

State of Nevada
Department of Indigent Defense Services
Board Meeting Minutes

Thursday, October 17, 2024
1:00 PM

Meeting Location:

OFFICE	LOCATION	ROOM
	Virtual Only (Zoom)	

1. Call to Order/Roll Call

Chair Fitzsimmons called the meeting of the Board on Indigent Defense Services to order at shortly after 1:00 pm, on Thursday, October 17, 2024.

Cynthia Atanazio conducted roll call. A **quorum was established**.

Board Members Present: Chair Laura Fitzsimmons, Chris Giunchigliani, Angela Cook, Susan Bush, Allison Joffe, Joni Eastley, Harriett Cummings, Jeff Wells, Lorina Dellinger, Jarrod Hickman, and Justice William Maupin.

Members not present: Vice-Chair Kate Thomas and Joe Crim.

Others Present: Acting Executive Director Peter Handy, Deputy Director Brenda Roberts, Professor Eve Hanan, Franny Forsman, Evelyn (Evie) Grosenick, Kate Hickman, Randy Fiedler, David Schiek, Deputy Attorney General Todd Weiss, Rew Goodenow, John Lambrose, and Cynthia (Cindy) Atanazio.

2. Public Comment

Chair Fitzsimmons opened the line for public comment.

Cindy Atanazio advised that a written public comment had been received via email and posted to the website as an attachment to this meeting.

Chair Fitzsimmons stated if it is a one-of-a-kind issue Acting Executive Director Peter Handy could address or if not, it can be brought to the next meeting. Does anyone want to make a public comment on any items on the agenda.

Franny Foresman explained I am not speaking on behalf of the plaintiffs in the *Davis* case but rather as a lawyer who practiced for 47 years in criminal defense, as former president of the State Bar of Nevada and former public defender for the District of Nevada. For almost 20 years three commissions have been trying to level the playing for indigent defendants in Nevada, which has resulted in where we are today. The board should be very proud of the progress that has been made over the three plus years, but the board also knows that progress is primarily due to Marcie Ryba and the things she has done. Throughout our struggles three people on this commission who were there for almost the entire 20-year journey: Joni Eastley, Jeff Wells, and Justice Maupin who got

the thing started with the first indigent defense commission. We have made great progress, surprising progress in the last three and a half years until a month ago, and I fear the actions of the governor will jeopardize the progress we have made. During the process of the three commissions the counties said we cannot trust the state. We cannot go with the reforms everybody agrees we need because we think the state will pull the rug out from under us, and I believe that is exactly what has happened. I hope this board has the strength to protect the progress that you have made from the governor and others who do not care whether poor people are treated fairly in our courtrooms in Nevada. Thank you for your time.

Evelyn (Evie) Grosenick stated that I am the Washoe County Public Defender and echo everything that Franny Foresman said. I would like to provide comment on item 4. I was disheartened and extremely concerned by Governor Lombardo's recent removal of Marcie Ryba from the position of executive director of DIDS. I had the opportunity to work closely with Ms. Ryba during her tenure in that position and I was always impressed by her enthusiastic and sincere dedication to improving indigent defense. Her untimely removal is concerning and unfortunate at such a critical time given the state's obligations and deadlines under the *Davis* consent decree. The reality is that I think the only way that indigent defense crisis will be solved in rural communities is sufficient funding from the state, and that is up to the legislature and governor. Despite that serious need for funding Ms. Ryba was able to implement several measures to improve indigent defense during her time as executive director. She successfully lobbied for change to the State Bar rules that would allow law school graduates to practice under supervision in rural communities while they take the Nevada bar and await their decisions on admission. She secured funding for law school graduates to take the bar in return for a promise to practice in rural indigent defense and obtain paid internships in rural jurisdictions. These actions have already increased the pipeline of new attorneys to the rural jurisdictions, which is a significant step in the right direction. That the governor could remove Ms. Ryba in that way that it occurred reveals what I think is a serious flaw in the system. I hope that a solution can be reached that will prevent this scenario from occurring in the future, and I would wholeheartedly support amendments to current law to place the decision on the executive director's position solely in the hands of BIDs. Thank you.

Chris Giunchigliani stated I also want to speak on public comment. I do not go back as far as Franny, but I still remember dealing legislatively and creating the indigent commission and trying to make sure that we had proper representation. I must admit that I was shocked when I saw that Marcie had been removed. I think it was done politically and I think it was done without cause. I have been a legislator for 16 years, a commissioner for 12 years and teacher for 30 years. What I appreciate about Marcie is she created this group with her team in a way that was complementary. It was not invasive to anybody; it was collegial, and to see management be able to build this department on their own, make the selections of a good team members and then move us forward to have that just snatched out from underneath us makes me very concerned about how the independence of judgment can be there for the future. I think there needs to be a different authority that is answerable to the indigent defense commission or board rather than the governor's office. I do not think that Marcie deserved that type of behavior, it was petty, and in the long run, she brought the rurals together. I think we need to be more proactive here to look at what the executive director's role and who they are answerable to in the future. I think legislatively we may have to look at something, but if I was an employer, I would give Marcie excellent ranks. She built this

whole system with just such ease, such care that I have not witnessed that from a lot of managers in the past, so I just wanted to say something just as an individual on it. Thank you.

Randy Fiedler stated I am an Assistant Federal Defender here in Nevada. My office provides indigent defense services to individuals charged in federal crimes and to individuals who have been convicted in state crimes in the courts of Nevada who have a right to file a petition seeking relief in federal court alleging any constitutional violations related to their conviction. Nearly all the post-conviction petitions our office litigates involve claims of ineffective assistance of counsel and we have significant experience litigating those claims for convictions from Nevada's rural counties. Our experience has shown us historically Nevada has faced challenges in ensuring the right to counsel, and the corresponding right to effective counsel have been respected again particularly in our rural counties. The work this board and the department are doing under Ms. Ryba's leadership since the department's founding is critical to ensuring and enforcing the right to defense counsel. It is of utmost importance that our rural counties provide legal representation, investigation, and expert assistance to litigate cases and provide constitutionally mandated defense services. Failing to do so requires these cases to continue into state and federal post-conviction proceedings. It is better both for state and for the defense for these cases to be litigated properly in the first instance at the trial level instead of going in on into post-conviction. Thank you.

Kate Hickman stated I am currently the Washoe County Alternate Public Defender and the Vice President of the North for Nevada Attorneys for Criminal Justice. I have been a public defender since 2009 and worked in three separate offices. I have a couple of areas I want to comment on. The first is agenda item 4, I echo everyone else's comments about Ms. Ryba. She did incredible work for indigent defense in the rural jurisdictions and for indigent defense as a whole in Nevada. I specifically want to commend and address her advocacy for adequate funding for the State Public Defender and contract attorneys, the trainings that she worked on and for her push for independence of the public defender system. DIDS is an incredibly important body and there needs to be significant resources allocated to ensure that it continues to rise to the challenges of ensuring that defendants are zealously represented in the entire state. The second thing that I would like to address is agenda item 6 and 7. The recent posting for the recruitment of the executive director gives me serious pause and is what prompted me to attend today and give my public comment. I spent yesterday reading the materials for the meeting and I have serious concerns about the independence of DIDS and the public defender system from the executive branch. The very nature of public defense is we are attorneys that are paid by the government, but we are not government attorneys. DIDS is going to have policies, funding requests and positions on issues that are not in line with the executive branch and often could be in direct conflict with the executive branch. The executive director, her staff, the state public defender must be able to take those stances in the interest of indigent defense without fear of retribution or termination because they are not in line with policy positions of the executive branch. In line with those concerns in reading emails between Ms. Ryba and the AG's office and with the governor's office. I am concerned the same agency that represents the executive branch will always represent DIDS. In some of those emails there appears to be a very direct conflict of interest and there needs to be a mechanism that DIDS can seek independent counsel when its interests are opposed by other agencies or offices such as the governor's office that is represented by the AG's office. As to item 6 compliance with *Davis* is always going to be severely limited as long as there is the deliberate choice made to continually underfund the State Public Defender's Office. In the emails there is a suggestion that the executive

director, Ms. Ryba, and her staff instead of running DIDS accept cases. There was a suggestion Ms. Ryba seek the AG's office to have deputy attorney generals accept cases but what the emails reflect is underfunding and low pay contributed to a high turnover rate and ultimately the inability for the office to preside and provide zealous representation to some of the state's most vulnerable populations which is the mandate of *Davis* and the Constitution. Those systemic problems can be solved with adequate funding, and it has to be addressed immediately to ensure that compliance. Finally, I want to address item 5 which is the lack of qualifications and the performance issues of the Nevada State Public Defender. It is heartbreaking to hear that the head of the state public defender's office was not offering mitigation for her clients to the point that the district attorney is offering such mitigation. This is ultimately tied to my earlier comments which is lack of funding that leads to a dearth of qualified applicants and a lack of independence that clearly limited DIDS ability to provide oversight of an unqualified employee. In the future the lack of independence and the fact that the termination of the executive director came from the lack of oversight is an issue the board should look to address. Further the lack of funding and resources put the state public defender in a very difficult position. She was forced to handle cases that she was not qualified for and unable to handle the administrative duties that the office requires. She was put in a position to fail, and DIDS was in a position to fail because there is not adequate funding and there are not adequate resources, and the state public defender was put in a position to wear too many hats. I think all of those are going to continue to give issues with compliance with *Davis*. Thank you.

Justice Maupin commented that you mentioned that someone came up with the idea that deputy attorney general should be handing criminal cases out in the rural. Who was it that came up with that idea?

Chair Fitzsimmons replied it is in the material as a suggestion from the governor's finance office. I believe Craig Newby wrote a letter saying that dog would not hunt and they could not do that. That is a clear conflict. Also, in the materials there is a suggest from Jim Wells who is the governor's chief of staff, who suggested Marcie and her staff go out and start representing clients and that all agency heads must pitch in now and then.

Justice Maupin interjected that I am going to interrupt you right there. That is absolutely none of his business and the only reason that this office is in the executive branch is because of a stupid concession. It is not necessary anymore that this should be in the executive branch. We wrote into statute a provision which makes our executive director a statutory contract of continued employment which was violated by the governor's office by treating this person as if she was an appointment by patronage.

Chair Fitzsimmons thanked Justice Maupin. Moving on to agenda item 3 is the approval of the minutes from August 22, 2024. Has everybody had a chance to read the minutes? Does anyone want to make a motion to amend or approve the minutes?

3. Approval of the Minutes: (For possible action)

Motion: Approve the Meeting Minutes of the August 22, 2024, Minutes

By: Jeff Wells

Second: Allison Joffee

Vote: Passed Unanimously

Chair Fitzsimmons stated the next agenda item is recognition of the service of our executive director, Marcie Ryba.

4. Recognition of the Service of Executive Director Marcie Ryba: (For discussion and possible action)

Chair Fitzsimmons explained that a statement has been provided to every member of the board and is in the agenda material. We can discuss this and then if appropriate the board could move to approve this statement. Is that correct?

Deputy AG Todd Weiss replied yes to adopt the statement with a majority vote yes.

Chair Fitzsimmons asked if every board member had the opportunity to read the statement. Does anyone have anything to add? I know one comment that I heard was the LASSO program which was something remarkable that Marcie did. Professor Stephen Bright an inspirational Titan of criminal defense recently spoke at Boyd School of Law to staff, defenders and inspire potential defenders. Marcie just called him out of nowhere and arranged for him to come to Nevada and speak and that is not in this statement. Does anyone have any edits, or anything taken out of this statement.

Joni Eastley stated that her position has not changed since we had a discussion with the DAG. That is, I have no problem with the essence of the letter with the exception of the first and last paragraphs. The governor as much as I do not like the action that was taken and I am familiar with chapter 180 and the fact that she serves at the pleasure of the governor. He has no obligation to consult with BIDS before he took the action that he did.

Chair Fitzsimmons asked if anyone want to respond to that or we could just move for a vote.

Chris Giunchigliani stated I would make a motion to approve sending out the letter and note Joni's concerns.

Chair Fitzsimmons explained that we are not sending it out, but adopting to put on the website and Joni's concerns will be in the minutes.

Chris Giunchigliani stated I will amend my motion to accept the letter and post it.

Motion: To Accept the Recognition of Service of Marcie Ryba and Post to the Website

By: Chris Giunchigliani

Second: Jarrod Hickman

Vote: Passed with Exception of Nay Vote by Joni Eastley

Chair Fitzsimmons advised the Recognition of Service will be posted to the website and this brings me to some of the things addressed in public comment. There are documents posted on the website under Ryba termination 001 which I will cover briefly. I am getting into this because we are still looking for a new executive director. The position has been posted and not a single applicant. I learned that Marcie had been called in and terminated without any real back and forth conversation by Ryan Cherry. I contacted him repeatedly and when I met with him, he told me, and it is in the materials there were three reasons for Marcie's termination. One was a purported error in her office in double billing on post-conviction bills. On June 12th the Nevada Current ran a story because lawyers performing representation for post-conviction

people were not getting paid. Marcie had been directed to hold bills because there was no funding. When that was reported there was a request by someone in the governor's finance office for a list of bills and the circumstances are set forth in a memo under Ryba termination pages 009 to 010. There was never any double billing, two ledgers were sent over with running tallies of the post-conviction bills that had been accruing. Number two Ryan Cherry told me there had been a dispute between Marcie and Ms. Cafferata and number three he said he had difficulty trying to reach her all week. Marcie met with Ryan Cherry, and he handed her a prepared termination agreement and told her the three reasons reiterating to me one of which was he could not reach her on the office cell phone. She returned to the office to collect her belongings and law enforcement was there to see her out. The office cell phone was left on the charger and undisturbed until I got over there to take screenshots which showed that Mr. Cherry had not in fact repeatedly tried to reach her. He called her that Friday morning on the office phone and she immediately went to his office, and he fired her. The other issue that happened that day that is a profound concern which I hope I addressed in item 6. Jim Wells went to the office which is in an uproar and appointed Peter Handy as acting director. He then gave him several directives which are reflected in an email Peter sent back to the governor's office. When I met with him, I do not think the governor knew about this. I think this was a tribal issue and ill-conceived and really quick decision arrived at by the chief of staff and Jim Wells. I told him we need to know what you think your authority is over BIDS and DIDS and he said he would send something but he never has.

Jarrold Hickman stated that the public comment took all my feelings and concerns out of my mouth. I do not know that I could say it any better than has already been said. The statute provides a due process that was not followed here as it pertains to the executive director. There is a finding that must be made, and I do not see from any of the material that has been sufficiently stated or made that gives me concern regarding the independence of the department or this board. I was in a unique position for a board member I was with Marcie when the department started and worked with her for about 2 ½ years getting the department up and running. I will tell you in those initial battles the independence piece of the defense function was our primary battle and extended from the public defenders and the judiciary to us and at the time the governor's finance office. I think that relationship has gotten a lot better but now it appears the governor's office itself is critical to protect the office from political influence. As stated in public comment the public defense function is not often popular. It should not be subject to popular influence, and I think with Marcie's termination without that statutorily prescribed cause or findings threatens the ability to carry out their central mission of ensuring that constitutionally adequate defense is provided. I know it is not on for the agenda today and I would hope we have an agenda item that allows us to discuss legal recourse if appropriate whether that is a writ or a deck action. I also share concerns about apparent conflicts of interest and a future agenda item may be appropriate to explore that via formal letter or question to the AG's office.

Chair Fitzsimmons stated that for those present the conflicts of interest and this is not personal to Todd who has really stepped up and been responsive to us but the Attorney General's Office. Their lawyers are Patty Cafferata's lawyer, they are the governor's lawyer, they prosecute the prison cases in White Pine County where Ms. Cafferata is practicing, and they are one of the parties in *Davis*. We need to figure out how we can protect our executive directors as we thought we had protected statutorily our executive directors.

Chris Giunchigliani commented she had two points. I thought when we did the statute there was more authority for the board and executive director. I think we need to file suit or something to verify that language is what we all thought it was and if not come up with language accordingly. My second would be to Peter and I do not want to put you in an awkward position but did the governor's people give you certain directives the board is not aware of or outside of your area.

Acting Executive Director Handy replied most of the things are identified in the email that Laura referenced earlier and most of them are things the department does and are continuing to do so. Some of it was shuffling duties between the NSPD and the department.

Chair Fitzsimmons stated she wanted to follow up on that. The dispute between Ms. Cafferata and Ms. Ryba was that Ms. Cafferata did not feel that her office should pay the post-conviction bills even though the statute says it comes out of her budget. She did not want to do it.

Chris Giunchigliani stated perhaps it is because she had no criminal background in the first place.

Chair Fitzsimmons replied just so you know that she wrote to Marcie and wrote a letter to the governor saying she was leaving. This all happened right after that great meeting we had. I really think she went to Ryan Cherry and that is when you will see the text there is a problem to stand down and Marcie got fired. Prior to the firing, Patty went to the governor's office and the other was Marcie requested \$2.3 million dollars to comply with *Davis*. Peter, my understanding is Jim Wells communicated the idea for funding compliance funding for NSPD contracts under *Davis* was not moving forward.

Acting Executive Director Handy confirmed that in the same meeting the same day Marcie was removed, he was told that the amount for the additional contract in White Pine and JusticeText would move forward but the additional amount for contracts would not be.

Chris Giunchigliani stated this sounds like there is an education problem with the finance department not understanding what the role of DIDS is and trying to micromanage it as they would any other state agency. We are different than the traditional state agencies and that is another thing that needs to be worked on.

Justice Maupin stated the problem is the executive branch prosecutes criminal cases and so the executive branch is controlling the purse strings and the ability to provide due process to indigent defendants. It is simple as that and that is forbidden territory.

DAG Todd Weiss said he did not want to stifle any discussion, but we need to move into an actual agenda item to continue discussions. I know these are kind of a mix of the next two agenda items but for clarity sake I want to make sure we are actually in an agenda item because I believe the NSPD has her own counsel who is attending on her behalf. I want to make sure he has the opportunity to respond and participate as needed.

Chair Fitzsimmons asked are you saying that we should be discussing specifically agenda item five?

DAG Todd Weiss replied whatever the next agenda item is. I want to make sure we are staying on schedule.

5. Discussion of Oversight Concerns, Including Specific Concerns About the Qualifications and Performance of the Nevada State Public Defender: (For discussion and possible action).

Chair Fitzsimmons stated I did not know there was a schedule. Moving to item five concerns the performance of the state public defender. We had to continue this meeting to comply with open meeting law requirement that the public defender or employee whose qualifications and performance are going to be discussed needs to have actual notice and that was provided to Ms. Cafferata. I believe she indicated she would not be present or her attorney and now you are informing us she does have an attorney present.

DAG Todd Weiss replied I do not know for certain and I would ask if Ms. Cafferata has representation on the call that they announce their presence.

Rew Goodenow thanked Ms. Fitzsimmons for the opportunity to talk briefly with the commission. As you know Ms. Cafferata is attending a program with the Hoover Institute and unable to be present. She does intend to respond and has asked me to represent her interest personally not the interest of her office today.

Chair Fitzsimmons welcomed Mr. Goodenow, and will you be representing her personal interest but not the office?

Rew Goodenow replied to put this succinctly Ms. Cafferata had some concerns with respect to her reputation because some of the issues raised could reflect on her so she asked me to be present so I could help her to address those. I do not think there is anything that needs to be addressed at this point; it sounds like the discussions of the commission are primarily centered around the issues and long-standing issues concerning funding indigent defense services.

Chair Fitzsimmons wanted to make sure that Mr. Goodenow understood agenda item 5 and that documents that address the issues of Ms. Cafferata as a public defender had been sent to her and had he had the opportunity to review those documents.

Rew Goodenow answered I only received them, and I do not believe Ms. Cafferata had a chance to review them until very recently. I do not know that she has received the agenda items and has looked at them and intends to respond and simply was unable to do so today.

Chair Fitzsimmons asked when he felt Ms. Cafferata would be able to provide her written response and wanted to confirm that would be part of the meeting record.

DAG Todd Weiss responded that was correct if she submits a written response after the meeting we can include that as part of the board meeting materials.

Chair Fitzsimmons asked if when Ms. Cafferata could reply. She explained I am alarmed because she has a felony jury trial in White Pine County next week. Would 14 days be okay for a response?

Rew Goodenow replied that she actually has a couple of trials scheduled and 14 days does seem like a bit abbreviated for that response.

Chair Fitzsimmons and Mr. Goodenow decided that 21 days would be fair and sufficient. I want to make something clear we all recognize that your client has decades of service to the state of Nevada in numerous positions. She knows more about the history of Nevada and its courthouses than anybody and this is not personal. The only thing this board is going to discuss is whether or not Ms. Cafferata has the experience, training or ability to provide constitutionally adequate defense to indigent defendants in Nevada.

Chris Giunchigliani wanted to clarify this discussion regarding Ms. Cafferata is about the office she is serving in and the issues that rose on that and nothing that is a personal discussion of her as an individual.

Chair Fitzsimmons replied nothing personal about her to the extent that personally as just any indigent defense lawyer. Her qualifications just in that one narrow category are something we should examine and see if we can remedy that. She is still there and is going to be representing the people we are supposed to be protecting.

Chris Giunchigliani stated okay, and she did resign so she is not in that role any longer.

Chair Fitzsimmons advised Chris that while you were in Paris, she wrote the governor's office a letter saying she was resigning. She then met with the governor's office and Marcie was fired and Patty has never resigned.

Chris Giunchigliani replied that clears up in my mind and why we are talking. Then we do have to look at qualifications as well as capabilities that there based on the letters and back and forth. That is a very legit discussion for us to have as a board.

Chair Fitzsimmons asked if everyone read all the oversight NSPD bate stamped documents which begin with Patty's resume and ends with her explaining why she cannot fill out the form. She was too busy to fill out the form to apply to be qualified which every lawyer is required to do. I wanted to summarize it in a timeline and how because of inadequate funding of the State Public Defender's Office which has been an ongoing concern to our *Davis* monitor to DIDS and this board. The salary range is so low it has been impossible or very difficult to hire anyone for the NSPD's office and is the context that Patty Cafferata applied to work. She went to work for Chris Arabia, a seasoned trial lawyer and NSPD. There were no other applicants, she gets hired and goes to Storey County. Letters have been provided, one from the Storey County DA pointing out constant and pervasive problems with Ms. Cafferata's performance concluding the current situation is untenable and potentially compromising the constitutional rights of the accused. DIDS made an on-site visit, interviewed the Justice of the Peace, and was provided with a DVD of Ms. Cafferata's appearance in justice court. I have viewed the DVD and it was very painful to watch. The conclusion was while many of these issues could be remedied with shadowing and training with more experienced defense counsel in the NSPD's office, there is no such counsel available. The best opinion was to let Storey County opt out of the State PD system and go into the newly created and very good office of the Carson City PD. This resolves the issue until Chris Arabia resigns. On January 10th, Ms. Ryba notifies the governor's office of the resignation and that she would be happy to assist with the new appointment of the NSPD and receives no response. She wrote again on January 22nd and no response. On February 21st, Ms. Ryba met with the governor's staff and was told a person had been selected to be the new NSPD. It was Ms. Cafferata, not the governor, on February 29th who wrote to Ms. Ryba and told her the governor appointed her. This bypassed the interview process with the Board and our recommendations for the governor. Ms. Cafferata started appearing in court in White Pine County and this is discussed in reports from David Schieck the concerns by the judges and the DAs. The point of putting this on the agenda is we cannot tell Peter how to supervise Patty under the statute, but we can give guidance and advice to Peter to act in my opinion. Peter, have you had to restrict any lawyer from going into court on certain kinds of cases, felony cases, right?

Acting Executive Director Handy replied yes in different circumstances, we have with other attorneys and reduced or removed them from the certain types of cases they were not eligible for or selected by the court.

Chair Fitzsimmons stated my understanding is not only has she not filled out her application to be qualified on your list, but she has been offered two substantial opportunities for training that she had not attended.

Deputy Director Brenda Roberts replied that is correct and she did not include adequate information about the trials that she has tried. She was signed up and registered for both the DIDS annual conferences, and, the State Bar annual conference and at last minute did not attend either.

Chris Giunchigliani asked what her legal background is I know she was a DA in some of the rural counties. What is her criminal background to be a DA, is that just an elected position or do you have to be a JP for five years.

Chair Fitzsimmons replied that her resume is on page one. This is quite a resume, very broad with little depth and she has been a prosecutor in Esmeralda County, Lander County, and Eureka County briefly quite a while ago.

Chris Giunchigliani suggested a checklist for future guidance as to qualifications the governor's office or anybody else should look at regarding this position. It is bothersome to me as a lay person there are two jury trials coming up and it sounds like the expertise is not there.

Chair Fitzsimmons stated that Peter has the authority to fire her but look what happened to Marcie when she tried to get her to pay some bills. Is David Schieck still on the phone?

David Schieck and the chair exchanged questions and answers regarding the upcoming trial in White Pine County.

Jeff Wells asked if David planned to be at the trial to watch it.

David Schieck replied that he is planning on attending the trial if it moves forward. A motion to dismiss has been filed and not yet ruled upon.

Chair Fitzsimmons and David discussed whether Patty would accept David as a mentor and co-counsel. He did not believe so. This is a mid-level trafficking case and not a sympathetic thing, but the guy deserves a competent lawyer.

Justice Maupin expressed that the fact that is a mid-level trafficking case and he is eligible of probation makes the problem more complicated because the judge is going to make the decision so in a situation where the defendant was going to get convicted and go to jail that would be a simpler problem to deal with.

Chair Fitzsimmons stated we have an immediate problem with the trial next week. I would suggest the directors get with David and see if anything could be done possibly a continuance. She could get a not guilty we do not know, we do know the DAs, the judges and our observer are profoundly concerned.

Susan Bush suggested that Peter appoint a contract attorney to second chair and share that trial or to join in that case immediately just so there is some oversight.

Franny Forsman stated she was not on board with this. The worst thing in the world to do would be appoint co-counsel or substitute counsel at this last minute. Basically, what should happen is the case should be dismissed. Sticking in a lawyer at the last minute to try and make it look like the client is represented would be the worst thing in the world in my opinion.

David Schieck advised there is a plea offer on the table and this case may never go to trial. The DA has informed me of what the offer is and if could be accepted after the motion to dismiss is denied.

Justice Maupin said the person that who comes in and represents them has go to tell the client they may have a free pass. I am not suggesting that is how this comes out; I am just saying if I walked in there and saw all this business going on and everyone is saying you either have to take a plea or continue the case, the lawyer should say no you have a third option and that is why I am saying this thing is maybe too far gone to save.

Chair Fitzsimmons stated we could go on forever on this topic because there are a lot of lawyers and smart people on this call, and we cannot just say okay we will do this and Peter you are in a bad position, but it is your job unfortunately.

Justice Maupin said if I was representing this guy, they would never forget it and the entire institutional attack on indigent defense services would become this case.

Chair Fitzsimmons stated that there is some good news as it looks like we will be able to have White Pine fully staffed soon and Patty will not need to go out there anymore.

Acting Executive Director Handy commented the workload does rely on some work from the NSPD so Derrick Penney who is out there full-time and Jim Hoffman who has done a fantastic job really pitching in is the chief appellate deputy handling trial level cases. We are entering a contract with Jane Eberhardy who is very well known and does a great job out there. We are in the process of a contract with Julie Cavanaugh-Bill to cover all juvenile matters so there should be sufficient attorney coverage for White Pine County.

Chair Fitzsimmons stated that is fabulous news. Does anybody on the board have any problem we and our DAG says we cannot tell Peter what to tell Patty which I disagree with. Peter, could we urge you with great urgency to tell Patty she cannot go to court until certain metrics are met. Does anybody disagree with that?

Chris Giunchigliani replied no but you are putting him at risk again so maybe we need to tell Ryan Cherry that.

Chair Fitzsimmons said she agreed, and I do not want to put Peter or Brenda at risk. How far do we go to protect Peter. Patty could decide she does not like his tone of voice when he talks to her. It is a big problem but for now our main reason for existing is to protect indigent defendants. The simplest way for now to do that is for Peter to tell Patty thank you but please do not go to court until further notice on behalf of indigent defendants. It is a band-aid but at least it will stop the bleeding.

Joni Eastley stated I am not an attorney everybody knows that and all I tend to do is read the statute and follow what the statute says. When I look at NRS 180.010 as it relates to what the requirements are for the state public defender there is one requirement. They must be an attorney and licensed to practice law in Nevada. It does not mention any other things and while this certainly is not a defense of anyone who believes that this is poor representation. Perhaps we should concentrate on contacting a friendly legislator to introduce a bill that amends some of the sections in the statute because this is a fault of the statute not the fault of any individuals.

Chair Fitzsimmons stated if you look at our regulations, they specifically require that if anybody including Patty is going to be on the DIDS list they have certain qualifications. That applies to every public defender in the rural counties.

Joni Eastley commented that is very helpful and thank you. I had forgotten about that, and I appreciate it.

Chris Giunchigliani stated let me piggyback on that. It makes sense that it be put into the statute if that is what you are going to do because not everybody goes back and looks at the administrative code to see what layers are below.

Chair Fitzsimmons explained the bill draft deadline is closed and we must go through the governor's office for bill drafts.

Jeff Wells stated he wanted to comment as well. Joni, you are reading the statute accurately but that is to hold the position of state public defender where all you have to be is an attorney. In certain types of cases, you must have certain qualifications. The Supreme Court has rule 250 before you can do a death penalty

case. That means we can have a state public defender who is qualified to hold the position but not qualified to go into court.

Joni Eastley replied yes, I understand that, and I had completely forgotten about the administrative code.

Allison Joffe wanted to add I think for Peter our advice should be for him to do what you have always done with other public defenders who are not qualified for this position in a felony case. Patty has not provided the information for us and at this point I need to take you off appearances in felony cases at least and then we will deal with the fallout. This is for who we are professionally to protect our indigent defendants and I do not see how he could be fired and I hope he will not be and that is as much as we can recommend.

Chair Fitzsimmons wanted to know if there had been an instance where there was a complaint from judges, DAs, or client where DIDS had them removed off a case.

Acting Executive Director Handy replied we have not removed somebody from a case or gone to a judge and said to remove the person from this case because they do not meet qualifications. We typically inform them of their qualification level that we are aware of and if the case is out of their qualification level and to withdraw from those cases and we will find new counsel. We have told attorneys you cannot take this level of cases because you have not shown yourself to be competent or we have seen a lot of evidence of lacking competency to take those cases so remove yourself from any of those cases. We had not had a situation where we have done that with an institutional office public defender; these have all been independent contractors or independent attorneys.

Justice Maupin stated he wanted to ask DAG Todd Weiss a question. Is what we say here I mean in this public meeting are you going to be interacting with the governor's office over this issue.

DAG Todd Weiss replied no Justice Maupin I do not represent the governor's office. I have no reason to talk to them about this.

Justice Maupin said I have a second question for you. Can we go into executive session over this issue about Patty Cafferata? Under what circumstances can we do that?

DAG Todd Weiss replied no not at this point. It has been noticed everything is public.

Harriett Cummings wanted to know what the DAG's advice would be regarding Patty and the trial coming up.

DAG Todd Weiss replied my advice was based on reading of the supervision statutes and is my opinion, not necessarily the AG's overall opinion. My opinion was that the supervision and jurisdiction to act against the NSPD in any way shape or form lies solely with the executive director and not the board.

Chair Fitzsimmons stated to that point is fine if the board recommends something that protects indigent defendants. It is a recommendation; we are not going to order Peter to do anything but help Peter. Peter has been brilliant, loyal and a huge asset, but he has never done this work. I would ask for a motion recommending to Peter that Patty be relieved from all court appearances on behalf of indigent defendants until future time clear metrics are provided to her.

Acting Executive Director Handy explained that the regulations indicate if somebody is making an application to be on the list, they are permitted to continue the level of cases to which they are seeking qualification until the decision is made.

Chair Fitzsimmons voiced concern that much of this might have not been discovered had she not rolled up her sleeves and started looking into this stuff. The board would not have known, nor Eve Hanan, and maybe not even Patty because Peter has been doing all this work and two or three quarterly reports that have not been done right?

Acting Executive Director Handy confirmed this is correct.

Chair Fitzsimmons explained she was not blaming Peter but what do we do now. Obviously, we must tighten our regulations.

Chris Giunchigliani and Justice Maupin wanted to know if Patty is considered an applicant still at this point in time and for what she was applying.

Acting Executive Director Handy replied she is applying through category A felonies. She is not applying for juvenile qualifications or death penalty cases.

Justice Maupin expressed this road to hell is paved with good intentions. This is how the newspaper report of this will read "Indigent Defense Commission Kicks Lawyer Off Case, Defendant Released." I am not saying we do not have an emergency, and this does not need to be dealt with, but what you are in is a very delicate situation and to a degree our viability as a board is right now in some jeopardy if it gets told improperly. It might be better if we hold an emergency meeting and give her an opportunity to say I need to do X and Y in response to these accusations and then this person is not going to get marooned and then they have a right to argue that her due process is being compromised through a political problem.

Jarrold Hickman explained I am in line with Ms. Joffee's position and tend to like the uniformity aspect of that and suggest we consider issuing a letter. A notice from the department that you have not provided proof and there is evidence that the service is not being provided to constitutional requirements. Until such time as you complete the application and we review these complaints, you are not qualified to take a case.

Chris Giunchigliani suggested to let Mr. Goodenow say what he needs to say and then I think we have come full circle and I think there is a way forward based on what Jarrod and Ms. Joffee said.

Rew Goodenow stated I want to go back to something Justice Maupin said because it seemed both prudent and appropriate under the circumstances and that is the commission schedule a meeting with Patty Cafferata to discuss the concerns that you have raised. I have concerns about open meeting aspects of notification for any action taken today. The first notice did not specify that there was possible action and the second notice one did.

Chair Fitzsimmons stated we completely relied on our DAG on these notices, and I did not know there were two notices. Are you saying there is a problem with the notice, and we should not have been discussing this for an hour.

Rew Goodenow said I think there is a discussion noted on the first notice and I do not think you had noticed it up for possible action earlier.

Chair Fitzsimmons explained that we are not taking any action.

Allison Joffee stated that the letter is to the executive director, and we are requesting he take the recommendation from us as to treating Ms. Cafferata as every other defender and according to regulations.

Justin Maupin stated I made a comment earlier on how the press and our political adversaries might look at this. We need to do the right thing and take care of the public relations later. I am just saying that if there is a way of that we have to be ready to deal with that kind of blowback. I am saying we need to do the right thing and a recommendation about this is not violating any jurisdictional barriers to dealing with the State Public Defender's Office.

Chris Giunchigliani commented that we posted this for discussion. I would suggest that we give direction to Mr. Handy from the board to counsel and uniformly meet with Ms. Cafferata and use the same standards that are used for any other attorneys based on our administrative code.

Chair Fitzsimmons asked if there is a motion, or we do not need a motion as we are not taking action.

Chris Giunchigliani replied you are giving direction.

Chair Fitzsimmons stated we would not be in this mess if Ryan Cherry had involved either us or Marcie in the appointment of the state public defender as done previously and who had to demonstrate the qualifications that are in our regulations.

Chris Giunchigliani stated you are correct and in addition there is an application process.

Dave Mendiola stated I do not feel it is necessarily appropriate but necessary for us to recommend anything to Peter. It is already part of the process and the application because if we do that then we are kind of suggesting that going forward we need to be involved in every one of the applicant's assessments. The concern I have is that we need to cover that other base called the governor's office and that is to protect Peter. I think somebody needs to have a conversation with Mr. Cherry and I am happy to be part of that, but Peter should warn them that we have a big concern with this situation and explain why it is a big concern.

Justice Maupin commented it is a great point, but it also gets us back to the original discussion which is the governor should not have the ability to kneecap this program. They need to understand that and I am afraid the only way that will happen is with a declaratory judgment issued by the First Judicial District for lack of a better place to say that your discretion with regard to this particular agency is limited. I believe that we should try to make peace with the governor's office before we make war but usually you have to show your willingness to make war before you get any.

Chair Fitzsimmons asked is there anything else on this agenda? Obviously, all wonderful comments very concerning but maybe we are starting to see a path forward.

Justice Maupin said I am going to tell you one thing I need to say before we go on. We owe you a debt of gratitude for the incredible amount of work that you have done on this and the grace and patience with which you have done it. I just want to make that statement for the record because this is the first big test of this organization, and your leadership is such that we are up to dealing with the bureaucracy of the governor's office on this one.

Here, here was heard by the attendees.

Jeff Wells stated I second that.

Chair Fitzsimmons expressed that she is looking forward to this meeting ending and getting back to my life, but this is so important for all of us that have worked on this. As an aside to this I have an article coming out next week in the Washington Post regarding a case I did in White Pine County. It is a front-page in-depth article about this woman who was sent to prison, and I got her plea taken away because of ineffective

assistance of her counsel. We all have these stories every one of us defenders and former defenders on this call are all flashing on those cases, so I am just part of something that had been started long before me and hopefully going to continue after me because we all know it is important. Moving on to item 6.

6. Discussion of Perceived Underlying Impediments to Compliance with *Davis* Conditions (For discussion).

Chair Fitzsimmons said on this I have submitted to you, and it is under emails and are bate stamped 1 to 191. These emails are from a freedom for information request made by the state democratic party to DIDS asking for all communications with the governor's office. As a result, our DAG went through these emails for any kind of privilege, and I got a copy and went through them. There are emails between Marcie and Jim Wells and other people. I am not being light-headed about that the impossibility the attitude of what Marcie went through trying to get money to comply with *Davis* and Justice Maupin you talk about grace just read these. She is friendly, she is upbeat, she stresses the positive, she covers for the governor's office when they make mistakes. It is just incredible what she did but the bottom line is after talking to people on IFC they said they set aside a bucket of money for DIDS compliance with *Davis* but to get that extra money, she had to go through the governor's office. A lot of things were put before IFC and were approved except for two. Those two things were pay parity and the absolute understaffing of the State Public Defender's Office. Those never made it through Mr. Jim Wells onto IFC and then Marcie said OKAY I guess we cannot do the state PD's office and after our last meeting said OKAY for compliance can we please get to this money that is already there for *Davis* compliance and she got fired. I went to a meeting with Jim Wells and Marcie where she was trying to get money for the lawyers who were driving from Las Vegas to Ely and Jim Wells said, why should they get paid; I do not get paid for commuting I live in Reno and work in Carson City. Those are the kinds of attitudes that permeate these emails and I do not know how we fix this.

Justice Maupin stated if this is what is going on and these are public records, I say we make a public record of what we know and this business of kneecapping this commission because you think that you have the authority over this and if they do, you should not, and making this kneecapping public is the first step.

Chris Giunchigliani stated I think the chair and a couple of members that might have a good relationship with Governor Lombardo should set up a meeting, not a bitch session but just say here is what happened. Your staff does what they are doing but this has caused an internal problem and here are some of the results because of those problems. You go to him both out of respect and because never assume that they know all the intricacies of what their staff may be doing or what repercussions of the staff's decisions might have been. If not resolved then I think you are going to need legislation one way or another so we need to find a legislator to do a committee bill. There is some stuff that needs to be cleaned up because where we thought we protected this office and treated it differently because it is not the same thing as other state agencies.

Chair Fitzsimmons stated I agree with Chris, and we did get it right, but we need to tighten it up because obviously the governor's staff views it differently than we do. This goes back with what Justice Maupin is saying we may have to get a Judicial determination, but we do not want to do that. I will say that when I met with Ryan Cherry and Nate Hastings, and this was all just within days, and I said does the governor even know about this and they kind of gave me one of those looks it is like oh yeah, he knows. If he knows he does not know if you know what I mean.

Justice Maupin stated that he agreed with Chris and has the utmost respect for what you said because it is very wise that you give the operative person a chance and this does not sound like if someone did this to the governor he would be out of his mind. When we were negotiating between branches and when we both in state government the best legislation got passed through consensus and I think if we went in there and explain we have this problem. He could say I agree with it so get out of my office, but I do not think he will so I think that is a good idea.

Chris Giunchigliani said if he does blow us off, we have the judicial way to go and then we do what we need to do. You should go to the source but verify and so he may not know what the result of his staff's behavior did and that is where the emails come in. Bring in documentation and Lombardo is reasonable on stuff like that, at least I found him to be.

Chair Fitzsimmons stated she agreed. I feel I gave that opportunity to Ryan Cherry and Nate Hastings within days, but I am not sure that was communicated. I think if Dave Mendiola and Joni and whoever else wants to volunteer maybe Jarrod would be helpful because he was in the office when it started and intimately aware with these issues. According to Todd and we do not need it but I think if somebody thinks they have a good relationship with the governor and they want to join in with Dave and maybe Joni, and make an appointment.

Justice Maupin said I can show the governor if I sat down in a room with him, I could show how a larger budget for this operation will make money in the long run for the state, millions of dollars.

Chair Fitzsimmons stated let us move forward with what we can because we are just talking about a meeting with the governor and who wants to and when is a good time. This is not an open meeting thing, is it?

DAG Todd Weiss responded no that would not be an official board action. That is just individuals on the board doing something.

Chris Giunchigliani requested to follow up though there was also a recommendation that we maybe have a special meeting of special agenda to deal with specifically with the Cafferata issue. Is that still something that needs to be pursued?

Chair Fitzsimmons replied I do not think we can because our DAG said we cannot do anything about Cafferata. It is completely in Peter's hands, and I think we have given him enough cover for now. Thank God we have David Schieck because he is one of the finest indigent defenders I have ever known. I would request for Patty and any other person that is being observed if there are complaints from judges or DAs we need to know immediately. I do not care if it is an institutional defender or contract defender forward them to the board. Not if somebody made the wrong argument but if there is a big problem we need to know. Moving to item 7 status of solicitation of new executive director. The job was finally posted 10 days ago and not a single human being has applied.

Chris Giunchigliani stated, and they will not.

Chair Fitzsimmons asked what happens when this goes on Peter with no pay raise and no statutory due process like Marcie had and Peter is acting director. Brenda is doing the other deputy stuff and we are going into session, bill draft and *Davis* compliance with 33% of our lawyers taken out. I think we can all agree Marcie was more like 60% because of her institutional knowledge and her defense experience.

Chris Giunchigliani said so stupid question. I am assuming Peter was appointed as acting by the governor's office.

Chair Fitzsimmons replied that Jim Wells walked over after Marcie was walked out with law enforcement and he was told he was acting executive director and I do not know if the governor knew anything about this.

Chris Giunchigliani stated he may not but again if the somebody needs to ask that question is this is an appointment by the governor because then he should be afforded those due process rights which they ignored for Marcie.

Chair Fitzsimmons commented and a pay raise. If you guys get this meeting with Governor Lombardo, I would bring that up. That is something we need to do, and we need to post a job because I do not think anybody is going to apply for executive director, and if Peter is acting executive director for as long as he wants to put up with this nightmare, they should hire another lawyer in the office. I have been to the office a lot and talking with staff, everybody is shell shocked because they believe in what we are doing. I am impressed every single person in that office is doing their job and more.

Chris Giunchigliani asked who would do the salary, is that us or is that the office.

Acting Executive Director Handy replied that is done by legislature through the pay bill.

Chris Giunchigliani stated so this must go through the pay bill, but this is a special circumstance. Maybe Todd that is something you could look into statutorily that if someone has been placed in a new role they at least get that wage that comes into play.

DAG Todd Weiss said it is something I would probably consult with the personnel DAGs on because that is within their wheelhouse. I can make that inquiry if that is what the board is interested in me doing.

Chris Giunchigliani stated I think that is a great idea to start there where we can maybe make some impact and then yes, the governor's meeting.

Chair Fitzsimmons stated we will have to sidestep Jim Wells. I have never met a human being that started more entrenched is that a word from a position of no. I mean it is just no so let us see what we can do. In the meantime, is there anything else, Peter, on the status of search for the new executive director?

7. Report on Procedure and Status of Solicitation of New Executive Director: (For discussion per opinion of Nevada Attorney General).

Acting Executive Director Handy replied no I do not have any updates. We sent it out and it has been sent to the NACJ Listserv, sent out to all our attorneys on the list and as far as I know we have not received any applicants. I do want to mention, since I have the floor, our staff has been phenomenal through this process; they really have been picking up a huge amount of slack doing a ton of work and really powering through, so I am really proud of everyone in the office right now.

- ## **8. Upcoming Meetings. (For discussion and possible action).**
- a. November 21, 2024, at 1pm.
 - b. February 6, 2025, at 1pm.
 - c. June 19, 2025, at 1pm.

Chair Fitzsimmons stated okay, upcoming meetings, these are our upcoming meetings. I may be in Spain, but we have a vice chair Kate, and I am hoping after this session that Dave you will take over being chair again, please. Now public comment and I know John Lambrose wants to make a public comment.

9. Public Comment.

John Lambrose explained this is going to be my first comment and I promise I will be brief. I have some written comments I want to read into the record. Before that I could not resist the lawyer in me the persons that helped the Sixth Amendment Center, Franny Forsman, Bob Crowell, Laura Fitzsimmons, and Teresa Benitz-Thompson draft ABA 181. In my humble opinion and again Todd I read the statute a little differently than you when it comes to the Office of the State Public Defender. That office was put into DIDS, and that office is run by the executive director who works at the pleasure of BIDS which is you guys. It would seem to me that it is a fairly logical syllogism that if you have supervisory authority, if not firing authority over the executive director, by definition you have supervisory authority, over the state public defender. My written comments, first I want the record to reflect as most of you know your board chairman is also my wife of 43 years. I want to thank her for all her hard work on this board and especially the work that she has put in since the unlawful termination, in my opinion, of Marcie Ryba. You members of this board are absolutely deserving of credit you work so hard for such a good cause and a cause that I have been supportive of for the last 17 years. Thank you so much and if my voice is cracking a little bit, it is because it means so much to me. I also want to thank the members of this board that have been on this journey with me, particularly Bill Maupin since 2007, thank you Bill for your colleagues on the court for getting the ball rolling, Jeff Wells, Joni Eastley, Dave Schieck, and Franny Forsman. All of you were on this board when it was the indigent defense commission and look where we are, in our wildest dreams did you ever think we would get this far except for what happened on that dark, dark Friday, August 30th. I do not think anyone could have predicted that. Finally, I just want to put into the record my gratitude to Marcie Ryba, her staff and former and current deputy directors particularly Jarrod Hickman. Jarrod a shout out to you and your wonderful wife Kate. Kate your comments were amazing. Evie the same with you and I wish we could have heard a little bit more out of Clark County, but God bless Washoe County, Randy Fiedler thank you for your comments from the Federal Defender's Office. I appreciate and know either Kate or Evie was speaking on behalf of NACJ so thank you NACJ for your contribution and support. I can tell you Marcie deeply is in gratitude to all of you for all your help throughout the years she was executive director. Just to remind you, Marcie took over in late 2019 about three months before the Covid epidemic so she was getting this journey started with masks on Zoom meetings and what the infrastructure that she put together with those impediments. Could we have imagined in our wildest dreams that we would be talking about the accomplishments of Marcie Ryba and this board. Think about it the beginning of state funding for county indigent defense. My God you know how many NACO meetings did we go to Joni where we said you have a constitutional right to have state funding.

Joni Eastley stated remember how many hours long conversations and arguments we had about the definition of a case.

John Lambrose commented but here we are and let me tell you, it is just the beginning because if all this goes to (censored) and I apologize for my bad language, we have the ACLU because I am telling you before I die the State of Nevada is going to pay for indigent defense in total, and I think we have a friendly forum in Carson City for that particular lawsuit. We have independence from the judiciary and the prosecution in the rural counties. We have performance and case load standards. We have increased hourly compensation for lawyers such that Clark County is jealous. You know what, thank you Marcie Ryba, and thank you Board of Indigent Defenses Services. Finally, the outreach Marcie endeavored to undertake she reached out to institutional defenders

and their offices were open for training for oversight for brainstorming. She reached out to the judiciary, Nevada Supreme Court Justices came to and sat on panels every year at trainings. We could not get as many state courts, rural judges to these darn things but we are going to keep trying. I am a pretty regular appearance at the Office of Indigent Defense Services on Nye Lane that they named an office after me, but they put it in scotch tape and finally I am an adjunct professor at Boyd Law School, and let me tell you the reputation that Marcie Ryba has at that law school. She is held in high esteem and Eve Hanan and many in the career development office would vouch for that. Her work with law students that are now getting paid to do externships in rural counties I mean think about it that never would have existed had it not been for the work your executive director did. Now I am talking about five years of work by a person of such good will and energy that got completely obliterated in one day. I have heard many of you board members apologize or at least try to mitigate what happened by saying the governor did not know about any of this. In my opinion that makes it even worse because he is the governor and that is where the buck stops. I am encouraged but not at all optimistic that this board is thinking about approaching the governor to see if you can work something out, but you better not give anything up it took too long to get. The things we have acquired are entitled to under the constitution, and the legislature was very convinced at that point that not only did they have to pay for this indigent defense, but they had to pay for it because it was constitutionally mandated. Before you make a decision as to whether or not you are going to settle, I can tell you that you do have a conflict when it comes to the legal advice you are getting. I think Mr. Weiss would have to admit you cannot be represented, counseled, be advised at this point in your tenure as board members by a deputy attorney general. You need independent counsel to advise you on what your remedies are, and I am happy to provide my time and resources in that endeavor if you cannot find counsel pro bono. It means that much to me and Laura; I will pledge what little separate property I have in that endeavor. I am happy to give up my time pro bono. I am too old to handle this lawsuit but by God, I will carry somebody's briefcase all the way to the Nevada Supreme Court or maybe Reno because we might even have a federal remedy. Thank you again and I really appreciate all the hard work you have done.

Chair Fitzsimmons said thank you, John. Is there any other public comment?

Chris Giunchigliani stated I do have one and I do not know if you want to call it public comment but not being a lawyer, after the group meets with the governor and if we do not have to proceed to court, are we missing any timelines.

Chair Fitzsimmons replied that we are not missing any timelines, but we may have some other hurdles. Our DAG has advised us that not only will the AG not represent us, but the AG will not appoint. They have a statutory provision where they appoint ex AGs to be special counsel, and they are not going to do that. Todd, correct me if I am wrong: did you not tell us that we do not even have statutory authority to utilize a pro bono lawyer?

DAG Todd Weiss stated based on the very cursory review I did of the statutes yes, but again this is an extreme.

Chair Fitzsimmons said you told us we could not even if we found a lawyer who would take this for free, we could not do it right?

DAG Todd Weiss replied I did not see an actioning statute that allowed for that correct.

Chris Giunchigliani stated but it does not say that you cannot, so absent any language, we have the authority to do it with no disrespect.

DAG Todd Weiss stated let me add what the most important thing on this issue is. It is extremely complex; it is extremely rare to come up, so what I said is if the board is interested, I would be happy to start process on requesting a formal AG opinion on this issue to give you an inclusive determination. This is not something that comes up very often, and when it does it is a very unusual circumstance so I do not want to steer you in the wrong direction or take away any rights this board may have.

Chair Fitzsimmons stated we appreciate the offer, but you were so conflicted that unfortunately I do not even think you could give us an opinion. We will figure out if and when we have to. I mean we all agreed that obviously the governor may not have been briefed and maybe if we can bring him into things they will change going forward. There is nothing we can do about what happened and functionally the minimal of minimum of six months that it has cost us on the eve of the *Davis* deadlines but we play the hand we are dealt. Let us meet with the governor and see where it takes us.

Dave Mendiola said I have one more thing and I will be short and sweet. I joined the board on its onset and had the joy to work with Marcie Ryba over the last three and a half years as the chair. In my 40 years plus in the private sector running some pretty good size companies and doing some different things I have never found anybody who I enjoyed working with more than Marcie Ryba. I have got to tell you that not only is she top-notch, gets things done, knowledgeable but she is the sweetest, kindest person and that gave me great joy. That is what kept me on this board. I just want to give a shout out to Marcie and the board as a whole because I have learned so much from all of you and it has been a great time. I feel horrible for Marcie and what happened, but I am really excited that we are looking into fixing these problems, so it does not happen again.

Chair Fitzsimmons said I think that is a perfect note to end this on. Thank you for everything this thankless task but you know what you said about Marcie, and I think everyone of us agrees with this so, is there a motion to adjourn.

10. Adjournment.

Motion: Motion to Adjourn Board Meeting on Indigent Defense

By: Chris Giunchigliani

Second: Dave Mendiola

Vote: Passed Unanimously

Chair Fitzsimmons adjourned the meeting at approximately 2:30 p.m.