has concerns about compliance with SCR 250, ADKT 411, and the ABA Standards of Performance for Capital Case Representation. Additionally, after our review of the decision of *Rogers v. Dzurenda*, No. 19-17158 (9th Cir. Feb. 2022), we are concerned about history repeating itself in this case.

In its *Rogers* decision, the Ninth Circuit upheld the lower court's finding of ineffective assistance and prejudice and remanded this case back to Pershing County to either enter a finding of Not Guilty by Reason of Insanity (NGRI) or to retry the matter. (The case is 40 years old.) Pershing County has elected to retry the matter.

Among other things, the Ninth Circuit's Opinion found that the original trial counsel's investigation, preparation, and execution of their chosen insanity defense fell below the standard of reasonableness. The *Rogers* Opinion lists a number of reasons for the Court's conclusion, which serve as cautionary factors today:

(1) Neither trial counsel for Rogers in the original trial had any experience with trying a capital case and they were not adequately trained for handling a death penalty case;

(2) Lead trial counsel in *Rogers* was overburdened with a caseload of approximately 80 cases (the ABA's recommendation is that counsel in a capital case not have more than 35 to 50 cases). In the remanded case at hand, according to LegalServer reports, the Pershing County Public Defender currently has 382 open cases and Kirsty Pickering has 231 open cases. These numbers eclipse the 80 cases called out as excessive by the 9th Circuit;

(3) Trial counsel in the original trial did not have an in-house investigator and was given limited funding to use an outside investigator. So far in the case at hand, counsel's reporting does not show any investigation being performed in the case;

(4) Trial counsel in the original case failed to consult with or otherwise prepare their experts (including an expert regarding legal sanity at the time of the offense -- the primary

issue in the case). It appears the only matter current trial counsel are pursuing is competency to stand trial;

(5) Trial counsel in the original trial failed to prepare to rebut the state's mental health expert. Again, it appears the only matter current trial counsel are pursuing is competency to stand trial;

(6) Trial counsel in the first trial failed to investigate Roger's childhood and did not provide any childhood information to any experts (counsel in a capital case has an obligation to conduct a thorough investigation of the defendant's background). Based upon the reporting, it does not appear any childhood or background information is being investigated or gathered; and

(7) Original trial counsel failed to adequately present the standard for legal insanity. There is no indication from their reporting that current trial counsel are pursuing a defense based upon legal insanity.

In sum, based upon the Department's current oversight of this case, we have the following concerns about the Pershing DP case of *Rogers*: (1) It appears the only issue current trial counsel are pursuing is one of competency to stand trial; (2) There does not appear to be any parallel investigation occurring, including of the defendant's background, the lack of which the 9th Circuit specifically noted as deficient performance; (3) Current trial counsel do not appear to have engaged any experts who can speak to the primary substantive issue of insanity at the time of the offense; (4) Trial counsel both appear to have too high of a workload to devote adequate time and attention to a capital case; and (5) SCR 250 qualified counsel should have been appointed by DIDS and not its designee in this case. The result is a first chair who is not SCR 250 qualified to handle a capital case and a second chair who was qualified by district court judge, even though she has never tried a death penalty case to verdict.

Director Ryba has reached out to County Commission Chair Joe Crim, and discussed the possibility that Pershing County could opt into the NSPD for Death Penalty Representation. In the current *Rogers* case, the district court exercised its discretion under SCR 250 to enter an order qualifying the Pershing County Public Defender as 250 qualified to handle DP cases, even though the Public Defender has never handled a death penalty case as first or second chair. The district court also appointed a second chair who has not handled a death penalty case to verdict. Such a move would have the benefit of saving the county a significant amount of money, while ensuring death penalty experienced counsel were handling the case. If Pershing opts into such a plan, then Pershing would only be responsible for 25% of the expenses and fees in the case, and the state would cover the other 75%.

Again, the Department is actively monitoring the situation and will follow up on this report.



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ONSITE VISIT REPORT

Churchill County

October 9, 2023

I. Brief Narrative.

On October 9, 2023, Marcie Ryba traveled to Churchill County to attend a meeting to discuss Churchill County's Plan for the Provision of Indigent Defense Services and the need to update it to include a portion on Death Penalty Coverage. In attendance were: Jacob Sommer (Churchill PD); Wright Noel (Alt Churchill PD); Jim Barbee (County Manager); Sue Sevon (Churchill County Counsel Administrator); Judge Stockard; Emily Tunsil (Assistant to Churchill PD).

At the conclusion of the meeting, it was discussed that the County will update their Plan for the Provision of Indigent Defense Services to clarify that:

- If there is a filing of a death penalty case or if there is a case where the District Attorney remains silent on whether such a penalty will be filed, Jacob Sommer will immediately notify Sue Sevon.
- Sue Sevon will work with the Department to ensure that an appropriate 250 qualified counsel is present.
- Churchill County has opted into the NSPD for such coverage.
- NSPD is in the process of entering into contracts with SCR 250 qualified counsel to provide such coverage. Once the contracts are finalized, such attorneys will contact Sue Sevon to be added to the list of qualified counsel for the district court.
- Churchill County desires their salaried attorneys to gain experience on such cases and will request that they are appointed as second chair.

The group also discussed the county's current plan. Since Sue Sevon has been appointed as appointed counsel administrator and a contract has been entered with an attorney to provide conflict coverage, the plan has been working very smoothly.

The parties further discussed other possibilities of how to continue to improve the indigent defense plan such as: adding county social workers to the public defender office and adding additional attorney staff.

II. Next Steps.

1. Jacob Sommer has been tasked to update the plan and will provide to the Department upon completion and approval.



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ONSITE VISIT REPORT

Douglas County

Visit date: August 30, 2023

I. Brief Narrative.

Marcie Ryba, Executive Director of the Department traveled to Douglas County for an oversight visit to meet with (1) the Douglas County Manager, Jen Davidson; (2) Brittnie Brown, Douglas Administrative Assistant In Support of Indigent Defense; (3) Gina Reiboldt (who will temporarily be taking over Brittnie Brown's duties until a replacement is hired); (4) Justin Clouser, Douglas Counties Appointed Counsel Administrator.

As an overview, the Douglas County indigent defense plan calls for five contract attorneys to serve on a rotational basis as the primary indigent defense provider of Douglas County; the counsel administrator ensures a fair rotation of cases amongst the attorneys. If there is a conflict, the counsel administrator finds conflict counsel from the DIDS approved list.

Appointed Counsel Administrator

Justin Clouser serves as the Counsel Administrator for Douglas County. He advised that one of the five contract positions will be coming open as Nadine Morton is leaving the position. DIDS has requested a copy of the job advertisement once it is published so that it can be shared with all attorneys on the list.

Marcie and Justin discussed data reporting for Douglas County. One attorney has significantly lower hours reported than the rest of the attorneys. Justin advised that his belief was that the other attorneys had better reporting because they had assistants to help. This one attorney did not have an assistant. Also, he believes that until the caseloads are reduced, there will continue to be issues.

The weighted caseload study was also discussed. Justin believed that the caseload in Douglas County is quite high and believed that if more attorneys were added as contractors, the caseload would be more manageable and better reporting would be received.

Justin Clouser rarely goes outside of the contract attorneys for coverage. He advised that all other duties are going well.

Justin Clouser has received complaints regarding the contract attorneys, but usually the complaints are limited to two attorneys. Justin follows up with these attorneys to investigate the complaints. He does not forward them to the Department because he believes he has been able to take care of them in-house.

Judges have complained to Justin Clouser regarding the performance of 2 of the contract counsel.

The Department will follow up with the judges in another visit to inquire about these concerns.

Phone Calls with Contract Public Defenders

Following the conversation, Marcie Ryba had phone conversations with four of the five contract attorneys. In these discussions, attorneys expressed concerns with the caseload. Specifically, there is limited time to sit and review cases where an attorney is not in court. Some attorneys also stated that the district attorney does not provide case discovery until there is a court order assigning the case to the attorney. This causes delays in preparation and attorneys are hoping for faster access to the discovery.

Douglas County has chosen not to renew their contract with Nadine Morton. The other four contractors have had their contracts extended for another term. Douglas County will be posting the advertisement for the contract position shortly.

Marcie was unable to contact Marty Hart at the time of this report, but will continue to follow up with him.

Fiscal Reporting

At the time of the meeting, Brittanie Brown had provided her notice that she was leaving her position as the Administrative Assistant in Support of Indigent Defense. The position is being advertised and Gina Reiboldt plans to complete all duties until a replacement is found. Ms. Reiboldt previously worked for the District Attorney's Office in Douglas County prior to her recent retirement, so she felt comfortable with the reporting requirements. Ms. Reiboldt will be completing the fiscal reporting. DIDS has offered to assist in any manner needed once the reports are due.

County Manager

Marcie took the opportunity to introduce herself to the new County Manager Jen Davidson and explain the background of the Department, recent legislation regarding DIDS, and the history of the Douglas County Plan. Marcie offered to be available to answer any further questions by Douglas County. In the meeting, the County Manager seemed quite pleased with the services of the contract attorneys and the current set up of the appointed counsel administrator.

Court House Tour

Justin and Marcie discussed client communication in Douglas County. Justin advised that there were two attorney client meeting rooms on the top floor of the courthouse that could be utilized by the public defenders. Pictures of these rooms are below and appear to provide confidential meeting space in the Justice/District Court.

II. Oversight Criteria.

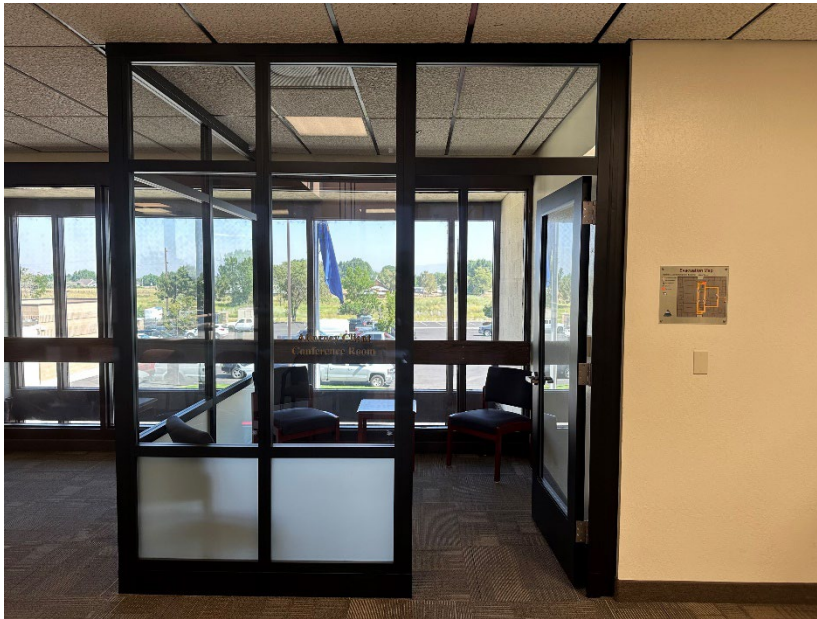
1. Client Communication
 - a. There are at least two confidential meeting spaces for Courts. See pictures below.
 - b. Since Minden jail is at capacity, some clients are transferred to the South Lake Tahoe jail. Attorneys expressed this does create extra difficulty if a client is transferred without the attorney's knowledge.
2. First Appearances
 - a. Rotating schedule with the attorneys. Contract Attorneys appear Tuesday-Saturday. The Sunday and Monday appearance are covered by Clouser. Tuesday coverage does provide an extra complication because District Court is running at the same time.
 - b. Attorneys are always present.
 - c. Concern is when Tuesday needs coverage because same time as District
3. Preparedness / Knowledge of Case
 - a. Attorneys express that the high number of cases is problematic. The attorneys expressed they are working their cases, but sometimes things get overlooked due to the sheer number of cases.
 - b. Clouser said that he has received complaints regarding 2 of the contractors' preparedness for cases from the judiciary. The Department will follow up on these complaints.
4. Investigation / Experts
 - a. A new investigator moved into the area. With the increased availability of investigators, attorneys represent they are using investigators at a higher rate than before.

III. Next Steps.

1. Contact Gina for Quarterly Reporting to ensure she understands which forms need to be submitted.
2. Set up appointments with the judges in Douglas County to follow up on their concerns.
3. Have a phone conversation with Marty Hart.

IV. Photos

Pictures of the two attorney client visitation rooms in the Douglas County courthouse.





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Follow up 2 -- ONSITE VISIT REPORT

Douglas County

October, 2023

I. Brief Narrative.

As a follow up to the initial visit, Marcie Ryba, Executive Director of the Department traveled to Douglas County for an oversight visit to meet with (1) the Douglas County District Court Judges, Judge Gregory and Judge Young and the East Fork Justice of the Peace, Judge Gilbert; (2) the new Indigent Defense Services Administrative Assistant Robyn Valdez, and (3) phone call a Douglas contract public defender.

As an overview, the Douglas County indigent defense plan calls for five contract attorneys to serve on a rotational basis as the primary indigent defense provider of Douglas County; the counsel administrator ensures a fair rotation of cases amongst the attorneys. If there is a conflict, the counsel administrator finds conflict counsel from the DIDS approved list.

Summary of Meeting with Judges

The Douglas County judges were concerned about oversight of the contract public defenders in Douglas County. Specifically, the judges relayed that some indigent defense providers are missing court, unprepared, and appear to fail to talk with their clients before court. But the judges did not know who to report this concern to because the current Douglas County Indigent Defense Services plan does not have an individual that has the authority to supervise or oversee the attorneys. Some of the judges took their concerns to Justin Clouser, the Indigent Defense Services Administrator, but did not know if that was sufficient. Some support was expressed to change the indigent defense system to an organized office with internal supervision. The judges were encouraged to contact that Department if there were concerns with representation.

The Department did discuss the maximum contribution formula and other legislative updates with the judiciary. There was a discussion of the Court list of Death Penalty qualified counsel. Douglas County does not have a list and did not believe that any members of the current contract public defenders would be able to qualify under SCR 250.

This issue will need to be clarified with the county.

Phone Calls with Contract Public Defenders

One issue of concern was that there was a delay in the District Attorney providing discovery to the appointed counsel. It appears that the delay is due to the appointment process being used at the time (which has since been remedied see the discussion with the Indigent Defense Coordinator Team) in Douglas County where a pleading is prepared by the Indigent Defense Administrative Assistant and will not be filed until Justin Clouser physically signs the document. Historically, this has led to delays because Clouser does not sign these documents daily.

Attorneys have expressed concern that the Administrative Assistant is not entering cases in LegalServer, as was initially the plan. This is creating an extra workload for the attorneys. The Department will follow up with the Admin Assistant next week to determine if this workload can be added to her duties.

Attorneys also expressed concern that some District Attorneys in the Douglas County District Attorney office have a policy that a client must waive their right to a preliminary hearing within 15 days at the first appearance/arraignment or no offers will be made in the case. Defense attorneys were very uncomfortable because they do not feel comfortable advising a client to waive a right without knowing whether it is in the client's best interest, but they are doing it because they want to preserve the possibility of an offer in the case. This issue was discussed with the Indigent Defense Coordinator Team.

Meeting with Indigent Defense Coordinator Team

On October 16, 2023, the Department met with Robyn Valdez (who will be the new administrative assistant (AA) for Justin Clouser), Gina Reibolt (who was temporarily in that position) and Justin Clouser.

The purpose of the meeting was to touch base with Robyn, as well as address some concerns that were raised by defense counsel.

First, Gina advised that the delay in discovery should be addressed because the Notice of Selection process was modified. At this time, the AA prepares the Notice of Selection of paperwork for Clouser's signature. Permission was received from the Court to use a stamp signature of Mr. Clouser's name on the documentation, so Mr. Clouser does not have to come down to the County Manager's Office for signature. The document is emailed to the Court, District Attorney, and Public Defender. Upon receipt of the emailed Notice of Selection, the District Attorney will release the discovery. It has been relayed that this process is usually complete within 24 hours or less.

Second, the parties discussed whether the AA position could enter the case assignments in LegalServer for the selected counsel and whether the AA would also track Mr. Clouser's time in LegalServer. Ms. Valdez received permission from the County Manager to take on these extra duties. The Department has a scheduled meeting this week to train her on LegalServer to start this process. It was also discussed that Ms. Valdez may also, if time allows, review open cases to see if any should be closed in the system and clean up the data. On October 19, 2023, the Department had a one-on-one training with Ms. Valdez.

Third, there was discussion on whether Justin Clouser is considered a supervisor over the public defenders. Mr. Clouser advised that he feels that it is included within his duties to ensure that each defense counsel is complying with their contracts and the regulations. Mr. Clouser will meet with the judges to let them know that it is appropriate to let him know any complaints regarding indigent defense services. Mr. Clouser did provide information that failure to comply with the contract requirements did lead to the termination of defense counsel for one of the contracts. DIDS has asked Mr. Clouser to let us know if he needs any assistance from us.

Fourth, the concern of counsel encouraging defendants to waive their rights at Preliminary Hearing was discussed. Mr. Clouser has agreed to schedule a meeting with Erik Levin (in the District Attorney's Office) to see if this requirement can be eliminated. Mr. Clouser's understanding that it was not an office policy, but rather certain district attorneys within the office required the waiver. DIDS shared a copy of the Regulations, *Davis Stipulated Consent Judgment*, and the County Plan where advising client's to waive such rights is not in compliance with the plan. Mr. Clouser shared this information with defense counsel and will share it in his meeting with the District Attorney to see if this policy can be stopped.

II. Oversight Criteria.

1. Client Communication
 - a. Mr. Clouser has shared the Douglas Plan with defense counsel as a reminder.
 - b. Mr. Clouser will meet with the Douglas County judges to let them know that any complaints can be shared with him, the County Manager, or DIDS.
2. First Appearances
 - a. No concerns expressed for first appearances.
3. Preparedness / Knowledge of Case
 - a. The judiciary expressed concern that not all attorneys are always prepared, in their observation.
 - b. Mr. Clouser will meet with the judges to ask them to inform him if attorneys appear unprepared.
4. Investigation / Experts

III. Next Steps.

1. Check in with Justin Clouser in the future on (1) death penalty plan and (2) follow up on the waiver of fifteen days requirement by the District Attorney.



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ONSITE VISIT REPORT

Mineral County

Visit date: October 18, 2023

I. Brief Narrative.

Marcie Ryba and Thomas Qualls traveled to Hawthorne, NV for an oversight visit, to present to the Board of Commissioners, and to meet with Justice of the Peace Robert Hoferer.

Marcie presented a fiscal and legislative update to the Board of Commissioners. She discussed the indigent defense reimbursements for the last two fiscal years, the amount that DIDS is allocated for the next biennium, that the maximum contribution formula is not in the statutes, and the safety net of contingent funding under AB 454 if counties exceed their projected budgets for indigent defense. She also discussed the ongoing *Davis* monitoring, and reiterated the importance of data collection to reimbursements. She gave the county a heads-up as to the workload study forthcoming, and finally discussed the county's ability to opt in to the NSPD's complex litigation unit for coverage of death penalty cases. Concern was expressed by the District Attorney that the county has had issues with appointed counsel (that are not in a contract with the county) failing to appear in person. As Mineral County's Indigent Defense Plan calls for a third indigent defense contract, it was discussed that the county may want to consider entering into this third contract to address the district attorney's concern.

While Marcie presented to the County Commissioners, Thomas met with Justice of the Peace Robert Hoferer and Court Administrator, Shaniya Williams. Because Judge Hoferer is relatively new to the bench, and the Department had not met with him before, Thomas provided the background of the Department, its basic functions, and its vision for the future. He also discussed many of the same matters that Marcie presented to the Commissioners, including AB 518, AB 454, and allocated funding for the future.

Thomas asked both Judge Hoferer and Ms. Williams to provide feedback on the indigent defense system in Mineral County, including their impressions of the process and the practitioners. They both remarked that it appeared to be working smoothly, that they were happy with both their primary public defender, Kale Brock and their conflict defender, Carl Hylin. They noted that Kale is prompt and prepared and that he always spends plenty

of time before and after hearings talking with his clients. They reported that since he had been on the bench, beginning January of 2023, there was only one appointed attorney on a single occasion who did not show up for court, due to a district court appearance in another county. And that attorney had attempted in good faith to secure a stipulated continuance, but the district attorney had refused to sign it.

Finally, of some concern was a report that the district court judge who oversees three counties was not available to travel as often as regularly scheduled. And that as a partial result, the jail was sometimes full and defendants had to be transferred to Lyon County. In a follow-up conversation, this matter was discussed with Kale Brock, to see if perhaps there were any due process violations as a result that deserved to be litigated by way of a Writ. Kale explained that he was not aware of any such violations.



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ONSITE VISIT REPORT

Pershing County

Visit date: October 5, 2023

I. Brief Narrative.

Marcie Ryba, Executive Director of the department traveled to Pershing County for an oversight visit to meet with (1) the Pershing County Board of County Commissioners Chair Joe Crim; (2) Erika Canchola, quarterly fiscal reporter for Pershing County; and (3) District Court Judge Jim Shirley and Kate Martin, Clerk of the Court/Court Administrator.

As an overview, the Pershing County indigent defense plan calls for a primary indigent defense provider of the Pershing County Public Defender, Steven Cochran; a first tier conflict public defender, Kyle Swanson; a second tier conflict public defender, unfilled; a third tier conflict public defender, unfilled; and a panel of attorneys from which the Counsel Administrator selects conflict counsel.

Chair Joe Crim

Historically the Department has been concerned that Pershing County may be missing financial expenses in their quarterly reporting. This is based upon the person that is responsible for reporting not having access to all of the information. For example, Kelly Weaver (Indigent Defense Coordinator) reviews billing and submits the bill to payment to Justice Court (for Justice Court bills) and District Court (for District Court bills). Further, the County Public Defender has his own budget for expenses. The Department encouraged Pershing to consider (1) developing a process for payment of indigent defense expenses that may be in one line in the budget and can be monitored by one person that is also responsible for reporting.

The Department also discussed the pending death penalty case and expected expenses for the case. The Department wants to ensure that the attorneys are provided with resources they feel are necessary.

Fiscal Reporting

DIDS has been advised that the fiscal reporting will be completed by Erika Canchola, the newly hired legal secretary in the Pershing County Public Defender's Office. Marcie

checked in with Erika and she has started the process to collect the information for reporting.

District Court

Marcie met with Judge Shirley and Kate Martin, as well. Judge Shirley was updated on recent legislative changes and the maximum contribution formula. Judge Shirley was also asked if he had any thoughts to share. There was concern expressed that some of the attorneys on the appointed list did not want to appear in person and did not sign up for the e-filing system that his judicial district requires.

The issue of billing was also discussed. Recently there was delay on a payment to appointed counsel due to a missing invoice. However, justice court pays attorney billing without such an invoice. It was discussed that a meeting should be held with the Counsel Administrator and the Courts and the County to determine the billing requirements so there is consistency in how these are processed.

The Department has sent emails requesting a meeting, but has been unable to set at this time.

II. Oversight Criteria.

1. Client Communication
 - a. There are several meeting spaces for Justice Court: the Board of County Commissioners Board Room can be used, as well as two conference rooms located in the law library of the court house.
2. First Appearances
 - a. Steve Cochran covers first appearance. He is grateful for the weekend stipend provided by AB518 because he can find coverage if he is unavailable.
3. Preparedness / Knowledge of Case
 - a. Kyle Swanson, in the one criminal matter scheduled for the day was prepared for the case.
 - b. Steven Cochran did not have court on the date of the visit, but appeared to be working on a case file prior to our discussion.
4. Investigation / Experts
 - a. Steve Cochran was not aware that he needed to track investigator time. He advised he uses one quite often, and he will start to enter the investigator time moving forward.

III. Next Steps.

1. Email Kelly Weaver and Erika Canchola to train on LegalServer and entry of time.

IV. Photos



Lake Township Justice Court, Pershing County, Nevada: Courtroom.



Law Library, Pershing County Courthouse with two conference rooms.

Pershing County



Conference Room 2.



Conference Room 1.



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ONSITE VISIT REPORT

White Pine County

Visit dates: October 3–4, 2023

On Tuesday, October 3, 2023, I, Peter Handy, Deputy Director of the Department, traveled to Ely, Nevada to conduct an oversight visit. I was able to observe a short proceeding in the Drug Court and Deputy Public Defender Christi Kindle. I met with Justice of the Peace Stephen Bishop, Seventh Judicial District Court Judge Gary Fairman, and Municipal Court Judge Mike Coster. This report will not discuss the facilities, as they have not substantially changed since the Department last conducted an oversight report.

All of the judges acknowledged that the transition from the prior contractors to the Nevada State Public Defender's Office (NSPD) was going relatively smoothly. All of the judges shared a concern for being able to recruit new attorneys to the area. Judge Fairman in particular was hoping that any additional hires to the NSPD would be moving to, and living in, the Ely area. We discussed the Department's pipeline program efforts, hurdles that exist to bringing attorneys (and other professionals) into rural areas in Nevada and across the country, and what other ideas the Department was hoping to implement in the near and distant future, including limited practice rule changes, marketing to other states and law schools, and monetary incentives. Judge Coster mentioned that weekend bail hearings were being attended to in a much more efficient manner by the NSPD than the prior contracted public defenders. I explained to the judges that, should they have any complaints or concerns about indigent counsel appearing before them that they could forward their complaints or concerns to the Department for review and possible action.

I was able to observe a brief proceeding of the White Pine County Drug Court with Chief Deputy Public Defender Christi Kindel representing the sole defendant, who had the only matter on calendar for the proceeding. Ms. Kindel acted competently and professionally, meeting the requisite standards of conduct for a criminal defense attorney as informed by ADKT 0411 and the ABA Defense Function Standards. Ms. Kindel had clearly discussed the proceedings in advance with her client, who appeared aware of the nature of the proceedings and acted accordingly.

Ms. Kindel communicated with her client during the proceedings to protect her client's interests and with the court to assist the court in understanding her client's position and to propose remedies that would keep her client in the drug court program.

I was able to have a conversation with Ms. Kindel outside of the proceedings about the goings-on with the White Pine Office and learned that the physical office was not yet up and running, as there was no active internet and no phones; she was primarily working in the courthouse. She did indicate that, due to this and there only being her and Chris Arabia to cover the cases, their efficiency was not being maximized. Ms. Kindel accompanied me to the meeting with Judge Bishop. During the proceedings, meeting with the judge, and during our conversations, Ms. Kindel was always civil, courteous, patient, and candid.

I was able to visit the NSPD office space in Ely, which consisted of several vacant offices, containing only desks and chairs and a storage closet, which lacked any kind of flooring over the visible bare concrete subfloor. Some carpets appeared to have been replaced, as there were different colors and patterns visible in different areas of the office. There were some places where it was apparent that texture had been applied over some paneling on the walls; it was unclear if paint had been applied over the texture. The NSPD staff reported that the suite manager had made several entries into the unit without providing notice or reason to the NSPD; should such conduct continue, it will be a security issue as the office will contain confidential and privileged client and personnel information. There were no visible ethernet outlets in any portion of the unit. Several power outlet faceplates were ajar with some wiring visible behind the wall. NSPD staff seemed to have reasonable plans for utilizing the various spaces in the office, including an alcove for a multifunction copier, orientation of the waiting/reception area, which doors would be locked or unlocked to the public, and how storage would be accomplished. The facility was unadorned and inconspicuous, within a building that consisted of office suites. Once fully furnished and developed, the location appears to be able to accommodate the needs of the Office.

Impressively, despite the slow progress of opening the new physical office, the attorneys with the NSPD have been able to attend to their clients and their cases by utilizing the limited facilities available to them. The judges and District Attorney lauded the performance of the attorneys, indicating that they found them to be more professional than the prior contracted attorneys. This is especially remarkable given that one attorney position, the investigator position, and one staff position for the Ely office remain vacant. Ms. Kindel and Mr. Arabia should be commended for their efforts to ensure that their clients are getting sufficient representation with such extreme limitations placed upon them.

On Wednesday, October 4, 2023, I traveled to Eureka, Nevada, to meet with Justice of the Peace Dorothy Rowley. Judge Rowley and her staff were pleased with the speed at which the Department was able to select counsel for indigent defendants. They were pleased with the attorneys who had been appearing in Eureka County and thought that the system was working well. There was a question about who they should direct any complaints to. I informed them that they could direct any complaints, or compliments, to our office, and we would use the information to support our oversight efforts. There were no proceedings taking place that day that I could observe.