

**State of Nevada**  
**Department of Indigent Defense Services**  
**Public Hearing and Board Meeting Minutes**

Thursday, February 2, 2023

1:00 PM

**Meeting Location:**

OFFICE	LOCATION	ROOM
Virtual Only (Zoom)		

**1. Call to Order/Roll Call**

**Chair Mendiola** called the meeting of the Board on Indigent Defense Services to order shortly after 1:00 pm, on Thursday, February 2, 2023.

Cynthia Atanzio advised the meeting was being recorded and conducted roll call. A **quorum was established.**

**Board Members Present:** Chair Dave Mendiola, Vice Chair Laura Fitzsimmons, Chris Giunchigliani, Drew Christensen, Kate Thomas, Lorina Dellinger, Commissioner Cassie Hall, Allison Joffee, Harriett Cummings, and Jarrod Hickman

**Members not present:** Joni Eastley, Jeff Wells, and Justice William Maupin.

**Others Present:** Executive Director Marcie Ryba, Deputy Director Thomas Qualls, Chris Arabia, Franny Foresman, DAG Sophia Long, Professor Eve Hanan, and Cynthia Atanzio.

**2. Public Comment**

**Director Ryba** advised written public comment had been received.

**Franny Foresman** appeared and spoke on behalf of the Litigation Team for the Plaintiffs in the *Davis* case. Their position regarding the Executive Order from the Governor is to urge the Board to advise the Governor that DIDS should be exempt from section 2 and section 4 of the Executive Order on the grounds of public safety, judicial deadlines, and compliance with Federal law. Ms. Forsman did not feel DIDS was considered when the Order was issued. Being a new agency, having only forty regulations, DIDS is not overly regulated and they urge the Board to take the position that no regulation should be cut at this time.

**3. Approval of Minutes. (For possible action)**

**Chair Mendiola** asked if there were any comments or edits regarding the minutes.

**Allison Joffee** stated the minutes well laid out and she did not see any problems.

**Chair Mendiola** agreed the minutes were easy to read and well done. He asked for a motion.

**Motion: Adopt the Minutes from December 8, 2022, as Proposed.**

**By: Drew Christensen**  
**Second: Allison Joffee**  
**Vote: Passed Unanimously**

**4. Introduction of the Nevada State Public Defender, Chris Arabia. (For discussion).**

**Chair Mendiola** wanted to welcome the new Nevada State Public Defender, Chris Arabia, on behalf of the Board. Unfortunately, Mr. Arabia is doing his job and in court, so I would like to welcome him on behalf of the Board, and we are thrilled and would like to congratulate him. He has a big challenge ahead of him, but we believe he will be up to it.

**5. Discussion of Executive Order 2023-003. (For discussion and possible action).**

**Chair Mendiola** stated we will move on to item 5 discussion of Executive Order 2023-003. He discussed that Director Ryba has provided a list of potential things that we could consider and he would like to have some input from the Board and entertain Allison Joffee's request to ask questions. He stated he agrees with Franny Foresman that there are some exemptions here and that this department was not the focus of this executive order since the fact that it grew out of the judgement. It is my opinion that we do not consider anything, and I am open to comment and perhaps we will start with Director Ryba with this discussion.

**Director Ryba** confirmed that we did receive Executive Order 2023-003, which we have shared with the Board. They would like every Board to undertake a comprehensive review of all regulations subject to their enforcement. Every Board shall prepare a report for the Governor's office detailing how the regulation can be streamlined to ensure the regulations provide for general welfare of the State without unnecessarily inhibiting economic growth. They have asked every Board to provide a list of not less than 10 regulations recommended for removal, ranking them in descending order of priority. They have requested that we hold a public hearing for that comprehensive review and that is the purpose of our hearing today.

**Chair Mendiola** expressed his appreciation for Director Ryba's input and it is important that we establish a public hearing because we are going to be talking about this. With that I would like Jarrod Hickman to give us some background since he contributed from day one building the department and setting up regulations.

**Jarrod Hickman** thanked Chair Mendiola and acknowledged his agreement with Franny Foresman and the letter submitted by the plaintiff's counsel. We undertook careful and close attention in writing the regulations from the authority granted by statute and the requirements of the consent decree. Some of the regulations that were submitted by the Department for consideration for repeal were necessary and very narrowly tailored to both the scope of authority and purpose. After considering the counsel's letter the question is, can we as a Board decide not to put any on the chopping block and this is perhaps a question for Deputy Attorney General (DAG) Sophia Long.

**Sophia Long** acknowledged that is appropriate considering first age of the department, what Franny Foresman said previously and second if you only have so many regulations. They are all necessary via statute and the consent decree. There is not much that can be on the chopping block

as you are a new agency. So, with 40 regulations if you try to take away 10 you do not really have 10 to offer. I would agree that the response could be that there are not any to offer.

**Chair Mendiola** thanked Jarrod and appreciated him passing it on to DAG Long. Those are great points and we do not have a lot of regulations unlike those that have been around for a long time. I commend the Governor on the plan to look at everything and it is important that we are always looking internally to find what we can do better and more efficiently. We are a young agency and born out of the consent decree.

**Allison Joffe** commented that she would like to echo those thoughts and I understand why the Governor is doing this. It makes a lot of sense, and the question would be to Franny Foresman does the executive order have the ability to override our requirements from the consent decree.

**Franny Foresman** replied that was not a question that she expected and did not have an answer.

**Allison Joffe** stated that she believed the court has jurisdiction.

**Franny Foresman** explained that the executive order would make it more difficult for the consent decree to be carried out. Based on Director Ryba's recommendation to the extent that they make it more difficult for the client attorneys in the rural counties to be able to comply with the executive order. I would guarantee that if that happens then they will be back in court.

**Allison Joffe** stated that she appreciated where we are and after speaking with rural attorneys and experts requesting funds for experts used to be a long-drawn-out process. We are respectful to our mission, and I think we respectfully decline.

**Franny Foresman** replied that we have had six reports from the court monitor and what comes out of those reports is that there is a need for more regulations in order to carry out the consent decree.

**Drew Christensen** stated he would like to bring up the point that Franny Foresman mentioned. The regulations and this Board were created to assist a roadmap of constitutional requirements that existed prior to this. Our Board and the roadmap that we have developed is in essence the *Davis* lawsuit to help us follow through and make sure those constitutional requirements are being met throughout the State. This is like a step backwards, because the constitutional requirements were always there but because of some lapses this Board was created. We can get an exemption just because of the newness of the Board and the constitutional requirements that the Board is tasked to evolve around the state. I would support not taking any of our regulations away and perhaps depending on how long a stay is on existing regulations there is a possibility we may want to amend some and add new ones as we find issues that develop around the state.

**Harriett Cummings** expressed that she had a question for clarification. As I understood it per Ms. Long, we can say we reviewed the regulations and have none to offer. This would be a separate procedure from seeking an exemption. Is that just two ways to state the same thing?

**Sophia Long** answered there are two different procedures, right? One is proposing new regulations so that you can get an exemption. If you push new regulations through, and then the other was looking at 10 of the ones you already have and trying to propose which ones could be deleted.

**Harriett Cummings** responded we could be doing both or one or the other.

**Sophia Long** replied, correct. I think you are doing both except I do not think you are proposing new regulations at this time.

**Chair Mendiola** stated that in reading the executive order it states that regulations that affect the application of powers, functions, and duties essential to the operation of the Executive Branch Agency Department and Border Commission at issue are subject to exemption. To me that means that is our exemption, and without them we are back at square one.

**Chair Mendiola** stated that I guess the question to DAG Long is can we simply prepare a letter stating our belief that we have an exemption under the items just discussed.

**Sophia Long** commented that is fine and, in your letter, you can explain that is why you are not proposing any to be cut.

**Director Ryba** stated that she wanted to point out for the record as Jarrod Hickman had said when these regulations were being created, we were very conservative. There are certain things in the statute that we are required to create. In NRS 180.320 we were told by the legislature that we had to adopt regulations. There are a number of requirements pursuant to the *Davis* judgment requiring the creation of the current regulations. Although we have authority under subsection 4 to adopt any regulations this Board deems necessary, we did not add any additional regulations that fall outside of what we are specifically informed to do because we wanted to take that conservative approach.

**Chair Mendiola** conveyed that needs to be put in a letter to support the position of an exemption. Perhaps Director Ryba could comment on the small business impact survey.

**Director Ryba** explained that in preparation for this meeting, which is being held as a workshop, we were advised by DAG Long to prepare a workshop notice. Before we could do the workshop, we had to do a small business survey. We reached out to the public defenders and provided a survey asking if repealing any of our regulations would affect their business. Three out of the four responses received noted they believed that repealing regulations would have a negative impact on indigent defense in the rural counties.

**Vice-Chair Fitzsimmons** stated that she agreed with everything that has been said and assumed there is going to be a motion and a vote, but it seems like Director Ryba is going to be submitting a request for exemption. It should include the points made and the letter from O'Melveny about the litigation and whatever input from our DAG's perspective justifying our exemption.

**Sophia Long** explained that she may be the only attorney in the room interpreting the executive order, but when we are talking about submitting a request to not repeal any other regulations that come from section 2, I do not think that needs an exemption. We can explain why we are not

repealing, or we are not proposing any repeal. As far as section 5 goes, it only pertains to the section proposing new regulations which this Board is not.

**Vice-Chair Fitzsimmons** commented that no matter how we do this, something will need to be provided to the Governor's office. We all probably agree there are a lot of Boards, and this is a great executive order and long overdue and we support it but for the reasons stated we should not have to comply, or we want an exemption.

**Chair Mendiola** stated that it seems that we are pretty much in agreement that we do not want to make any new regulations and we do not see the possibility of changing or doing away with any regulations. It seems we are leaning towards a motion for a letter from the Director signed by myself to the Governor's office with our reasons why we do not consider changes.

**Chris Giunchigliani** expressed that pretty much sums it up and would the Chair like a motion. It appears that the consensus is we are a new agency, and the regulations are imperative to carrying out the new duties, and we still have the lawsuit hanging over our heads. I propose a motion that the Director draft a letter including any points as to why we either need to qualify for an exemption or we will not repeal any of our regulations.

**Motion: For the Director to Draft a Letter to the Governor's Office from the Board Reiterating Points for an Exemption and/or not Repealing Any Regulations Pursuant to Executive Order 2023-03 for Signature of the Chair.**

**By: Chris Giunchigliani**

**Second: Jarrod Hickman**

**Vote: Passed Unanimously**

**Chair Mendiola** stated that the next question would be if we are in the workshop itself, I see no reason to go into a, b or c inquiring if that was the Directors understanding.

**Director Ryba** stated that she agreed, and DAG Long did as well.

#### **6. Workshop Pursuant to Executive Order 2023-003 (For discussion and possible action).**

**Allison Joffe** asked since we are unanimous, I would like to have the vote be noted that it was by unanimous vote and consensus with our Board.

**Chair Mendiola** agreed that was a great idea and so noted. Moving on to item seven.

#### **7. Budget and Legislative Update. (For discussion and possible action)**

**Director Ryba** said that we had some really great news at Interim Finance (IFC) this week. We had pending requests for funding for Douglas County, White Pine County, Elko and for the first time Humboldt County and the total amount was around \$101,000.00. We appeared before IFC, and they unanimously agreed to move those funds into our account so we could reimburse our rural counties. This will be the close of fiscal year 22 funding and with this we have reimbursed over 1.9 million dollars to our rural counties. Moving to fiscal year 23 quarter two, we have provided what we have for reporting to date and at the end of the second quarter no counties have

reached their maximum contribution. Lander County for the first time has reported a quarterly report and that is exciting news even though it is not necessarily required unless they are asking for reimbursement.

**Chris Giunchigliani** commented that was an excellent report in that it shows good faith on behalf of DIDS reimbursing the rurals and that it is much appreciated that IFC did that.

**Chair Mendiola** agreed that was a tremendous report and there is more information that Director Ryba will be sharing which is even more exciting.

**Director Ryba** stated that the governor's recommended budget for us has changed since his State of the State address. Yesterday at IFC it was announced that the governor's office is putting forward a one-shot in fiscal year 24 and another in fiscal year 25 of 3.5 million dollars to be set aside for the maximum contribution. Our understanding is if all the money is not spent in fiscal year 24 rather than going back to the general fund it will roll over into the fiscal year 25 account. We are currently in fiscal year 23 and we do not have these expenses within our budget at this time. We have 1.2 million dollars that was set aside in the IFC contingency account for the *Davis* counties. There is no money to reimburse our non-*Davis* counties and when the legislature is in session you cannot go to IFC. The governor recommended an allocation of 2.5 million dollars so that is the 2.5 plus 1.2 which will be provided to our department in fiscal year 24 so that we can start reimbursing those fiscal year 23 expenses. The governor's budget does recommend one new Management Analyst II who would assist with the maximum contribution formula, assist in collecting county funding and auditing what is being reported for accuracy. Our concern is with the change to Assembly Bill 480, DIDS workload has increased significantly. For calendar year 2022 DIDS assigned over 2100 cases, processed over 400 bills for criminal cases and over 400 bills for post-conviction cases. The State Public Defender's budget has been increased because White Pine County has opted in for representation. The concern is trying to staff the office with the salaries that the State Public Defender's Office can pay. The governor is recommending the budget include a hundred thousand dollars for our complex litigation unit. Six counties have opted in for representation in death penalty cases. The hundred thousand dollars will be used to contract with counsel if necessary. It is our understanding that currently there are no pending death penalty matters in those counties. There is concern that we did not receive any policy personnel who could assist with oversight in the rural counties.

**Chris Giunchigliani** questioned if that hundred thousand is that for each year or is that over the biennium?

**Director Ryba** responded that she believed that was for each year. I would like to point out that just to let you know Lyon County has a pending death penalty case and in the first two quarters of this year they have reported spending eighty-six thousand dollars.

**Allison Joffe** commented that two of the folks in the Public Defender's Office (PD) left and maybe more. Sally deSoto and Chuck Odgers both left and are now earning more money than they did with the PD's office. Chuck Odgers is at the District Attorney's Office in Douglas County as a deputy, earning the same if not more than he earned as senior deputy at the PD's office. Sally deSoto is at Washoe County PD's office and she is earning more. It is obvious that that our attorneys are underpaid even for other public service lawyers and that should really be our focus.

**Director Ryba** acknowledged that Chris Arabia had joined the meeting. I would like to point out that this Board has seen Mitch Herion's report, showing that we are far behind the Attorney General's Office salaries. We had requested to have pay parity with our Attorney General's Office and that is currently not built into our budget moving forward. Going into White Pine, a *Davis* County, it may be an issue if public defenders are not on par with what prosecutors are making. That is specifically required as part of our regulations and the stipulated consent judgment. Chris Arabia will say he got notice that another public defender is leaving to go to the Attorney General's Office. Reducing his office from nine to six very shortly.

**Chris Arabia** stated he would like to jump in for a moment and apologized for being late. The court in Virginia City ran a little bit long and I am glad to be here now. I caught some of what Director Ryba was saying and agree that we have an issue when our pay is considerably lower than the comparable people who are in public service. We are working on White Pine and that is certainly a top priority. It is an issue, and I am hoping that we get some kind of relief regarding the money that has been allocated. It does not seem to be enough and that is going to cause bigger problems down the road if we do not get them solved now. I did not hear everything that preceded this, and I will limit my remarks to that and thank you Director Ryba for stepping in.

**Chair Mendiola** thanked Chris Arabia and stated I was going to introduce you earlier and congratulate you on the new position on behalf of the Board. If you would like an opportunity to make any initial comments and then we will get back to what we are talking about.

**Chris Arabia** stated I am the new Nevada State Public Defender, and I am very happy to be here. My background shows I believe very deeply in indigent defense, and I have worked at it for a long time, and I am happy to be in a position where we might be able to make some long-term changes. This can be considered sort of a jumping off point for complying with *Davis* and giving people who do not always have the best opportunities a chance to be on something resembling an equal footing when their liberty and even their lives can be at stake. All the niceties about doing good and everything else are great but people have to make a living. If we are not competitive that is going to be a problem, especially in a situation such as Ely where we are building a new office and it is a challenge that I am looking forward to.

**Chair Mendiola** commented that we have had these discussions before, but I think it is time that we put together a strategic plan. We have an opportunity with the session starting to get to the people that we need to. I have had several discussions with legislators, and they were very receptive to me. I think that we need to use all our resources and our connections to get out there and make people aware of what our challenge is with respect to pay not only internally but externally.

**Director Ryba** wanted to acknowledge that Chris Giunchigliani's has her hand up. To bring these changes for pay parity what we are requesting would cost around \$160,000 each year or a total of \$330,000 for the biennium and bring us competitive with the Attorney General's Office. Then for our counterpart we had set forward for a policy staff of attorneys that could go out to the rurals and a travel budget with an estimated cost of \$379,000 in the first year and \$467,000 in the second year. That would be for two attorneys, an administrative assistant plus someone to help us assign the cases with our large caseload of over 2000 cases being assigned.

**Chair Mendiola** stated that with those numbers in mind and as we reach out to individuals let us not kid ourselves the numbers are significant. They go back to the basic issue of providing the kind of service that we want for indigents, and you cannot have the discussion unless there is a financial piece of it.

**Chris Giunchigliani** stated she thinks it is actually so long overdue. I mean state employees and state management have not been compensated appropriately. We train them, we spend the money to train them as a state and then they go to local government or they move out of state. This is the year there is an influx of money, gaming just got another new huge win with the numbers that came in and I think at a minimum we should fight to get on par with the Attorney General's Office. Perhaps we make a request or maybe do it by resolution saying we understand but here are some issues that we have to deal with, and we have already lost three people. The governor is aware that there is something like 1400 state employees short across the state. The Board should emphasize that we are in support of this and this is the year to fix it because they have the revenue. If we could get the salary equity and maybe one attorney in the first year and the second attorney ramped up in the second year with the staffing. There are just other ways that could be looked at financially with the IFC or Senate Finance. I think it would be helpful for a letter from the Chair and that it is not just the Director and her staff asking. It is Board in agreement with that part of it.

**Vice Chair Fitzsimmons** agreed that the information provided by Chris Giunchigliani was really good information. I think we need to take the lead on this. I understand if the Director makes a request, and it is not included in the governor's budget there some policy or etiquette or something that will work for the governor. I think we need to do this as a Board and if the Chair would be willing to send the letter and then the second part is as our chair mentioned we need to get out and speak to whoever we know in the legislature. I do not want to wait for IFC, we do the groundwork and then go to the hearing when the DIDS budget is discussed and ask for augmentation for those purposes.

**Chris Giunchigliani** stated they have not changed the process since I served. You cannot put staff in that kind of a position because technically under the executive branch lobbying against would get them in trouble. It probably would make good sense to have the Board take the position that we all sign-on the letter. Then we find out who is doing the budget hearings and educate the legislators and we should be prepared to go and testify.

**Chair Mendiola** commented I would agree with that I think it needs to be unified front and I think that Director Ryba can help us put together our talking points and I do not think we can take any action on a resolution today and requested DAG Long confirm is that not true.

**DAG Long** stated you cannot.

**Chair Mendiola** stated I am happy to take the lead and put together a letter and we would need the vote of the Board and if we are going to do it as a Board, we may have to come back to another meeting whether that be special or otherwise.

**Chris Giunchigliani** wanted to know if we do a special meeting in two weeks and do it by phone and then that way we would be almost in time and in sync with what the legislature is doing.



**Director Ryba** stated that just so you know I can give you the dates when we are scheduled to do presentations. February 8<sup>th</sup> we will be presenting in front of the Assembly Committee on the Judiciary. February 9<sup>th</sup> will be in front of the Senate Committee and February 24<sup>th</sup> is when we will be presenting our budget.

**Chair Mendiola** stated I would suggest if we could have a special meeting here in a couple weeks so we can get approval of a resolution or a letter or both and that way we have got something as a Board to take into the hearing.

**Jarrod Hickman** requested that the Director repeat the dates one more time.

**Director Ryba** responded that the dates are February 8, 2023, for the Assembly Committee on the Judiciary, February 9<sup>th</sup> for the Senate Committee on the Judiciary and February 24<sup>th</sup> for budget. Perhaps DAG Long could let us know if we need to have a special meeting or could the chair be authorized to communicate with the legislature on behalf of the Board as we have set forth in seven, subsection E, subsection four in our agenda.

**Sophia Long** stated that she thinks that is acceptable as long as you give them the parameters to discuss.

**Chair Mendiola** confirmed it would be okay to do something within that context.

**Vice-chair Fitzsimmons** questioned if we could do something today which would authorize the chair to communicate with the legislature and we would not have to wait. Director Ryba cannot and should not present this, but she can present the information to our chair to incorporate in a letter. DAG Long do you agree?

**Sophia Long** apologized that it felt like the Vice-Chair had cut out a bit.

**Vice-chair Fitzsimmons** questioned if Director Ryba could provide this information to the Chair, and he could add some talking points in a letter so something could be out there for the assembly hearings. It would be great if it could be done quickly because the meetings are coming up soon.

**Sophia Long** confirmed that if the discussion hits on those talking points, and if the Board is fully apprised of what the Chair is going to communicate to the legislature.

**Allison Joffe** stated that we agree that the chair may talk to legislators on behalf of the Board and indicate that the Board is unanimous on a \$160,000 staff increase and that they saved \$330,000 for the policy.

**Director Ryba** stated that the actual amount was \$379,000 the first year and approximately \$467,000 the second year. It is the policy units, pay parity with prosecutors and whether the Board is concerned about the complex litigation unit and is \$100,000 sufficient. Professor Eve Hanan is present, and she may have input on what should be included in the communication to the legislature.

**Professor Hanan** expressed that when she looks at the judgment the state has done so much to comply, and the department has done a great deal. The things that are left out of the compliance picture are almost all due to inadequate funding and the judgment requires oversight and support.

There are specific requirements around representation and image how a small unit like DIDS ensures this in 10 diverse rural counties. The only way to comply with this requirement is to have folks who can go out once a year and do a real check on each county and the ability to do spot checks and make sure that things are going smoothly. Part of that is the training budget which is quite low to provide opportunities for training. In some areas finding attorneys who meet all the qualifications has been a real challenge. The department has had to find mentors for newer attorneys so that they can take cases and be trained to take higher level of cases, and this requires budget funds as well. Another concern is the budgeting process and amount of inefficiency of having to go to the Interim Finance Committee (IFC) every time a county needs reimbursement. Lacking control of the budget to reimburse is an inefficiency which takes up the Director's and Department's time. It could be remedied if that budget was in the control of the department. If I remember the numbers correctly Ely has three or four attorneys working high caseloads reporting a lot of cases and work hours. The concern is how the State Public Defender will fare if they only have a chief and deputy attorney. There has not been a chance to speak to Mr. Arabia yet about the budget for Ely, which is a *Davis* County. Then the complex litigation unit depends on the number of death penalty cases but certainly does not seem like enough if there is even one death penalty case. If there is more than one death penalty case, it is going to be insufficient.

**Chair Mendiola** conveyed that he appreciated that, it is very valuable certainly and a constant reminder that what we are here for and what we are lacking at this point in time. It goes back to funding, and you cannot have the discussion without there being a cost related to it.

**Professor Hanan** expressed that she wanted to add that the pay parity with the prosecutorial counterpart is in the judgment so this question of pay parity for the department and any *Davis* County is part of the judgment too.

**Chair Mendiola** commented that it kind of aligns with the same thing we are talking about with respect to the executive order and the Director is in control of this.

**Director Ryba** confirmed that with your information I can assist in preparing that letter for the legislature.

**Chair Mendiola** asked if we need a motion for that?

**Sophia Long** replied yes please.

**Chair Mendiola** said thank you and I will entertain a motion to prepare the letter.

**Motion: To Have the Chair Prepare with the Assistance of Director Ryba a Letter for Submission to the Legislature Regarding the Budget and Pay Parity.**

**Motion: Chair draft a letter with**

**By: Chris Giunchigliani**

**Second: Allison Joffee**

**Vote: Passed Unanimously**

**Director Ryba** stated we want to update you on the upcoming legislation regarding our bill draft request. We have our policy bill Senate Bill 30 for the purpose of protecting the attorney-client privileged information of the data that is turned over to us for billing and requests for expert or

investigator fees. I would like to thank Drew Christensen for this idea because he had a similar experience where prosecutors tried to get this information to learn what their counter is doing. Our budget bills have not moved forward at this point and are not required to be filed with the legislature until February 17<sup>th</sup>. We have been asked to present our Senate Bill 39 in front of the senate committee so hopefully they will be able to vote on it next week and start moving that forward to try and get it passed. At our last meeting Allison Joffee inquired as to whether or not our department could have a lobbyist. After speaking to DAG Long we are not allowed to use public funds to employ a lobbyist.

**Chair Mendiola** thanked the Director and inquired if Professor Hanan had anything else she wanted to provide regarding the letter to the legislature or updates on the monitor report.

**Professor Hanan** replied that she is a little bit behind but would be working over the weekend and will have something available that will be addressed to the court as an update on the budget issue.

**Chair Mendiola** thanked Professor Hanan and let us move on to item eight oversight update and Deputy Director Qualls will give us the update on that.

## **8. Oversight Update. (For discussion and possible action)**

**Deputy Director Qualls** stated in your packet there is the Quarter two fiscal year 23 data report. DIDS is receiving reporting from every county now and they seem to be doing better and it is more thorough. We continue to work out the bugs with the reports prior to publishing. After reviewing the packet if anybody has any questions let me know. Regarding an oversight update I sent Professor Hanan a multi-county update on January 11<sup>th</sup> and that is in the packet. In touching on a few highlights, Chris Arabia is happy to be here, has great ideas and communicates with us all the time. We think the NSPD (Nevada State Public Defender's) office is in great hands. The issue that he is facing is that a third of his attorneys are soon to be open positions. The budget news is frustrating because we have addressed pay parity as potentially 20 to 26 percent across the board and now it looks like an effective four percent increase which is not enough to attract anyone for the positions in Carson City and Storey. Another concern is that White Pine County opted in, and we thought we may attract some Vegas attorneys, but the pay scale is much higher there. We were hopeful with the parity and the projected salary increase it would be just fine and now we are looking at a different situation in White Pine County. We were joking earlier in the office that we are already like MacGyver here in the office we are already making things out of rubber bands, toothpicks and paper clips and making it work. We have spent a ton of time building our budget taking all the ideas from the last two or three years and trying to push them forward like the Holistic Resource Center, the policy people, and the additional staff we need to comply with AB480. All of that was gutted so I strongly encourage you and whatever influence you may have to reach the legislature because we are kind of at the end of our MacGyvering. On a positive note, a county second tier conflict contract started on January 1<sup>st</sup> and that is going well, and I think that conflict took virtually all of our conflicts for the month of January. Lyon County is starting a second-tier conflict on March 1<sup>st</sup> and that will hopefully be fixed as far as department resources and assigning cases. We are working with Elko still to come up with a second-tier contract and hopefully that happens soon because that is another place where a lot of resources have been used up.

**Director Ryba** questioned if Director Qualls wanted to discuss the LegalServer and Elko issue with the Board to see if there is any guidance the Board would like to provide with the new information that we have learned.

**Deputy Director Qualls** explained that the Elko County's Public Defender Office (PD) despite knowing we were coming on board with LegalServer contracted with Tyler for their case management system. Tyler was supposed to go online way back shortly after I started here, and it is still not online. Elko has been entering their cases and keeping track in LegalServer and I think transferring those out to conflict counsel. We have been working with them for at least nine months or maybe longer. We put the Tyler people, the LegalServer people, the PD's office, and the IT people all together to try to create an API bridge between Tyler and LegalServer so that they do not have to do dual entries and we can have uniform data reporting. There are concerns that how do we know if a case entered into Tyler makes it into LegalServer and then gets transferred if there is a conflict. The concern has also been expressed by our IT department. Fundamentally, as to whether this is even possible there is also a third-party White Box that is helping with this, so it is pretty complicated. The question for the Board is do we continue down this road and for how much longer or do we just at some point say Elko you are not in compliance as required by regulation. I do not know what the remedies might be or what the Board could do as a corrective action?

**Director Ryba** commented that Elko has been complying with LegalServer, but they would like to use Tyler since they paid for it and just have it transferred over. What we have learned is there is going to be a fee of \$5000 to set it up plus \$50 a month. I think Elko PD would like to pass that on as an Indigent Defense Services expense and the question for the Board is this an expense that we should be reimbursing because it is a choice that they are making. LegalServer is provided for free, and this may create more work for our staff because we will have to confirm that we are receiving accurate data from their Tyler system to LegalServer so that we can transfer the case to new counsel. Is there any input that the Board is able to give us because this will be a substantial cost per month plus that initial fee which we do not have in our budget. If they were just giving year-end data that could easily be passed over and we could easily use that. They have at least 55 conflicts a month and all of those conflicts have to come over to our department so that we can find new counsel and assign it. The only way we learn about that is when they transfer it to us in LegalServer with all the contact information and the charges. We are concerned that if we continue to go down this road it is going to increase our workload and increase Indigent Defense Services expenses. These funds can be better used elsewhere so we would appreciate the Board's guidance.

**Deputy Director Qualls** explained that LegalServer is hesitant to contract directly with Elko PD for this one-time thing because they are not a current client, we are their client.

**Allison Joffe** questioned how much longer is the contract with Tyler?

**Deputy Director Qualls** replied that we suggested that Tyler's in material breach of the contract. They just keep moving the date for it coming online down the road like three months later, six months later it has been like that since I arrived here. I guess they are overwhelmed we have heard this from other people and other channels. The Supreme Court rejected Tyler as a potential Statewide case management system because of some of these issues. I do not know the current date, but it is either April or June and I have no confidence that it is going to go online at that time.

**Chair Mendiola** wanted to ask the thoughts on this from the Board. I have my opinion, but I would rather hear from everybody else first.

**Chris Giunchigliani** commented that it appears we are facing a couple of issues. The fact that it is not up and running and the other issue is whether we reimburse Elko. Since we do provide the server part free, I think that should be part of their obligation, but I would like to hear some discussion on it.

**Director Ryba** acknowledged that the state's EITS (Enterprise IT) has some specific concerns. They think if we allow this that we specify the responsibility of ensuring these cases are transferred falls on Elko. The concern is if there is any sort of mistake there is going to be finger-pointing that they did not assign the case and we could say we did not receive it. Another concern is we will need someone to verify that all cases are transferred into LegalServer and able to be assigned to a conflict attorney. DIDS would need to ensure that the data is properly imported, including attorney time reported in Tyler and adding any data required by LegalServer and then maintain it. The recommendation would be that someone maintain a log of the cases transferred. EITs is of the opinion that one case management system will result in the best and most accurate data.

**Allison Joffe** reiterated that we are a new agency and we have had issues where counties are sometimes not very happy with us. I do not feel comfortable making exceptions for everything right now. What is Lyon County going to say and what different thing do they want for the client's part. I think we are most concerned about getting them their services very quickly and I just don't see this benefiting us or the client.

**Deputy Director Qualls** stated that he wanted to jump in. In the beginning when rolling this out and trying to get everybody on board and team building our approach was you get more flies with honey. We have tried to be accommodating and we decided that we wanted Elko on board, and we decided that we would work with them to try to bridge LegalServer with Tyler. Now we are in this situation where we have the transfer problem and that really is the thing that brings out the red flags. We are in a wait and see and what LegalServer comes up with can work. I think we just keep moving forward but if it does not work then what do we do.

**Chair Mendiola** thanked Tom and asked if anyone else had a comment? Having worked in a software business and once you go down that road, sign a contract and you want to migrate a product, or it is a startup it is a big deal. They have expended a tremendous amount of time, resources, etc. so I can see why they are dedicated knee-deep to trying to make it work. However, having said that I have gone through these kinds of migrations before they may never end and sometimes, they do not work, and you have to cut ties. I do not think it is our responsibility and we have accommodated them for a long time trying to make it work. I do not think I have any interest in paying anything to help them make the connection work. I can guarantee that once they are online it will be six months or longer before it actually works right. They are trying to get the system to work and once they do that, they are asking about how we interface these two systems and bring data across a white box. I have done that too and that does not work very well so having said that I have no interest in supporting any kind of funding for this. I do not think we need to take any action on that and should be the response unless the Board has some other feeling about doing it in a different way, but I think it is a simple call.

**Deputy Director Qualls** responded that there is not anything else on oversight.

## **9. Training Update. (For discussion and possible action)**

**Deputy Director Qualls** conveyed that Deputy Director Handy is not here and I am going to cover the training update. Since our last Board meeting, we held the final homicide conference session in December 2022. It was put on in coordination with Washoe County Public Defender, Washoe County Alternate Public Defender, Clark County Public Defender, Clark County Special Public Defender, and went very well, very well attended.

**Director Ryba** responded that she believed there were over 100.

**Deputy Director Qualls** stated our next monthly CLE is planned for February 9<sup>th</sup> at noon.

**Director Ryba** commented it is February 10<sup>th</sup> and it is about what to do when the press calls. We have received a lot of questions on how as a public defender interacts with the press if at all. It will cover the right of the press to have access to the courts and what public defenders can do if anything when interacting with them.

**Deputy Director Qualls** advised the 2023 third annual DIDS conference is scheduled for May 4<sup>th</sup> and 5<sup>th</sup> at the Silver Legacy Resort in Reno. DIDS has sent out save the dates along with a CLE book for all of our contract holders and offices of organized attorneys that is related to storytelling which is the theme of the conference. We sent out the motion updates as well.

**Director Ryba** advised the Board that DIDS sent a motion update which is a DVD of sample motions to all the rural attorneys. To the larger urban offices, we only sent the book on storytelling which is a NLADA resource because that is the theme of our program and that should all have gone out to every office in Nevada and hopefully, we will see individuals signing up soon.

**Deputy Director Qualls** announced that DIDS secured grant funding again to reimburse rural attorneys for their travel experience expenses and their lodging for the conference. Deputy Director Handy will be sending the application out soon and there will be an estimated 12 units of CLE over the two days. The headline is going to be David Mann on storytelling for criminal defense he is going to take up Thursday and Friday mornings. We will have a Supreme Court justice panel again hosted by John Lambrose and there will be plenty of networking opportunities for attendees. We are doing something that we borrowed from the State Bar Conference last year. We are going to do some dine-arounds in the Silver Legacy as there are lots of great restaurants there. The plan is to reserve tables or private dining rooms and have different people figuratively host not financially host each table. If anyone on the Board is interested in hosting a table let us know.

**Director Ryba** stated we reached out to NACJ, and they are exploring sponsorship opportunities. Nothing is set in stone but they will possibly sponsor maybe breakfast in a hospitality suite so attorneys can come up and meet each other. There is Top Golf in the Silver Legacy, and they are exploring sponsoring and reserving two lanes so individuals can go there after our dine arounds and continue their networking. We are grateful to them for that, but it has not been finalized yet, it is just out in discussions.

**Deputy Director Qualls** stated the Director, and I toured a bunch of the rooms in Silver Legacy, Top Golf, and the restaurants. It has been a while since I was there, and everything is top-notch. They have remodeled a lot of it so for any of you who might have been a little disappointed in the Plaza this will be a step up from that.

**Chair Mendiola** thanked Deputy Director Qualls. That sounds like a great outing on May 4<sup>th</sup> and 5<sup>th</sup>. So, if we do not have any questions on that with Deputy Director Qualls, we will move on to item 10 scheduling of future meetings and April 6<sup>th</sup>, Director Ryba and I want to talk a little about that. We are not sure we really need to have a meeting then, but I will turn it over to Director Ryba.

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

**Director Ryba** commented that I think we had tentatively scheduled April 6<sup>th</sup> for a public hearing not knowing whether or not that would be required. With the direction from the Board that we will not be requesting to repeal we do not need to hold a public hearing on April 6<sup>th</sup>. We would ask that we not schedule anything for that date and that keep our remaining dates of June 15<sup>th</sup>, August 3<sup>rd</sup> and November 2<sup>nd</sup>.

**Chair Mendiola** mentioned that we were talking about June 15<sup>th</sup> being a live meeting and the I offered Winnemucca as a potential site and obviously would love to have you and host you guys here. That still being the case are people still interested in taking the travel up north. If you want to respond we were talking about doing it on a Thursday, which is our regular meeting date. My question was maybe people would like to do it on a Friday. That way they can come in on Thursday, have the meeting on Friday and you can either stick around and spend some time and get out and about or get you off for the weekend. You would not have to go back to work on a Friday although Director Ryba reminded me like I would just take that day off anyway. Are there any comments on June 15<sup>th</sup> being the live meeting.

**Chris Giunchigliani** agreed that it makes good sense to make a three-day weekend out of it. If we decide to drive, then we have the 15<sup>th</sup> to do it and do the work on 16<sup>th</sup>. Can you repeat the other dates as I have August, what the October one?

**Director Ryba** replied that it is November 2<sup>nd</sup>.

**Chair Mendiola** questioned if anyone else had a comment on June 15<sup>th</sup> specifically.

**Drew Christensen** stated he would support the 15<sup>th</sup> as well. I enjoyed the time we spent in Tonopah, so I think it is nice to circle the state in the variety of locations. A Friday does make sense, Thursday travel, Friday the meeting and then have the weekend to either hang out or go back.

**Chair Mendiola** thanked Drew stating that he appreciated it. Any other comments. Jarrod you are muted so do you have something?

**Jarrod Hickman** stated that personally in terms of work schedule, the 16<sup>th</sup> would probably be more likely in June as we will be on the road the majority of that month.

**Chair Mendiola** confirmed that I am hearing a theme here. Is anybody absolutely would not come if it was on the 16<sup>th</sup>?

**Director Ryba** questioned if the Chair would you like to keep the scheduled time of 1 pm or would you like to move it up in the morning?

**Chair Mendiola** replied that we should move it up especially if people could travel in on Thursday. We can do what we need to do and get people out early in the afternoon so that they can enjoy the surroundings or get back home. We will shoot for changing that to the June 16<sup>th</sup> date and then the only thing that I would say is Director Ryba we would want to get out some save the dates and get some commitments so I can block some rooms, get a space for us.

**Director Ryba** questioned if the Chair would like a 9 o'clock or 10 o'clock meeting time. What are you thinking?

**Chair Mendiola** answered that I think nine is good. Are there any public comments?

**11. Public Comment.**

**Cynthia Atanazio** replied there is nothing on my end.

**11. Adjournment.**

**Chair Mendiola** with no public comment I will adjourn this meeting, it is 2:40 and I thank everyone very much it was a good meeting. Have a great rest of the week and weekend.