

**14th Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

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## Introduction

This Monitor’s Report to the First Judicial District Court of Carson City summarizes the Defendants’ compliance with the terms of the *Davis v. State* Stipulated Consent Judgment (hereinafter “the Judgment”) from August 19, 2024, to November 15, 2024.

Departing from the usual structure of the Monitor’s reports, four compliance problems are pressing and will be addressed first:

- I. Failure to comply with the workload standards.
- II. The Department’s inability to access earmarked funds sufficient to comply with the workload standards.
- III. Removal of the Executive Director and resultant understaffing of the Department at a critical juncture in the state’s efforts to comply with the Judgment.
- IV. Continued failure of the NSPD to serve as a robust and independent source of representation for rural Nevadans charged with crimes.

These problems affect the compliance with the workload standards, the independence of the defense function, and the Department’s ability to effectively oversee and ensure the quality of representation.

## Compliance Issues

### I. Failure to comply with workload standards

As discussed in more detail in Part II.A., the State has failed to comply with the workload standards by the November 2, 2024, deadline.

- Nye County is short six (6) full-time attorneys.
- Churchill County is short four (4) to five (5) full-time attorneys
- Lyon County: The State is unable to determine how many full-time attorneys are currently serving Lyon County, which requires twelve (12) full-time attorneys. Three law firms hold five contracts, but a firm holding two contracts requiring at least (five) 5 full-time (FTE) attorneys has four (4) or less attorneys and has not provided assurance that the attorneys are qualified and available full-time for indigent defense in the county. A second firm holds a contract requiring three (3) attorneys, but is staffed with only two (2) attorneys.
- Douglas County has structured its contracts so that five (5) attorneys must work up to the point where they cover the workload of 7.8 full-time attorneys. The County states that it disagrees with the workload standards.
- The Nevada State Public Defender (NSPD) is currently staffed with an Acting State Public Defender, responsible for all appellate cases, and a Deputy Public Defender providing trial-level representation in White Pine County. The NSPD is also responsible for death penalty cases in Churchill, Lander, and White Pine counties and parole and pardons in Churchill,

Esmeralda, Lincoln, Lyon and White Pine counties. Some of the needs are met by contracting with private attorneys.

## **II. Inability to access funding to comply with the workload standards**

The Department has been unable to access sufficient funds earmarked by the legislature in AB 518 (7) (2023) to meet the workload standards, through either contracting with additional attorneys or providing financial incentives for attorneys to accept positions within the office of the NSPD.

The legislature allocated sufficient funds, and the Department attempted to access the funds, but was unable to do so. The funds were set aside by the legislature in AB 518 (7)(1) (2023) and include \$6,613,033 for FY 2023-2024 and \$6,306,880 for FY 2024-2025 for (a) “reimbursement of counties for costs in excess of their maximum contribution ... including, without limitation the costs of compliance with workload standards;” (b) the costs to the Department related to compliance with the *Davis v. State* consent judgment; (c) NSPD contracts with private counsel to provide representation in complex litigation; and (d) training and pay parity for indigent defense providers. Critically, AB 518 (7)(2) states, “Money appropriated ... may only be allocated by the Interim Finance Committee upon recommendation of the Governor, and upon submittal by the Department of Indigent Defense Services of documentation of the costs.” It is thus a matter of course that the Department’s requests go to the Governor’s Office first for approval.

To be sure, the Department has secured funds for county reimbursement and some compliance activities. In FY 2024, the Interim Finance Committee transferred \$3,592,585 of the \$6,613,033 authorized. To date in FY 2025, the Interim Finance Committee has transferred \$778,103 of the \$6,265,191 authorized. Assuming \$4.5 million should be reserved for reimbursing the counties, approximately \$4 million in earmarked funds remain for compliance with the Judgment and other activities designed to ensure effective assistance of counsel.<sup>1</sup>

The following is a non-exhaustive summary of the Department’s efforts to access earmarked funds to comply with the workload standards.

- In February 2023, in response to the Executive Director’s request to access earmarked funds to either hire contract attorneys or supplement the income of state public defenders to meet the workload standards, the Governor’s Finance Office suggested that the Department request that the Office of the Attorney General temporarily transfer assistant attorneys general to work at the public defender’s office.<sup>2</sup> Several months later, in response

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<sup>1</sup> *Davis* county reimbursement from the state for indigent defense is estimated at \$3,087,843.16 for FY 2024 and \$4,492,439.45 for FY 2025. See Appendix A of this Report.

<sup>2</sup> Emails between the Department and the Governor’s Office were included in the record for the October 17, 2024, Board Meeting as “Email Attachment-ADA Progress\_Redacted” [hereinafter EMAIL], available here: [https://dids.nv.gov/Meetings/2024/2024\\_Meetings/](https://dids.nv.gov/Meetings/2024/2024_Meetings/). The suggestion that assistant attorneys general temporarily be assigned to the NSPD can be found at EMAIL 181-86.



to another Department request to access its earmarked funding, the Deputy Chief of Staff for the Governor suggested that the Executive Director and her two deputies go work at the NSPD themselves until they could provide additional “justification” for the request for funds for additional attorneys.<sup>3</sup>

- On December 19, 2023, the Department submitted an amended memorandum to the Budget Office, requesting an allocation of \$130,066 from AB 518 (7) (2023) to provide NSPD attorneys with a stipend that would make their total compensation comparable to the compensation offered by the larger county offices of the public defender. The Department also requested a travel reimbursement for NSPD attorneys who provide representation in White Pine and other rural counties. A travel stipend of \$7,068 was secured, but the Department’s request for a stipend to increase total compensation was not heard by the Interim Finance Committee on the scheduled date of February 8, 2024.<sup>4</sup>
- On March 13, 2024, the Department submitted a work program for (1) additional NSPD attorneys or attorney hours to cover appeals and parole violation cases transferred to the NSPD and for representation in White Pine County, (2) a recruitment campaign, and (3) a satellite office for the NSPD in Las Vegas and additional travel funds. The Budget Division of the Governor’s Finance Office did not move the work program forward to the IFC.<sup>5</sup>
- Throughout the summer, the Executive Director requested the Governor’s Office to permit a work program to move forward to provide contract attorneys and also to supplement the NSPD salaries with travel and other stipends in order to make the vacant NSPD positions attractive to qualified defense attorneys.<sup>6</sup> The Department asked for assistance in proposing bill draft requests that might help the state comply with workload standards by raising the pay of state public defenders and through other means.<sup>7</sup>
- On August, 7, 2024, aware that the Judgment’s deadline for compliance with workload standards was less than three months away, the Executive Director emailed the Governor’s Office with proposals to comply with the Judgment, noting that the NSPD has 13 out of 19 positions vacant.<sup>8</sup> Following up on August 19, 2023, the Executive Director reached out to another member of the Governor’s Office seeking assistance accessing funding to comply with the workload standards. The Executive Director wrote:

As a backup plan, DIDS would propose a request to the IFC restricted reserve contingency funds that are set aside by AB518, Section 7 (2023) for workload compliance so that the Nevada State Public Defender can enter into contracts with

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<sup>3</sup> EMAIL 133-144.

<sup>4</sup> The Department’s memorandum to the Budget Office is attached as Appendix D to the Monitor’s 13<sup>th</sup> Report.

<sup>5</sup> See, Monitor’s 12<sup>th</sup> Report, 9 (discussing work program C67438), and Appendix F to the Monitor’s 12<sup>th</sup> report.

<sup>6</sup> EMAIL 134-140.

<sup>7</sup> EMAIL 132-133.

<sup>8</sup> EMAIL 061-063.

contract attorneys to cover our county workload shortages. The proposal would be to request funding for 10 contract attorneys to provide up to 1,393 hours of representation as needed throughout rural Nevada. The rate of pay would be \$172 an hour. Therefore, each contract is expected to be: \$239,596 (1392 x \$172). The total for 10 contracts would be: \$2,395,960. Attached is an email from LCB with the opinion that such contract funding can be requested by the Nevada State Public Defender from AB518, Section 7 funds. If this funding proposal were to be approved, DIDS would take steps to prepare a work program for the October IFC. As a side note, the work program due date for the October IFC is August 21 (Wednesday). The NSPD would enter into up to 10 contracts to be set for BOE on October 2, that would be contingent on IFC approving the funding. DIDS would appear at IFC on October 20 for the request. If this were to fall into place, if counties are unable to fill the number of public defender positions required by the workload study, the state could step in with these 10 contract attorneys to provide coverage. In the end, the desire is to comply with the workload, as required by the consent judgment so that we can close Davis.<sup>9</sup>

In response to this email, the governor's office asked the Executive Director to submit this request again to Deputy Chief of Staff Jim Wells, who was away that week.<sup>10</sup> On August 28, 2024, the Executive Director submitted the above request to Deputy Chief of Staff Jim Wells.<sup>11</sup> The following week, the Executive Director was placed on administrative leave pending her termination.<sup>12</sup>

To be sure, some funding requests have been approved to move forward to the Interim Finance Committee, which released funds to comply with aspects of the Judgment. Recently, on October 10, 2024, the Interim Finance Committee approved the Department's request for \$92,000 to provide JusticeText to up to ninety (90) attorneys. This software analyzes and transcribes body worn camera and similar footage, saving attorney time. At the same hearing the Interim Finance Committee approved \$137,600 for a second part-time contract for juvenile representation in White Pine County. But the larger ticket item is release of AB 518 (7) funds to comply with the workload standards. These requests have not moved forward, preventing the Department from accessing the funds necessary for compliance with the Judgment.

### **III. Removal of the Executive Director**

The Governor put the Executive Director on administrative leave on Friday, August 30, 2024, and then terminated her appointment on September 20, 2024.

Public comment at the Board's October 17, 2024, Board meeting stressed the progress made by Executive Director Ryba, comparing the advancements in rural indigent defense during the almost five years that she was in role at the Department to the "twenty years" of commissions

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<sup>9</sup> EMAIL 049-50.

<sup>10</sup> EMAIL 044.

<sup>11</sup> EMAIL 043.

<sup>12</sup> The email exchange from August 7 – August 28, 2024, is attached to this Report as Appendix B.

and reports and other efforts to reform indigent defense.<sup>13</sup> A statement by the Board regarding Marcie Ryba was introduced as Agenda Item #4, approved by the Board.<sup>14</sup> Further concern was expressed by Board members and in public comment that the Executive Director's position was not free from political interference, compromising the defense function and making it unlikely that a robust pool of applicants would apply for the position. Indeed, it was reported at the Board meeting that a representative of the Governor's Office and law enforcement officers entered the offices of the Department of Indigent Offense on the day the Executive Director was placed on administrative leave. When leadership in public defense is removed from office, especially when by all accounts the leadership has vigorously advocated for public defense, it gives the clear appearance of political interference with the defense function.<sup>15</sup>

Indeed AB 81 (2019), which established the Board and Department of Indigent Defense, limits—or attempts to limit—interference with the defense function. It states, “The Executive Director of the Department must be appointed by the Governor from a list of three persons recommended by the Board,” presumably so that the appointment tracks the independent Board's considered decision of who can best oversee the Sixth Amendment right to counsel for the state.<sup>16</sup> The Executive Director is protected from summary removal by the Governor: The Executive Director:

(b) Serves at the pleasure of the Governor, except that the Executive Director may only be removed upon a finding of incompetence, neglect of duty, commission of an act that constitutes moral turpitude, misfeasance, malfeasance or nonfeasance in office or for any other good cause.<sup>17</sup>

In terms of oversight, the Executive Director reports to the Board of Indigent Defense Services,<sup>18</sup> and the Board's responsibilities toward the Executive Director and the Department are specifically enumerated by the statute.<sup>19</sup> Likewise, the statute appears to strive to ensure that the Board of

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<sup>13</sup> A recording of the Board Meeting is available on the Department's website here [https://dids.nv.gov/Meetings/2024/2024\\_Meetings/](https://dids.nv.gov/Meetings/2024/2024_Meetings/).

<sup>14</sup> The approved Statement of the Board of Indigent Defense Services Concerning Former Executive Director Marcie Ryba is attached to this Report as Appendix C and is available on the Department's website homepage here: <https://dids.nv.gov/>.

<sup>15</sup> Alex Bunin, *Public Defender Independence*, 27 TEX. J. CIV. LIB. & CIV. RIGHTS 25, 47 (2022).

<sup>16</sup> NRS 180.400 (2).

<sup>17</sup> NRS 180.400 (3).

<sup>18</sup> NRS 180.410.

<sup>19</sup> NRS 180.320 states:

1. The Board on Indigent Defense Services shall:

(a) Receive reports from the Executive Director and provide direction to the Executive Director concerning measures to be taken by the Department to ensure that indigent defense services are provided in an effective manner throughout this State.

(b) Review information from the Department regarding caseloads of attorneys who provide indigent defense services.

(c) Direct the Executive Director to conduct any additional audit, investigation or review the Board deems necessary to determine whether minimum standards in the provision of indigent defense services are being followed and provided in compliance with constitutional requirements.

(d) Work with the Executive Director to develop procedures for the mandatory collection of data concerning the provision of indigent defense services, including the manner in which such services are provided.

Indigent Defense is selected and composed in a manner that ensures the independence of the defense function.<sup>20</sup>

The Governor's Office announced that Deputy Director Peter Handy would serve as the Acting Executive Director of the Department, again without consultation with the Board of Indigent Defense Services.

The degree to which the Governor's Office is supervising or directing the Department remains a matter of concern for the independence of the defense function. On September 3, 2024, the Acting Executive Director wrote an email to the Governor's Deputy Chief of Staff stating, "As you requested, I'll get to work immediately on ensuring that each county has an Indigent Defense plan that comports with the workload requirements ...and I'll have our team review the FY24 county fiscal reporting for errors and develop some best practices/guidelines."<sup>21</sup> The email gives the appearance that the Governor's Office was directly supervising the new Acting Executive Director of the Department. In response to the Monitor's query, however, the Acting Executive Director states that he has not recently received directives from the Governor's Office but has been asked to provide information about the Department's compliance efforts.

In sum, the degree to which the Governor's Office supervises the state's indigent defense leader is unclear, but a clear matter of concern for the independence from law enforcement of the defense function. This must be clarified, and the role of the Governor's Office limited to protect the independence of the defense function. In response to a request from the Chair of the Board, the governor's office agreed to provide a summary of the governor's oversight of the Department.<sup>22</sup> To date, no summary or explanation has been provided, but a meeting is scheduled for November 19, 2024.

The Judgment makes specific reference to the establishment of the Board as an important step toward ensuring independent oversight and regulation of public defense throughout the state.<sup>23</sup> This is in accordance with national standards. It is the board or commission for indigent defense that should be empowered to select the director, and to remove the director for good cause.<sup>24</sup> Principle 1 of the revised ABA Ten Principles of a Public Defense Delivery System (2023) reaffirms the independence of the defense function, and that the selection and removal of public defender leadership must be free from judicial and political interference.<sup>25</sup> The removal of the

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(e) Provide direction to the Executive Director concerning annual reports and review drafts of such reports.

(f) Review and approve the budget for the Department.

(g) Review any recommendations of the Executive Director concerning improvements to the criminal justice system and legislation to improve the provision of indigent defense services in this State.

(h) Provide advice and recommendations to the Executive Director on any other matter.

<sup>20</sup> NRS 180.300 (setting forth the members and appointing authorities for the Board of Indigent Defense Services).

<sup>21</sup> EMAIL 009-010.

<sup>22</sup> EMAIL 009.

<sup>23</sup> Judgment, 2.

<sup>24</sup> Guideline 2.11, National Legal Aid & Defender Association's Guidelines for Legal Defense Systems in the United States, available here: <https://www.nlada.org/defender-standards/guidelines-legal-defense-systems/black-letter>.

<sup>25</sup> Principle 1, ABA Ten Principles of a Public Defense Delivery System (2023); *see also id.* at 8, n. 8 (quoting the ABA Standards for Criminal Justice: Providing Defense Services, Standard 5-4.1 (3<sup>rd</sup> ed., 1992) ("The chief defender should be appointed for a fixed term of years and be subject to renewal. Neither the chief defender nor staff should be

Executive Director of the Department without the Board’s knowledge, consultation, or action, demonstrates either that the statute has been violated or that the statutory scheme does not adequately protect the independence of the defense function.

#### **IV. Understaffed and underperforming Office of the State Public Defender (NSPD)**

The NSPD has continued to shrink despite great need for a robust state public defender office to (1) provide appellate representation, (2) to provide representation in parole and pardons cases, and (3) to provide first-line representation in any rural county that elects its services. The NSPD currently has two full-time attorneys on staff, Jim Hoffman, the appellate chief serving as the acting State Public Defender, and Derrick Penney, serving as the Chief Deputy Public Defender in White Pine County.

The state of the NSPD presents challenges to providing effective assistance of counsel, complying with workload standards, and ensuring the independence of the defense function. To understand the breadth and depth of the problem, it is helpful to look back over the past eighteen months.

- On May 23, 2023, the Storey County District Attorney emailed the Department to express profound concern over Patricia Cafferata’s representation of indigent defendants.<sup>26</sup> At the time, Chris Arabia was serving as the State Public Defender and had hired Ms. Cafferata as a deputy public defender. In response to the concerns raised by the District Attorney for Storey County, the Department conducted oversight, culminating in a June 8, 2023, report that confirmed that the NSPD as a whole was failing at basic defense function tasks, including instances where the client’s rights were waived without the client’s consent and a general “lack of familiarity with criminal procedures.”<sup>27</sup> The level of representation fell below professional standards.<sup>28</sup> Ultimately, Storey County elected to switch to the newly formed Carson City Public Defender office for representation rather than rely on the NSPD.
- The State Public Defender, Chris Arabia resigned on January 26, 2024, and Ms. Cafferata became the Acting State Public Defender. Short staffed, Ms. Cafferata provided direct representation to clients in White Pine County.

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removed except upon a showing of good cause. Selection of the chief defender and staff by judges should be prohibited”), available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/lis-claid-ten-princ-pd-web.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis-claid-ten-princ-pd-web.pdf).

<sup>26</sup> Final Cafferata Redacted [hereinafter Oversight], 002, is available as part of the October 17, 2024, Board meeting’s record, and attached to this Report as Appendix D.

<sup>27</sup> Oversight NSPD, 005.

<sup>28</sup> Oversight NSPD, 004-006.

- On February 26, 2024, the Department’s oversight attorney for White Pine County stated the “quality of the [NSPD] representation did not meet the Davis standards.”<sup>29</sup> The district court judges noted that the NSPD was understaffed and unavailable, especially after the resignation of Chris Arabia. The justice of the peace reported that the NSPD attorneys did not file requests to reduce bail, even in cases where the court would have reduced bail or released the defendant on their own recognizance. He noted that there was no local telephone number at which defendants could reach the NSPD attorneys. From court observation, the oversight attorney noted cases in which the NSPD attorney had not reviewed the pre-sentence investigation report before sentencing, necessitating a continuance and failure to adequately counsel a client before a change of plea. These issues were, according to the oversight attorney, attributable to lack of continuity and numerosity of counsel.
- On March 4, 2024, the Governor appointed Ms. Cafferata as the State Public Defender. Although the Board and Department were not consulted on her appointment,<sup>30</sup> the Department was optimistic that Cafferata could be an effective communicator with the bench, bar, and government in the rural counties in her role as the chief of the office.<sup>31</sup>
- On March 28, 2024, the Department’s oversight attorney for White Pine County noted that two initial appearances were held without the presence of counsel.<sup>32</sup> The judges and district attorney—as well as the Department’s oversight attorney—expressed concern over whether Ms. Cafferata was meeting basic benchmarks for effective assistance of counsel, including the apparent failure to meet with clients or to appear at critical stages. In response to this report, the oversight attorney notes, “When Patricia Cafferata became aware of my report she launched a series of accusatory emails about the report’s accuracy, demonstrating a lack of knowledge of the workings of defending indigent cases.”<sup>33</sup>
- Despite the documented problems with representation, on May 1, 2024, the Department issued an oversight report, published on its website, that suggested that the problems with representation in White Pine County had been adequately addressed, attributing the lack of presence at hearings to “imperfect communication between the Justice Court and the

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<sup>29</sup> Onsite Visit Report: White Pine County (February 26, 2024), attached to this Report as Appendix F. Note that the Department provided the February 26, 2024, report to the Monitor on November 13, 2024, in response to the Monitor’s request.

<sup>30</sup> Oversight NSPD, 007-011.

<sup>31</sup> See the Department’s July 1, 2024, Annual Report, 16. Note that the Monitor’s 12<sup>th</sup> report states on page 6 that Patricia Cafferata was an experienced public defender. This is incorrect and was based on miscommunication between the Monitor and the Department. Cafferata is an experienced lawyer who has a great deal of experience in many of Nevada’s rural counties, but no prior experience in public defense.

<sup>32</sup> Oversight NSPD, 023-025. A similar problem is discussed in the oversight attorney’s September 23, 2024, report. Oversight NSPD, 018.

<sup>33</sup> Oversight NSPD, 018.

NSPD’s office.”<sup>34</sup> The Monitor relied on this May oversight report in the Monitor’s 13th Report.

- A September 23, 2024, oversight report details recurring failures in representation in White Pine County, including the NSPD’s failure to argue mitigation at sentencing, compelling the prosecutor or court to make the mitigation arguments *for the defense*, failure to meet and consult with clients before hearings at which they waive their right to a preliminary hearing and before guilty pleas, failure to submit written motions for bail reduction, failure to cross examine witnesses at a preliminary hearing, and a lack of familiarity with criminal procedure.<sup>35</sup>
- On October 14, 2024, the oversight attorney reported that, based on his court observation, it did not appear that the State Public Defender was having confidential meetings with her clients beforehand. At a sentencing hearing, she did not present mitigating evidence. Of even greater concern, a defendant was eligible for a mandatory deferral, but the court had to continue the case for further hearing because the State Public Defender had not taken steps to have the client evaluated for the deferral.<sup>36</sup>
- Cafferata first tendered a resignation letter to the Governor on August 22, 2024.<sup>37</sup> She then rescinded her resignation, but ultimately resigned on October 23, effective November 1, 2024.<sup>38</sup>

Under the current statutory scheme, the Governor appoints the State Public Defender.<sup>39</sup> This is curious given that the NSPD exists within the Department of Indigent Defense and the statute states that the State Public Defender “serves at the pleasure of the Executive Director” of the Department, and that no one other than the Department of Indigent Defense may supervise the State Public Defender.<sup>40</sup>

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<sup>34</sup> Quarterly Oversight Report, May 1, 2024, 4. Available on the Department’s website, here <https://dids.nv.gov/litigation/Davis/>.

<sup>35</sup> Oversight NSPD, 013-020.

<sup>36</sup> Court observation form (October 14, 2024), on file with the Monitor.

<sup>37</sup> Oversight NSPD, 012.

<sup>38</sup> During a Board meeting on October 17, 2024, the Board discussed the qualifications of Cafferata to represent defendants in felony cases and discussed some of the concerns about Cafferata’s performance as noted by the prosecution, bench, and oversight attorneys. The Board meeting can be viewed here. Note that Cafferata submitted a document titled Patricia Cafferata Correction to the Record of the Board of Indigent Defense Services (BIDS) Meeting on October 17, 2024. The document was added to the materials for the Board’s October 17, 2024, meeting.

<sup>39</sup> NRS 180.010 (2) (“The Governor shall appoint the State Public Defender for a term of 4 years, and until a successor is appointed and qualified”).

<sup>40</sup> NRS 180.010 states:

1. The Office of State Public Defender is hereby created **within the Department** of Indigent Defense Services.
2. The **Governor shall appoint the State Public Defender** for a term of 4 years, and until a successor is appointed and qualified.
3. The **State Public Defender is responsible to the Executive Director**.
4. The State Public Defender:
  - (a) Must be an attorney licensed to practice law in the State of Nevada.

Direct, gubernatorial appointment of the State Public Defender undermines the power of the Board and Department, and dramatically undermines the ability of the Defendant State of Nevada to comply with the *Davis* Judgment. It is likely that the Governor will soon appoint a new State Public Defender, but an attorney qualified to lead a state-wide public defender office would surely hesitate, knowing that the statute does not protect them from political influence.

Second, as reported in prior Monitor’s Reports, the salaries of the NSPD are not comparable to the salaries of public defenders in the state’s most populous counties, nor to the compensation of attorneys providing public defense on a hourly or contractual basis.<sup>41</sup> The inability to staff the NSPD has foreclosed an important avenue for compliance with the workload standards.

Third, the Department’s oversight mechanisms failed to quickly resolve the problems with the quality of representation in White Pine County. But it is difficult to resolve such problems when there are few or no qualified attorneys eager to replace attorneys who are providing representation below the standards required by both the Judgment and the Sixth Amendment. Fortunately, the state entered into a contract with a former contract attorney in White Pine County who is reported to provide effective assistance of counsel.

## V. Summary of failures to comply with the Judgment

The Monitor’s 13<sup>th</sup> Report summarized compliance since the Monitor’s first report on July 1, 2021, and to point out two substantial impediments to *final* compliance with the Judgment: Insufficient number of attorneys and insufficient funding in the budget of the Department of Indigent Defense Services (hereinafter “the Department”) to ensure ongoing compliance with the Judgment’s terms. In the areas of training, oversight, and data collection, the Department relies on approval for allocation of earmarked funds on an *ad hoc* basis from the Interim Finance Committee.

Now, the removal of the Executive Director has created instability in leadership and a staff shortage just when the Department was in the critical stretch of complying with the Judgment. The Department is stretched thin, with no executive director, only one acting executive director and deputy director. The Department faces ongoing budget development tasks, an upcoming legislative session, and what ought to be the home stretch of *Davis* compliance, all without sufficient staffing, institutional knowledge, or established relationships that the previous Executive Director provided.

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(b) Is in the unclassified service of the State and **serves at the pleasure of the Executive Director.**

(c) Except as otherwise provided in NRS 7.065, shall not engage in the private practice of law.

5. **No officer or agency of the State**, other than the Executive Director and the deputy director selected by the Executive Director pursuant to NRS 180.420 who is responsible for carrying out the duties provided in NRS 180.430 **may supervise the State Public Defender.** No officer or agency of the State, other than the Executive Director or deputy director selected by the Executive Director pursuant to NRS 180.420 who is responsible for carrying out the duties provided in NRS 180.430 may assign the State Public Defender duties in addition to those prescribed by this chapter. (emphasis added).

<sup>41</sup> See, for example, the Monitor’s 12<sup>th</sup> Report (May 17, 2024), 6-9.



On September 3, 2024, the Monitor exchanged emails with the then-Deputy Director of the Department, Peter Handy, to determine whether the Executive Director had been placed on administrative leave and how that action might impact compliance with the Judgment. Handy responded:

The immediate impact from Marcie’s placement on administrative leave is a significant amount of Departmental staff time being spent as we work to identify and redistribute Marcie’s day-to-day workload and update relevant persons and agencies of the change while continuing to perform our usual work. As with any reduction in staff, we are working to itemize and prioritize functions and programs, focusing on continuity of services to the counties, public defenders, their clients, and community stakeholders.<sup>42</sup>

Through August 2024, the Executive Director was ably leading the state toward compliance with the Judgment. The removal of the Executive Director caused significant disruption in the Department’s ability to secure the state’s compliance with the Judgment, despite the energetic and committed efforts of the Acting Executive Director and the deputy director.

## Recommendations

- Whether through the judiciary or the legislature, clarification is needed regarding the limits on the Governor’s discretion over the Department, Board, and State Public Defender.
- The statute should be amended so that the Board selects the Executive Director of the Department for a four-to-six-year term, renewable, and that the Executive Director can be removed only by the Board and only for good cause. In the absence of such a statutory change, it is unlikely that the Department will be able to recruit a qualified Executive Director who is confident that they can protect the Sixth Amendment right to counsel without political interference.
- Although no issues of independence have been identified with the Board, the State should consider amending the statute so that the Board’s composition complies with national standards, which require equal appointments from all three branches of government.<sup>43</sup>

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<sup>42</sup> Email on file with the Monitor (September 3, 2024).

<sup>43</sup> The independence of indigent defense boards and commissions is assured by drawing equally from all three branches of government. *Nevada Supreme Court Indigent Defense Commission Rural Subcommittee Report and Recommendations*, 10, In re: Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT 411 (Nev., filed Dec. 16, 2008) (“That the State of Nevada create and totally fund an independent, statewide oversight board to oversee the delivery of indigent defense services in Nevada. The board should consist of members from all three branches of government at both the state and local level, the State Bar, and other interested persons. The board will provide a source of accountability for indigent defense services.”). This accords with Guideline 2.10 of the National Legal Aid & Defender Association’s Guidelines for Legal Defense Systems in the United States, adopted by the ABA in Principle 1 of its revised Ten Principles of a Public Defense Delivery System (2023).

- NRS 180.010 should be amended to ensure the independence of the defense function. The Department supervises the NSPD, and thus the Executive Director should be responsible for hiring and firing the head of the NSPD.
- The state should either build up the NSPD through incentivized recruitment and retention efforts or change the statutory scheme that allows counties to opt into the NSPD for all or part of their indigent defense cases, perhaps conditioning the “opt-in” provision on adequate NSPD resources.
- The Department should share all oversight reports with the Monitor, including email and court observation forms. It is impossible to monitor this Judgment without knowing about the problems in representation. The Department should not protect attorneys, including the chief State Public Defender, from evaluation in terms of compliance with the *Davis* consent judgment. The Monitor cannot function, cannot report on compliance, without all documentation relevant to compliance.

## VI. Additional Information on Compliance Efforts

The Judgment requires that minimum performance standards be assured in the following ways:

- Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights.<sup>44</sup>
- Client communication per the standards set in ADKT 411; provision of space for confidential attorney-client meetings; all reasonable efforts to have confidential attorney-client meetings before an initial appearance.<sup>45</sup>
- Systems to identify and remove conflicts.<sup>46</sup>
- Establishment of performance standards.<sup>47</sup>
- Establishment of workload standards.<sup>48</sup>
- Qualifications for attorneys.<sup>49</sup>
- A system of oversight.<sup>50</sup>
- Attorney training and resources.<sup>51</sup>

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<sup>44</sup> Judgment, 14.

<sup>45</sup> *Id.* at 14-15.

<sup>46</sup> *Id.* at 12.

<sup>47</sup> *Id.* at 16.

<sup>48</sup> *Id.* at 17.

<sup>49</sup> *Id.* at 15.

<sup>50</sup> *Id.* at 16-17.

<sup>51</sup> *Id.* at 16.

This Report addresses (A) workload standards first, followed by (B) oversight, and (C) training.

### A. Workload standards

The Judgment requires that the Defendants implement workload standards in the rural counties within twelve months of the completion of the Delphi-based workload study.<sup>52</sup> The study was completed and unanimously adopted at the Board on November 2, 2023. Thus, the deadline for compliance with the workload standards was November 2, 2024. The State has failed to comply with the workload standards on the anniversary of their establishment. The governor’s office has not approved the Department’s requests to access earmarked funds to hire or contract with additional attorneys to comply with workload standards. The scarcity of public defenders, the failure to comply with the workload standards, is thus a direct result of the state’s refusal to adequately fund indigent defense.

As described in previous reports, the total number of legal professionals needed can be calculated based on historical data of the number and types of cases in the county. Per the NCSC study, each case has a “weight” assigned that represents “the average amount of time required to handle [the type of case, measured] over the life of the case.”<sup>53</sup> An annual workload for a full-time equivalent (FTE) attorney can be “calculated by multiplying the annual new cases for each case type by the corresponding case weight, then adding up the workload across all case types.”<sup>54</sup> This annual workload, expressed in hours, can be measured against the number of FTE attorneys available. Using the existing trends in case number and type in each of the rural counties, the NCSC Study calculates existing caseloads by type, existing numbers of FTE attorneys, assistants, and investigators, and determines need.<sup>55</sup> The study recommends one investigator per four FTE attorneys and one administrative assistant per one-to-two FTE attorneys in the same practice.<sup>56</sup> Note that an FTE is the equivalent of 1,392.6 hours per year (to account for sick and personal days, as well as time spent on ministerial tasks, travel, personal and sick time).

The reader should note that additional investigators and staff are needed to comply with the workload limits. This Report does not include current totals of staff and investigators. Given that the Monitor cannot even ascertain how many lawyers are providing public defense in one of the counties, the staff and investigator compliance question is a question for another day.

<b>County</b>	<b>Total number of FTE attorneys needed</b>	<b>Current number of FTE attorneys</b>	<b>Shortage of FTE attorneys</b>
Churchill	7.4	2 plus	5

<sup>52</sup> Judgment at 17.

<sup>53</sup> NCSC Study, 6. Please see the Monitor’s Tenth Report for a discussion of concerns around methodology and final case weights. Those concerns notwithstanding, the adoption of workload standards represents a significant accomplishment and set toward compliance with the Judgment.

<sup>54</sup> NCSC Study, 6.

<sup>55</sup> *Id.* at 20-23.

<sup>56</sup> *Id.* at 20.

		2 <sup>nd</sup> Alt PD Contract	(4.4 if Alt PD is FTE)
Douglas	8.8	5, plus 0.35 FTE for initial appearance and specialty court	Approx. 3 (unless the parties agree that the Judgment permits attorneys to contract for up to 2,200 per year per attorney, at an hourly rate below \$172/hour)
Esmeralda	0.3	0.3	0
Eureka	0.3	0.3	0
Lander	1.3	1 (3 part-time contracts) 2 conflict counsel as needed	0
Lincoln	1.1	1.15	0
Lyon	12	5	Unknown (see discussion below)
Mineral	2.1	2 plus conflict counsel	0
Nye	12	6 attorneys under contract	6
White Pine	3.3 (Additional attorney hours needed if attorneys travel from Carson City and Las Vegas.)	1 FTE NSPD attorney; 1 on-call NSPD attorney who serves as the only NSPD appellate attorney in the state 1.3 FTE+ contract (1,800 hours) 1 contract for 0.6 FTE	In compliance only if the state's sole NSPD appellate attorney can commit 40 percent of his time to trial-level representation in White Pine County

Please note that the adopted workload standards do not include the municipal court cases in the county. Of the *Davis* counties, Churchill, Lincoln, Lyon, and White Pine have municipal courts. The additional criminal cases litigated in these municipal courts increase the total workload numbers, requiring additional attorneys.

## 1. Churchill County: Short five (5) attorneys

The state has failed to comply with the workload standards in Churchill County. Five (5) additional attorneys are needed in Churchill County to comply with the workload standards, four for the office of the public defender and one for the office of the alternate public defender. Each office is fully furnished with adequate room and supplies for the five new attorneys. The county set the pay for these Deputy Public Defender I positions at a salary of \$88,171 on July 15, 2024. As noted in the last Monitor's Report, the salary of \$88,171 is probably too low to attract applicants. The Churchill County public defender offices are approximately a one-hour drive from Reno. Yet, in Reno, the Washoe County Public Defender is offering a salary range of \$107,723.20 - \$230,859.20, according to a current job posting.<sup>57</sup>

A current posting lists the position of Churchill Deputy Public Defender II at a range of \$97,323.20 to \$112,860.80, and the Churchill Public Defender reports that he has interviews scheduled with applicants later in November.

## 2. Douglas County: Question of contract terms up to 2,200 hours per year

The Department calculated that Douglas County required 8.8 FTE attorneys to comply with the workload standards. The County contracts with five (5) attorneys and added two (2) additional contracts for initial appearance and specialty court hearings for an estimated 456-612 hours per year.<sup>58</sup> Of concern is that the hourly rate of compensation for 48-hour hearings is set in the contract at \$150 per hour, and \$125 per hour for specialty court representation. This is below the \$172 per hour rate set in the Board's regulations, although the regulations permit attorneys to contract for less than the hourly rate.<sup>59</sup>

### Five contracts for up to 2,200 hours per year

The outstanding issue is whether five (5) attorneys can agree to do the work of 8 attorneys, and thereby meet the workload standards without adding additional contracts.<sup>60</sup> The Douglas County Manager contends that these contracts comply with workload limits.<sup>61</sup> As discussed in the Monitor's last report, the county leadership disagrees with the definition of an FTE attorney as performing 1,392.6 hours of casework per year.

The Douglas County contracts for first-tier public defense state, "Firm promises and agrees to commit up to 2,200 hours per year for Firm and Firm's attorneys, associates and employees to provide services under this Contract."<sup>62</sup> The contract contains provisions requiring the attorney to

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<sup>57</sup> A listing for public defender jobs can be found on the Department's website at <https://dids.nv.gov/JobListings/JobListings/>.

<sup>58</sup> The contracts are held by the Counsel Administrator, Justin Clouser, and are attached to this Report as Appendix K.

<sup>59</sup> The Department's January 1, 2024, memorandum on hourly rates is attached to this Report as Appendix J.

<sup>60</sup> A recent contract for up to 2,200 hours is attached to this Report as Appendix I.

<sup>61</sup> The Douglas County Manager's August 22, 2024, letter to the Department is attached to this Report as Appendix G.

<sup>62</sup> Douglas County Contract, 3, attached as Appendix I.

refuse new cases if the attorney does not have “sufficient time.” For a solo practitioner, assuming two weeks of vacation per year, no other holidays, and no sick or personal time off, the attorney must work exclusively on clients’ cases 44 hours per week to reach 2,200 hours. In addition, the attorney must travel to various courthouses and jails, report their cases and hours, take regular CLE training, and conduct other business required to manage a law firm.

It is the Monitor’s position that, regardless of a contract clause permitting attorneys to refuse cases, these contracts create economic disincentives to effective representation and therefore do not comply with the Judgment. Attorneys are assigned casework that may take up to 2,200 hours per year, and thus are incentivized to spend less time on each case.

Under the contracts, if an attorney works 2,200 hours per year under a contract providing \$265,000 in compensation, the attorney’s compensation would amount to \$120.46 per hour, below the \$172 hourly rate set by the Board. As a result, these contracts create a financial disincentive prohibited by the Judgment.<sup>63</sup>

Ultimately, however, it is not the responsibility of the county to comply with the workload standards. It is the responsibility of the state.

### **3. Lyon County: Unknown number of attorneys currently providing public defense**

Lyon County requires a total of twelve (12) attorneys to comply with the workload standards. Lyon County expressed to the Board that it disagrees with the workload standards,<sup>64</sup> but has assured the Department that it intends to work toward compliance with the existing standard. The letter from the Lyon County Board of Commissioners is attached to this Report.

The county now relies on two law firms, Mansfield and Mayo and Brock Law, to provide first tier public defense, and a third law firm, Walther Law, to provide first-tier representation in juvenile cases, to serve as conflict counsel, and to provide representation in specialty courts. Another law firm, Silver State Law, provides conflict counsel in Lyon County, which may reduce the workload on the existing contract attorneys.

#### Contracts # 1 & 2:

Brock Law entered into a contract with Lyon County to provide first-tier public defense in cases arising out of the Dayton Justice Court, and as conflict counsel in the Canal and Walker River justice courts and for juvenile matters. The term of the contract is three (3) years. The contract requires the firm to supply a list of “at least three attorneys and two support staff,” and to maintain a list of all attorneys providing services under the agreement (all of whom must be qualified by the Department) within thirty (30) days of July 1, 2024. This contract was signed on June 20, 2024, and went into effect on July 1, 2024.

Brock Law entered into a separate contract with Lyon County to provide first-tier public defense in cases arising out of both the Walker River Justice Court, as well as conflict for juvenile

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<sup>63</sup> Judgment, 11-12.

<sup>64</sup> The Lyon County Board of Commissioners’ October 11, 2024, letter to the Department is attached to this Report as Appendix H.

cases. The contract amount is \$420,000. Under the contract, Brock Law agrees to supply the county with “at least two attorneys and one support staff” and to provide the county with a list of attorneys representing indigent clients under the contract within thirty (30) days of the Effective Date of the contract, which was signed on September 19, 2024, to take effect on November 1, 2024. The contract permits a “temporary variance” while the firm is recruiting additional staff.<sup>65</sup>

The website for Brock Law only shows one attorney working for the firm, Kale Brock.<sup>66</sup> He reports, however, that his firm has three (3) full-time attorneys, 1 part-time attorney (up to 10 hours per week), and a vacant attorney position. He also reports that he has two (2) full-time paralegals and one (1) part-time assistant.

The Lyon County Comptroller provided the Department with the names of four attorneys working with Brock, but the Department noted that one of the names is that of a law student intern, not an attorney. Another is an attorney who last reported that he was no longer accepting cases from the Department because he had accepted a contract with Sparks Municipal Court. As for the other two attorneys, Brock previously reported assist him behind the scenes but do not appear in court. More recently, Brock stated to the Board that Carl Hylin will be assisting with the Lyon County contracts, having ended his contract with the Sparks Municipal Court in Reno.

### Contract #3

A third contract is held by Mansfield and Mayo.<sup>67</sup> The contract requires that the law firm provide three (3) attorneys and two (2) support staff, and the firm has at least one additional contract to provide indigent defense services, in Humboldt County. It is thus unclear how many FTE attorneys at the firm provide full-time representation in Lyon County. It is unclear how many full-time lawyers and staff the firm dedicates to public defense. Per the Department, the firm recently hired two attorneys, but one of those accepted a full-time defender contract in Mineral County. The other attorney joins the firm from another state and will take the Nevada bar exam in February. The out-of-state attorney has not applied to the Department to be qualified to represent indigent clients. If the out-of-state attorney is deemed qualified, it is still not clear how much time the new attorneys will devote to public defense in Lyon County.

### Contracts #4 & 5

The Walther Law Firm is now serving as first-tier conflict counsel at a \$200/hour rate of compensation, with a workload estimated at between 0.3 and 1.0 FTE. Walter entered into additional contracts to provide an attorney to represent indigent clients in the Third Judicial Western Regional Drug Court and to represent clients in juvenile cases. The compensation for the second contract is set at \$3,350/monthly. The workload is estimated at 210 hours per year, and the county is responsible for providing additional counsel or compensation if the amount of work exceeds that.

### Contract #6

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<sup>65</sup> The Brock Law contract for Douglas County (Walker River) is attached to this Report as Appendix L.

<sup>66</sup> <https://seal-plane-t28k.squarespace.com/>

<sup>67</sup> The Lyon County contract with Mansfield & Mayo is attached as Appendix C to the Monitor’s 13<sup>th</sup> Report.

Silver State Law has a conflict contract that requires the firm to take an average minimum of six (6) cases per month.

#### **4. Nye County: Short six (6) attorneys**

As previously reported, the oversight attorney for Nye County worked with the individual contract attorneys to ensure that the caseloads were not artificially elevated through a failure to close cases in Legal Server. This process is complete, and it appears that the workload standards set by the Board adequately reflect the caseloads in Nye County. A total of twelve (12) attorneys are needed. In response to excessive workloads, the Department granted the contract attorneys a 60-day reprieve by selecting appointed counsel to take new cases. In the first quarter of FY 2025, appointed counsel in Nye County logged 971.8 hours—offering a significant reprieve to the contract attorneys. The reprieve ended on October 1, 2024. Because Nye County manages its indigent defense plan, the county pays for appointed counsel to provide the contract attorneys with a reprieve, and then the state reimburses the county for the amount of the county’s expenditure that exceeds the county’s maximum contribution. To date, however, the county has not been willing to put another reprieve in place. The Acting Executive Director of the Department met with Nye County leadership on November 18, 2024, and was told that the county will post a notice that additional contracts are available for private attorneys who would like to apply.

The workload of the contract attorneys is exacerbated by the absence of a Counsel Administrator to assist with opening cases in Legal Server. The Nye County Plan for Indigent Defense Services requires an administrator, but no one has been hired for the position.

The Department could take steps through a corrective action plan but would need additional resources to provide appointed counsel to relieve excessive workloads.

#### **5. White Pine County: In compliance, depending on total workload of NSPD**

White Pine County opted to use the NSPD for its primary public defender services. Currently, the NSPD attorneys staffing cases in the county are Deputy Director Derrick Penney with the as-needed assistance of the Chief Appellate Defender, Jim Hoffman. The White Pine NSPD office has one legal secretary and one investigator.

The Department contracted with Jane Eberhardy—an Ely attorney who previously held a full-time contract for public defense in White Pine County—to provide up to 1,800 hours at an hourly rate, with a total not to exceed \$309,600. The Department recently contracted with a second attorney for 800 hours of casework to cover juvenile cases.

Without the as-needed assistance of the NSPD Chief Appellate Defender, Jim Hoffman, White Pine County would have 2.9 FTE, leaving it short 0.4 FTE. If the appellate chief is available to spend 40 percent of his time on trial-level defense in White Pine County, then the county



complies with workload standards. The Monitor does not have information about Hoffman’s appellate caseload, and the NSPD annual workload report is not due until December 1, 2024.<sup>68</sup>

## 6. NSPD Workload Compliance: Unknown

It is difficult to assess the workload of the NSPD attorneys, particularly Jim Hoffman. In addition to handling appeals, the NSPD represents clients in rural counties that have opted for their services. Four (4) *Davis* counties have opted to have the NSPD handle appellate representation—Esmeralda, Lander, Lincoln, and White Pine counties. Three (3) *Davis* counties—Churchill, Lander, and White Pine—have opted to have the NSPD handle death penalty cases, for which the NSPD is contracting with private attorneys. Five (5) *Davis* counties—Churchill, Esmeralda, Lincoln, Lyon and White Pine—have opted to transfer parole and pardons cases to the NSPD. The Office of the Public Defender is required to submit a report by December 1, 2024. NRS 180.080 (1). This report will provide the information necessary to assess the caseload and workloads of the sparsely staffed NSPD.

## Discussion

The state has failed to comply with the workload standards by the deadline of November 2, 2024. As the above discussion makes clear, there are significant shortages, particularly in Churchill—short 5 attorneys--and Nye—short 6 attorneys, and possibly in Douglas depending on how one views the terms of the provider contracts.

It should be noted that the Department took the necessary steps to comply with the workload standards by requesting earmarked funds to contract with 10 additional attorneys, and for additional funds for appointed counsel to provide a reprieve through the appointment of conflict counsel.

On August 19 and 28, 2004, the Executive Director emailed the Governor’s Office to request approval for a request for funding for 10 attorneys to deploy to the rural counties that are significantly out of compliance with the workload standards so the state could meet the compliance deadline set in the *Davis* Judgment (November 2, 2024). The request was not granted, and the Executive Director was placed on administrative leave two days after the August 28, 2024, request.

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<sup>68</sup> NRS 180.080 Duties: Reports to Executive Director and participating counties.

1. The State Public Defender shall submit:

(a) A report on or before December 1 of each year to the Executive Director and to each participating county containing a statement of:

- (1) The number of cases that are pending in each participating county;
- (2) The number of cases in each participating county that were closed in the previous fiscal year;
- (3) The total number of criminal defendants represented in each participating county with separate categories specifying the crimes charged and whether the defendant was less than 18 years of age or an adult;
- (4) The total number of working hours spent by the State Public Defender and the State Public Defender’s staff on work for each participating county;
- (5) The amount and categories of the expenditures made by the State Public Defender’s office; and
- (6) Such other information as requested by the Executive Director of the Department of Indigent Defense Services or the Board on Indigent Defense Services.

Given that the legislature set aside more than \$12 million for the biennium to comply with, among other things, the workload standards, it is frustrating that the Department was unable to access the funds necessary to comply with the Judgment.

As noted in the prior Monitor’s Report, to the extent that the attorney shortages are caused by insufficient funding and low salaries, the state runs the risk of violating both the Judgment and the Sixth Amendment. The Ninth Circuit recently upheld a preliminary injunction requiring Oregon to release pretrial detainees who, due to attorney shortages, had not been appointed an attorney within seven days.<sup>69</sup> The Ninth Circuit laid the blame for the Sixth Amendment violation squarely on the state of Oregon’s “uncharted refusal to adequately pay lawyers.”<sup>70</sup> The court further stated, “Consistent with the Sixth Amendment, Oregon could solve this problem overnight simply by paying appointed counsel a better wage.”<sup>71</sup> Ultimately, it is the state’s responsibility in Nevada as well to ensure a sufficient number of qualified attorneys.

Although the Department has made valiant efforts to comply with the workload standards, it is difficult to conclude anything other than that the state has failed to make a good faith effort to comply with the Judgment.

### **Recruiting attorneys**

To recruit new attorneys, or at least start a pipeline to rural indigent defense, the Department this quarter offered an event at UNLV Boyd School of Law to publicize the LASSO program, which provides progressively higher stipends for law students and recent graduates,<sup>72</sup> The former Executive Director arranged for one of the most prominent defense attorneys in the nation, Stephen Bright, to speak to UNLV Boyd School of Law students about public defense in general and rural indigent defense in particular at a LASSO event on October 10, 2024. Bright told the Monitor that he would not have come to Las Vegas but for Marcie Ryba’s heartfelt letter describing the important and vital work of building a rural indigent defense system that complies with the Sixth Amendment and provides equal justice for all. Based on Ryba’s letter, Bright decided to accept the invitation. He spoke to a full room at noon, and more law students at a second event in the afternoon. Both the Acting Executive Director and Deputy Director attended as well. The Department has held no additional recruitment events since the departure of the Executive Director.

### **B. Oversight**

As discussed in the previous Monitor’s Report, the Department’s Oversight Protocol for Indigent Defense Systems in Rural Nevada Counties sets forth the statutory mandate for on-site visits to determine compliance with minimum standards, court rules, and other rules, statutes, and constitutional provisions, and to generally ensure that “[r]epresentation of indigent defendants is being provided in an effective manner.”<sup>73</sup>

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<sup>69</sup> *Betschart et al. v. State of Oregon*, 103 F.4<sup>th</sup> 607, 614 (9<sup>th</sup> Cir. 2024).

<sup>70</sup> 103 F.4<sup>th</sup> at 622.

<sup>71</sup> 103 F.4<sup>th</sup> at 628.

<sup>72</sup> The LASSO Program was discussed in detail in the Monitor’s 12<sup>th</sup> Report, 18-19.

<sup>73</sup> NRS 180.440(2)(1).

The oversight system appears to be stalled in data collection, without analysis and intervention. The last oversight report from the Department was posted May 1, 2024, by then Deputy Director Thomas Qualls. Since that time, the three contracting oversight attorneys continued to visit counties and submit forms—as well as some reports—to the Department about the performance of individual attorneys, attorney-client meeting spaces,<sup>74</sup> and prisoner transport issues. The problem seems to be that there is insufficient Department staff to review the materials submitted by the oversight attorneys, determine which issues need to be addressed for compliance, and then develop and implement a plan to address the compliance issues.

Several issues emerge from the documents provided by oversight attorneys. First, the quality of representation in White Pine County is likely resolved by the resignation of the State Public Defender.

Second, there remains a problem ensuring court appearances of in-custody clients charged in Eureka County. Oversight Attorney David Schieck reported after an in-person visit to Eureka County on November 1, 2024. Because Eureka closed its jail, people arrested and held on charges in Eureka County are still being taken to the White Pine County jail. This problem has been exacerbated by the resignation of the Eureka County Sheriff. In one instance this resulted in an incomplete Presentencing Investigation report because relevant information was not collected from the defendant housed in White Pine County's jail.<sup>75</sup> Schieck noted a representation issue as well: A Spanish speaking defendant pleaded no contest without having the rights waiver provided in Spanish.

## Recommendations

- The Department is understaffed to review, consolidate, and respond to the oversight attorneys' reports from the field. The last quarterly report on oversight was posted on the website in May 2024. The Department needs to be adequately staffed to respond to the information provided by the oversight attorneys.
- The state should build funding for oversight attorneys into the Department's budget. The funds to pay for three contract-based oversight attorneys are not in the Department's budget, but instead, are paid with funds earmarked in the state's contingency account

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<sup>74</sup> Judgment, 15 (“Defendants shall take appropriate legal steps to ensure that county jails and state prisons are in compliance with all existing laws and rules regarding access to counsel and the privacy of client communication”). Some progress has been made on assuring access to confidential spaces for attorney-client communication, at least in the courthouses. In Douglas County, the Stateline Justice Court now has a room dedicated to attorney-client meetings. The oversight attorney for Lyon County informs the Monitor that the Dayton courthouse has a confidential meeting room in the basement, and that plans are underway for a new courthouse that will have an office for public defenders to meet with clients. Likewise, the Canal Township Justice Court in Fernley is in the process of soliciting bids for renovation and expansion of the courthouse and is planning to include a public defender office in the renovated courthouse. In the meantime, attorneys can meet confidentially with clients at the Municipal Court building. The renovated District Court in Yerington includes a public defender office which is almost completed.

<sup>75</sup> Onsite Visit Report: Eureka County (November 1, 2024), attached to this Report as Appendix E.

pursuant to AB 518 (7)(b). It may be the case that contracting at an hourly rate is preferable to salaried positions, allowing for maximum flexibility so that experienced attorneys familiar with the county in question can provide oversight as needed. For the stability of the state's compliance with the Judgment, however, it may be prudent to ensure that the Department can compensate oversight attorneys from its budget.

### **C. Training and resources**

The Judgment states that the Defendants must offer “a systematic and comprehensive training program.”<sup>76</sup> The Department received an allocation of \$113,239 for trial college expenses for four (4) to six (6) attorneys, conference reimbursement, speaker and travel fees, the annual conference and a manager for the conference. In addition, the Department hosted the following CLEs:

- Autonomy to Decide: Managing an Effective Defense with a Challenging Client, September 19, 2024, Federal Public Defender's Office.
- Civil Resources for Indigent Clients, October 23, 2024. Susan Myers of Nevada Legal Services.
- Strangulation: Evaluating Strangulation Evidence from a Medical Perspective, October 24, 2024. Tara Godoy, Godoy Medical Forensics.
- Ethical Considerations Regarding Client Files, October 31, 2024, John Lambrose & Brenda Roberts.
- Legal Update and Practice Pointers for Criminal Practitioners in the Nevada Court of Appeals, November 13, 2024, Chief Judge Michael Gibbons, Judge Bonnie Bulla, Judge Deborah Westbrook, Nevada Court of Appeals.
- Kristine Kuzemka (State Bar) and Jeena Cho (author of *The Anxious Lawyer*) will present a substance abuse/mental health CLE on November 14, 2024.

In addition to planning the annual conference, the Department is planning trainings on Westlaw research and juvenile law.

### **Recommendations**

- The state should consider including all training funds for ongoing and annual training into the Department's budget rather than requiring the Department to apply for an allocation of interim funds on an *ad hoc* basis. The training budget should anticipate new defender training for a potential cohort of new public defense attorneys hired or contracted to meet the workload standards.

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<sup>76</sup> Judgment, 16.

## **D. Uniform Data Collection and Reporting**

The Judgment requires that attorneys who provide public defense in the relevant counties document time for attorneys, investigators, experts, staff, and the total number of hours the attorneys spent working on private cases, and that the Department provide the data collected on rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.<sup>77</sup> The Board's regulations follow the Judgment's requirements.<sup>78</sup>

The Department published its first quarter report on workload data, for July 1—September 30, 2024.<sup>79</sup> All attorneys are reporting attorney hours except for Jherna Shahani in Nye County, and Karl Shelton of Nye County, who reported only 4.9 hours. Some attorneys are reporting staff, investigator, and expert hours. For those who do not report in these areas, it is difficult to determine whether they failed to report or have not used staff, investigators or experts on their cases. This requires further analysis by the Department to ensure compliance.

### **Private workload reporting**

The Judgment requires attorneys to report the total number of hours spent on private cases, but very few attorneys are complying with this requirement. The issue of private caseload is important in determining the overall workload of attorneys with full-time or more-than-full-time contracts to provide indigent defense.

Attorneys in compliance with private workload reporting: Brown (Douglas); Ence (Douglas); Stovall (Douglas); Brown (Eureka)

Attorneys who did not respond to the private workload survey: Filter (Douglas); Stermitz (Douglas); Katschke (Lincoln); Brock (Lyon & Mineral); Mansfield & Mayo (Lyon); Silver State Law (Lyon); Walther Law (Lyon); Blatnik (Nye); Duecker (Nye); Gent (Nye); Shelton (Nye); Shahani (Nye); Eberhardy (White Pine). Shahani reported no private workload hours.

### **Recommendations**

- The Department has a form that public defense providers fill out to report the hours spent on private casework. To be in compliance with the Judgment, the Department should ensure that attorneys are submitting their private workload on a quarterly basis.

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<sup>77</sup> Judgment, 18.

<sup>78</sup> Section 43 of the Regulations requires an annual report of the number and type of cases, their disposition, whether motions to suppress were filed, and the number of trials. Section 44 requires that attorneys providing indigent defense in the relevant counties document their time in increments to the tenth of an hour, the number of hours for attorneys, investigators, experts, staff, and the total number of hours the attorneys spent working on private cases. Section 45 requires attorneys providing indigent defense to use the Department's data collection system.

<sup>79</sup> Available at [https://dids.nv.gov/Annual\\_Report/county-reports/](https://dids.nv.gov/Annual_Report/county-reports/).

- Per the Judgment, the Department should ensure that all expert and investigator hours are reported.

## **Looking ahead**

There are numerous outstanding matters to comply with the Judgment, and a short-staffed Department to engage in compliance activities. Here are the outstanding compliance issues:

- Ensuring enough attorneys to comply with the workload standards.
- Determining the current and projected workload of the NSPD.
- Ensuring that attorneys are qualified by the Department for the types of cases that they are handling, and that attorneys are up to date on their required continuing education.
- Ensuring that the contracts between public defense providers and counties do not create economic disincentives forbidden by the Judgment.
- Supervising oversight attorneys and engaging in outreach and (if necessary) corrective action plans in those counties in which the system or attorneys are failing to provide effective assistance of counsel.
- Establishing a method that ensures all contract attorneys report time spent on private cases.
- Ensuring that in-custody defendants are brought to court for substantive hearings, that attorneys are present at initial appearance, that courthouses, jails and prisons provide spaces adequate for confidential attorney-client meetings.

## **Next steps for the Monitor**

The Monitor awaits the decision whether the Defendant is out of compliance with the terms of the Judgment, and the next steps in this case. In the meantime, the Monitor will prepare to report on:

- The status of requests to access AB 518 (7) funds to comply with the Judgment in general and the workload standards in particular.
- Bill draft requests or proposed legislation aimed at compliance with terms of the Judgment, particularly draft bills that would ensure the independence of the defense function.

- The Department's oversight activities and qualification checks.
- Recruitment and efforts to comply with the workload standards, including incentives and increased rates of compensation for salaried public defenders.

**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix A**  
**Budget Status Report**



**STATE OF NEVADA  
Office of the State Controller**

**Budget Status Report - Receipts/Funding**

**Fiscal Year: 2024**

**Fund:** 101 GENERAL FUND

**Agency:** 111 DEPT OF INDIGENT DEFENSE

**Budget Account:** 1008 OFFICE OF INDIGENT DEFENSE

**Organization:** 0000 DEPT OF INDIGENT DEFENSE

	YTD Actual	Work Program	Difference
<b>Total Receipts/Funding</b>	9,438,718.04	9,875,417.00	-436,698.96

Code	Description	YTD Actual	Work Program	Difference
<a href="#">42</a>	APPROPRIATIONS	6,236,685.00	6,236,685.00	.00
<a href="#">45</a>	REVERSIONS	-480,553.00	-480,553.00	.00
<a href="#">47</a>	BEGINNING CASH	11,053.00	11,053.00	.00
<a href="#">4653</a>	TRANSFER FROM DETR	78,948.04	515,647.00	-436,698.96
<a href="#">4654</a>	TRANS FROM INTERIM FINANCE	3,592,585.00	3,592,585.00	.00

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**STATE OF NEVADA  
Office of the State Controller**

**Budget Status Report - Receipts/Funding**

**Fiscal Year: 2025**

**Fund:** 101 GENERAL FUND

**Agency:** 111 DEPT OF INDIGENT DEFENSE

**Budget Account:** 1008 OFFICE OF INDIGENT DEFENSE

**Organization:** 0000 DEPT OF INDIGENT DEFENSE

	YTD Actual	Work Program	Difference
<b>Total Receipts/Funding</b>	7,552,732.00	7,953,181.00	-400,449.00

Code	Description	YTD Actual	Work Program	Difference
<a href="#">42</a>	APPROPRIATIONS	6,265,191.00	6,265,191.00	.00
<a href="#">47</a>	BEGINNING CASH	473,188.00	473,188.00	.00
<a href="#">4203</a>	PRIOR YEAR REFUNDS	36,250.00	.00	36,250.00
<a href="#">4653</a>	TRANSFER FROM DETR	.00	436,699.00	-436,699.00
<a href="#">4654</a>	TRANS FROM INTERIM FINANCE	778,103.00	778,103.00	.00

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**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix B**  
**August 2024 Emails**

**From:** [Marcie Ryba](#)  
**To:** [Jim Wells](#)  
**Cc:** [Dylan K. Tedford](#); [Andrew Coates](#); [Budd Milazzo](#); [Peter P. Handy](#); [Donald Carlson](#)  
**Subject:** RE: Request for Guidance (Davis Consent Judgment)  
**Date:** Wednesday, August 28, 2024 11:00:28 AM  
**Attachments:** [Monitor Report No. 13 Davis v. State 170C002271B.pdf](#)  
[image001.png](#)  
[image006.png](#)  
[image005.png](#)  
[image007.png](#)  
[image008.png](#)  
[image010.png](#)

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Hello, Mr. Wells,

I submitted the question below to Mr. Hastings, but he has directed it should be sent to you.

First, as you are aware, the consent judgment requires compliance with the workload study by November 2. The *Davis* court monitor has expressed concern that the State of Nevada will not comply with the workload by the timeline set forth in the consent judgment. The Department is hopeful that the counties will comply with the workload requirement by the deadline. We are working with the counties that are open to working with us. But the reality is that ultimately the state is responsible if the counties are not in compliance with the workload by the deadline.

As a backup plan, DIDS would propose a request to the IFC restricted reserve contingency funds that are set aside by AB518, Section 7 (2023) for workload compliance so that DIDS can enter into contracts with contract attorneys to cover our county workload shortages. The proposal would be to request funding for 10 contract attorneys to provide up to 1,393 hours of representation as needed throughout rural Nevada. The rate of pay would be \$172 an hour. Therefore, each contract is expected to be: \$239,596 (1392 x \$172). The total for 10 contracts would be: \$2,395,960.

ASD has started the work program and the GFO has allowed an extension. We are hoping to make the October IFC to bring the state into compliance (if the counties are unable to). DIDS would enter into up to 10 contracts to be set for BOE on October 2, that would be contingent on IFC approving the funding. DIDS would appear at IFC on October 20 for the request. If this were to fall into place, if counties are unable to fill the number of public defender positions required by the workload study, the state could step in with these 10 contract attorneys to provide coverage. In the end, the desire is to comply with the workload, as required by the consent judgment so that we can close *Davis*.

On an alternate note, the Nevada State Public Defender, Patricia Cafferata, has resigned effective September 6. The NSPD (via DIDS) is taking steps to enter into a contract with an attorney in Northern Nevada to cover the parole violation hearings that occur at the Parole Board in Carson City that Patty was historically covering. The expected cost will be not to exceed \$27,500 (\$172 x 160 hours). I hope that you are supportive of this contract.

I look forward to hearing from you on these issues. Let me know if you need additional information.

Thank you,

Marcie

---

**From:** Nathan Hastings <hastings@gov.nv.gov>  
**Sent:** Thursday, August 22, 2024 2:43 PM  
**To:** Marcie Ryba <mryba@dids.nv.gov>  
**Cc:** Dylan K. Tedford <dktedford@gov.nv.gov>; Andrew Coates <acoates@gov.nv.gov>; Jim Wells <jimwells@gov.nv.gov>  
**Subject:** RE: Request for Guidance (Davis Consent Judgment)

Marcie,

As I believe you're aware, Jim is out of the office this week. Independent of the legal interpretation of Sec. 7(1)(b) of the bill, the decision of whether to proceed with your proposal is a budgetary decision that will fall under Jim's direction. I apologize for not getting to your email earlier, but a Monday proposal with a potential Wednesday deadline is almost always going to be quite challenging to process effectively. We will circle back with Jim early next week.

Best,

**Nathan Hastings**  
**General Counsel**  
**Governor Joe Lombardo**  
101 North Carson Street  
Carson City, NV 89701  
775-684-5637  
[hastings@gov.nv.gov](mailto:hastings@gov.nv.gov)

---

**From:** Marcie Ryba <[mryba@dids.nv.gov](mailto:mryba@dids.nv.gov)>  
**Sent:** Tuesday, August 20, 2024 11:01 AM  
**To:** Nathan Hastings <[hastings@gov.nv.gov](mailto:hastings@gov.nv.gov)>  
**Cc:** Budd Milazzo <[bmilazzo@finance.nv.gov](mailto:bmilazzo@finance.nv.gov)>; Jim Wells <[jimwells@gov.nv.gov](mailto:jimwells@gov.nv.gov)>; Peter P. Handy <[P.Handy@dids.nv.gov](mailto:P.Handy@dids.nv.gov)>; Dylan K. Tedford <[dktedford@gov.nv.gov](mailto:dktedford@gov.nv.gov)>; Andrew Coates <[acoates@gov.nv.gov](mailto:acoates@gov.nv.gov)>; Brenda Roberts <[B.Roberts@dids.nv.gov](mailto:B.Roberts@dids.nv.gov)>; Peter P. Handy <[P.Handy@dids.nv.gov](mailto:P.Handy@dids.nv.gov)>; Donald Carlson <[d.carlson@admin.nv.gov](mailto:d.carlson@admin.nv.gov)>  
**Subject:** RE: Request for Guidance (Davis Consent Judgment)

Good morning,

As a follow-up to yesterday's email, I wanted to include a copy of the most recent Monitor report (which was received last night at 8:39 pm).

On Page 16 of the Report, the Monitor discusses her concerns for workload compliance in Douglas, Churchill, Lyon, Nye and White Pine. Her concerns are that the counties may be contributing to the shortages of attorneys by being unwilling to set terms and compensation that will attract new attorneys, but it is the state, not the counties, that run the risk of violating both the Judgment and the Sixth Amendment. See p. 20.

Thank you,  
Marcie

**Marcie Ryba | Director**  
State of Nevada  
Department of Indigent Defense Services  
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(775) 687-8493 (o)  
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**From:** Marcie Ryba  
**Sent:** Monday, August 19, 2024 4:45 PM  
**To:** Nathan Hastings <[hastings@gov.nv.gov](mailto:hastings@gov.nv.gov)>  
**Cc:** Budd Milazzo <[bmilazzo@finance.nv.gov](mailto:bmilazzo@finance.nv.gov)>; Jim Wells <[jimwells@gov.nv.gov](mailto:jimwells@gov.nv.gov)>; Peter P. Handy <[P.Handy@dids.nv.gov](mailto:P.Handy@dids.nv.gov)>; Dylan K. Tedford <[dktedford@gov.nv.gov](mailto:dktedford@gov.nv.gov)>; Andrew Coates <[acoates@gov.nv.gov](mailto:acoates@gov.nv.gov)>; Brenda Roberts <[B.Roberts@dids.nv.gov](mailto:B.Roberts@dids.nv.gov)>; Peter P. Handy <[P.Handy@dids.nv.gov](mailto:P.Handy@dids.nv.gov)>; Donald Carlson <[d.carlson@admin.nv.gov](mailto:d.carlson@admin.nv.gov)>  
**Subject:** Request for Guidance (Davis Consent Judgment)

Hello, Mr. Hastings,

I am hoping that I could schedule a meeting with you to discuss the *Davis* Stipulated Consent Judgment and a funding request I would like to submit.

As you are aware, the consent judgment requires compliance with the workload study by November 2. The *Davis* court monitor has expressed concern that the State of Nevada will not comply with the workload by the timeline set forth in the consent judgment. The Department is hopeful that the counties will comply with the workload requirement by the deadline. We are working with the counties that are

open to working with us. But the reality is that ultimately the state is responsible if the counties are not in compliance with the workload by the deadline.

As a backup plan, DIDS would propose a request to the IFC restricted reserve contingency funds that are set aside by AB518, Section 7 (2023) for workload compliance so that the Nevada State Public Defender can enter into contracts with contract attorneys to cover our county workload shortages. The proposal would be to request funding for 10 contract attorneys to provide up to 1,393 hours of representation as needed throughout rural Nevada. The rate of pay would be \$172 an hour. Therefore, each contract is expected to be: \$239,596 (1392 x \$172). The total for 10 contracts would be: \$2,395,960. Attached is an email from LCB with the opinion that such contract funding can be requested by the Nevada State Public Defender from AB518, Section 7 funds.

If this funding proposal were to be approved, DIDS would take steps to prepare a work program for the October IFC. As a side note, the work program due date for the October IFC is August 21 (Wednesday). The NSPD would enter into up to 10 contracts to be set for BOE on October 2, that would be contingent on IFC approving the funding. DIDS would appear at IFC on October 20 for the request. If this were to fall into place, if counties are unable to fill the number of public defender positions required by the workload study, the state could step in with these 10 contract attorneys to provide coverage. In the end, the desire is to comply with the workload, as required by the consent judgment so that we can close *Davis*.

I am aware that GFO and ASD staff is very busy with budget duties and I was hoping to get your support before submitting the request, as ultimately this is a policy decision of which way to go.

I look forward to hearing from you. Let me know if you need additional information.

Marcie

**Marcie Ryba | Director**

State of Nevada

Department of Indigent Defense Services

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**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix C**

**Statement by the Board Concerning  
Former Executive Director Marcie Ryba**

STATEMENT BY THE BOARD ON INDIGENT DEFENSE SERVICES CONCERNING  
FORMER EXECUTIVE DIRECTOR MARCIE RYBA

The Board on Indigent Defense Services (“BIDS”) recently learned that Marcie Ryba was summarily terminated as Executive Director of the Department of Indigent Defense Services (“DIDS”) by Governor Lombardo’s Chief of Staff. There was no consultation between the Governor’s staff and BIDS prior to this action nor was there any prior expression of any concern by the Governor’s office to BIDS concerning Ms. Ryba.

BIDS expresses confidence in the work Ms. Ryba did on behalf and under the direction of BIDS in this statement.

In November 2019 when she was appointed Executive Director of DIDS, Ms. Ryba was tasked with creating an entire Department from scratch. Her responsibilities were broad, including finding office space, hiring staff, learning the budget, legislative, and regulatory processes, meeting with stakeholders throughout the State and serving as secretary to BIDS.

In May 2020, after extensive discussion at a meeting which was attended by Craig Newby, on behalf of the Nevada Attorney General, BIDS signed the following:

“Pursuant to A.B. 81, the Board of Indigent Defense Services has the authority to act in pursuit of its statutory responsibility to make efforts to improve the quality of mandated legal representation in the State of Nevada. The Board has reviewed the Consent Judgment settling the *Davis v. Nevada* lawsuit and the State’s obligations contained therein that are expressly intended for implementation by the Board, the Department of Indigent Defense Services, and/or the Director (or designee). The Board acknowledges that those obligations constitute measures that, once implemented, will improve the quality of indigent defense services. Therefore, the Board hereby authorizes and directs the Executive Director and the Department to implement those obligations in accordance with the terms of the Consent Judgment. The Board represents and warrants that it is authorized to take this action.”<sup>1</sup>

---

<sup>1</sup> That authorization and acknowledgement was attached as Exhibit A to the stipulated consent judgment which was filed in August 2020. Thus BIDS’ responsibility to improve the quality of mandated legal defense and implement the Davis settlement provisions are imposed by a binding settlement agreement in addition to Chapter 180.

To that end, Marcie Ryba and her staff made aggressive steps towards compliance with the judgment as follows:

1. To comply with the workload data reporting requirement, Ms. Ryba: a) assisted the BIDS with the promulgation of regulations to both define the data being collected, as well as require the collection of such data; b) collaborated with State Purchasing to enter into a contract for the case management system and modified the case management system to collect the data set forth in the regulations; c) interacted with indigent defenders and worked to support the passage of AB39(2023) to protect the data from dissemination and d) published quarterly data reports of indigent defense services data.
2. Successfully published five annual reports on the status of indigent defense.
3. Established a Standard Contract for Provision of Indigent Defense and required the approval of new county contracts. In so doing, Ms. Ryba: a) gained an understanding of the uniqueness of each of our rural communities and b) assisted BIDS to set forth the requirements of each indigent defense services contract by regulations. See NAC 180.
4. Ensured all Class Members: (a) have immediate access to applications for indigent defense services; (b) are screened for indigency within 48 hours; and (c) who are eligible for publicly funded legal representation are represented by counsel at initial appearance/arraignment.
5. Guided and represented BIDS' obligations in the adoption of regulations requiring all counties create plans for the provision of indigent defense services, as was set forth in ADKT 411. The regulations require each plan to address the requirements in Section 4 to specify how they are achieved by each county's plan.
6. Worked with every rural county to adopt a Plan for the Provision of Indigent Defense Services.
7. BIDS was required to establish a system for issuing client surveys. Ms. Ryba created a survey, obtained BIDS' approval of the survey, and successfully provided for issuing the survey either digitally (through LegalServer) or physically by a paper copy.
8. BIDS was required to enter a Delphi study contract with a qualified provider. To that end, Marcie Ryba completed a Request for Proposals (RFP) and contracted with the National Center for State Courts (NCSC) within the required timeframe. In so doing,

she successfully served as a conduit between NCSC and the indigent defense providers for the successful completion of the study.

9. DIDS, through BIDS, was obligated to have the Delphi study standards included in standard indigent defense contract. Upon completion of the study, Ms. Ryba presented the final findings to BIDS for adoption. BIDS directed Ms. Ryba to work with the counties to bring them into compliance by the deadline. To assist that effort, BIDS authorized Ms. Ryba to amend regulations within NAC 180 to require county plans comply with the workload requirements.
10. Ms. Ryba immediately and continuously worked to explain to stakeholders the new staffing requirements which resulted from the workload study.

At the August 22, 2024, BIDS meeting, Ms. Ryba presented the 13<sup>th</sup> Report of the Davis Monitor. In the report, the monitor highlighted the following achievements of DIDS, under the leadership of Executive Director Ryba:

- All the Davis counties have plans for public defense, including prompt screening for indigency, selection of counsel independent of the prosecution or judiciary, compensation and reimbursement for experts and investigators independent of the judiciary, prompt appointment of counsel, 48-hour pretrial release hearings. The county plans also set forth the qualifications, performance standards, and specific requirements, such as confidential spaces for attorney-client communication, that are required for effective representation. Each county plan provides for first line and conflict public defense, as well as for second tier conflicts, and a system for identifying conflicts.
- Contracts between counties and public defense providers are reviewed by DIDS to ensure the inclusion of all obligations under the judgment.
- Through Ms. Ryba's efforts, as authorized by BIDS, a statutory formula was enacted to reimburse the counties for expenses over their maximum contribution for indigent defense, previously set forth in DIDS's regulations. By all accounts, reimbursement has been reliable and thus a success.
- Developed and implemented a system of qualification and selection for public defense providers and, on an ongoing basis, selects appointed counsel directly or through its county-level delegates.
- Developed a system of oversight in which three attorneys, compensated on a contract basis, report on compliance activities required by the Judgment, including the prompt screening for indigence and appointment of counsel, appearance at initial arraignment, bail arguments, client communication, confidential meeting rooms, and the

discouragement of waivers of rights at arraignment. Oversight attorneys using the standards set forth in ADKT 411 and the ABA Standards for the Defense Function can address compliance issues on an ongoing basis and DIDS issues oversight reports on a regular basis.

- Developed a framework for training and resources, including providing regular CLE courses for indigent defenders, an annual conference and opportunities for attorneys to attend trial colleges and other out-of-state training opportunities.
- Adopted standards of practice for indigent defense and requires their inclusion in all county contracts.
- BIDS has set regulations for, and the Department has acted upon, the statutory procedure for corrective action plans with counties or attorneys failing to comply with the terms of the Judgment.
- Implemented a universal case and workload reporting system, incentivized through Westlaw subscriptions, which DIDS provides free of charge to indigent defenders. When compliance issues emerge, the Department's oversight attorneys have begun working directly with contract attorneys to ensure cases and hours are reported completely.
- The Department produces quarterly case and workload reports, as well as an annual report regarding the status of indigent defense services.
- After completing the National Center for State Courts' workload study, through Ms. Ryba's guidance, BIDS set workload standards, which DIDS then applied in each county, determining the number of attorneys, investigators, and support staff needed. Ms. Ryba began working with stakeholders in each rural county to develop the plan for complying with the workload limits.
- The new contracts for indigent defense acknowledge the judgment's workload requirements and contain provisions for appointing conflict counsel or providing extra, hourly remuneration when the workload exceeds the limits. To address the shortage of attorneys and excessively high workloads of some attorneys, through Ms. Ryba's efforts, DIDS has: a) increased the hourly rate for appointed counsel to track the federal rate; b) secured \$32,996 in funding for social work services through the Nevada Public Health Foundation for Douglas, Eureka, Lincoln, and White Pine counties; c) provided a reprieve for attorneys with excessive workloads, especially in Nye County where the DIDS is selecting appointed counsel for all new cases for at least sixty days or until the caseloads of the contract attorneys fall within the workload standards; d) selects appointed counsel on an ongoing basis for counties with insufficient numbers of contract attorneys or conflict counsel and e) engaged in ongoing recruitment, including the LASSO program that provides stipends for first- and second-year law students to work with rural public defenders over

the summer or during the semester, and larger stipends for law school graduates who commit to working in rural indigent defense.

See 13<sup>th</sup> Report of the Monitor, *Davis v. State*, Case No. 170C002271B, August 19, 2024, page 4.

During the August 19, 2024, BIDS meeting Ms. Ryba cautioned BIDS about the growing concerns from the Davis monitor that the State would be non-compliant with the workload study by the judgment deadline of November 2, 2024. Concerns of the monitor contained within the 13<sup>th</sup> report were:

- The instability of ongoing funding for Judgment-mandated activities wherein the monitor expressed concern that crucial activities necessary for compliance with the Judgment were funded in whole or in part by *ad hoc* disbursement requests which are processed through the Governor's office to the Interim Finance Committee requesting the release of funds earmarked pursuant to AB518(7)(2023). These crucial activities include oversight and evaluation, training and resources, and universal reporting. The monitor expressed concern that a delay or denial in funding could cause the state to fall out of compliance with the judgment.
- Insufficient attorneys to comply with workload limits: the monitor expressed concern that the compensation and/or workload offered by some counties would be insufficient to attract new attorneys.
- County contracts that create economic disincentives: the monitor expressed concern that some county contracts created an economic disincentive as the rate of compensation fell far below the hourly rate for appointed counsel.
- Confidential meeting spaces: many county courthouses still lacked reliably accessible places for confidential attorney meetings.
- Standards for remote appearances of incarcerated defendants: jail practices: the monitor was concerned that as the local sheriff had control of how defendants were brought to court, it could affect access to clients.

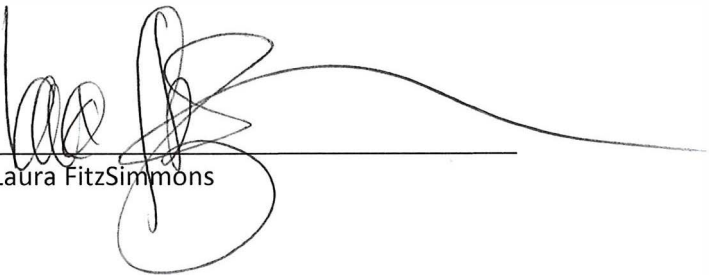
See, 13<sup>th</sup> Report of the Monitor, *Davis v. State*, Case No. 170C002271B, August 19, 2024, page 4.

Also, the monitor expressed concern at the August BIDS meeting. She described the period between February 25, 2024, and August 15, 2024, as "one of great precarity with regard to compliance with the Judgment." These concerns were raised because of ongoing uncertainty as to whether funding would be continued for oversight attorneys, training, recruitment, and data collection incentives for Fiscal Year 2025. *Id.* At p. 7. The monitor

expressed concern that there is no assurance that DIDS will reliably succeed in future funding requests through the Governor's office to the Interim Finance Committee. *Id.* At p. 8. The monitor also expressed concern that the indigent defense shortage in the rural counties could be caused by each rural counties' unwillingness to set terms and compensation that would attract new attorneys, and as such, the state runs the risk of violating both the judgment and the Sixth Amendment. *Id.* At p. 20. Ultimately a recommendation was made that DIDS should intervene when counties set rates of compensation and terms of work that do not attract and retain qualified attorneys to public defender service. *Id.*

These are the circumstances known to BIDS in which Ms. Ryba was terminated by the Governor's Chief of Staff, without consultation or notification to BIDS. These are also the known circumstances in which BIDS expresses its acknowledgment of, and gratitude for, the work Ms. Ryba has done in compliance with BIDS' direction and legal mandate throughout her tenure.

Signed by the Chair of the Board on Indigent Defense Services, as authorized by the Board.



Laura FitzSimmons

**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix D**

**Materials on State Public Defender  
Provided at October 17, 2024 Board meeting**



**Patricia D. Cafferata, Esq.**  
**P.O. Box 20357**  
**Reno, Nevada 89515-0357**  
**775-825-2694**  
[pdcafferata1@sbcglobal.net](mailto:pdcafferata1@sbcglobal.net)

## **EDUCATION**

Southwestern School of Law – California – J.D., 1989  
Lewis and Clark College – Oregon – B.A., 1963  
Mills College – California – 1958-1961

## **EMPLOYMENT**

Associate Tribal Judge, Fallon Paiute-Shoshone Tribal Court – December 2019 to present  
Judicial Law Clerk, Second Judicial District Court, Dept. 3 & 12, August 2019 to November 2020  
Judicial Law Clerk, Second Judicial District Court, Dept. 4, January- August 2019  
Special Assistant Attorney General for Law Enforcement, Counties and Municipalities, Nevada Attorney General Adam Laxalt, 2015- December 2018  
Communications Director, Nevada Attorney General Adam Laxalt, 2015- 2015  
Hearing Officer, Nevada Personnel Dept., (part-time) and private practice, 2010– 2014  
Executive Director, Nevada Commission on Ethics, 2007-2009  
Jenkins Law Office, of Counsel, 2005-2007  
Judicial Law Clerk, Second Judicial District Court, Dept. 4, 2003-2004  
Private civil practice, 2003  
District Attorney, Esmeralda County (Chief Legal Adviser/Prosecutor) 2000-2003&2010  
Staff Attorney, Washoe Legal Services, 1999  
Cafferata & Associates, 1996-1999  
District Attorney, Lander County (Chief Legal Adviser/Prosecutor), 1995-1996  
Cafferata & Steinheimer, 1991-1992, Cafferata & Associates, 1993-1994  
District Attorney, Lincoln County (Chief Legal Adviser/Prosecutor) 1991-1992  
Criminal Deputy District Attorney, Eureka County, 1991  
Judicial Law Clerk, Ninth Judicial District Court, Dept. 1, 1989-1990  
Nevada State Treasurer, 1983-1987  
Assemblywoman, State of Nevada, District 25, 1981-1982  
Office Manager, H. Treat Cafferata, M.D., Reno, 1973-1980  
Bookkeeper and travel agent, Welcome Aboard Travel, Reno, 1971-1972  
Employment counselor, Taylor and Rossi, San Francisco, 1969-1970  
Director of Instruction, Evelyn Woods Reading Dynamics, Oakland, 1966-1969  
Instructor, Evelyn Woods Reading Dynamics, Oakland, 1964-1966  
First Grade School Teacher, Portland, 1963-1964

## **MEMBERSHIPS**

State Bar of Nevada, Washoe County Bar Association member  
National Council of Juvenile and Family Court Judges, Board member  
*Nevada Lawyer*, former Chair and member of the Editorial Board  
Nevada Equal Rights Commission, Former Chair  
Nevada Sesquicentennial Commission, former history member

**AWARD:** Nevada Advisory Council for Prosecuting Attorneys, Bill Raggio (Prosecutor of Year) Award, 2021



ANNE M. LANGER  
STOREY COUNTY DISTRICT ATTORNEY

*Storey County is an equal opportunity provider*

P.O. Box 496 • 201 S C Street • Virginia City, Nevada 89440

May 26, 2023

Thomas Qualls  
Deputy Director  
Department of Indigent Defense Services  
896 West Nye Lane, Suite 202  
Carson City, NV 89703-1578

Peter Handy  
Deputy Director  
Department of Indigent Defense Services  
896 West Nye Lane, Suite 202  
Carson City, NV 89703-1578

RE: Storey County Indigent Defense Services

Dear Deputy Directors:

On or about April 13, 2023, the State Public Defender's Office assigned new counsel to perform the indigent defense in Storey County, Nevada. Unfortunately, there have been numerous problems which include the lack of knowledge of routine court proceedings, a great deal of requests for continuances of hearings/trials due to unavailability, delay in getting defendants released from custody, the appearance of minimal to no client contact prior to a hearing and setting most matters for a hearing regardless of whether there are issues demonstrating a lack of ability to resolve cases. These problems and others are constant and pervasive, and they raise legitimate concerns about the qualifications of assigned counsel to do the job and the effect this has on the representation of indigent defendants.

Chris Arabia, the State Public Defender, who hired and is directly in charge of assigned counsel for Storey County, assured me that the currently assigned counsel would only be appearing on misdemeanor and low-level felony cases, and that he would personally appear on all the higher-level felony cases. However, this has not occurred to date. While the assigned counsel has past prosecution experience, that experience does not appear to translate to the required skills, training and background needed to perform her current criminal defense duties.

Based on the above, I am requesting that each of you as Deputy Directors of the Department of Indigent Services immediately exercise your responsibilities under NRS 180.430 and NRS 180.440 to obtain information and oversee the manner in which indigent services in Storey County are provided, including conducting on-site visits of court proceedings. Attached hereto please find a copy of a court proceeding from the Justice Court of Virginia Township on May 18, 2023. Other past court proceedings are also able to be viewed on recordings from the Court.

The current situation is untenable, potentially compromises the constitutional rights of the accused, and creates a risk of liability exposure to the County. It cannot be allowed to persist.

Thank you for your anticipated responsiveness and assistance in resolving this problem. Please do not hesitate to call me at #775-847-0964 if you have any questions.

Thank you.

Anne M. Langer, Storey County District Attorney

cc: Austin Osborne, Storey County Manager

Attachment as stated

Joe Lombardo  
Governor

Marcie Ryba  
Executive Director

Thomas Qualls  
Deputy Director

Peter Handy  
Deputy Director

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

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578  
Phone: (775) 687-8490 | [dids.nv.gov](http://dids.nv.gov)

June 7, 2023

Anne M. Langer  
Storey County District Attorney  
201 S C Street  
Virginia City, Nevada 89440

*Re: Response to May 26, 2023 Letter regarding Storey County Indigent Defense Services*

Dear District Attorney Langer,

The Department is in receipt of your letter, dated May 26, 2023, regarding Storey County Indigent Defense Services. Your letter alleges several issues related to the representation of indigent defendants by the attorneys within the Nevada State Public Defender's Office.

Based on the allegations made in the letter, the Department will be increasing its oversight of the Nevada State Public Defender's Office as it relates to its performance in Storey County in the coming weeks. The Department takes possible underperformance of indigent defense counsel very seriously, as it is necessary that indigent defendants in Nevada have their rights protected by competent, qualified counsel in accordance with the law.

Throughout and after the intensive on-site and administrative oversight process, the Department will take such action as it determines to be necessary and prudent to ensure the relevant standards are being met and will continue to be met.

Should you have any additional information to provide to the Department regarding this matter, please submit it to the Department through the usual channels.

Sincerely,

/s/ Peter P. Handy  
Peter P. Handy  
Deputy Director

cc: Austin Osborne, Storey County Manager  
Thomas Qualls, Deputy Director  
Chris Arabia, Public Defender

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

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**ONSITE VISIT REPORT**

**Storey County: Virginia City**

Visit date: June 8, 2023

**I. Brief Narrative.**

**Deputy Director Peter Handy and Deputy Director Thomas Qualls** traveled to Virginia City, NV for a court oversight visit, to meet with **Justice of the Peace Eileen Herrington** and **District Attorney Anne Langer**.

**Reports from Anne Langer, Storey County District Attorney**

The Department has received multiple notices from Storey County District Attorney Anne Langer that the indigent services being provided in Storey County were below reasonable standards. The first report was on May 18, 2023, at a meeting with Carson City officials to discuss corrective action in Carson City, which would include Carson City opting out of the State Public Defender's Office and establishing a Carson City Public Defender's Office (CCPD). Ms. Langer expressed the desire for Storey County to join the corrective action (and thereby also opt out of the SPD, outside of the statutory deadline of December 31, 2022). Deputy Director Qualls informed Ms. Langer that the Department would need more information in order to join Storey County into the corrective action.

The second notice from Ms. Langer was a letter dated May 26, 2023, detailing some alleged shortcomings of representation by the SPD in Storey County. The Department responded with a letter dated June 7, 2023, that it would immediately investigate the allegations, including with on-site observations. Deputy Directors Handy and Qualls planned to observe court proceedings in Virginia City on June 8, 2023. Ms. Langer responded immediately, on the same day, with a third notice, a more urgent letter regarding her observations of the deficiencies in the current system, and a "request for immediate intervention" and for a "corrective action plan" for Storey County.

As planned, DIDS Deputy Directors conducted an onsite visit to Storey County on June 8, 2023, to observe court proceedings.

## **Justice of the Peace Eileen Herrington –**

Handy and Qualls first met with Judge Herrington, before court proceedings, to discuss the reason for their visit and to gather feedback from the Judge on the matter, if possible. Judge Herrington was originally reluctant to weigh in on the issue, not wanting to besmirch any single attorney's reputation. Ultimately she did express in a number of different ways her concerns regarding whether the current system of representation was providing adequate due process. She noted multiple ongoing procedural errors, a lack of familiarity with criminal procedures, and even instances in which client's rights were almost waived, without the clients' consent.

## **Observations of Court Proceedings –**

Our observations in court were in accordance with the concerns that Ms. Langer and Judge Herrington had expressed:

1. It became apparent that the issue went deeper than just one attorney, and that the office of the SPD was not providing the attorney in attendance on this date with adequate support, document organization, discovery, or calendaring;
2. There were numerous examples of SPD counsel obviously not adequately communicating with the prosecutor regarding her clients' cases;
3. Numerous times it was apparent that SPD counsel had not discussed the client's rights before they were sitting at the defense table, in open court;
4. There were numerous confusions by counsel regarding when items were calendared and when counsel was available. In 3 or 4 different motions, counsel requested court dates on dates in which she was not available;
5. One defendant explained his lack of communication with his attorney by saying that he had dealt with 3 different attorneys so far, and that it was confusing;
6. It appeared in multiple cases that SPD counsel was not responding to offers from the prosecution in a timely manner;
7. It also appeared that counsel was not sharing information with the prosecutor which could help potentially resolve the cases until they were discussing the case in open court. Several time counsel attempted to share the information with the court, instead, and was advised that these were matters to be discussed with the prosecutor.

Final thoughts: While many of these issues could be remedied with additional training / shadowing by and with more experienced criminal defense counsel in the SPD office, currently there are not such counsel available. The SPD is operating on a skeletal crew. It has stopped taking all new cases. And there are not sufficient attorneys to handle their existing caseload. When the CCPD opens, it is anticipated that two of the remaining four counsel will move over to the CCPD. That leaves the head of the office, who will also be overseeing the build-out of a new SPD office in White Pine County, and the inexperienced attorney in question in these Storey County proceedings. In short, the best option under the circumstances appears to be to allow Storey County to opt out of the SPD and join the CCPD.

### **III. Next Steps.**

1. Work with Storey County to craft a corrective action plan;
2. Consult with Carson City officials regarding the viability of the CCPD providing indigent defense representation in Storey County (this idea was originally floated by Carson City officials in an earlier meeting);
3. Bring agreed corrective action plan to the Board on Indigent Defense Services for approval;
4. Oversee the implementation of the corrective action plan and report back to the *Davis* monitor.



## Outlook

## Resignation of NSPD

From Marcie Ryba </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F5B58839B2B04543BBE54BF239A778C3-MARCIE RYBA>

Date Wed 1/10/2024 3:44 PM

To Dylan K. Tedford <dktedford@gov.nv.gov>

1 attachments (240 KB)aa

20240110112555001.pdf;ee

Hi, Dylan,

Happy snow day! Just wanted to share with you that the Nevada State Public Defender has tendered his resignation effective January 26, 2024.

Please let me know if I or the Board on Indigent Defense Services can be of assistance in any way with the next appointment of the Nevada State Public Defender. We are hoping the appointment can be filled quickly as the Nevada State Public Defender was directly providing indigent defense services in White Pine County.

Thank you,  
Marcie

**Marcie Ryba | Director**  
State of Nevada



Department of Indigent Defense Services

896 W Nye Ln, Suite 202  
Carson City NV 89703  
(775) 687-8493 (o)  
(775) 431-0527 (c)

[mryba@dids.nv.gov](mailto:mryba@dids.nv.gov)

[dids.nv.gov](http://dids.nv.gov)

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Support.**



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**RE: Resignation of NSPD**

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From Marcie Ryba </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F5B58839B2B045438BE54BF239A778C3-MARCIE RYBA>

Date Mon 1/22/2024 10:02 AM

To Dylan K. Tedford <dktedford@gov.nv.gov>; Sonia Joya <sjoya@gov.nv.gov>

 1 attachments (240 KB)

20240110112555001.pdf;

Hi, Dylan and Sonia,

I sent this notice during the two snow days last week, so I just wanted to resend it to make sure you saw it.

Mr. Arabia is leaving his role as the Nevada State Public Defender on January 26, 2024. As this is a governor appointed position, (if needed) we would like to extend an offer to assist in any way with finding candidates to fill the position.

Thank you!  
Marcie

**Marcie Ryba | Director**  
State of Nevada



Department of Indigent Defense Services

896 W Nye Ln, Suite 202  
Carson City NV 89703  
(775) 687-8493 (o)  
(775) 431-0527 (c)  
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**RE: Ely Muni Court Meeting**

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From Patricia D. Cafferata <pdcafferata@nspd.nv.gov>

Date Thu 2/29/2024 5:19 PM

To Marcie Ryba <mryba@dids.nv.gov>

FYI. I just heard from the Governor's office.

He signed the papers to appoint me as a Nevada State Public Defender. The office is waiting for the paperwork from the Secretary of State to make it official.

Patricia D. Cafferata, Esq.  
Interim State Public Defender  
511 E. Robinson Street, Suite 1  
Carson City, Nevada 89701  
Office: 775-684-1080  
Fax: 775-687-4993  
[pdcafferata@nspd.nv.gov](mailto:pdcafferata@nspd.nv.gov)

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**From:** Marcie Ryba <mryba@dids.nv.gov>  
**Sent:** Thursday, February 29, 2024 4:03 PM  
**To:** Patricia D. Cafferata <pdcafferata@nspd.nv.gov>  
**Subject:** RE: Ely Muni Court Meeting

Can I call you and update you?

**From:** Patricia D. Cafferata <[pdcafferata@nspd.nv.gov](mailto:pdcafferata@nspd.nv.gov)>  
**Sent:** Thursday, February 29, 2024 3:58 PM  
**To:** Marcie Ryba <[mryba@dids.nv.gov](mailto:mryba@dids.nv.gov)>; Thomas L. Qualls <[ThomasQualis@dids.nv.gov](mailto:ThomasQualis@dids.nv.gov)>; Peter P. Handy <[P.Handy@dids.nv.gov](mailto:P.Handy@dids.nv.gov)>  
**Cc:** Melanie A. LaChapelle <[malachapelle@nspd.nv.gov](mailto:malachapelle@nspd.nv.gov)>  
**Subject:** Ely Muni Court Meeting

Marcie,

I am back from vacation and trying to catch up with emails.

At the moment, I might have a trial in Justice Court on March 7 at 1:30 pm.

I haven't read all my emails yet. I am not sure whether the Ely budget issue has been resolved. If a meeting is still needed, the 2 pm meeting time might not work for me.

Patty

Patricia D. Cafferata, Esq.  
Interim State Public Defender  
511 E. Robinson Street, Suite 1  
Carson City, Nevada 89701  
Office: 775-684-1080  
Fax: 775-687-4993  
[pdcafferata@nspd.nv.gov](mailto:pdcafferata@nspd.nv.gov)

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## Outlook

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**RE: State Public Defender Appointment**

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From Ryan Herrick <RyanHerrick@gov.nv.gov>

Date Mon 3/4/2024 1:45 PM

To Marcie Ryba <mryba@dids.nv.gov>

Marcie,

Patricia Caffierata should receive the documents today appointing her as the State Public Defender.

As always, please feel free to contact me with any questions or concerns.

Thanks,  
Ryan



**Ryan Herrick**  
*Deputy Policy Director*  
Office of Governor Joe Lombardo  
[ryanherrick@gov.nv.gov](mailto:ryanherrick@gov.nv.gov)  
(775) 684-5670 (office)  
(775) 376-2912 (mobile)

---

**From:** Marcie Ryba <mryba@dids.nv.gov>  
**Sent:** Wednesday, February 21, 2024 2:49 PM  
**To:** Ryan Herrick <RyanHerrick@gov.nv.gov>  
**Subject:** RE: State Public Defender Appointment

Hi, Ryan!

So nice to meet you, too! I am so grateful you have taken the time to help us unravel this conundrum. I am thinking positive about it!

Very excited to hear that an appointment for the Public Defender has been approved. Cannot wait to hear who it is.

As a follow up, please find attached the NCSC Rural Workload Study and an Executive Summary of the study. I am happy to talk about it, if you are interested.

Have a great day,

Marcie

**Marcie Ryba | Director**  
State of Nevada

**Patricia D. Cafferata, Esq.**

[REDACTED]  
[REDACTED]  
[REDACTED]  
775-825-2694  
[pdcafferatal@sbcglobal.net](mailto:pdcafferatal@sbcglobal.net)

August 22, 2024

Governor Joe Lombardo  
State Capitol Building  
101 N. Carson Street  
Carson City, Nevada 89701

Via U.S. mail and  
[eray@gov.nv.gov](mailto:eray@gov.nv.gov)

Re: Resignation as Nevada State Public Defender

Dear Governor Lombardo:

When you appointed me Nevada State Public Defender, I was honored with your trust in my abilities. At the time I accepted the position, I fully planned to serve out the term. However, circumstances have made it impossible for me to continue this work. I will retire effective on September 6, 2024.

I enjoyed the job and hope I made a difference in our clients' representation in court and at the Parole Board. I want you to know our staff of lawyers Derrick Penney and Jim Hoffman and Administrative staff Melanie La Chappelle and Kristi Valencia and investigator William Simpson provide excellent service to our clients and the State. I have been privileged to work with them and leave the office in their capable hands.

You have my continued support, and if I can help you in any way, please do not hesitate to contact me.

Thanks again for appointing me.

Sincerely,

Patricia D. Cafferata, Esq.

Cc: Marcie Ryba, DIDS

# **ONSITE VISIT REPORT**

White Pine County

Visit date: September 23, 2024

## **I. Brief Narrative**

Outreach and Compliance Advisor David Schieck traveled to Ely to observe the District Court Law and Motion calendar on September 23, 2024; and to make contact with the judiciary and other stakeholders. Contact was made with Judges Fairman, Dobrescu, Bishop and attorneys Jane Eberhardy and Richard Sears (who sits as a Judge Pro Tem in Ely Justice Court). The conversation with Richard Sears has been summarized in a separate Onsite Visit Report regarding Lincoln County

## **II. Forty-eight (48) Hour hearings.**

No issues were noted since the last Onsite Visit Report

## **III. Facilities for Attorney-client privileged communications.**

In several previous reports, I have noted that contact with clients in the White Pine County jail has been problematic. It is my information that collect phone calls are not accepted by the NSPD and that when defendants are taken to a phone to make a direct call, the call is not in a confidential location. Contact legal visits are on a hit or miss basis and often only after regular hours. I have suggested that meetings be held with the Sheriff's office to come to an agreement or that appropriate motions be filed to address the lack of privileged attorney-client contact at the jail. To my knowledge nothing has been done to correct the matter. Meaningful private communications with the client is essential for effective representation. Failure of the NSPD to take steps to address this issue is troubling.

## **IV. Issues with Appointed Conflict Counsel**

A four week two defendant murder trial was pending, set to start on September 26, 2024. Issues concerning the trial were discussed with Jane Eberhardy including the complexity of a possible long trial with co-defendants. Subsequent to my meeting with Eberhardy, the case was settled and the defendants are set for sentencing in December, 2024. A

contract for handling juvenile cases is in process and should help alleviate juvenile hearing issues which are usually held on Fridays during the school year as there is no school on Fridays. This contract contemplated easing commuting hardships for public defenders by removing some Friday appearances from their scheduled court dates.

## **V. Interviews and Discussions with Stakeholders**

By prior arrangement I met with Judge Fairman and Dobrescu in chambers after their morning calendars. A number of matters were discussed, including the transition from District Attorney Beecher to Melissa Brown.

Both judges, again, expressed concern about the representation of Patricia Cafferata. Specifically, from today's calendar, Judge Dobrescu referred to the sentencing of Amber Mason and the failure of counsel to argue her mental health in mitigation of sentence or to provide a statement on the record to support the finding of guilty but mentally ill. The Court was compelled to make a record to support the finding in the absence of counsel doing so. Additionally, as has been reported to me in the past, the Deputy District Attorney recited the mental health mitigation history, providing background on the subject in the absence of argument from the defense. The State also offered the Extended Order of Protection as an Exhibit at the sentencing, with defense counsel not being familiar with the document or the dates of protection covered, asking the State for an explanation during the proceedings. The Order of Protection related to the underlying offense and the victim in the case and it was disconcerting to observe defense counsel unaware of the nature of the document. The only argument that was made on behalf of the client was that she had credit for time served, most of which was in Lake's Crossing to return her to competency and for a shorter probationary period.

This visit was not the first time I have reported on concerns relayed to me about courtroom performance. My Onsite Visit Report for August 9, 2024 addressed this very issue and noted that the failure of defense counsel at sentencing was an area of concern for the court and the District Attorney's office. At that time, Chief Deputy Melissa Brown had informed me that she felt compelled to present mitigation on behalf of the defendant as defense counsel failed to do so. Her comments were consistent with those expressed by the Court. These concerns related to sentencing hearings handled by Patricia Cafferata..

It should be noted that in addition to Onsite Visit Reports and Court Observation Reports I am required to have bi-weekly contact with the assigned Deputy Director, either in person or weekly, and to meet with the Director in person at least once a quarter to discuss more in-depth evaluations. The matters contained in this report were also subjects of discussion at the bi-weekly and quarterly contacts.



During our meeting on September 23, 2024, Judge Dobrescu also expressed concern over the proceedings in the case of Joseph Henry that had been on calendar for arraignment in a Category B felony prison case. The Deputy Attorney General stated that he had been informed by defense counsel that Mr. Henry had rejected the negotiations and an Amended Information would need to be filed and a trial date set. Mr. Henry who was appearing via Zoom from the prison expressed surprise and informed the Court that he thought the case was set for entry of plea and he wanted to proceed with the plea. Based on this request by the defendant, the Court went forward with a plea canvass. The plea canvass was stopped when Mr. Henry indicated that he had not discussed possible defenses with his attorney and wanted to have the opportunity to discuss possible defenses before entering the plea. From statements made on the record it did not appear there had been any contact with the client for at least several weeks or for months regarding the negotiations and entry of plea. It was stated that they had gone over the plea agreement months ago. A review of the docket sheet shows that the case was filed on April 12, 2024 with a conditional waiver of preliminary hearing the same date and the Memorandum of Plea Negotiations filed on April 17, 2024 which would be consistent with the stated time periods. The case was continued to October 7, 2024 to allow Mr. Henry to discuss possible defenses with counsel.

This lack of communication with clients and preparation for entry of plea has been the subject of other discussions with the Court with several occurrences of clients being unable to articulate a factual basis for the plea requiring continuances of arraignments and plea hearings.

The third case heard on September 23, 2024 that caused concern was before Judge Fairman and involved a charge of battery with use of a deadly weapon with substantial bodily harm (State v. Tracy Boyer). Mr. Boyer entered a not guilty plea and refused to invoke his right to a speedy trial and instead would only respond that he was not waiving his speedy trial. When the Court proposed two possible dates, November 18, 2024 and December 2, 2024 the District Attorney asked for the later date which was outside of 60 days. Mr. Boyer clearly wanted the earlier date (within 60 days), however no argument was made regarding the 60 days limit, rather just a statement that the client wants the earlier date. After the later date was set, Mr. Boyer asked the Court for bail and Judge Fairman informed him that no written motion had been submitted and such a motion was necessary for him to consider the bail amount. Again this would indicate a lack of communication with the client concerning the arraignment and the workings of the court concerning bail, with client expecting his bail status to be heard at arraignment. I was later informed that counsel had appeared via Zoom for the preliminary hearing, which may have contributed to a lack of communication with the client. I will be following up to review either the transcript or JAVS of the preliminary hearing.

During our meeting, both Judge Fairman and Judge Dobrescu informed me that they were

concerned with the prospect of Ms. Cafferata taking a felony case to a jury trial and whether she had the necessary experience with defending criminal cases. The judges had raised these concerns on previous meetings and on September 23rd they inquired of me whether they should be holding hearings prior to jury trials to inquire into the subject. Previously, former White Pine County District Attorney Beecher had raised the same concerns about competence to provide representation at felony jury trial. I conveyed to the judges that my understanding was that the State Public Defender is supervised by the Department of Indigent Defense and that DIDS should be making such determinations of whether any appointed attorney or public defender meets the requirements to handle felony trials at various levels.

## **VI. Access to Resources**

No change since previous report.

## **VII. Quality of Representation**

As referenced in previous reports and meetings there is a concern with White Pine County being in compliance with Davis, not with regard to caseload, but rather quality of representation.

On June 25, 2024 myself and former DIDS Executive Director Marcie Ryba met with Judge Fairman and Judge Dobrescu concerning efforts to have White Pine County be in compliance with the Davis mandate. In that regard, it had been deemed necessary to enter into a full time public defender contract with Jane Eberhardy and the Court was extremely receptive to this change. It was discussed that another part-time contract may be forthcoming for criminal cases or for juvenile cases to further relieve staffing issues. Both Fairman and Dobrescu were encouraged that Eberhardy would be taking over a number of Cafferata's cases so that Cafferata could concentrate on administrative matters and parole hearings in Carson City as opposed to driving to Ely for court appearances. Neither judge felt it was necessary for Ms. Cafferata to appear when other attorneys would be available to handle cases. In my Onsite Visit Report for June 24 and 25, 2024, I had specifically noted that Cafferata's commuting to Ely for cases was not conducive to client contact and preparation and that one of her cases had to be continued as she had not spoken with the client before court. This appears to be a continuing problem impacting effective representation based on issues observed during the September 23, 2024 hearings.

Even after the Eberhardy contract became effective on July 1, 2024 there was a failure of preparation for cases on calendar. As noted in my Court Observation Report for July 22, 2024, one client (Walter Kennedy) stated that he had not had adequate meetings with his



public defender for entry of plea, stating that his counsel had not been available to meet with him and another defendant (Michael Hiatt) had his case called and counsel was not familiar with the case even though she stated she represented him on other charges and was the supervising attorney for the office.

If the problem with contact with clients before appearances and in preparation is due to jail issues, it is a problem that should have been fixed. If the issue is the lack of attorney presence in White Pine County then other solutions are necessary. In either event Davis compliance is questionable with regard to client contacts.

Overlaying the representation issues discussed herein is the uncertainty that had been created by the resignation and then rescission of the resignation of Patricia Cafferata and the removal of the Executive Director. Judge Dobrescu stated that Cafferata had announced her resignation in his courtroom saying she was done in two weeks. He was therefore surprised when he was informed that the resignation had been rescinded. Likewise, Jane Eberhardy had undertaken to assume responsibility for some of Cafferata's cases and contacted the State Public Defender to receive the files and was told, not so fast, there is not a resignation. Everything was placed in a state of limbo.

During previous onsite visits, I was told by both judges and deputy district attorneys that during sentencing hearings no argument in support of leniency or in mitigation was being made by Patricia Cafferata. In some instances, the prosecutor felt compelled to make arguments in favor of the defendant so that a full record existed. As related above, this is a continuing problem.

Previous reports have also referenced conversations and concerns expressed to me about the quality of representation and the lack of familiarity with basic criminal defense procedures. One such example was on May 13, 2024 when District Attorney Beecher asked me to come to his office so he could describe the case of State v. Bazan where Ms. Cafferata at the time set for sentencing asked the court to reduce the charges, basically asking, without a motion, for the court to just change the guilty plea agreement. She nonetheless indicated she was prepared to proceed with sentencing, however, the Court continued the sentencing when Bazan complained that he had not communicated with Ms. Cafferata recently. A Motion to Withdraw Plea was filed several days later which contained no legal basis to withdraw the plea other than Bazan was just a mere passenger in the vehicle and the co-defendants were "apparently" sentenced to some of the charges. Both the assigned deputy and Mr. Beecher expressed concern that there appeared to be a lack of understanding of basic criminal defense law and procedures.

Previous reports have detailed concerns that she does not advocate on behalf of the client, instead simply saying "my client wants this or that", not making any argument in support of the position of the client. It was characterized as being, at best, the marginal minimum

to avoid a claim of ineffective assistance of counsel.

My first report on February 26, 2024 described the dissatisfaction of the Court with the representation from the NSPD and my opinion that the quality of the representation did not meet the Davis standards for a number of reasons. The issues noted included a lack of contact with clients and failure to prepare for entry of plea or preparation for sentencing. At this time Ms. Cafferata was Chief Supervising Deputy and the State Public Defender position was vacant. These same issues continue to be cause for concern and need improvement. It is not appropriate that the same problems linger and the concerns expressed need to be addressed.

Suggestions for improvement of the quality of indigent defense have not been appreciated or accepted.

The White Pine County Plan calls for public defender representation beginning at initial appearances and continuing throughout the case. I reported in a Court Observation Report of Justice Court dated March 28, 2024 that two case initial appearances (State v. Henry and State v. Blake) were heard without counsel being present. Both cases were felony charges arising from incidents at the prison. I was aware of the cases being on calendar from the calendar that is circulated to all interested parties, including the State Public Defender. There was no appearance by counsel and the Court arraigned Mr. Henry, who was in custody and set a preliminary hearing date. The second defendant, Mr. Blake, had paroled and the AG requested a bench warrant, when a summons should have issued before a bench warrant absent a showing that the defendant was aware of his court date. When Patricia Cafferata became aware of my report she launched a series of accusatory emails about the report's accuracy, demonstrating a lack of knowledge of the workings of defending indigent cases. Firstly, the report directed criticism at the Court for proceeding without counsel being present and secondly, it was intended to improve representation in future cases. Best practices for a public defender office is to appear at all initial appearances to protect the accused, and the felony inmate cases were on the calendar and should have been flagged for appearance, even if the appearance was via zoom if no attorney was physically present in Ely on that date. Instead of considering that the quality of representation could be improved and considering the suggestion of having counsel present for such cases the report was ignored. No changes occurred to improve representation at initial appearances as evidenced by another prison case (State v. Aycock) charging Open Murder heard on May 21, 2024 without counsel present and the defendant being arraigned and preliminary hearing set.

One final example of cause for concern occurred during the initial preliminary hearing for Defendant Aycock on June 5, 2024. The hearing was not completed as homicide detective Homan was the brother-in-law of Skye Homan, a member of the Justice Court's staff. The conflict was only discovered when Detective Homan was called as the State's

second witness. Mr. Aycock, when advised by the Court of the conflict, would not waive the conflict and the hearing was vacated and reset before a Judge Pro Tem. While it was disconcerting that defense counsel was not aware of the conflict before start of the preliminary hearing, more concerning was the lack of meaningful cross-examination of the State's first witness, the pathologist, Dr. Norman Shaller, who performed the autopsy. This was a prison stabbing case between two inmates, and Aycock had stated at his initial appearance (with no counsel present) that it was self-defense. Cross-examination consisted of questioning why the autopsy report was signed on a different day than the autopsy, whether the pathologist examined the entire body and what documents had been reviewed by the Dr. Shaller. Shaller, who was allowed to testify by Zoom, was not able to hear or understand the last questions and did not provide an answer. Experienced counsel would not have asked either of the first two questions and would have insisted on an answer to the last one. Competent cross-examination would have covered whether the wounds were consistent with a fight, the angle, nature and location of the wounds in order to create a record to support possible self-defense. Additionally a challenge existed to the findings of the pathologist if the findings were based on information provided to him as opposed to the medical findings during the autopsy. Mr. Aycock was not prejudiced as the hearing was vacated and reset but the underlying concern remains.

### **VIII. Fair Judicial Treatment**

No change from previous reports.

### **IX. Recommendations**

Overlaying the representation issues discussed herein is the uncertainty that had been created by the resignation and then rescission of the resignation of Patricia Cafferata and the removal of the Executive Director immediately thereafter. Based on my observations and previous reports of deficient performance and coupled with the doubts expressed by the Court and the District Attorney's Office it is incumbent upon the Department to determine if there is sufficient criminal defense experience within the State Public Defender's office to handle the various levels of criminal cases, up to and including Category A felonies.

### **X. Next Steps**

Continue to monitor court proceedings and engage with the various stakeholder to insure compliance with the Davis stipulated judgement and continue to report findings, concerns and positive achievement toward the goal.

This will include additional onsite visits in the coming months as well as observation via Zoom link.

As mentioned in previous reports a review is ongoing concerning the number of cases that are showing as open in LegalServer that in all likelihood should be closed in order to report accurate caseload numbers for the next quarterly report

Dated September 29, 2024

*David Schieck*

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David Schieck



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**FW: Hensley 24CR105**

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**From** Peter P. Handy <P.Handy@dids.nv.gov>  
**Date** Wed 9/4/2024 1:19 PM  
**To** Laura FitzSimmons <Laura@fitzlamblaw.com>

See below from the Monitor via David Schieck.



**Peter P. Handy (he/him)**  
Deputy Director  
(775) 687-8495 (direct)  
[p.handy@dids.nv.gov](mailto:p.handy@dids.nv.gov)

---

**From:** David Schieck <dmslaw.llc@outlook.com>  
**Sent:** Tuesday, September 3, 2024 3:43 PM  
**To:** Peter P. Handy <P.Handy@dids.nv.gov>; Brenda Roberts <B.Roberts@dids.nv.gov>  
**Subject:** Fw: FW: Hensley 24CR105

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello: Eve has responded to the judge's email.

Sent from [Outlook](#)

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**From:** Eve Hanan <[eve.hanan@unlv.edu](mailto:eve.hanan@unlv.edu)>  
**Sent:** Tuesday, September 3, 2024 2:40 PM  
**To:** Stephen Bishop <[SBishop@whitepinecountynv.gov](mailto:SBishop@whitepinecountynv.gov)>  
**Cc:** [dmslaw.llc@outlook.com](mailto:dmslaw.llc@outlook.com) <[dmslaw.llc@outlook.com](mailto:dmslaw.llc@outlook.com)>; Steven Dobrescu <[SDobrescu@whitepinecountynv.gov](mailto:SDobrescu@whitepinecountynv.gov)>; Gary Fairman <[GFairman@whitepinecountynv.gov](mailto:GFairman@whitepinecountynv.gov)>; Jasen Hutchens <[JHutchens@whitepinecountynv.gov](mailto:JHutchens@whitepinecountynv.gov)>  
**Subject:** Re: FW: Hensley 24CR105

That is very concerning. Are there other cases where attorney turnover and other factors are resulting in delays?

Thank you,

Eve

On Tue, Sep 3, 2024 at 9:30 AM Stephen Bishop <[SBishop@whitepinecountynv.gov](mailto:SBishop@whitepinecountynv.gov)> wrote:

Just thought I'd forward the below email, so you were aware.

I'm a bit concerned with the implications of the PD, less than 2 hours before a scheduled prelim, asking for the complaint in a case they've been appointed on since July 1, with a defendant in custody and 5 category A felonies.

Judge Stephen J. Bishop  
Justice of the Peace - Ely Justice Court  
1786 Great Basin Blvd. #6  
Ely, NV 89301

[SBishop@whitepinecountynv.gov](mailto:SBishop@whitepinecountynv.gov)

---

**From:** Kristi Valencia [mailto:[kmvalencia@nspd.nv.gov](mailto:kmvalencia@nspd.nv.gov)]  
**Sent:** Tuesday, September 3, 2024 7:46 AM  
**To:** Justice Court <[WPCJusticeCourt@whitepinecountynv.gov](mailto:WPCJusticeCourt@whitepinecountynv.gov)>  
**Subject:** Hensley 24CR105

Good morning

Is there a complaint filed in this case? If so, can I please get a copy of it?

## **Kristi Valencia**

Legal Secretary

1500 Avenue F, Suite E

Ely, Nevada 89301

[kmvalencia@nspd.nv.gov](mailto:kmvalencia@nspd.nv.gov)

Phone (775) 430 0386

Fax (775) 687-4993

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**FW: White Pine County Murder case**

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**From** Peter P. Handy <P.Handy@dids.nv.gov>  
**Date** Wed 9/4/2024 1:20 PM  
**To** Laura FitzSimmons <Laura@fitzlamblaw.com>

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**From:** David Schieck <dschieck@dids.nv.gov>  
**Sent:** Thursday, May 23, 2024 1:37 PM  
**To:** Marcie Ryba <mryba@dids.nv.gov>; Thomas L. Qualls <ThomasQualls@dids.nv.gov>; Peter P. Handy <P.Handy@dids.nv.gov>  
**Subject:** Re: White Pine County Murder case

Yes no one appeared for the NSPD. This is the same issue as when Patty got upset before.

Sorry for the delayed response I was off grid for this morning.

David

---

**From:** Marcie Ryba <mryba@dids.nv.gov>  
**Sent:** Thursday, May 23, 2024 8:53 AM  
**To:** David Schieck <dschieck@dids.nv.gov>; Thomas L. Qualls <ThomasQualls@dids.nv.gov>; Peter P. Handy <P.Handy@dids.nv.gov>  
**Subject:** RE: White Pine County Murder case

Why did it happen in absentia? Did no one show up?

I sent an email to Patty about this to see if she wants to get off.

Also, I heard a death penalty case is coming for Lincoln County. The DA and judge reached out directly to Richard sears (who is retired) to ask him to take the case. I am unsure how that process worked. Maybe you can check into it?

---

**From:** David Schieck <dschieck@dids.nv.gov>  
**Sent:** Wednesday, May 22, 2024 9:58 PM  
**To:** Marcie Ryba <mryba@dids.nv.gov>; Thomas L. Qualls <ThomasQualls@dids.nv.gov>; Peter P. Handy <P.Handy@dids.nv.gov>  
**Subject:** White Pine County Murder case

Hello: Just a FYI. New prison murder case in Ely on Tuesday, May 21: Devontay Aycock. Judge Bishop appointed the NSPD in absentia and scheduled a Prelim within 15 days for June 5. Mr. Aycock was already asserting his right to a speedy trial and asking for his discovery. He seemed adamant on speedy trial which means late summer.

David



**Court Observation**

**DIDS Oversight Observation Report**

1. County \_\_\_\_\_

2. Name of Reviewer \_\_\_\_\_

3. Date of Observation \_\_\_\_\_

4. Type of Hearing \_\_\_\_\_

\_\_\_\_\_

5. Judge(s) \_\_\_\_\_

6. Pre-observation meeting with judge(s)? \_\_\_\_\_

7. Indigent Defense Attorneys Present:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Observation Checklist from *Davis* Monitor.

Please use this checklist to assess the adequacy of the indigent defense system in the county and the quality of representation, including attorney-client communication, knowledge of the case, and courtroom advocacy skills. (Some questions will require you talking to the attorneys personally.)

• Did the attorney have a substantive, confidential meeting with each client before court? (If you know or can tell from observation.)

\_\_\_\_\_  
\_\_\_\_\_

• Did the attorney argue for pretrial release/ OR, or for reasonable bail?

\_\_\_\_\_  
\_\_\_\_\_

• Did the court require the defendant(s) to reimburse the entity for representation?



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• Did the attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case? (If you know.)

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• Did the attorney appear to have counseled clients to refrain from waiving any rights at arraignment?

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• Did the attorney appear to know their clients' cases and to be prepared?

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• Did the attorney appear to adequately advise clients of the consequences of accepting a guilty plea or going to trial, including any collateral consequences?

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• Does the attorney appear to have a sustainable workload?

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• Overall, does the attorney appear to be providing effective representation of their clients?

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**9. Assessment and Evaluation of County System.**

**Your impressions on the overall effectiveness of the indigent defense system in the county.**

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**Overall assessment of the sustainability of attorney caseloads, based upon observation.**

N/A

**Fair Judicial Treatment.**

**Assess the fairness and impartiality of judicial proceedings. Identify any systemic issues affecting fair treatment of defendants or public defenders.**

COURT SHOULD HAVE 1) PASSED THE FIRST CASE FOR COUNSEL BEFORE SETTING PH. DEFT WAS ASKING ABOUT DISCOVERY AND 2) AFFORDED THE SECOND DEFT A CHANCE TO APPEAR BY SUMMONS AND NOT WARRANT. IF COUNSEL HAD BEEN PRESENT WOULD HAVE BEEN FAIRER TREATMENT.

**10. Recommendations.**

**Provide actionable recommendations, where appropriate, for enhancing the indigent defense system in the county.**

I WAS ABLE TO LOOK AT THE DAY'S CALENDAR AND KNOW THAT THESE TWO PRISON CASES WOULD BE INDIGENT DEFENSE CASES AND THAT COUNSEL WOULD BE APPOINTED. I EXPECTED AN APPEARANCE BY THE NSPD. THE COURT SENDS OUT THE CALENDAR AND IT NEEDS TO BE REVIEWED EVERY DAY. THIS MAY BE GREATLY HELPED WITH FULL-TIME PRESENCE OF COUNSEL

*David Schuck*

**From:** [Patricia D. Cafferata](#)  
**To:** [Brenda Roberts](#)  
**Cc:** [Peter P. Handy](#)  
**Subject:** RE: Attorney application to DIDS  
**Date:** Friday, October 11, 2024 4:01:27 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image004.png](#)  
[image006.png](#)  
[image007.png](#)

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Brenda,

When I am not working on my cases and driving back and forth to Ely for court this week and will be next week, I will answer your questions. Some of the information you are requesting, I do not have. You will have to obtain it from the County Clerks in Lincoln., Lander and Esmeralda counties. I have the names of the 10 cases, jurisdiction, and dates of the trials at home.

I have done several appeals to the Nevada Supreme Court, mostly civil cases and maybe one criminal matter State v. Zebe is published. I don't have the citation, but I'm sure you can find it.

I am driving to Ely on Sunday and returning Monday and will be in the office working on my cases on Tuesday and off on Wednesday through Friday. The following week, I have a jury trial in Ely.

Of course, if you need this information sooner than I can find it, please contact the Count Clerks mentioned above.

Patty

Patricia D. Cafferata  
Nevada State Public Defender  
511 E. Robinson Street, Suite 1

Carson City, Nevada 89701  
775-684-1080  
pdcafferata@nspd.nv.gov

---

**From:** Brenda Roberts <B.Roberts@dids.nv.gov>  
**Sent:** Friday, October 11, 2024 9:22 AM  
**To:** Patricia D. Cafferata <pdcafferata@nspd.nv.gov>  
**Cc:** Peter P. Handy <P.Handy@dids.nv.gov>  
**Subject:** RE: Attorney application to DIDS

Good morning, Patty,

I won't worry about juvenile cases. But I do still need the list of your jury trials. For each case, please provide as much of the following as possible:

- whether you were first or second chair or the only attorney,
- the case name,
- the jurisdiction/name of the trial court,
- the trial court case number,
- any appellate court case numbers and
- the name of the appellate court(s), and the types of charges involved.

Kind regards,



**Brenda Roberts**  
Deputy Director  
Nevada Department of Indigent Defense Services  
896 W. Nye Ln, Suite 202  
Carson City, NV 89703  
(775) 687-8490  
[b.roberts@dids.nv.gov](mailto:b.roberts@dids.nv.gov)

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**From:** Patricia D. Cafferata <[pdcafferata@nspd.nv.gov](mailto:pdcafferata@nspd.nv.gov)>  
**Sent:** Tuesday, October 8, 2024 9:03 AM  
**To:** Brenda Roberts <[B.Roberts@dids.nv.gov](mailto:B.Roberts@dids.nv.gov)>  
**Cc:** Peter P. Handy <[P.Handy@dids.nv.gov](mailto:P.Handy@dids.nv.gov)>

**Subject:** RE: Attorney application to DIDS

Brenda,

I will have to check my list of cases tonight when I get home. I am sure I cannot provide case numbers because I didn't keep track of them. I was the primary and only attorney on my jury trials. I am unaware of any cases where a post-conviction was filed. However, I was the prosecutor, so that would not have been an issue.

I didn't check the "juvenile" box because it appeared trial work was required. While handled all the juvenile matters in Lincoln, Lander, and Esmeralda counties, I never had a trial because there weren't any.

You said that all the lawyers in the NSPD's office had completed this application, except for me. Please send me a copy of Derrick and Jim's applications for our records.

Thanks,

Patty

---

**From:** Brenda Roberts <[B.Roberts@dids.nv.gov](mailto:B.Roberts@dids.nv.gov)>  
**Sent:** Monday, October 7, 2024 12:31 PM  
**To:** Patricia D. Cafferata <[pdcafferata@nspd.nv.gov](mailto:pdcafferata@nspd.nv.gov)>  
**Cc:** Peter P. Handy <[P.Handy@dids.nv.gov](mailto:P.Handy@dids.nv.gov)>  
**Subject:** RE: Attorney application to DIDS

Hi, Patty,

Thanks for getting this in so quickly. I will need the case names and numbers and the jurisdictions of at least three felony jury trials in which you were either the primary/sole attorney or were a second chair who conducted a significant portion of the trial. If you know of any where the defendant subsequently sought postconviction habeas relief, those are typically quickest for me to verify. If not, it's just a little more cumbersome to verify.

Also, the application doesn't have "juvenile" selected, but you did provide some information on your history in juvenile law. Did you intend to seek qualification for juvenile cases?

Thanks again,



**Brenda Roberts**  
Deputy Director  
Nevada Department of Indigent Defense Services  
896 W. Nye Ln, Suite 202  
Carson City, NV 89703  
(775) 687-8490  
[b.roberts@dids.nv.gov](mailto:b.roberts@dids.nv.gov)

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**From:** Patricia D. Cafferata <[pdcafferata@nspd.nv.gov](mailto:pdcafferata@nspd.nv.gov)>  
**Sent:** Friday, October 4, 2024 11:09 AM  
**To:** Brenda Roberts <[B.Roberts@dids.nv.gov](mailto:B.Roberts@dids.nv.gov)>  
**Cc:** Peter P. Handy <[P.Handy@dids.nv.gov](mailto:P.Handy@dids.nv.gov)>  
**Subject:** RE: Attorney application to DIDS

Brenda,

I submitted the form. Remembering cases for the last 30 years is not possible. I have a book at home I entered my jury trials in. I can look for it sometime next week and give you whatever information I recorded, if you really need that information.

Patty

Patricia D. Cafferata  
Nevada State Public Defender  
511 E. Robinson Street, Suite 1  
Carson City, Nevada 89701  
775-684-1080  
[pdcafferata@nspd.nv.gov](mailto:pdcafferata@nspd.nv.gov)

---

**From:** Brenda Roberts <[B.Roberts@dids.nv.gov](mailto:B.Roberts@dids.nv.gov)>  
**Sent:** Friday, October 4, 2024 8:34 AM  
**To:** Patricia D. Cafferata <[pdcafferata@nspd.nv.gov](mailto:pdcafferata@nspd.nv.gov)>

**Cc:** Peter P. Handy <[P.Handy@dids.nv.gov](mailto:P.Handy@dids.nv.gov)>

**Subject:** Attorney application to DIDS

Good morning, Patty,

I'm working to verify that all attorneys in public defender offices throughout the State have submitted an application to the Department as required by section 30 of the regulations of the Board on Indigent Defense Services. Our records show that everyone in your office is in compliance save for you. Please submit an application using the following link by Friday, October 11:  
[https://hal.nv.gov/form/DIDs/Application\\_with\\_the\\_Department\\_of\\_Indigent\\_Defense\\_Services](https://hal.nv.gov/form/DIDs/Application_with_the_Department_of_Indigent_Defense_Services)

Let me know if you have any questions.

Kind regards,



**Brenda Roberts**  
Deputy Director  
Nevada Department of Indigent Defense Services  
896 W. Nye Ln, Suite 202  
Carson City, NV 89703  
(775) 687-8490  
[b.roberts@dids.nv.gov](mailto:b.roberts@dids.nv.gov)

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**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix E**  
**Onsite Visit to Eureka County**



## **ONSITE VISIT REPORT**

Eureka County

Visit date: November 1, 2024

### **I. Brief Narrative**

Outreach and Compliance Advisor David Schieck traveled to Eureka to observe the District Court Law and Motion calendar. The calendar contained a number of matters, which is unusual for Eureka County. During the last several months there have been law and motion days (held twice a month on the first and third Fridays) where no cases were on calendar.

Unexpectedly the Eureka County Sheriff resigned effective November 1, 2024. This was sooner than had been reported and led to some level of confusion. Three in-custody cases were on calendar for sentencing and plea that were housed at the White Pine County jail and not transported for court. This was discovered shortly before court was set to start. During an in-chambers meeting with DA Beutel and PD Brown, Judge Fairman called the Eureka County Sheriff's office. After determining who was acting sheriff, arrangements were made for sheriff deputies to drive to Ely and pick up two of the three inmates. A court interpreter was needed for one of the defendants coming from Ely for entry of plea to a Category A felony kidnaping case.

It was not clear whether the failure to transport and the resignation of the Sheriff were related events or coincidence. DA Beutel indicated that he thought the defendants were being brought to Eureka the previous evening to be available for morning court. The previous evening was Halloween and this may also have factored into the failure of communication or decision not to transport.

Housing defendants in White Pine County has been an ongoing issue and previously reported. During the meeting in chambers it was discussed that the DA's office would include transport order language in all settings in an attempt to prevent future issues with clients being present for court proceedings.

### **II. Forty-eight (48) Hour hearings.**

These hearings are being held as needed. Kelly Brown reported that there was an

unusual number of cases over the summer, and, other than the issues with the White Pine County jail providing access to clients, no problems were encountered in completing the 48 hour hearings.

### **III. Facilities for Attorney-client privileged communications.**

During the sentencing hearing for Derrick Allison, Brown noted on the record that his client had not been timely provided with the paperwork to complete for the PSI report preparation. He was thus not able to provide a complete background showing his substance abuse history and employment record. Counsel was able to cover these items to the Court during the sentencing hearing and the State was not opposing a suspended sentence, but this highlights additional logistical issues that are created by housing Eureka County defendants in the White Pine County jail.

### **IV. Issues with Appointed Conflict Counsel**

No issues to report. Kelly Brown is handling the vast majority of public defender cases.

### **V. Interviews and Discussions with Attorneys**

Discussions with Brown were reported in the last White Pine County Onsite report and other than the discussions in chambers, no other discussions occurred with Brown.

DA Beutel related that his office is still in need of a Deputy, but that he has resigned himself to not finding one. White Pine County also has two open Deputy DA positions that they have been unable to fill.

### **VI. Access to Resources**

During the plea hearing for Martin Gonzalez, he informed the Court that he was a diabetic and had been on medication prior to his arrest. He was being housed for Eureka County at the White Pine County jail. He stated that he had requested medical appointments and medication on numerous occasions and had received no treatment. Gonzalez indicated that he was having headaches and issues with his vision from his untreated diabetes. The Court, on the record, directed that the Eureka County Sheriff's office arrange for Gonzalez to be seen by a health care provider in Eureka before he was transported back to White Pine County or that White Pine be directed to take him to the medical center in Ely.

### **VII. Quality of Representation**

Kelly Brown continues to provide high quality representation on the limited number of

cases filed and pending in Eureka County.

### **VIII. Fair Judicial Treatment**

No issues noted or observed.

### **IX. Recommendations**

Monitor Eureka caseload numbers. The increased number of cases over the summer months resulted in Kelly Brown going over the contracted number of hours and triggered the additional compensation clause of his contract. Both Kelly Brown and Ted Beutel commented that this was an extraordinary number of cases being filed by the Sheriff's office. This may be a Sheriff's office issue that affects the number of attorney hours allocated to Eureka County.

### **X. Next Steps**

Follow up with the medical care issue.

Watch for more issues with housing defendants in White Pine County.

Dated: November 3, 2024

---

David Schieck

**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix F**

**White Pine County Oversight Report**  
**February 26, 2024**

## ONSITE VISIT REPORT

White Pine County

Visit date: February 26, 2024

### I. Brief Narrative

Outreach and Compliance Advisor David Schieck traveled to Ely for an initial oversight visit. This was the first oversight trip after contracted on February 12, 2024 to perform oversight and compliance pursuant to *Davis v. Nevada*. The visits in White Pine County preceded visits to Eureka County and Lincoln County, which are described in separate reports. The visit was scheduled to be able to attend District Court hearings on February 26, 2024. No court hearings were scheduled in Ely Justice Court on the day of my visit.

I had prearranged to meet with Judges Fairman and Dobrescu prior to the morning law and motion calendar. Both had hearings scheduled. One of the first matters on calendar was *State v. Michael Vega*, CR-2101010, a case out of Ely State Prison. Judge Fairman showed me a Motion to Withdraw as counsel that had been filed by the Nevada State Public Defender (NSPD) on the basis of being unable to staff the case. Judge Fairman left to hear the case while I continued to speak with Judge Dobrescu. I was later informed that Judge Fairman was displeased with the NSPD attorney that appeared at the hearing of the Motion and that no action was taken on the motion. I was not aware at the time of my visit that the NSPD had filed to withdraw from a number of cases that are pending decisions. I became aware during the course of the day that the NSPD was also not accepting appointment to new prison cases. Judges Fairman and Dobrescu were of the opinion that there would be an increased volume of prison cases as a result of new legislation concerning inmate housing. They noted that there were often conflicts in prison cases and that one of the contract attorneys, Jane Eberhardy, was not taking prison cases. Eberhardy has a contract for tier 2 representation at an hourly rate. She was not available during my time in Ely for a meeting with me as she was handling cases in Elko.

Both Judge Dobrescu and Judge Fairman expressed that they were not satisfied with the representation being provided by the NSPD due to the unavailability of counsel. They acknowledged that there had been a turnover of attorneys and the head of the office had resigned, leaving White Pine County without any attorneys staffing the office. They had been content with the contract attorney system that was in place and felt the move to the

NSPD as tier 1 counsel was made without their input.

After the meeting with the District Court Judges I observed court proceedings for approximately two hours. Issues that arose during the hearings are described below.

During a break in the District Court hearings I went downstairs for a scheduled meeting with Justice of the Peace Stephen Bishop. We met in his courtroom with two of the justice court clerks. Judge Bishop asked my permission to record the meeting, as he has started recording all of this meetings with “the other side”. I corrected him that I did not represent any side but rather was observing and reporting to the monitor as required by the *Davis* decision. Judge Bishop was unhappy with the NSPD for a number of reasons, including that they were not staffing cases as there were no attorneys in Ely, there was no phone in the NSPD office, and no one in the office. We called the office during the meeting and the call was answered in Carson City, who had no ability to reach the Ely office. Bishop noted, with the agreement of the clerks, that clients would come to the window and not know who their attorney was or how to get in touch with them. He also complained that the contract number changed a number of times and they had to keep changing forms to reflect the changes. After my return to Las Vegas on February 28, 2024 I received an email from Judge Bishop forwarding an email from the Ely office of NSPD providing a temporary contact phone number and noting that they once again had to change their forms and that doing so was time consuming and a burden on Justice Court staff. The email was forwarded to DIDS and after consultation I replied with an email that efforts were being made to address all his issues.

After meeting with Judge Bishop, I went to Ely Municipal Court and met with Judge Mike Coster. Under the agreement with the NSPD, coverage was to be provided for Municipal Court. NSPD had given one day’s notice that it would no longer be providing coverage. It was Judge Coster’s understanding that the City was considering a contract with Jane Eberhardy to provide representation in City Court. Per Coster the matter was on the agenda for February 29, 2024. Judge Coster had no complaints about the quality of representation, only with the lack of representation on short notice.

I met with District Attorney James Beecher in the afternoon and discussed the challenges faced by the NSPD office with staffing attorneys. It was his opinion that the District Court judges were harder on the NSPD attorneys than private or conflict counsel because of their general unhappiness with the change from the contract system. His office has a total of five attorneys consisting of himself, two criminal deputies, a civil deputy and a Domestic Violence deputy. The office does not handle cases from the prison as those cases are handled by the Attorney General’s office.

At the end of the day, and after the Court calendar was concluded, I went to the NSPD office and met with James Hoffman and was introduced to legal secretary Kristi Valencia

who was hired to staff the Ely office and resides in the Ely area. The lobby of the office had partially opened boxes scattered about and two chairs. I met with Hoffman in the lobby area. There were internal office and secretary areas with furnishings. Given the issue of rotating weeks for attorneys and short staffing I did not inquire regarding investigators, social workers or other support staff for the office. Further discussions will be necessary on these staffing issues.

## **II. Forty-eight (48) Hour hearings.**

Judge Bishop indicated that 48 hour hearings were being held by audio visual connection and that NSPD attorneys were appearing. He was critical of a lack of follow up with requests for bail or OR release. He believed there were occasions he would have reduced bail or allowed release if a request had been properly made by counsel. This was a result of there being no attorney in Ely to meet with the client and ascertain if there was a basis and to file a Motion for release. This also related to the inability of the defendants to contact and communicate with their attorney. The NSPD did not accept collect calls from their client as there was no local number. I explained that a number of these issues were being addressed and that a full time legal secretary was hired that should help alleviate some of his concerns.

Judge Coster stated that he had no problems with the lawyers or with virtual appearances. Even though Municipal court did not have video capabilities, he allowed audio initial appearances when needed.

## **III. Facilities for Attorney-client privileged communications.**

The White Pine Justice Center has anterooms outside of the District Court courtrooms that allow for private attorney client meetings. Justice Court, while not having separate rooms should be able to utilize the second floor areas for such meeting. The NSPD now has office space and a place to meet with clients. A full time legal secretary has been hired and therefore clients should be able to make necessary appointments to speak with counsel. Currently the office is being staffed with attorneys based outside of Ely on a rotating weekly basis such that many of the communications are likely being done by phone conference. White Pine County jail does have facilities for privileged legal calls, and will allow attorney client meetings by appointment..

## **IV. Issues with Appointed Conflict Counsel**

Judge Bishop related that he had issues with two appointed conflict counsel not appearing for hearings. Carl Arnold failed to appear for a preliminary hearing and then attempted to conduct the preliminary hearing while driving his car. Tom Gibson failed to appear for

a hearing and when contacted was still in his office in Pahrump and stated he was too busy to appear in Ely. Bishop also took issue with a bail motion filed by Gibson that charged a number of hours for preparation and when reviewed by Bishop was found to be a verbatim refiling of the motion filed by previous counsel on the case.

All of the White Pine County judges recognized the problem with drawing counsel to reside in Ely or be willing to commute on a regular and consistent basis. They were open to any suggestion on how to manage the pay disparity and challenges of travel time. They noted it was extremely difficult to even obtain judicial law clerks.

## **V. Quality of Representation**

From the cases I observed in District Court the quality of representation was at that time substandard and not up to the requirements of the *Davis* consent judgment. The noted deficiencies were only with NSPD cases.

Kristy Pickering appeared on several retained and appointed cases and was well prepared and had been in communication with her clients. Her cases included a lengthy sentencing in a retained case, a probation violation in a retained case and a plea in a jail stabbing case with an in custody client. Her clients appeared satisfied with her level of representation.

A number of cases were handled by NSPD deputy James Hoffman. Hoffman is the appellate deputy for the NSPD and assigned to the Las Vegas office. He was providing temporary coverage and making appearance the week of February 26<sup>th</sup>. NSPD Derrick Penney was staffed to the Ely office but was working in Las Vegas and not in Ely. Penney had covered the appearances the previous week.

Issues that were noted during the hearings were:

**State v. Brett Davis** - CR2310145. Date set for sentencing on a gross misdemeanor for grand larceny case. The client was in custody but the PSI had not been discussed with him. Hoffman stated that the PSI was not in his file and the Court would not proceed with sentencing until the PSI had been reviewed for errors, particularly with respect to prior criminal history. Hoffman offered to meet with the client later and then proceed but the Court would only pass the matter for one week. Hoffman requested to appear by video appearance and the Court refused, wanting counsel present for the sentencing. Hoffman placed on the record that Davis wanted to attend a family funeral that was taking place within a few days and the Court still would not proceed with the sentencing.

**State v. April Eby** - CR2401014. Entry of plea, however, Hoffman had been unable to reach the client. She was out of custody and appeared for entry of plea. When asked, the



client stated she had not read the plea agreement and Hoffman stated he had gone over it with her. The Court insisted that the client have time to read the plea agreement herself and discuss it with counsel and again passed the plea for a week.

Other cases were handled without any noted problems and in one case, **State v. Michael Logan** - CR2310153, counsel stated that they were on track for a jury trial starting on June 18, 2024 and confirmed that pretrial motions were due by May 20, 2024.

My overall impression is that the lack of continuity in attorney staffing is a major obstacle to quality representation. ADKT 411 and the *Davis* holding do not contemplate a constant change of counsel. A competent legal secretary and support staff can alleviate many of the problems. For instance, no PSI in the file before the sentencing date and no record of transmission of the PSI to a locally incarcerated client could have been avoided. Or inability to contact an out of custody client who resides locally and knows her plea hearing date but had not been provided a copy of the plea agreement.

## **VI. Next Steps**

1. Schedule additional visits that will allow observation of individual practitioners and different types of hearings using the Observation Report checklists;
2. Conduct additional interviews with NSPD attorneys and prepare Attorney Interview Report;
3. Conduct an initial interview with Derrick Penney and prepare Attorney Interview Report;
- 4.. Follow up Ely Municipal Court regarding representation;
5. Review selected case files for pleadings and motions;
6. Draft a comprehensive Assessment and Evaluation Report on Quality of Representation, Access to Resources and Fair Judicial Treatment and discuss with DIDS.

Dated March 4, 2024

*David Schieck*

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ADDENDUM: I observed via Zoom the Law and Motion calendar on the morning of

March 4, 2024. Kristi Valencia was also on with Zoom which allows her to be aware of status and calendaring issues. This is encouraging. The cases that were passed from last week were handled without further issue. There were additional cases heard where there had been a lack of communication with the client and with the District Attorney's office. One case was being handled from Carson City which accounted for delayed communication with the DA regarding body cam video that needed to be viewed by the client.

In the case that Judge Fairman showed me the Motion to Withdraw last week, James Hoffman filed a withdrawal of that Motion and indicated that the NSPD would be continuing to handle the case. I will be speaking to Chief Deputy Attorney General Bongard tomorrow to get his input on prison cases.

*dms*  
dms

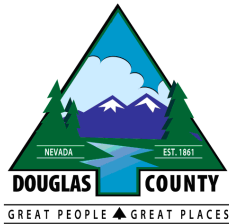
**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix G**

**Letter from Douglas County Manager**  
**Concerning the Monitor's Assessment of Provider Contracts**

JENIFER DAVIDSON  
County Manager

SCOTT MORGAN  
Assistant County Manager



1594 Esmeralda Avenue  
Minden, Nevada 89423

[www.douglascountynv.gov](http://www.douglascountynv.gov)  
775-782-9821

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## OFFICE OF THE COUNTY MANAGER

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August 22, 2024

Marcie Ryba, Director  
State of Nevada  
Department of Indigent Defense Services  
896 W Nye Lane, Suite 202  
Carson City, NV 89703

Ms. Ryba,

This letter is in response to Monitor Report No. 13 Davis V. State 170C002271B submitted to you on August 19, 2024. On August 20, 2024, you reached out to the attorney's contracted by Douglas County to request feedback on concerns expressed "regarding the Douglas County contracts requiring 2,200 hours of case-related representation." Because the comments were made about Douglas County, I would respectfully request that feedback from the County Manager's Office also be considered.

Beginning with page 9 and 17 of the 13<sup>th</sup> Report of the Monitor (hereafter referred to as the Monitor's Report) section I. (A) Douglas County, the monitor asserts "Douglas County currently has four contracts with attorneys. **Each contract requires 2,200 hours of casework annually**" (Monitor's Report, August 2024). Despite correctly citing the language from the Douglas County contracts, it is unclear why the monitor reached the conclusion that the County requires 2,200 hours of casework annually. Douglas County's contracts do not require 2,200 hours of casework annually, and the County is not requiring the contract attorneys "to do the job of two attorneys to get around the workload limits" (Monitor Report, August 2024, pg. 18). Included with the monitor's report for reference is a copy of a current contract. Not one contract includes language requiring 2,200 hours of work, while all contracts limit the total hours of work to 2,200 in an effort to ensure appropriate distribution of work. The contract states in section 4 (H) "firm promises and agrees to commit **up to 2,200 hours per year for Firm and Firm's attorneys, associates and employees to provide services under this Contract.**"

The monitor does, however, correctly note "the contract contains provisions requiring the attorney to refuse new cases if the attorney does not have 'sufficient time'" (Monitor Report, August 2024, pg. 9). Douglas County can confirm that each of the contract attorneys with which Douglas County works has refused, as is within their right, on several occasions to accept cases when they do not have sufficient time. In each instance where a case had been refused, the County has offered the case to an alternate contract attorney or hourly contract attorney for representation. In fact, Douglas County is currently contracting with 14 hourly contract attorneys in addition to the four flat-rate contracts it has in place to ensure the workload is dispersed properly and the standards are met.

The monitor also notes "It appears that all four attorneys who hold contracts with Douglas County are solo practitioners. Their contracts make no mention of requiring additional attorney or support staff to accomplish a workload of 2,200 hours per year of casework. In any case, the rate of compensation makes it unlikely that a solo practitioner would recruit another attorney to help with the workload" (Monitor's Report, August 2024, pg. 9). The County appreciates the concern expressed by the monitor. The language in the contract is intended to serve two purposes. First, the County intends to set both a minimum caseload of 1,392.6 hours and a maximum caseload of 2,200 hours. The County asserts the economic disincentive mentioned by the Monitor, is actually an incentive for each of the contract attorneys to refuse work when they do not have the capacity, because the more work a contract attorney accepts in excess of 1,540 hours, the less they will make per hour. Second, the language in the contract intends to allow the contract attorneys the flexibility to expand their team based on their workload and needs at the time. Douglas County's contract rate of \$265,000 and range of caseload hours provides flexibility for engagement of support staff and allocation of time to cases, while incentivizing contract attorneys to accept workloads based on availability of resources.

Mailing Address: P.O. Box 218, Minden, NV 89423

Douglas County understands DIDS “calculated that Douglas County required 8.8 FTE attorneys to comply with the workload standards” (Monitor Report, August 2024, pg. 18). Currently, the County contracts with 4 contract attorneys, one Indigent Defense Program coordinator, and 14 hourly attorneys with additional hourly contracts pending. It is important to note that in addition to his role as coordinator, Mr. Clouser fills in critical gaps by taking on cases as his time allows. This was a fact you brought to the attention of the County, and the County agrees the work completed by Mr. Clouser is likely equivalent to nearly one full-time FTE.

With your encouragement, the County requested assistance from the State with parole violations, appeals, and capital cases. The plan at that time was that the caseload related to this work would account for at least one FTE. Unfortunately, after revising the county’s plan to reflect this arrangement, on June 21, 2024, you advised in an email “at this time, the NSPD does not have the capacity to take on this additional workload during this biennium” and the County would need to submit a request to NSPD in writing before November 1<sup>st</sup> to transfer the responsibility for appeals, parole violations, and capital cases to the State. It is the plan of the County to complete this written request to NSPD and reflect these changes in the revised plan for indigent defense services by October 2024.

Douglas County understands the challenges the State has encountered in adequately staffing full-time positions with qualified attorneys in your office and supports the State’s decision to not commit to providing services when there is no capacity to take on the additional responsibility. Each of the rural jurisdictions has struggled with this same problem. The simple truth is, there are not enough qualified attorneys to fulfill the requirements imposed on each county and each county is recruiting from the same dwindling pool of attorneys in the region. We would ask DIDS to consider building more flexibility into the administration of this program to allow local governments the ability to tailor their plan and approach to the unique circumstances of each county and the qualified labor market while also achieving the objectives of quality, equitable, and sustainable services.

Despite this struggle, Douglas County remains committed to achieving substantial compliance by October 2024. I am pleased to report after careful evaluation of qualifications and expertise, Douglas County has identified and is entering into an agreement with one qualified attorney, which will be the sixth contract agreement (including four annual contracts and the contract of the Indigent Defense coordinator). Moreover, the County has received applications from one additional individual interested in an annual contract. The applicant will be evaluated, and the County will offer a contract to that attorney if the individual is qualified and able to meet the requirements. Including this additional contract, the County will be at 7 FTEs and will continue to utilize hourly attorneys when appropriate and recruit for contract attorneys until the caseload objectives are met.

Finally, Douglas County acknowledges the concerns expressed by the Monitor regarding the need for confidential meeting spaces at the Tahoe Justice Court. Immediately upon review of the Monitor’s Report, Douglas County initiated actions to promptly rectify and implement change. I am pleased to report significant progress has been made and Douglas County is actively working to provide confidential meeting space which will be available by August 30, 2024.

Respectfully submitted,

Jenifer Davidson  
Douglas County Manager

**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix H**

**Letter from Lyon County Board of Commissioners**  
**Concerning Required Number of Attorneys**



**BOARD OF COUNTY COMMISSIONERS**  
**LYON COUNTY NEVADA**  
27 South Main Street  
Yerington, Nevada 89447  
Phone: (775)463-6531 Fax: (775)463-6533

**Wes Henderson, District 1**  
**Scott Keller, District 2**  
**Tammy Hendrix, District 3**  
**Robert Jacobson, District 4**  
**Dave Hockaday, District 5**

**Andrew Haskin**  
County Manager

October 11, 2024

Department of Indigent Defense Services  
Attn: Board of Indigent Defense Services  
896 W. Nye Lane, Suite 202  
Carson City, NV 89703

Re: Dispute Regarding the Required Number of Defense Attorneys

Dear Board Members:

Lyon County would like to formally dispute the required minimum number of public defense attorneys that has been calculated based on the weighted caseload study which has been adopted by the Board of Indigent Defense Services. The weighted caseload study appears to significantly overestimate the required number of attorneys, perhaps by as much as two hundred percent. This results in each county being required to employ or contract with a significantly higher number of attorneys than is actually needed to provide adequate defense.

**Issues:**

There are four factors that Lyon County considered in regards to the accuracy of the weighted caseload study:

- Counting each charge as a separate case.
- Estimated hours per type of case.
- Estimated hours per attorney
- Comparing the number of public defense attorneys to the District Attorney's Office.

**Counting each charge as a separate case:**

Lyon County asserts that counting each charge associated with a single arrest for an indigent client as a separate case vastly overestimates the required number of hours to provide an adequate defense. Frequently there are two or more charges for the client in a single arrest. The charges are often related to each other or similar in nature. For example, when an indigent client is arrested in a drug case (a common case type) there may be both a misdemeanor charge and a felony charge for the defendant. Currently this is treated as two cases in the weighted caseload study, however, the defense strategy for both charges is likely substantially similar or even the same. In reality it is essentially a single case for the public defender to defend. The current caseload study fails to take this into consideration and calculates a higher number of public defense attorneys than the workload justifies.



### **Estimated Hours per Type of Case:**

The weighted caseload study was developed by assigning a set number of hours per type of case. The number of hours per case type was based on a short, six-week survey of existing public defenders in order to obtain how many hours each type of case would require. After that, the actual number and type of cases in each county were collected and multiplied by the required number of hours per case. These total hours were then divided by an estimated number of hours for a full-time attorney to determine the number of required attorneys by each county.

It seems the average estimate of hours per case was misjudged and is much closer to the number of hours that would be required for the most time-consuming case scenario. In reality, many cases take significantly less time than what was estimated. When the guess of average hours needed per type of case is inaccurate, the result of this formula would also be inaccurate. As a result, the counties are being required to hire or contract a significantly higher number of attorneys than is necessary.

### **Estimated hours per attorney:**

The weighted caseload study fails to properly calculate the number of hours an attorney has available in a year to provide adequate defense to clients. Starting at 365 days, the number of available days was reduced by weekends, holidays, estimated time for personal leave, training, and staff education. That number is further reduced by estimated hours of non-case-related work and travel time. The result is the number of hours per year it is estimated that a full time attorney would have to provide indigent defense. This is a critical calculation used in arriving at the number of attorneys needed based on hours per case.

While this methodology makes logical sense initially; upon further analysis, it seems to be a one-size-fits-all approach that doesn't really fit all scenarios. This approach also appears to have flaws for many defense attorneys that are contractors.

There are a number of contract attorneys that take a few conflict cases each month to supplement their practice. They have the capacity to take these cases without needing to reduce their number of hours for other administrative purposes as they are only contracting for a few hours' worth of cases each month. When these contracts are split out between a number of firms, there is much less or, at times, no need to reduce the hours for weekends, holidays, personal leave, training, or administrative time.

In addition, an estimate of 1 hour per day for administrative work for every attorney, every day, may be excessive. It is a great goal, but many employees and independent contractors are able to be more efficient, especially with advances in software designed to increase efficiency.

Finally, the formula fails to factor in overtime. Many independent contractors, by choice, voluntarily decide to work overtime. This is part of the American work ethic and part of what makes the American dream work. People choose to work overtime for a variety of reasons, such as supporting their families and saving up for vacations, holidays, etc. Exempt employees also are expected to work overtime, at times, as there are additional benefits provided to them under the FLSA regulations to compensate for the overtime. Overtime should not be a dirty word; but it does need to be within reason, so that it doesn't affect adequate client representation. A reasonable number of overtime hours per attorney should be allowed in the weighted caseload study.



## **Comparing the Number of Public Defense Attorneys to the District Attorney's Office:**

The weighted caseload study fails to compare the number of indigent defense attorneys with the number of prosecuting attorneys. In Lyon County, the District Attorney's Office has seven total attorney positions, for which at any given time there are typically one to two vacancies. This is a stark contrast to the weighted caseload study calculation of 12 or 13 public defense attorneys. Especially considering that in addition to the same cases that the public defense attorney provides services for, the District Attorney's Office has a significant additional workload prosecuting criminal cases represented by conflict counsel, privately retained attorneys, those in pro per, and an entirely separate civil caseload. Not to mention, a significant number of criminal cases submitted by law enforcement for review for prosecution, many of which are not filed but require extensive time in the District Attorney's Office for evaluation.

With the current caseload study, the cost of public defense services is well in excess of the cost of the District Attorney's Office, which has a greater caseload. This is expected to be an even greater difference in fiscal year 2025. Using six filled prosecuting attorneys in the District Attorney's Office as a rough benchmark for comparison, it appears that a more reasonable figure should be five or six public defense attorneys in Lyon County.

### **Solution:**

Lyon County recommends reopening the weighted caseload study now that there is significantly more information available to consider. Three key items to reevaluate and modify would be: what constitutes a case; the average hours per type of case; and the number of reasonable hours per attorney. As a part of the process, the new results should be compared against the associated size of the District Attorney's Office. There should not be a significant unexplained difference between the results of that comparison.

### **Conclusion:**

In Lyon County, the increase in costs for public defense services is more than 273% between fiscal years 2021 and 2024. This shows significant progress in increasing the quality and capability of indigent defense services. State funding is instrumental in that increase. Lyon County now estimates that there are approximately seven to nine attorneys providing indigent services.

In addition to operating costs, Lyon County is also investing a significant amount of money in capital costs to support public defense services. Lyon County has just completed a \$10M remodel and expansion of the District Court. There is also a \$7M expansion of the Fernley Justice Court currently out to bid. In addition, there is a new \$30M building currently in the design phase that will house the Dayton Justice Court and is estimated to be out to bid next July. All of these projects provide office space and secure attorney/client consulting areas for public defense services. This space also assists in attorneys in being able to be more productive on court days.

As you can see, Lyon County is a committed partner with the State of Nevada in ensuring the constitutional right of adequate indigent public defense services. While acknowledging the current challenge in a lack of attorneys available for both public defense and prosecution, Lyon County continues to work with the Department of Indigent Defense Services towards implementing the Davis decision. As a partner, Lyon County is recommending revisiting and modifying the weighted caseload study as some of the assumptions create unrealistic and inaccurate results.

If you have any further questions I can be reached at [ahaskin@lyon-county.org](mailto:ahaskin@lyon-county.org).

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke that extends to the right.

Andrew Haskin  
County Manager  
[ahaskin@lyon-county.org](mailto:ahaskin@lyon-county.org)

**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix I**  
**Douglas County Contract**

# CONTRACT FOR INDIGENT LEGAL SERVICES

A CONTRACT BETWEEN

**DOUGLAS COUNTY, NEVADA**

AND

**Matt Stermitz Law, LLC**

This Contract for Indigent Legal Services (the “Contract”) is entered into by and between Douglas County, a political subdivision of the State of Nevada (“County”), and Matt Stermitz Law, LLC (“Firm”). The County and Firm are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

**WHEREAS**, County, from time to time, requires the professional services of independent contractors; and

**WHEREAS**, it is deemed that the services of Firm are both necessary and desirable and in the best interests of County; and

**WHEREAS**, Firm represents that Firm’s attorneys are licensed to practice law in the State of Nevada, are in good standing with the State Bar of Nevada, and Firm duly qualified, equipped, staffed, ready, willing and able to perform and render the legal services required by the County.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein made, the County and Firm mutually agree as follows:

**1. TERM AND EFFECTIVE DATE OF CONTRACT.** The Contract will become effective October 1, 2024, and will remain in effect until **June 30, 2025**, unless earlier terminated pursuant to the terms of this Contract.

**2. INDEPENDENT CONTRACTOR STATUS.** The Parties agree that Firm, Firm’s attorneys, associates and employees shall have the status of an independent contractors and that this Contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted, to the parties, including that the Firm’s attorneys are not Douglas County employees and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the independent contractor or the County to the public employees’ retirement system;
- (5) Accumulation of vacation leave or sick leave;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

Firm and County agree to the following rights and obligations consistent with an independent contractor relationship between the Parties:

- a. Firm has the right to perform services for others during the term of this Agreement.
- b. Firm has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- c. Firm shall not be assigned a work location on County premises.
- d. Firm, at Firm's sole expense, will furnish all equipment and materials used to provide the services required by this Contract.
- e. Firm, at Firm's sole expense, has the right to hire associates and assistants as subcontractors, or to use Firm's employees to provide the services required by this Agreement.
- f. Firm or Firm's employees or contract personnel shall perform the services required by this Agreement, and Firm agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Firm.
- g. Neither Firm nor the Firm's attorneys, employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.
- h. County shall not require Firm or Firm's employees or contract personnel to devote full time to performing the services required by this Agreement.

Firm further certifies the following:

- i. Contactor is licensed by the State Bar of Nevada to provide legal services to members of the public and agrees to maintain the required professional license to practice law in active status and in good standing for the State of Nevada.
- j. Firm understands that Firm is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Firm understands that an IRS Form 1099 will be filed by County for all payments County makes to Firm.

**3. INDUSTRIAL INSURANCE.** Firm shall, as a precondition to the performance of any work under this Contract and as a precondition to any obligation of the County to make any payment under this Contract, provide the County with a work certificate and/or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Firm also shall, prior to commencing any work under the contract, complete and provide the following written request to a qualified insurer:

Matt Stermitz Law, LLC has entered into a contract with Douglas County to perform work from October 1, 2024, through June 30, 2025, and requests that the insurer provide to Douglas County (1) a certificate of coverage issued pursuant to NRS 616B.627 and (2) notice of any lapse in coverage or nonpayment of coverage that the contractor is required to maintain. The certificate and notice should be mailed to:

Douglas County Manager  
Post Office Box 218  
Minden, Nevada 89423

Contractor agrees to maintain required worker's compensation coverage throughout the entire term of the Contract. If Contractor does not maintain coverage throughout the entire term of the Contract, Contractor agrees that County may, at any time the coverage is not maintained by Contractor, order the Contractor to stop work, suspend the Contract, or terminate the Contract. For each six-month period this Contract is in effect, Contractor agrees, prior to the expiration of the six-

month period, to provide another written request to a qualified insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six-month period, Contractor agrees that County may order the Contractor to stop work, suspend the Contract, or terminate the Contract.

**4. SERVICES TO BE PERFORMED.** On an as-needed basis, the Firm will provide professional legal services including the following:

A. Firm will represent adult criminal defendants that a court in Douglas County has determined to be indigent. The representation will include all stages of the criminal proceedings including bail hearings and other court appearances, appeals and revocation of probation or parole, but not post-conviction proceedings.

B. Firm will provide legal representation for a child alleged to be delinquent or in need of supervision where a court orders the appointment in accordance with NRS Chapter 62A.

C. Firm agrees to perform the services of an attorney for a child, parent, or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the court orders the appointment of Firm pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.

D. If at any time during the representation of a person the Firm has reason to believe the person is not indigent, Firm must immediately notify the court.

E. If, at any time during the representation of a person, the Firm has reason to believe that there is a legal ethical conflict with that representation, Firm must immediately notify the Court.

F. If a defendant who is requesting appointed counsel due to indigence has contacted Firm concerning retaining that Firm for representation, that Firm will not be obligated to accept that appointed case. Firm must notify the appropriate court, by letter, of the contact with the indigent defendant prior to the proposed appointment, and the next law firm in the rotation will be appointed.

G. Firm shall perform all duties required under the Nevada Revised Statutes and by the Nevada Department of Indigent Defense Services ("DIDS") and Board of Indigent Defense Services ("BIDS"), including standards of performance, record keeping, time keeping and reporting requirements. However, in no event shall Firm be required to provide any information that would compromise client confidentiality, prejudice the rights or defense of any eligible client or violate any provision of the Nevada Rules of Professional Conduct.

H. Firm understands that DIDS, in collaboration with the National Center for State Courts ("NCSC"), performed a Rural Nevada Indigent Defense Services Weighted Caseload Study and submitted a Final Report in October 2023 that was subsequently adopted by BIDS on November 2, 2023. Although the Parties believe the BIDS Adopted Weighted Caseload Study is defective and requires additional study and revisions, for the purpose of this Contract, according to the BIDS Adopted Weighted Caseload Study, the case-related annual attorney year value is 1,392.6 hours per 1.0 full-time equivalent ("FTE") attorney.

Firm promises and agrees to commit up to **2,200 hours per year** for Firm and Firm's attorneys, associates and employees to provide services under this Contract.

## **5. Standard Of Work.**

A. In providing legal representation as set forth in Paragraph Four, Firm and Firm's attorneys, associates and employees must provide those services in a professional, competent, and effective manner. This includes, but is not limited to, interviewing the client, appearing at all court hearings or providing coverage for those court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations.

Firm shall:

- (1) Provide zealous, competent representational services in all cases;
- (2) Comply with the requirements of the DIDS Standards of Performance;
- (3) Comply with the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 41 of the Nevada Supreme Court;
- (4) Comply with all applicable laws and regulations;
- (5) Comply with the Nevada Rules of Professional Conduct ("NRPC");
- (6) Comply with the Douglas County Plan for the Provision of Indigent Defense Services (attached as Exhibit "A");
- (7) Agree to not accept cases for which the Firm is not approved by DIDS; and
- (8) Agree to not accept any case if Firm's attorneys do not have the experience, qualifications, and sufficient time to accept the appointment or is otherwise unable to provide competent legal representation in compliance with NRPC, ADKT No. 41, DIDS Standards of Performance, and the requirements of this Contract.

B. Firm agrees to staff and maintain an office in Douglas County, Nevada. Firm agrees to furnish a telephone number for use after normal office hours in any emergency that may arise where Firm's services are requested pursuant to the terms of this Contract to the Justice Courts, District Courts and District Attorney. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of Firm's practice as required by this Contract are the sole responsibility of Firm and are a part of Firm's compensation pursuant to Paragraph 6 of the Contract.

C. Firm's attorneys may engage in the private practice of law which does not conflict with Firm's professional services required pursuant to this contract.

D. Because Firm is an independent contractor for Douglas County, the Firm's attorneys and employees promise and agree to not sue, be a party to, or assist in any lawsuit against Douglas County.

E. Firm agrees to furnish to County a copy of the DIDS Eligible Provider Approval Letter (Exhibit "B") verifying the category of cases each of the Firm's attorneys are authorized to accept.

## **6. PAYMENT FOR SERVICES.**

A. Firm agrees to provide the services set forth in Paragraph 4 at a cost not to exceed **One Hundred and Ninety-Eight Thousand Seven Hundred and Fifty Dollars and** (\$198,750) through the term of this Contract ("Base Compensation").

Payment of Firm's base pay will be made by the County to the Firm in three quarterly payments of \$66,250.00 to be paid on or before October 1, 2024, January 1, 2025 and April 1, 2025.

B. In addition to Firm's Base Compensation, Firm will be compensated for any weekend or holiday that a Firm attorney attends, or is required to be available (i.e., on standby), to attend weekend arraignment/pretrial release hearings at the rate of \$450.00 per day.

C. For legal services related to a child's welfare when a parent or other person is alleged to have abused or neglected a child, and the Court orders the appointment of Firm pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128, Firm will be paid supplemental fees at the statutory rate for any work performed beyond ten (10) hours per case for appointments pursuant to NRS 128.100.

D. The Firm may secure payment for extraordinary investigative costs, expert witness fees, forensic services, translators, laboratory analysis, or other legally necessary services if authorized in advance by the Douglas County Appointed Counsel Program Coordinator. Firm understands and agrees that the reimbursement of these extraordinary costs is subject to the limits and requirements of NRS 7.135. Firm agrees to submit invoices within ten days of the end of the prior month in which any extraordinary costs or other expenses were incurred and for which reimbursement is requested from the County. County will pay invoices it receives within a reasonable time. However, in no event will Firm be reimbursed or receive payment for travel expenses or any form of per diem expense.

E. The compensation specified above is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court may, for the reasons specified in NRS 7.125(4), award extraordinary fees to Firm in a particular matter, which are over and above the compensation specified provided that the statutorily prescribed procedures contained in Nevada law, including NRS 7.125(4), are complied with.

F. Firm agrees to submit invoices within ten days of the end of the prior month for the legal services provided to County, including any weekend or holiday hearings for which Firm seeks payment. County will pay invoices it receives within a reasonable time. A 1099 Miscellaneous Income Form will be issued by County to Firm at year-end for all amounts paid by County to Firm.

## **7. TERMINATION OF CONTRACT.**

A. Either Party may terminate this Contract without cause, provided that a termination shall not be effective until 90 calendar days after the Party has served written notice upon the other Party. All monies due and owing up to the point of termination of the Contract shall be paid by County, and all pending cases that were produced for this Contract must be immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Firm will be reduced to the proportionate number of days worked by the Firm. The Firm must reimburse the County for any funds received to which Firm is not entitled due to the termination of the Contract.

B. If Firm should be unable to perform any or all of the duties required by reason of illness, accident or other cause beyond Firm's control, and the disability exists



for a period beyond ten (10) judicial days, Firm must provide, at Firm's own expense, a substitute attorney (which could include other contract attorneys) to perform the duties of the Firm during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of the Firm's duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this Contract, and the respective duties, rights and obligations of this Contract will terminate.

**8. PROFESSIONAL LICENSE.** Firm agrees to maintain the Firm's attorneys' professional license to practice law in active status and in good standing with the State of Nevada. Firm promises and agrees to notify the County Manager and the Douglas County Appointed Counsel Program Coordinator if an attorney with the Firm is brought before the State Bar of Nevada on any ethics charge or if a Firm attorney is arrested for any crime. Failure to maintain this license to practice law will result in the immediate termination of this Contract.

**9. GENERAL LIABILITY INSURANCE.** Douglas County's liability coverage will not extend to the Firm and Firm is required to acquire and maintain general liability insurance in the minimum amount of \$1,000,000 during the term of this Contract at Firm's sole expense. Proof of insurance must be sent to the Douglas County Manager. Such proof of insurance must be provided at least annually throughout the term of this Contract and Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such insurance.

**10. LEGAL MALPRACTICE INSURANCE.** Firm agrees to acquire and maintain malpractice insurance in the minimum amount of \$250,000 per claim and \$500,000 aggregate claims during the term of this Contract at Firm's sole expense. Proof of malpractice insurance must be sent to the County within five (5) business days upon request. Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such malpractice insurance.

**11. NONAPPROPRIATION.** Nothing in the Contract will be construed to provide Firm with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Firm will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Firm. Firm will have no claim of any sort to the unexpended funds.

**12. CONSTRUCTION OF CONTRACT.** The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court. The Parties mutually agree to not seek punitive damages against either Party.

**13. COMPLIANCE WITH APPLICABLE LAWS.** Firm promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or

requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws. County will not waive and intends to assert all available NRS chapter 41 liability limitations.

**14. ASSIGNMENT.** Firm will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the Douglas County Appointed Counsel Program Coordinator and must meet the qualifications under the Nevada Department of Indigent Services to represent the charged individual. If the Firm wishes to have a substitute attorney appear for the Firm due to vacation, illness or personal family matter, then the Firm may do so and is responsible for paying the substitute attorney. There is no requirement to have the Douglas County Appointed Counsel Program Coordinator approve such substitution if the substitution is for less than twenty-five judicial days per calendar year.

**15. COUNTY INSPECTION.** The accounting records and expense invoices of Firm related to the Contract will be subject to inspection, examination and audit by the County, including by the County Manager and Chief Financial Officer, to audit and verify the expenses claimed by Firm.

**16. DELEGATION OF AUTHORITY.** The Judges of the Ninth Judicial District Court and the Justices of the two Townships are expressly designated the authority to oversee and implement the provisions of this Contract. Such designations include the development of factors for determining whether a person is indigent and all other properly related matters related to the appointment of indigent defense counsel. The Douglas County Appointed Counsel Program Coordinator is expressly designated the authority to oversee and implement the provisions of this Contract. This authority includes the assigning of cases on a rotating basis among attorneys to ensure an equitable distribution, ordering/requiring monthly time summaries from attorneys, and preparing vouchers for the quarterly payments due to Firm. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

**17. INDEMNIFICATION OF COUNTY.** To the fullest extent permitted by law, Firm and its principals shall indemnify, hold harmless and defend County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Firm, its officers, employees and agents arising from or relating to this Contract. Firm will defend, hold harmless and/or indemnify County against such claims. Notwithstanding the obligation of Firm to defend County as set forth in this paragraph, County may elect to participate in the defense of any claim brought against County because of the conduct of Firm, its officers, employees and agents. Such participation shall be at County's own expense and County shall be responsible for the payment of its own attorney's fees it incurs in participating in its own defense.

**18. MODIFICATION OF CONTRACT.** The Contract and any attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

**19. AUTHORITY.** The Parties represent and warrant that they have the authority to enter into this Contract.

**20. STANDARD OF CARE.** Firm, its attorneys, agents and employees will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of the legal profession currently practicing under similar conditions and in compliance with the standards established by the Nevada Department of Indigent Defense Services and as required under the terms of this Contract.

**21. THIRD PARTY BENEFICIARY.** Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party, or to otherwise allow a third party to assert a cause of action against either Firm or County.

**22. NOTICES.** All formal notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

**To County:** Douglas County  
Attn. County Manager  
Post Office Box 218  
Minden, Nevada 89423  
Telephone: (775) 782-9821

**To Firm:** Matthew Stermitz, Esq.  
Matt Stermitz Law, LLC  
1512 Highway 395 N., Suite 3-C  
Gardnerville, NV 89410  
Telephone (775) 392-4440

**IN WITNESS WHEREOF**, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

**Matt Stermitz Law, LLC**

By: \_\_\_\_\_  
Matthew Stermitz, Esq. (Date)

**Douglas County**

By: \_\_\_\_\_  
Jenifer Davidson (Date)  
County Manager

**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix J**

**Department's Memorandum on Hourly Rate Increase**



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

896 W. Nye, Suite 202 | Carson City, NV 89703  
(775) 687-8490 | [www.dids.nv.gov](http://www.dids.nv.gov)

**Memorandum**

DATE: January 2, 2024

TO: Indigent Defense Services Providers  
Department of Indigent Defense Services Designees  
Washoe County Appointed Counsel Administrator  
Director of Clark County Office of Appointed Counsel  
Nevada Administrative Office of the Courts  
NACO  
Rural County Administrators

FROM: Marcie Ryba  
Executive Director, Department of Indigent Defense Services

SUBJECT: Implementation of Increases to Hourly Appointment Rates for Attorneys who Provide Indigent Defense Services **(IMPORTANT INFORMATION)**

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This memorandum provides information about adjustments to the hourly rates under Approved Regulation R033-23, Section 1 (NAC 180.\_\_\_\_(1)). Pursuant to this regulation, the hourly appointment rate equals the prevailing federal CJA panel rate.

**As of January 1, 2024, an attorney who provides appointed indigent defense services is entitled to receive an hourly compensation rate of:**

- **\$172 an hour for non-capital cases, and**
- **\$220 an hour for capital cases.**

An “attorney who provides indigent defense services” means:

1. In a county whose population is less than 100,000, an attorney, other than a public defender, who is selected pursuant to NRS 7.115 to provide indigent defense services; or
2. In all counties, an attorney who is appointed pursuant to NRS 34.750 to represent a petitioner who files a post-conviction petition for habeas corpus.

In other words, the rate applies to all trial and direct appeal representation in any rural Nevada county, and all post-conviction habeas cases in all 17 Nevada counties. Please

note, the new rate does not apply to those who have contracted with a county for a flat rate or a different hourly rate. Please refer to your contract for the correct rate to bill.

The new rates apply to services performed on or after January 1, 2024. Where appointment of counsel occurred before January 1, 2024, the new hourly compensation rates apply to that portion of services provided on or after the effective January 1, 2024.

Compensation for work completed during the periods below should be billed as follows:

- December 15, 2023 – December 31, 2023 | \$163 per hour for non-capital work and \$210 for capital work.
- Dates prior to December 15, 2023 | \$100 per hour (or as provided by each county) for non-capital work and \$125 an hour for capital work.

Questions concerning the hourly rate may be directed to the Department of Indigent Defense Services at (775) 687-8490 or via email at [didscontact@dids.nv.gov](mailto:didscontact@dids.nv.gov).

cc: Eve Hanan, *Davis* Monitor

**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix K**

**Douglas County Contracts**  
**Specialty Court & First Appearance Court**

# CONTRACT FOR INDIGENT LEGAL SERVICES

A CONTRACT BETWEEN

**DOUGLAS COUNTY, NEVADA**

AND

**Justin M. Clouser, Esq.**  
Appointed Counsel Program Coordinator

This Contract for Indigent Legal Services (the “Contract”) is entered into by and between Douglas County, a political subdivision of the State of Nevada (“County”), and Justin M. Clouser, Esq. (“Attorney”). The County and Attorney are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

**WHEREAS**, County, from time to time, requires the professional services of independent contractors; and

**WHEREAS** it is deemed that the services of Attorney are both necessary and desirable and in the best interests of County; and

**WHEREAS** Attorney represents that Attorney is licensed to practice law in the State of Nevada, is in good standing with the State Bar of Nevada, and is duly qualified, equipped, staffed, ready, willing, and able to perform and render the legal services required by the County.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein made, the County and Attorney mutually agree as follows:

**1. TERM AND EFFECTIVE DATE OF CONTRACT.** The Contract will become effective July 1, 2024, and will remain in effect until **June 30, 2025**, unless earlier terminated pursuant to the terms of this Contract.

**2. INDEPENDANT CONTRACTOR STATUS.** The Parties agree that Attorney, Attorney’s associates, and employees shall have the status of an independent contractors and that this Contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted, to the parties, including that Attorney is not a Douglas County employee and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the independent contractor or the County to the public employees’ retirement system;
- (5) Accumulation of vacation leave or sick leave;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.



Attorney and County agree to the following rights and obligations consistent with an independent contractor relationship between the Parties:

- a. Attorney has the right to perform services for others during the term of this Agreement.
- b. Attorney has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- c. Attorney shall not be assigned a work location on County premises.
- d. Attorney, at Attorney's sole expense, will furnish all equipment and materials used to provide the services required by this Agreement.
- e. Attorney, at Attorney's sole expense, has the right to hire assistants as subcontractors, or to use Attorney's employees to provide the services required by this Agreement.
- f. Attorney or Attorney's employees or contract personnel shall perform the services required by this Agreement, and Attorney agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Attorney.
- g. Neither Attorney nor attorney's employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.
- h. County shall not require Attorney or Attorney's employees or contract personnel to devote full time to performing the services required by this Agreement.

Attorney further certifies the following:

- i. Contactor is licensed by the State Bar of Nevada to provide legal services to members of the public and agrees to maintain the required professional license to practice law in active status and in good standing for the State of Nevada.
- j. Attorney understands that Attorney is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Attorney understands that an IRS Form 1099 will be filed by County for all payments County makes to Attorney.

**3. INDUSTRIAL INSURANCE.** Attorney agrees, as a precondition to the performance of any work under this Contract and as a precondition to any obligation of the County to make any payment under this Contract, Attorney must provide an affidavit indicating that Attorney is a sole proprietor and that:

A. In accordance with the provisions of NRS 616B.659, he has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and

B. Is otherwise in compliance with those terms, conditions and provisions.

**4. SERVICES TO BE PERFORMED.** On an as-needed basis, and at the direction of the Douglas County Manager or designee, the Attorney will provide professional level services fulfilling the role of the **Douglas County Appointed Counsel Program Coordinator** as defined in Exhibit "AA" and otherwise support and oversee the County's Indigent Defense Services Program.

**5. STANDARD OF WORK.**

A. In providing the services set forth in Paragraph Four, Attorney must provide those services in a professional, competent, and effective manner and ensure all attorneys appointed cases under an indigent defense contract comply with the requirements of the Nevada Department of Indigent Defense Services and the Nevada Indigent Defense ("DIDS") Standards of Performance.

B. Attorney agrees to staff and maintain an office in Douglas County, Nevada. Attorney agrees to furnish a telephone number for use after normal office hours in any emergency that may arise where Attorney's services are requested pursuant to the terms of this Contract to the Justice Courts, District Courts and District Attorney. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of Attorney's practice as required by this Contract are the sole responsibility of Attorney and are a part of Attorney's compensation pursuant to Paragraph 6 of the Contract.

C. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

D. Because Attorney is an independent contractor for Douglas County, the Attorney promises and agrees to not sue, be a party to, or assist in any lawsuit against Douglas County.

**6. PAYMENT FOR SERVICES.** Attorney agrees to provide the services agrees to provide the services set forth in Paragraph 4 at a rate of \$150.00 per hour. Attorney is not entitled to a minimum number of hours worked and will only be paid for hours worked at the direction of the County Manager or designee. On-call pay: when unable to assign coverage, the Attorney may bill on-call pay to be available to cover initial arraignment hearings on weekends at a rate of \$450 per day. The total compensation shall not exceed One Hundred Sixty-Eight Thousand and Four Hundred Dollars (\$168,400). The Attorney will be responsible for expenses incurred while performing services under this Contract. Attorney agrees to submit invoices within ten days of the end of the prior month for the services provided to County. County will pay invoices it receives within a reasonable time. A 1099 Miscellaneous Income Form will be issued by County to Attorney at year end for all amounts paid by County to Attorney.

**7. TERMINATION OF CONTRACT.**

A. Either Party may terminate this Contract without cause, provided that a termination shall not be effective until 90 calendar days after the Party has served written notice upon the other Party. All monies due and owing up to the point of termination of the Contract shall be paid by County, and all pending cases that were

produced for this Contract must be immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Attorney will be reduced to the proportionate number of days worked by the Attorney. The Attorney must reimburse the County for any funds received to which Attorney is not entitled due to the termination of the Contract.

B. If Attorney should be unable to perform any or all of the duties required by reason of illness, accident or other cause beyond Attorney's control, and the disability exists for a period beyond ten (10) judicial days, Attorney must provide, at Attorney's own expense, a substitute attorney (which could include other contract attorneys) to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of the Attorney's duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this Contract, and the respective duties, rights and obligations of this Contract will terminate.

**8. PROFESSIONAL LICENSE.** Attorney agrees to maintain his or her professional license to practice law in active status and in good standing with the State of Nevada. Attorney promises and agrees to notify the County Manager and the Douglas County Appointed Counsel Program Coordinator if Attorney is brought before the State Bar of Nevada on any ethics charge or if Attorney is arrested for any crime. Failure to maintain this license to practice law will result in the immediate termination of this Contract.

**9. GENERAL LIABILITY INSURANCE.** Douglas County's liability coverage will not extend to the Attorney and Attorney is required to acquire and maintain general liability insurance in the minimum amount of \$1,000,000 during the term of this Contract at Attorney's sole expense. Proof of insurance must be sent to the Douglas County Manager. Such proof of insurance must be provided at least annually throughout the term of this Contract and Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such insurance.

**10. LEGAL MALPRACTICE INSURANCE.** Attorney agrees to acquire and maintain malpractice insurance in the minimum amount of \$250,000 per claim and \$500,000 aggregate claims during the term of this Contract at Attorney's sole expense. Proof of malpractice insurance must be sent to the County within five (5) business days upon request. Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such malpractice insurance.

**11. NONAPPROPRIATION.** Nothing in the Contract will be construed to provide Attorney with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Attorney will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Attorney. Attorney will have no claim of any sort to the unexpended funds.

**12. CONSTRUCTION OF CONTRACT.** The Contract will be construed and

interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court. The Parties mutually agree to not seek punitive damages against either Party.

**13. COMPLIANCE WITH APPLICABLE LAWS.** Attorney promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws. County will not waive and intends to assert all available NRS chapter 41 liability limitations.

**14. ASSIGNMENT.** Attorney will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the Douglas County Appointed Counsel Program Coordinator and must meet the qualifications under the Nevada Department of Indigent Services to represent the charged individual. If the Attorney wishes to have a substitute attorney appear for him or her due to vacation, illness or personal family matter, then the Attorney may do so and is responsible for paying the substitute attorney. There is no requirement to have the Douglas County Appointed Counsel Program Coordinator approve such substitution if the substitution is for less than twenty-five judicial days per calendar year.

**15. COUNTY INSPECTION.** The accounting records and expense invoices of Attorney related to the Contract will be subject to inspection, examination, and audit by the County, including by the County Manager and Chief Financial Officer, to audit and verify the expenses claimed by Attorney.

**16. DELEGATION OF AUTHORITY.** The Judges of the Ninth Judicial District Court and the Justices of the two Townships are expressly designated the authority to oversee and implement the provisions of this Contract. Such designations include the development of factors for determining whether a person is indigent, and all other properly related matters related to the appointment of indigent defense counsel. The Douglas County Appointed Counsel Program Coordinator is expressly designated the authority to oversee and implement the provisions of this Contract. This authority includes the assigning of cases on a rotating basis among attorneys to ensure an equitable distribution, ordering/requiring monthly time summaries from attorneys, and preparing vouchers for the quarterly payments due to Attorney. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

**17. INDEMNIFICATION OF COUNTY.** To the fullest extent permitted by law, Attorney shall indemnify, hold harmless and defend County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Attorney, its officers, employees and agents arising from or relating to this Contract. Attorney will defend, hold harmless and/or indemnify County against such claims. Notwithstanding the obligation of Attorney to defend County as set forth in this paragraph, County may elect to participate in the defense of any claim brought against County because of the conduct of Attorney, its officers, employees, and agents. Such participation shall be at County's own expense and County shall be responsible for the payment of its own attorney's fees it incurs in participating in its own defense.

**18. MODIFICATION OF CONTRACT.** The Contract and any attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

**19. AUTHORITY.** The Parties represent and warrant that they have the authority to enter into this Contract.

**20. STANDARD OF CARE.** Attorney will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of Attorney's profession currently practicing under similar conditions and in compliance with the standards established by the Nevada Department of Indigent Defense Services and as required under the terms of this Contract.

**21. THIRD PARTY BENEFICIARY.** Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party, or to otherwise allow a third party to assert a cause of action against either Attorney or County.

**22. NOTICES.** All formal notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

**To County:** Douglas County  
Attn. County Manager  
Post Office Box 218  
Minden, Nevada  
89423  
Telephone: (775) 782-9821

**To Attorney:** Justin M. Clouser, Esq.  
1687 U.S. Hwy 395 N., Suite 4

Minden, NV 89423  
Telephone (775) 782-2888

**IN WITNESS WHEREOF**, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

**Attorney**

By: \_\_\_\_\_  
Justin M. Clouser, Esq. (Date)

**Douglas County**

By: \_\_\_\_\_  
Jenifer Davidson (Date)  
County Manager

# CONTRACT FOR INDIGENT LEGAL SERVICES

A CONTRACT BETWEEN

**DOUGLAS COUNTY, NEVADA**

AND

**Justin M. Clouser, Esq.**

Western Nevada Regional Drug and DUI Court

This Contract for Indigent Legal Services (the “Contract”) is entered into by and between Douglas County, a political subdivision of the State of Nevada (“County”), and Justin M. Clouser, Esq. (“Attorney”). The County and Attorney are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

**WHEREAS**, County, from time to time, requires the professional services of independent contractors; and

**WHEREAS** it is deemed that the services of Attorney are both necessary and desirable and in the best interests of County; and

**WHEREAS** Attorney represents that Attorney is licensed to practice law in the State of Nevada, is in good standing with the State Bar of Nevada, and is duly qualified, equipped, staffed, ready, willing and able to perform and render the legal services required by the County.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein made, the County and Attorney mutually agree as follows:

**1. TERM AND EFFECTIVE DATE OF CONTRACT.** The Contract will become effective July 1, 2024, and will remain in effect until **June 30, 2025**, unless earlier terminated pursuant to the terms of this Contract.

**2. INDEPENDANT CONTRACTOR STATUS.** The Parties agree that Attorney, Attorney’s associates, and employees shall have the status of an independent contractor and this Contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted, to the parties, including that Attorney is not a Douglas County employee and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the independent contractor or the County to the public employees’ retirement system;
- (5) Accumulation of vacation leave or sick leave;
- (6) Unemployment compensation coverage provided by the County if the

requirements of NRS 612.085 for independent contractors are met.

Attorney and County agree to the following rights and obligations consistent with an independent contractor relationship between the Parties:

- a. Attorney has the right to perform services for others during the term of this Agreement.
- b. Attorney has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed.
- c. Attorney shall not be assigned a work location on County premises.
- d. Attorney, at Attorney's sole expense, will furnish all equipment and materials used to provide the services required by this Agreement.
- e. Attorney, at Attorney's sole expense, has the right to hire assistants as subcontractors, or to use Attorney's employees to provide the services required by this Agreement.
- f. Attorney or Attorney's employees or contract personnel shall perform the services required by this Agreement, and Attorney agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Attorney.
- g. Neither Attorney nor attorney's employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.
- h. County shall not require Attorney or Attorney's employees or contract personnel to devote full time to performing the services required by this Agreement.

Attorney further certifies the following:

- i. Contactor is licensed by the State Bar of Nevada to provide legal services to members of the public and agrees to maintain the required professional license to practice law in active status and in good standing for the State of Nevada.
- j. Attorney understands that Attorney is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Attorney understands that an IRS Form 1099 will be filed by County for all payments County makes to Attorney.

**3. INDUSTRIAL INSURANCE.** Attorney agrees, as a precondition to the performance of any work under this Contract and as a precondition to any obligation of the County to make any payment under this Contract, Attorney must provide an affidavit indicating that Attorney is a sole proprietor and that:

- A. In accordance with the provisions of NRS 616B.659, he has not elected to be included within the terms, conditions, and provisions of chapters 616A to 616D, inclusive, of NRS; and



B. Is otherwise in compliance with those terms, conditions, and provisions.

**4. SERVICES TO BE PERFORMED.** On an as-needed basis, the Attorney will provide professional legal services including the following:

A. The Parties agree that Attorney will provide legal counsel to participants in the Western Nevada Regional Drug and DUI Court ("Drug Court"), act as the defense attorney member of the Drug Court team, conduct interviews and prepare necessary forms for new Drug Court participants, and appear at all Drug Court sessions. Attorney's duties may also include communication with Douglas County contract defense attorneys and other Drug Court team members. Attorney will also complete the sealing of records for graduates of the drug court program who qualify to have their criminal records sealed pursuant to NRS Chapter 179.

B. If, at any time during the representation of a person, the Attorney has reason to believe that there is a legal ethical conflict with that representation, the Attorney must immediately notify the Court.

C. The Attorney shall perform all duties required under the Nevada Revised Statutes and by the Nevada Department of Indigent Defense Services ("DIDS"), including standards of performance, record keeping, time keeping and reporting requirements. However, in no event shall the Attorney be required to provide any information that would compromise client confidentiality, prejudice the rights or defense of any eligible client or violate any provision of the Nevada Rules of Professional Conduct.

D. DIDS has performed a weighted caseload study and made a determination regarding the indigent defense service needs of Douglas County. Although the Parties believe the DIDS caseload study is defective and requires additional study and revisions, for the purpose of this Contract, according to DIDS, 1.0 full-time equivalent public defenders equates to 1,392.6 hours annually for indigent defense services. Attorney promises and agrees to commit up to **25 hours per month** for Attorney's services under this Contract.

**5. STANDARD OF WORK.**

A. In providing legal representation as set forth in Paragraph Four, Attorney must provide those services in a professional, competent, and effective manner. This includes, but is not limited to, interviewing the client, appearing at all court hearings, or providing coverage for those court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations. Attorney shall:

- (1) Provide zealous, competent representational services in all cases;
- (2) Comply with the requirements of the Nevada Department of Indigent Defense Services and the Nevada Indigent Defense ("DIDS") Standards of Performance;
- (3) Comply with the Nevada Indigent Defense Standards of Performance set

- forth in ADKT No. 41 of the Nevada Supreme Court;
- (4) Comply with all applicable laws and regulations;
  - (5) Comply with the Nevada Rules of Professional Conduct (“NRPC”);
  - (6) Comply with the Douglas County Plan for the Provision of Indigent Defense Services (attached as Exhibit “A”);
  - (7) Agree to not accept cases for which the Attorney is not approved by DIDS; and
  - (8) Agree to not accept any case if Attorney does not have the experience, qualifications, and sufficient time to accept the appointment or is otherwise unable to provide competent legal representation in compliance with NRPC, ADKT No. 41, DIDS Standards of Performance, and the requirements of this Contract.

B. Attorney agrees to staff and maintain an office in Douglas County, Nevada. Attorney agrees to furnish a telephone number for use after normal office hours in any emergency that may arise where Attorney’s services are requested pursuant to the terms of this Contract to the Justice Courts, District Courts, and District Attorney. The expense of office space, furniture, equipment, supplies, routine investigative costs, and secretarial services suitable for the conduct of Attorney’s practice as required by this Contract are the sole responsibility of Attorney and are a part of Attorney’s compensation pursuant to Paragraph 6 of the Contract.

C. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

D. Because Attorney is an independent contractor for Douglas County, the Attorney promises and agrees to not sue, be a party to, or assist in any lawsuit against Douglas County.

E. Attorney agrees to furnish to County a copy of the DIDS Eligible Provider Approval Letter (Exhibit “B”) verifying the category of cases Attorney is authorized to accept.

## **6. PAYMENT FOR SERVICES.**

Attorney agrees to provide the services set forth in Paragraph 4 at the rate of \$125.00 per hour for a total cost not to exceed \$3,125.00 per month through the term of this Contract. Attorney agrees to submit invoices within ten days of the end of the prior month for any services rendered. County will pay invoices it receives within a reasonable time. Any fee charged by Attorney in excess of the maximum \$3,125.00 per month must be approved in advance and in writing by the Douglas County Indigent Defense Coordinator.

Attorney shall be responsible for all costs and expenses incurred while performing his services under this Contract, including without limitation licenses fees, memberships, and dues; automobile and other travel expenses; and all salary, expenses and other compensation paid to Attorney's employees or contract personnel Attorney hires to perform the services described by this Agreement. A 1099 Miscellaneous Income Form will be issued by County to Attorney at year-end for all amounts paid by County to Attorney.

**7. TERMINATION OF CONTRACT.**

A. Either Party may terminate this Contract without cause, provided that a termination shall not be effective until 90 calendar days after the Party has served written notice upon the other Party. All monies due and owing up to the point of termination of the Contract shall be paid by County, and all pending cases that were produced for this Contract must be immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Attorney will be reduced to the proportionate number of days worked by the Attorney. The Attorney must reimburse the County for any funds received to which Attorney is not entitled due to the termination of the Contract.

B. If Attorney should be unable to perform any or all of the duties required by reason of illness, accident or other cause beyond Attorney's control, and the disability exists for a period beyond ten (10) judicial days, Attorney must provide, at Attorney's own expense, a substitute attorney (which could include other contract attorneys) to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of the Attorney's duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this Contract, and the respective duties, rights and obligations of this Contract will terminate.

**8. PROFESSIONAL LICENSE.** Attorney agrees to maintain his or her professional license to practice law in active status and in good standing with the State of Nevada. Attorney promises and agrees to notify the County Manager and the Douglas County Appointed Counsel Program Coordinator if Attorney is brought before the State Bar of Nevada on any ethics charge or if Attorney is arrested for any crime. Failure to maintain this license to practice law will result in the immediate termination of this Contract.

**9. GENERAL LIABILITY INSURANCE.** Douglas County's liability coverage will not extend to the Attorney and Attorney is required to acquire and maintain general liability insurance in the minimum amount of \$1,000,000 during the term of this Contract at Attorney's sole expense. Proof of insurance must be sent to the Douglas County Manager. Such proof of insurance must be provided at least annually throughout the term of this Contract and Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such insurance.

**10. LEGAL MALPRACTICE INSURANCE.** Attorney agrees to acquire and maintain malpractice insurance in the minimum amount of \$250,000 per claim and \$500,000 aggregate claims during the term of this Contract at Attorney's sole expense. Proof of malpractice insurance must be sent to the County within five (5) business days upon request. Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such malpractice insurance.

**11. NONAPPROPRIATION.** Nothing in the Contract will be construed to provide Attorney with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Attorney will automatically

revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Attorney. Attorney will have no claim of any sort to the unexpended funds.

**12. CONSTRUCTION OF CONTRACT.** The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court. The Parties mutually agree to not seek punitive damages against either Party.

**13. COMPLIANCE WITH APPLICABLE LAWS.** Attorney promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws. County will not waive and intends to assert all available NRS chapter 41 liability limitations.

**14. COUNTY INSPECTION.** The accounting records and expense invoices of Attorney related to the Contract will be subject to inspection, examination, and audit by the County, including by the County Manager and Chief Financial Officer, to audit and verify the expenses claimed by Attorney.

**15. DELEGATION OF AUTHORITY.** The Judges of the Ninth Judicial District Court and the Justices of the two Townships are expressly designated the authority to oversee and implement the provisions of this Contract. The Douglas County Appointed Counsel Program Coordinator is expressly designated the authority to oversee and implement the provisions of this Contract. This authority includes the assigning of cases on a rotating basis among attorneys to ensure an equitable distribution, ordering/requiring monthly time summaries from attorneys, and preparing vouchers for the quarterly payments due to Attorney. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

**16. INDEMNIFICATION OF COUNTY.** To the fullest extent permitted by law, Attorney shall indemnify, hold harmless and defend County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Attorney, its officers, employees and agents arising from or relating to this Contract. Attorney will defend, hold harmless and/or indemnify County against such claims. Notwithstanding the

obligation of Attorney to defend County as set forth in this paragraph, County may elect to participate in the defense of any claim brought against County because of the conduct of Attorney, its officers, employees, and agents. Such participation shall be at County's own expense and County shall be responsible for the payment of its own attorney's fees it incurs in participating in its own defense.

**17. MODIFICATION OF CONTRACT.** The Contract and any attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

**18. AUTHORITY.** The Parties represent and warrant that they have the authority to enter into this Contract.

**19. STANDARD OF CARE.** Attorney will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of Attorney's profession currently practicing under similar conditions and in compliance with the standards established by the Nevada Department of Indigent Defense Services and as required under the terms of this Contract.

**20. THIRD PARTY BENEFICIARY.** Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party, or to otherwise allow a third party to assert a cause of action against either Attorney or County.

**21. NOTICES.** All formal notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

**To County:** Douglas County  
Attn. County Manager  
Post Office Box 218  
Minden, Nevada  
89423  
Telephone: (775) 782-9821

.....

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**To Attorney:** Justin M. Clouser, Esq.  
1687 U.S. Hwy 395 N., Suite A  
Minden, NV 89423  
Telephone (775) 782-2888

**IN WITNESS WHEREOF**, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

**Clouser Law Group, Ltd.**

By: \_\_\_\_\_  
Justin M. Clouser, Esq. (Date)

**Douglas County**

By: \_\_\_\_\_  
Jenifer Davidson (Date)  
County Manager

**14<sup>th</sup> Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**November 18, 2024**

**Appendix L**

**Lyon County Contract, Brock Law**

## AGREEMENT FOR PUBLIC DEFENDER SERVICES

This Agreement by and between LYON COUNTY (hereinafter "Contracting Authority") and BROCK LAW, LTD. (hereinafter "Contractor") shall take effect on the 1<sup>st</sup> day of November, 2024 ("Effective Date").

WHEREAS, the right to counsel in certain criminal matters is guaranteed by the United States Constitution, the Nevada Constitution, and the Nevada Revised Statutes (NRS); and

WHEREAS, the Contracting Authority is required by law to appoint a public defender to provide counsel in such matters to eligible indigent persons; and

WHEREAS, the Contracting Authority desires to contract with a private law firm to serve as one of three firms providing public defender services; and

WHEREAS, the Contractor is a private law firm that desires to serve as one of the Contracting Authority's public defender firms and warrants that it has the means and ability to do so in a competent manner; and

WHEREAS, both parties desire to reduce the entirety of their agreement to writing in this document (hereinafter "this Agreement"), and intend for all funds paid under this Agreement to be used for the sole purpose of providing indigent defense services to eligible clients of the Contractor;

NOW, THEREOFRE, the parties agree as follows:

### I. DEFINITIONS

As used in this Agreement, the underlined words below shall have the following meanings:

1. Appointing Authority: The judge, justice, or master presiding over a Case arising in a court of law within Lyon County.
2. Case: A "Case" shall have the meaning prescribed to it in Sec. 4 of the Regulations.
  - a. Misdemeanor Case: A Case in which the highest charge is a Misdemeanor.
  - b. Category B, C, D, or E Felony or Gross Misdemeanor Case: A Case in which the highest charge is a gross misdemeanor or a Category B, C, D, or E Felony for which the maximum penalty is less than ten (10) years imprisonment.
  - c. Category B Felony (10+ year maximum): A Case in which the highest charge is a Category B felony for which the maximum penalty is greater than ten (10) years imprisonment.



- d. Non-Capital Category A Case: A Case in which the highest charge is a non-capital Category A Felony.
  - e. Capital Case: A Case in which the highest charge is a capital Category A felony.
  - f. Juvenile Proceedings: A Case arising under NRS 432B and/or a Case in which a juvenile is alleged to be delinquent or need of supervision.
  - g. Appeal: Any appeal of an interlocutory adjudication or Final Adjudication in a Case to the Third Judicial District or the Nevada Supreme Court.
3. Cause: Cause for immediate termination of this Agreement. Cause for such termination shall exist in the event of:
- a. A material breach of this Agreement by the Contractor, including without limitation failure to provide Representational Services to Eligible Clients; failure to comply with reporting obligations; failure to utilize qualified attorneys; failure to meet performance standards; failure to adhere to the Nevada Rules of Professional Conduct; or any other failure from which it could reasonably be discerned that public funds are not being responsibly used for the provision of indigent defense services as required in this Agreement and in compliance with all applicable laws, rules, and regulations.
  - b. A material breach of this Agreement by the Contracting Authority, such as non-payment of compensation without justification; failure to provide reimbursement for reasonable Case-Related Expenses; or failure to obtain additional counsel or negotiate additional compensation in good faith in the event of a Significant Workload Increase.
4. Department: The Nevada Department of Indigent Defense Services.
5. Eligible Client: An indigent person whom an Appointing Authority has determined to be eligible for a court-appointed attorney pursuant to Section 6 of the Regulations of the Board of Indigent Defense Services, in a Case arising in a court of law within Lyon County.
6. Final Adjudication: "Final Adjudication" shall have the meaning prescribed to it in Section 43(4)(d) of the Regulations.
7. Fiscal Year: July 1<sup>st</sup> through June 30<sup>th</sup>.
8. Case-Related Expenses: Expenses for professional services reasonably needed to provide an effective defense of Eligible Clients under this Agreement. This includes reasonable fees for investigators, translators, expert witnesses, laboratory analysis, and other forensic services.



9. Plan: Lyon County's Plan for the Provision of Indigent Defense Services.
10. Regulations or Reg.: The Permanent Regulations of the Board of Indigent Defense Services.
11. Representational Services: All services part and parcel of the Contractor's delivery of competent, zealous legal representation to Eligible Clients under this Agreement. Such services may include, without limitation: investigation; interviews of clients and potential witnesses; review of physical evidence; legal research; preparation of pleadings, briefs, correspondence, exhibits, or other documents; preparation for and attendance at hearings and conferences; expert witness selection, discovery, and preparation; pretrial advocacy; trial advocacy; sentencing advocacy; appellate advocacy; plea bargaining; and any and all other services needed to provide competent, zealous legal representation from the beginning of a Case through Final Adjudication and, if applicable, through Appeal.
12. Significant Workload Increase: An increase in the number of Cases in a Fiscal Year that exceeds ten percent (10%) of the average number of Cases per Fiscal Year in the preceding three Fiscal Years.

## **II. APPOINTMENT OF PUBLIC DEFENDER; TERM OF APPOINTMENT**

Pursuant to NRS 260.010(2) and Title 1, Chapter 9 of Lyon County Code, the Contractor shall be appointed as public defender for the Contracting Authority. The term of the Contractor's appointment shall be two years and eight months, commencing on the Effective Date of this Agreement. This term may be extended by written agreement of the parties. This term may be terminated early by either party without Cause upon ninety (90) days written notice. This term may be terminated early by either party for Cause at any time. In the event of any early termination, with or without Cause, the Contractor shall take all professionally-responsible action to ensure an orderly transition of counsel that does not prejudice the rights or defense of Eligible Clients. The Contractor will be primarily responsible for public defender services for the Walker River Justice Court and conflict in Juvenile cases in the Walker River Justice Court service area. The Contractor will also be responsible for providing public defender services at the District Court.

## **III. SCOPE OF SERVICES**

Except as expressly limited in this Section, the Contractor shall provide Representational Services as follows:

1. Misdemeanor Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.
2. Category B, C, D, E Felony and Gross Misdemeanor Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.



3. Category B Felony (10+ year maximum) Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.
4. Non-Capital Category A Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.
5. Capital Cases: In the event the Contractor is appointed as co-counsel in a Capital Case two (2) or more times in a Fiscal Year, the Contractor may, at its option, provide Representative Services in the additional Cases after the first one. For all Capital Case appointments in excess of one (1) per Fiscal Year, the Contractor will receive additional compensation in accordance with Section IX below. In the event an attorney of the Contractor becomes qualified to serve as lead counsel in Capital Cases pursuant to SCR 250, the Contracting Authority and Contractor may negotiate the terms of such representation in a separate Agreement or a written modification of this Agreement.
6. Appeals: The Contractor shall represent Eligible Clients on any Appeal of an interlocutory adjudication or Final Adjudication to the Third Judicial District Court or the Nevada Supreme Court.
7. Juvenile Proceedings: The Contractor shall provide Conflict Council Representational Services to all Eligible Clients in this category of Cases.
8. Conflicts: The Contractor understands that there will be two other public defender firms who will have executed a similar agreement and agrees to cooperate with the other attorneys to ensure that all courts are adequately covered. Contractor shall cooperate with the other two public defender firms to ensure, to the extent possible under ethical considerations, that all cases are covered and that any conflicts are resolved by the three public defender firms. Conflict cases will be rotated between the three primary public defender firms as set forth in the Plan. Attorney is not entitled to additional compensation for conflict cases. Attorney is not obligated to provide additional attorneys should a case arise where there is an insufficient number of public defenders to ethically represent all defendants.
9. Bail Hearings: The Contractor will work on a rotating schedule, set by the County, with the other public defender firms to provide coverage for bail hearings.

By way of express limited exception, the Contractor shall not provide the Representational Services otherwise required above to the extent doing so would violate any provision of the Nevada Rules of Professional Conduct, including but not limited to the provisions concerning conflicts of interest. The Contractor will refer to the Nevada Rules of Professional Conduct, as interpreted by the State Bar of Nevada and/or opinions of the State judiciary, and to the American Bar Association Standards for Criminal Justice to determine the existence and appropriate resolution of conflicts of interest. If a conflict of interest exists, the Contractor will promptly file an appropriate motion or follow the procedure for handling conflicts of interest provided in the Contracting Authority's Plan.



**IV. ATTORNEYS; ATTORNEY QUALIFICATIONS; PERFORMANCE STANDARDS; TRAINING**

1. Attorneys: The Contractor shall maintain a list of all attorneys who will perform Representational Services under this Agreement. The list shall specify, for each attorney, the category(ies) of Case(s) in which the attorney is qualified to provide Representational Services. The Contractor shall provide a copy of this list to the Contracting Authority and the Department within thirty (30) days of the Effective Date and in the event of any subsequent change to the list.
2. Attorney Qualifications: It shall be the sole responsibility of the Contractor to ensure all attorneys providing Representational Services to Eligible Clients under this Agreement maintain all requisite qualifications for the category(ies) of Case(s) in which they are providing Representational Services. To ensure the ability, training, and experience of an attorney match the complexity of a given Case, the Contractor shall demonstrate compliance with the standards and regulations of the Department pertaining to training, education, and qualifications. The Contractor shall further ensure attorneys performing Representational Services in a particular category of Case under this Agreement are qualified by the Department to perform such services in that category of Case.
3. Performance Standards: It shall be the sole responsibility of the Contractor to ensure the attorneys whom it employs or with whom it contracts to perform its obligations under this Agreement:
  - a. Provide zealous, competent Representational Services in all Cases;
  - b. Comply with the requirements of the Department and the Nevada Indigent Defense Standards of Performance;
  - c. Comply with all applicable laws and regulations (including the Reg., as may be amended);
  - d. Comply with the Nevada Rules of Professional Conduct; and
  - e. Comply with the Contracting Authority's Plan.

The Contractor shall also ensure, to the greatest extent practicable, consistency in the representation of Eligible Clients such that the same attorney represents an Eligible Client through every stage of a Case. Nothing in this paragraph shall be construed to prohibit the Contractor from delegating appropriate administrative tasks to support staff, or to prohibit the Contractor from assigning more than one (1) attorney to represent an Eligible Client as necessary provided it would not prejudice the rights or defense of the Eligible Client.

4. Training: Ongoing professional training is a necessity for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Contractor shall ensure attorneys providing



Representational Services under this Agreement annually complete a minimum of five (5) hours of continuing legal education relevant to the areas in which they practice and satisfy any other training requirements mandated by the Department.

## **V. WORKLOAD**

The Contractor will initially supply at least two attorneys and one support staff. The Contractor shall also obtain the services of an investigator. The investigator shall be approved by the County and is anticipated to be paid directly by the County outside of this contract.

The Contractor shall continue to ensure sufficient staffing to comply with the workload guidelines as determined by the Department. A temporary variance may be approved during a period in which the Contractor is actively recruiting qualified staff.

In the event of a Significant Workload Increase, the Contracting Authority shall be responsible for retaining the services of additional counsel to provide Representational Services to cover the amount of the Significant Workload Increase. The Contracting Authority and the Contractor may negotiate additional compensation to allow the Contractor to acquire additional personnel and/or resources needed to cover the Significant Workload Increase.

## **VI. OFFICES AND STAFFING**

The Contractor shall have staff available to answer telephone calls to the office during business hours and agrees to furnish to the Justice Courts, District Courts, Lyon County Sheriff's Office, and the Lyon County District Attorney a telephone number for use after hours in any emergency that may arise. The expense of office space, furniture, equipment, technology, software, legal research database access, supplies, and support staff services suitable for conduct of the Contractor's practice of law are the sole responsibility of the Contractor. The Contractor's expenses described in this paragraph are not a charge against the County as provided in NRS 260.040(5) and are not considered Case-Related Expenses. The Contractor may at its discretion use legal interns as part of its staffing, provided such usage complies with SCR 49.5

## **VII. REPORTING**

The Contractor shall report quarterly to the Lyon County Manager and Board of Commissioners any information the Contracting Authority reasonably deems pertinent, including, without limitation, any information required under the Plan and/or the Regulations. The Contracting Authority shall approve the format in which such quarterly reports are provided.

The Contractor shall report to the Department any information necessary for the oversight of indigent defense services in Lyon County, as required and specified in the Regulations. This also includes entering case information, conflicts/conflict assignments, and hours worked into the Department's case management system (currently LegalServer).



In no event shall the Contractor be required to provide any information that would compromise client confidentiality, prejudice the rights or defense of any Eligible Client, or violate any provision of the Nevada Rules of Professional Conduct.

### **VIII. INSURANCE**

The Contractor will maintain adequate liability insurance, including errors and omissions coverage and general liability coverage, in policy limits of at least five hundred thousand dollars (\$500,000.00) per occurrence during the term of this Agreement. The Contractor shall also maintain workers compensation insurance for its personnel as required by Nevada Law. The Contractor shall provide proof of all such insurance coverage to the Contracting Authority within thirty (30) days of the Effective Date of this Agreement. The insurance policies must be written by an insurance carrier authorized to issue the policies in the State of Nevada. The premium expense for all insurance coverage required in this Section is the sole responsibility of the Contractor.

### **IX. COMPENSATION**

Except as otherwise expressly stated in this Section, the Contractor's full compensation for the performance of all Representational Services and all other obligations under this Agreement shall be the sum of:

Four hundred and twenty thousand dollars (\$420,000) per Fiscal Year, paid at the rate of thirty-five thousand dollars (\$35,000) per month, due on or before the fifth (5<sup>th</sup>) of each month. The second and third fiscal year increases may be negotiated with the County and any increases will need to be formally approved by the Board of Commissioners.

Nine hundred dollars (\$900) per full weekend worked for bail hearings, payable each month, based upon a schedule maintained by Lyon County. The schedule is expected to rotate coverage between three contracted public defender attorney firms, each assigned for seven days at a time. This additional pay is only available as funding is available from the State of Nevada.

By way of express exception:

1. In the event the Contractor wishes to accept more than one appointment as co-counsel in a Capital Case in any Fiscal Year as is its prerogative under Section III, the Contractor shall receive two hundred dollars (\$200.00) per hour for all attorney time reasonably spent providing Representational Services in such Cases. The Contractor shall submit monthly invoices to the Contracting Authority, with time entries for Representational Services rounded to the nearest one-tenth (1/10) of an hour.
2. In the event the Contractor determines it is for any reason unable to meet its obligations under this Agreement, it may submit a written application to the Contracting Authority for modification of compensation and/or workload. The



application shall state, with specificity, all reasons for the Contractor's request. Upon receipt of the application, the Contracting Authority may submit questions or requests for additional information to the Contractor, and the Contractor shall respond promptly and in good faith. The Contracting Authority may take any appropriate action to ensure its obligations to provide public defense services are met, including, without limitation, authorizing additional compensation for the Contractor, modifying the Contractor's workload, and/or amending or terminating this Agreement, as appropriate.

3. In the event of early termination without Cause, the Contractor shall continue to receive its monthly payment of thirty-five thousand dollars (\$35,000) until the end of the ninety (90) day notice period. In the event the notice period ends part way through a month, the Contractor shall receive a pro rated payment for that month. By way of example, if the notice period ends on the fifteenth (15<sup>th</sup>) day of a thirty (30) day month, the Contractor would receive one half of its monthly fee for that month (i.e., \$17,500). The Contracting Authority shall owe no further compensation after that, except that if the Contractor must provide continued Representational Services after the end of the notice period to ensure an orderly transition of counsel, the Contractor will receive compensation at the rate of two hundred dollars (\$200.00) per hour for all attorney time reasonably needed to ensure such transition. The Contractor shall submit an invoice for these services, with time entries rounded to the nearest one tenth (1/10) hour, after all Eligible Clients have been transitioned to other counsel.
4. In the event of early termination for Cause, the Contractor shall receive its monthly payment of thirty-five thousand dollars (\$35,000) through the month in which termination occurs. The Contracting Authority shall owe no further compensation after that, except that if the Contractor must provide continued Representational Services in a subsequent month to ensure an orderly transition of counsel, the Contractor shall receive compensation at the rate of two hundred dollars (\$200.00) per hour for all attorney time reasonably needed to ensure such transition. The Contractor shall submit an invoice for these services, with time entries rounded to the nearest one tenth (1/10) hour, after all Eligible Clients have been transitioned to other counsel.

The Contractor acknowledges and agrees the provisions of NRS 7.125 do not apply, and the Contractor is not entitled to any compensation or reimbursement pursuant to NRS 7.125. The compensation provided for in this Section is in lieu of the statutorily prescribed fees under NRS 7.125.

#### **X. REIMBURSEMENT OF CASE-RELATED EXPENSES**

The Contractor may secure reimbursement for Case-Related Expenses in the manner set forth under the Contracting Authority's Plan and applicable law. All other expenses the Contractor incurs in providing Representational Services under this Agreement are the sole responsibility of the Contractor. Expenses for which the Contractor is solely responsible include, without



limitation: travel and meal expenses of Contractor's personnel; wages, benefits, or other compensation of Contractor's personnel; costs associated with procuring office space; office supplies, technology, software, and equipment; and all other costs attendant to operating a private law practice.

#### **XI. INDEPENDENT CONTRACTOR; PRIVATE LAW PRACTICE**

This Agreement is for professional services as an independent contractor and does not create any employer/employee relationship between the Contracting Authority and the Contractor, its employees, or its affiliates. The Contracting Authority does not control the means by which the Contractor provides services. The Contracting Authority is not responsible for withholding income tax or other taxes in payments to the Contractor, procuring workers' compensation insurance for the Contractor, or providing group insurance, retirement, and other benefits available to Lyon County employees.

The Contractor may maintain a private law practice and may engage in the private practice of law which does not conflict with its obligations under this Agreement. The Contractor agrees not to file, or represent clients in, any lawsuits against Lyon County, its officers, employees, or agents, or entities in which the Board of County Commissioners act as a governing body.

#### **XII. ASSIGNMENT AND DELEGATION**

The Contractor's rights and obligations under this Agreement are not assignable to any other law firm or third party without the express approval of the Contracting Authority.

#### **XIII. DEFENSE AND INDEMNIFICATION**

The Contractor shall defend, indemnify, and hold harmless the Contracting Authority, its officers, agents, and employees from and against all claims, suits, or asserted damages arising from the Contractor's provision of Representational Services under this Agreement.

#### **XIV. ENTIRE AGREEMENT; MODIFICATIONS**

This Agreement constitutes the entire agreement between the parties. This Agreement supersedes all prior agreements and understandings related to the Contractor's appointment as Lyon County's public defender, whether oral or written, and whether express or implied.


This Agreement may be amended or modified only by a written modification duly executed by both parties.

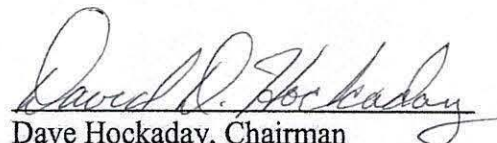


**XV. GOVERNING LAW; CHOICE OF FORUM**

This Agreement shall be interpreted in accordance with the laws of the State of Nevada. Because both parties have participated in drafting of this Agreement, it shall not be construed against either drafter. Any action to enforce any provision in this Agreement shall be brought in the Third Judicial District Court in Lyon County, Nevada.

Agreed:

  
\_\_\_\_\_  
Attorney Office

  
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Dave Hockaday, Chairman  
Lyon County Board of Commissioners

Date: 9.18.24

Date: 9/19/2024