State of Nevada
Department of Indigent Defense Services
Board Meeting Workshop Minutes
Thursday, May 2, 2024
1:00 PM
Meeting Location:

OFFICE	LOCATION	ROOM
Legislative Building	401 South Carson St. Carson City, NV Virtual (Zoom) Phone Number 1-888-475-4499 / ID 845 2081 4979	2135

1. Call to Order and Open Workshop

Chair Fitzsimmons called the Workshop of the Board on Indigent Defense Services to order at 1:00 pm, on Thursday, May 2, 2024.

Bet-Nimra Torres Perez and conducted roll call. A **quorum was established**.

Board Members Present: Chair Laura Fitzsimmons, Vice-Chair Kate Thomas, Chris Giunchigliani, Angela Cook, Susan Bush, Joe Crim, Allison Joffee, Joni Eastley, Harriett Cummings, Jeff Wells, Joe Crim, Jarrod Hickman, and Lorina Dellinger.

Members not present: Justice William Maupin.

Others Present: Executive Director Marcie Ryba, Deputy Director Thomas Qualls, Deputy Director Peter Handy, Professor Eve Hanan, Franny Forsman, Patty Cafferata, Scott Coffee, Evelyn Grosenick, Todd Weiss, and Bet-Nimra Torres Perez.

2. Public Comment

Chair Fitzsimmons opened the line for public comment.

Director Ryba advised the Chair that with the change in Public Meeting Law Notices we are required to place the phone number and ID over the virtual broadcast for public comment.

Chair Fitzsimmons stated anyone wishing to provide public comment to call 1 888 475 4499 and provide ID 845 2081 4979.

BPS requested anyone calling in to provide public comment, to press *9 to join the queue. No callers were in the queue.

3. Presentation and Discussion of Proposed Regulations. (For Possible Action)

Director Ryba advised she would be presenting two regulations for the Board of Indigent Defense Services. The goal of this regulation is to create and bring into the Board of Indigent Defense Services a qualification standard to be able to take death penalty cases. The section that refers to

death penalty states attorneys that take such cases must meet criteria set forth in Supreme Court Rule 250. The Supreme Court has issued an ADKT where they have created a commission to study Supreme Court Rule 250 and to bring it into harmony with the creation of our Board on Indigent Defense Services. We scheduled this Workshop today to obtain guidance from this Board as to whether they would like to create a regulation within our regulations in the administrative code or if they would like to take some other action based upon NRS 180.320. Finally, we define to maintain or remain on this roster, every two years attorneys must seek specialized trainings that focus on the defense of death penalty cases.

Deputy Director Qualls stated that the Supreme Court committee had its first meeting and not much has moved forward. Committee members include judges, public defenders, some prosecutors, and Deputy Director Qualls. We are weighing in on aspects of Supreme Court Rule 250 that need updating. The Supreme Court is aware it has been some time since the rules were revisited and there have been a lot of changes, including the creation of our department. There are several different subject matters that will be addressed including who should oversee those subjects.

Chair Fitzsimmons commented we are visiting the topic of qualification of counsel and asked what topics were discussed yesterday about Rule 250.

Deputy Director Qualls replied as the rule currently reads, if first-degree murder case charges are filed, it could be a death penalty case. The rule requires that 250 qualified attorneys be assigned. There are not enough death penalty qualified lawyers in the state to make that possible, so it is impossible to comply with the rule as it reads. We are concerned about vertical representation, which is one of the goals of the department and the *Davis* lawsuit.

Chair Fitsimmons commented in terms of timing, it may have been accidental that we are doing this at the same time as the Supreme Court has formed this committee. Is there any sense of timing? Was there any understanding after this meeting when they are looking at getting a draft of something we can start considering?

Deputy Director Qualls replied that Justice Bell indicated she would like this to be wrapped up by the end of the year. The desire amongst everyone is to move forward as quickly as possible.

Chair Fitzsimmons asked Director Ryba if we have a deadline to get the Board to act on what has been presented.

Director Ryba explained there is not necessarily a deadline to create regulations. It depends on whether our goal is to create permanent regulations or temporary regulations. Once the Legislature comes into session, we can only create temporary regulations, and then we would have to go through this process again to create permanent regulations.

Chair Fitzsimmons wanted to know what starts the clock.

Director Ryba explained there is a deadline and perhaps AG Todd Weiss could tell us the date.

Todd Weiss replied he did not have the date but would look it up.

Director Ryba explained this issue recently came to light when Deputy Director Qualls was working with some of the counties on developing death penalty plans. The Supreme Court Rule says that each district is supposed to have a list of qualified counsel to take the cases. After reaching out to most of the jurisdictions, they did not have a list of qualified counsel to take these cases. When this was discovered, we knew we needed to take action, because the selection of counsel falls on DIDS to select qualified counsel. This brings up the question: are we allowed to take counsel approved in one jurisdiction, and place them in a different jurisdiction?

Chair Fitzsimmons asked which piece of the proposed regulation this addresses.

Director Ryba replied this proposed regulation creates separation from the judiciary, instead of allowing the judiciary to approve and select who is on the list, and who qualifies for that exception. The proposal is to bring it into the department where individuals would apply to our list and show they meet these requirements.

Deputy Director Handy explained when making the determinations, he tries to qualify attorneys who want to be 250 qualified on his maintained list for rural counties. The District Court may grant an exception after a hearing and give credit for being qualified under Rule 250 for a death penalty case in their jurisdiction. In some cases, there is not an order from the District Court giving that qualification, and in some cases that are proceeding to death penalty. There is inconsistency among the districts as to how attorneys are receiving these cases in rural counties, and this regulation would resolve that by centralizing that determination.

Chair Fitzsimmons asked if any Board members had any questions.

Chris Giunchgliani stated Director Ryba said it will streamline the process and take the judiciary out, allowing the Department to decide who can serve, while retaining the authority to grant an exception. We need to make sure if we are looking at training that enough is budgeted because we do not want to set people up for failure if they cannot access the training.

Deputy Director Handy stated currently we have a standing budgetary amount of $25,000 for training and resources to train rural practitioners. We have received other funds through AB 518 and through CET funding from DETR to provide additional resources in training. The funds are not specifically designated for death penalty training, mitigation training, or voir dire training, which is necessary to fulfill that kind of training requirement. There are funds to provide attorneys with opportunities to attend these kinds of programs if they request to do so.

Chris Giunchgliani asked if these are in state training or out of state training, or a combo?

Deputy Director Handy explained last year Clark County Public Defender's office, and the Special Public Defender's office, hosted a voir dire training for capital cases. Many of these training courses occur in places like Chicago and California. These are very high-quality training courses, put on by experts. Deputy Director Handy would be happy to arrange it so attorneys are able to attend these trainings.

Chris Giunchgliani said when budgets are reviewed, there should be something requested down the road, if this regulation is adopted. We do not want to set people up so they have to take training and there is nothing available, or no funding available.

Allison Joffee is very passionate about death penalty representation. It is one of the reasons she joined the DIDS Board. As defense attorneys, we are here for indigent defendants. Some of us specifically trained as defense counsel, and our requirement through DIDS is to take independent steps to provide for indigent defendants. It is our job to act to find the specialists who can handle death penalty cases and begin to train them before they are called to do a death penalty case. Ms. Joffee thinks we should set the regulations and immediately begin to provide training, as this is what we are supposed to do as this Board. It is not appropriate to give it to the commission for review by judges, prosecutors, and public defenders.

Chair Fitzsimmons asked if anyone on the Board would like to comment on any aspect of the proposed regulations.

Susan Bush, Director of Office of Appointed Counsel in Clark County, stated her office has the most death penalty cases. Her concern is inconsistency throughout the state of what is qualified under 250 and does not want to lower the standard already set. Subsection C is just a license to practice law in Nevada and is concerning. Pursuant to Rule 250, three years' experience is required. Ms. Bush does not want to go below three and feels there should be more years of criminal law experience. The other concern is the training required every two years.

Director Ryba explained the two-year time limit is from ADKT 411 and standard 23 under training in subsection C. We used the language regarding attorneys seeking to remain on the appointment roster being required to attend and successfully complete, at least once every two years, a specialized training program that focuses on the defense of the death penalty cases. We think it would help if we had one list of death penalty qualified counsel for the entire state, and we would be happy to collect it, if that were the direction the Board would like to take. ADKT had put forth the timeline, and payment for the training, if required, is something we could ask the legislature to put in our budget.

Deputy Director Handy stated we did not have anyone interested in the training this fiscal year. We do have individuals interested in taking training in death penalty, beginning next fiscal year. Deputy Director Handy will recommend they attend those trainings, and DIDS will provide the funding.

Susan Bush expressed concern that under these regulations the public defenders, and special public defenders, would have to be able to do these trainings. They would have to ensure their employees are going to these training courses every two years, is that correct?

Director Ryba confirmed that is correct and anyone taking death penalty cases should be taking these trainings. In speaking with someone from the Clark County Public Defender's Office, they do that amount of training on death penalty, meeting that requirement. They were wondering if

there should be an amount of CLE regarding death penalty that is required, rather than just an open training of your choice. We would leave that to the Board to decide what is appropriate.

Deputy Director Handy referred to ABA guideline 8.1 under training for death penalty cases, subsection C indicates attorneys seeking to remain on the appointment roster should be required and successfully complete at least once every two years, a specialized training program approved by the responsible agency, that focuses on the defense of death penalty cases. The current proposed regulation ADKT 411 is consistent with those ABA guidelines. Ms. Bush asked who would report the training requirements, and it should be noted, DIDS does not maintain a list for the urban counties, and we do not micromanage organized offices. Organized offices must make sure their employees are appropriately handling cases at levels they are capable of taking.

Deputy Director Qualls followed up what Deputy Director Handy was saying about his list for the rurals. In NRS 184.440, whoever sits in my deputy director's chair has oversight over the whole state so that could be an appropriate person to maintain that capital qualification list across the state.

Chair Fitzsimmons asked if anyone was present from Washoe County. She would like to hear from someone that deals with this every day. There are several issues that have already come up. One is the extent of the CLE and how that really manifests itself, especially because some of these capital cases do pend for years and years. We have Clark and Washoe Counties who have their own way of qualifying people. How do they feel about adding another level of bureaucracy?

Evelyn Grosenick had two questions. One would be the extra layer of oversight and then training. The training is great. We need more training, especially for death penalty cases, as the law changes so much. It is a funding issue. Would DIDS funding be available for capital training in the larger counties? Having some minimum standards regarding oversight is not a bad idea. We want to try to balance it for everyone. Anyone who is in indigent defense will tell you if you want quality representation, you must pay for it, which is the underlying issue. Historically, the State has not been able to give as much money to indigent defense as it warrants. That effect multiplies when you get a death penalty case, which requires an enormous number of resources from the defense side to provide constitutional representation. We are balancing how much support we can give to build up the ability of people to take these cases versus policing it. It sounds like DIDS wants to ensure quality, which is great. We need that, but how do we do that most effectively? To be honest, we do not want a bunch of oversight, but appreciate that there needs to be uniformity, at least across the rurals.

Chair Fitzsimmons stated we have a Supreme Court study committee, and two counties that are compliant with Rule 250. She questioned if judges involved in Washoe County are appointing counsel, obtaining a waiver, and appointing somebody you have not qualified?

Evelyn Grosenick confirmed that is correct.

Chair Fitzsimmons expressed that must stop.

Evelyn Grosenick answered the chair that an affidavit must be filed under oath and a hearing in front of a judge. The judge is responsible for making sure the person has the qualifications. Ms. Grosenick explained, in detail, the process of the last time the 250 qualifications were waived. Washoe is different from the rural jurisdictions with different problems. She likes the transparency of the process. The concern is about the proposed regulation in which the waiver would be done by DIDS. The process could be improved. Ms. Grosenick liked the suggestion of having some expert death penalty attorneys make that determination about appropriateness of the waiver.

Franny Forsman stated the issue of oversight is the only issue she will comment on. The process described in Washoe County is of great concern, even when they are doing what is in the regulation. Over the 25 years or more history, and getting where we are today, with having DIDS and being able to adopt regulations, the overriding and underlying principal throughout the process from the ABA rules to the *Davis* lawsuit to the sixth Amendment Center study, the underlying principle is independence from the judiciary. I completely agree with Ms. Joffee in whatever process comes up, no court, including the Supreme Court, should be involved in this part of the process.

Scott Coffee congratulated DIDS on undertaking this. He outlined his experience in death penalty defense for 25 years, and that with probably 90% of death penalty cases in the state coming across his desk, he is familiar with the system. After conferring with various groups, there are concerns with what is happening with DIDS. There are two separate questions: one is qualifications and the other is selection of counsel. Mr. Coffee agrees 100% with Ms. Forsman. Selection for the rurals should be done by DIDS, and by the existing systems in the urban offices. Qualifications traditionally have been a bare minimum, set by the Nevada Supreme Court, which is what the commission is looking at. There has been a lot of discussion about exceptions and who should decide them. We have never used an attorney that was accepted in by signature as lead counsel in a capital case. Exceptions should go away, and the rules should be rewritten in a manner to qualify more people and recognize other qualities of experience. It is a big concern discussed in the brief commission meeting yesterday. The overall position is this committee is very useful; it is great if you want to adopt additional standards. Mr. Coffee feels the qualifications are the realm of the Supreme Court, and we should let that commission do its work. The selection needs to be handled sooner than later, and needs to go to DIDS, and out of the judges' hands.

Chair Fitzsimmons confirmed Mr. Coffee was saying the judges need to stay out of the selection, asking if he feels the department should be involved in the Rurals, at least, and if the Department should be involved in Clark County or if the county should be involved.

Scott Coffee stated the counties should be in the selection process in Clark and Washoe, at this point. DIDS will be overburdened if you dump 250 capital cases on them to do selection of attorneys. DIDS will need a lot more staff. There is already a system that is working. The selection process works in Clark and Washoe. It can be adjusted, have some recommendations or some oversight, but the independent selection process from OAC, and similar office in Washoe, is working.

Chair Fitzsimmons questioned if there would be any impediment to the goal of having one list that works throughout the state for death qualified attorneys.

Scott Coffee does not feel there would be a problem. After speaking to Director Ryba, he thinks a centralized list is necessary, because there are rural counties with no capital qualified attorneys. Attorneys need to be pulled from Clark or Washoe county to try capital cases. There should be a clearing house, or a single sourced list. It would make sense to have some kind of certification process, a declaration or affidavit, when attorneys are appointed to a case, that they meet the qualifications based on whatever the Supreme Court comes up with.

Vice Chair Thomas wanted clarification on if we are talking about a statewide list. Are we talking about maintaining a list that includes attorneys from the independent, non-rural offices? The PD offices in Clark and Washoe would not be maintaining a list that includes staff from those offices; this only includes the appointed conflict administrator list?

Scott Coffee replied that he is not sure why attorneys should be able to forego putting their qualifications on the record, if records of those qualified are kept someplace. Rule 250 applies to his Clark County office. Mr. Coffee does not feel there is much additional burden to have attorneys fill out a declaration, once every two years, that says an attorney has been to CLE for capital work. It would be straightforward, and not burdensome if something consistent is done for the state.

Director Ryba explained having one unified list would be beneficial to knowing how many individuals are death penalty qualified, if the cost of the death penalty training falls on the State. To build this into DIDS' budget, it would be helpful knowing there are 50 attorneys that are death penalty qualified that will require intensive training.

Chair Fitzsimmons expressed the excellent points made. She appreciated hearing from Washoe County and liked what they said. Chair Fitzsimmons is dead set against any judge being involved in appointing or approving through an exception, a lawyer that is going to be fighting for their client's life in front of that same judge. She did not want to put anybody on the spot, but asked if anybody at DIDS is death penalty qualified.

Deputy Director Qualls advised that he is Appellate Death Penalty qualified, but not trial.

Chair Fitzsimmons clarified the community that Director Ryba talked about are qualified death penalty lawyers and could be part of the calculus that DIDS uses if we decide to have exceptions. A whole another issue is who can weigh in on that when there are people doing an incredible job and maybe they do not have all prerequisites under the proposed regulation.

Deputy Director Qualls added to his previous answer that Director Ryba is death penalty qualified at the trial level.

Scott Coffee explained rather than exceptions, we might want to look at alternate methods of qualifications. Perhaps we look at death penalty mitigation work. Mitigation training is the most difficult thing compared to normal trial work. That is the reason we make people sit through penalty phases to become 250 qualified. If we are going to create an exception, there might be rules inside the exception, meaning somebody is considered if they have completed so many hours of mitigation training. Cases that return to the counties through lawsuits, and kicked around for years, are where mitigation was not done appropriately. Exceptions are so dangerous, and if you

are going to create an exception, there needs to be something specifically related to mitigation training.

Evelyn Grosenick expressed there are ways to beef up the process. Instead of applying to DIDS, we create a panel of expert attorneys who are death penalty qualified and have substantial practice in death penalty litigation who could approve these applications. There could be notice or opportunity for individuals to submit letters in support or concerns from the perspective of DAs, judges, or other defense attorneys. The panel could make the determination, being a more transparent process. Finally, are we talking about attorneys being pulled from the list in Clark and Washoe and putting them on a rural death penalty case?

Chair Fitzsimmons asked do you mean from the institutional office? I do not believe so.

Deputy Director Qualls answered it is not the intention of what we are talking about. Thank you for your input. We are interested in transparency and as much input as possible. If we become in charge of the exception, all of your points are important and doable.

Allison Joffee stated maybe we have specific training in mitigation all the time. The instant you get the case you start mitigation. If we have the statewide list, which she encourages, and if we have people who are interested in only doing mitigation, they could come in and be second chair and start getting training to become death penalty qualified. Let us give them the pathway so we can get more people who can help with these very intense cases.

Chris Giunchgliani had a couple of points. Can somebody explain why the Supreme Court put together a committee and are they now taking over something we are supposed to be doing or augmenting it?

Scott Coffee explained Supreme Court Rule 250 was adopted 25 to 30 years ago. Justice Bell has suggested that we reexamine 250 and update it, given the concerns about the rural areas and the fact that we now have DIDS in place. This is just a reexamination of that, in part, to also help DIDS with the function of selecting appropriate attorneys and making clear that rural judges are not in the selection process. We are trying to take the judiciary out of the selection, so it was created in recognition of all those problems, and the fact that we have learned a lot in the last 30 years.

Deputy Director Qualls stated he wanted to add to the statement that NRS 180 and the committee, are aware of NRS 180.320, the Boards mandate to set forth training and experience requirements. The question is going to be addressed in the committee, and it could be that the rule ends up referring to the regulations, or vice versa.

Chris Giunchgliani commented Mr. Coffee answered it is perceived, at least potentially, as augmentation and reviewing, so if we do the work and make recommendations, we still weigh in. In Clark and Washoe, do you have the required number of CLEs to take, in your requirements?

Scott Coffee replied we are down to two capital attorneys, Ryan Basher and me. We are both familiar with both of our CLE practices, so we meet the time requirements. Everybody on my team does the Colorado Method Jury Selection Training, which was 20 hours, about four months ago.

We send people to various death penalty seminars in Santa Clara, or wherever it might be. It is not tracked individually, but we know what CLE training the people on my team have taken.

Chair Fitzsimmons stated what staff is recommending are the standards that have been adopted appropriately and nationally for death penalty cases, and that should be something we can agree on.

Deputy Director Qualls replied this was all crafted out of looking at the ABA guidelines for death penalty cases: the training requirements, the oversight of an agency independent from the judiciary, as well as provisions similar to ADKT 411.

Chair Fitzsimmons stated we have our mandate through the legislature to adopt these regulations, and we have an actual need in the rural counties to adopt these. Why would we not take this opportunity? It does not sound like there is any objection to a statewide list of qualified attorneys under the same standards. We are not voting on this but discussing input on waivers.

Evelyn Grosenick questioned if the Chair was asking about the issue of the State list.

Chair Fitzimmons replied we are asking about anything we have been brainstorming here about this proposed regulation, which our staff has worked long and hard on.

Evelyn Grosenick expressed she wanted to echo what Ms. Bush said about reducing the qualifications for death penalty counsel. It seems to be a statewide or state-by-state trend, that five years is the minimum general qualification. These regulations do not have a minimum, that I can see, which is curious because other DIDS regulations talk about needing three years of criminal practice to take a high B felony or a non-death Cat A felony. Ms. Grosenick thinks we would want a floor there; the ABA has a good document that goes through state by state of what qualifications are required, and a five-year floor seems to be consistent across many states.

Director Ryba replied we have no objection to adding time that is needed. It would include they must sit second chair on a death penalty case, be qualified for category A or B which means they must have three years of experience and if this Board feels five years is more appropriate, we could place in that language.

Chair Fitzsimmons asked if Clark and Washoe County agree on the minimum number of years for their guidelines or qualifications?

Scott Coffee replied it is three years in Clark, as it is in Supreme Court Rule 250.

Evelyn Grosenick replied that is the current rule.

Deputy Director Handy explained the history to back up the comments about experience requirements in 1989 death penalty standards from the ABA. It recommends a minimum of five years practice for people that are going to be selected for trial counsel and why many adopted that five-year standard. The 2003 version did not set a minimum number of years' experience for

attorneys. They are more of a qualitative requirement; they have to demonstrate the ability to handle the types of cases and the requisite legal experience.

Evelyn Grosenick explained the problem with the years, is you can have a person who has done five felony trials and three murders, and can be a terrible attorney, or you can have someone who has done the same number and can be great, and that is why this is so difficult. Having some of these markers can help, but they do not necessarily ensure that person is ready for a death penalty case.

Deputy Director Qualls said that is another reason for gathering as much input as possible. We are completely open to this because only qualitative standards are going to be very hard to comply with. That may not even be legal in some circumstances, so you must have some objective markers, but then real human input on top of that. That is what we are looking for.

Chair Fitzsimmons said we all share the same goal and do not know a solution, but totally agree with some people who have a gift for this, and we certainly do not want to lose them because of some rigid rules.

Deputy Director Qualls stated he thinks that underscores the need for some sort of exception process with as much input as possible.

Evelyn Grosenick explained one of Washoe County's death qualified attorneys has nine years criminal practice and is supervisor of Washoe's Category A team. This person was waived in because she had not sat second chair on a death penalty case, and could have done a death penalty case after three years of criminal practice in the public defender's office. The individual felt she was not emotionally ready, and it took her a long time to feel like she was competent to handle a person's life.

Chair Fitzsimmons added there have been statements made today not directly addressing this rule and it may be based on what Deputy Director Qualls and Scott Coffee said. In Carson City in 1981, death cases came out of the prison like clockwork and there would be an attorney for guilt and an attorney for mitigation from the start. If you do your mitigation work, a lot of times you can talk the prosecutor into dropping the death penalty, which is cost effective.

Jeff Wells stated he appreciates all these comments and would echo some comments made by Ms. Bush earlier. One of her questions was not really answered. The statement that you must have the training every two years to remain on the appointment list. What about the attorney, who barely made the two years, gets appointed and then the case does not show up for four years and the has no training in between? Do we remove that attorney and ruin the vertical representation, or should we require that training for people who have been appointed and not technically currently on the appointed list?

Director Ryba replied that even while you are in a death penalty case, you can benefit from taking classes or courses while you have an open case. These cases take several years to complete, and these attorneys would have sufficient time to be able to take training in the middle of that case and set their schedule accordingly. If attorneys are tracked and have access to the list, we would need

to send out reminders that things are due or work with them. There could be an exception: if not completed in two years, does the Board allow us for good cause to continue them on a list if they are actively working on a case? This language is taken directly from the ABA standards, as well as the recommendation in ADKT 411. Discretion is important. If we knew a person was actively working a case. We are open to feedback.

Jeff Wells agreed they should have to continue training.

Deputy Director Qualls added that a lot of trainings encourage attorneys to bring active case problems as they are staffed with experienced death penalty counsel. You obtain ideas and input and maybe other mitigation assistance with them, so it is a good idea if you are in the middle of a case to take one of these death penalty trainings.

Chair Fitzsimmons stated there is a consensus here that the training should remain no matter what is going on and should remain a requirement.

Evelyn Grosenick requested the Board consider holding off on the proposed amendment amending section 29, which would cause 28 through 37 (except for 30) to apply to the urban counties as written. It would apply to institutional offices and those regulations were not created with the institutional offices in mind. They could have an impact on our offices that would be more of an administrative burden and less help. We are accredited CLE provider for the state, and we provided 35 hours of CLE, with 28 hours related to criminal defense. Reporting on 43 attorneys' CLE compliance to DIDS is just an extra requirement that I am not sure furthers any goals.

Director Ryba explained we have no objection to removing the urban counties from that requirement in section 37; it may have been an oversight. Initially, the rule said these qualifications only applied to counties with a population of less than 100,000. Our main goal is to ensure we have one standard for death penalty qualifications. We do not want this Board to adopt one standard for death penalty, and then have the urbans have something else. As Ms. Bush said, we have all these different qualifications across the state, and we are looking at uniformity. The qualifications contained in sections 28 through 36 are less than what we see already in place in the urban plans. It Director Ryba's understanding organized offices in the urban areas do not have to apply to the list that is held by counsel administrator. They do not actually have to show their qualifications in the urban areas, it is just at the discretion of the head of the office as to how they are assigned. We are basically setting a floor in place.

Chair Fitzsimmons stated for today, the consensus is there should be one state list in the rurals, but not in the organized public defender offices. The qualifications will be what Director Ryba articulated, as the floor, and with Washoe County and Clark County having more stringent qualifications.

Director Ryba clarified in section 34, we would like one statewide list for death penalty qualifications and all other cases. In the urban areas, the lists are maintained by their counsel administrators, Susan Bush for Clark County, and Patrick McGinnis for Washoe County. Deputy Director Handy maintains the list by qualifications in the rural areas. The urban counties have created their own qualifications, which are more stringent regarding non-capital cases.

Chair Fitzsimmons asked to discuss capital cases.

Director Ryba explained section 29 only applies to counties with populations less than 100,000. The goal is to modify this in section 34, which also applies to the urban areas.

Deputy Director Qualls stated capital requirements and capital standards are uniform throughout the state.

Chair Fitzsimmons questioned if we accept the reporting of CLE for capital cases would be reported to DIDS, but it is the non-capital CLE they do not want to report?

Evelyn Grosenick stated what we are doing with death penalty cases is a little broad. Our suggestion would be to narrow down the sections and just deal currently with death penalties. When DIDS decides to take on standard practices or qualifications for the entire state, they consider the differences in institutional offices or larger counties that have more stringent standards. Ms. Grosenick feels when section 28, 29, and 31 through 37 were enacted, they were targeted towards the rural counties.

Chair Fitzsimmons stated she agreed, and having served on all the committees that give rise to all this, the focus was on the rural counties. That is the reason that Clark and Washoe County did not step in with the kinds of concerns that now need the opportunity to articulate. Is there any problem with taking the whole thing off the table now, and just focus on the death penalty cases?

Director Ryba replied we could modify it to maintain the language of provisions of section 28 to 37, or we could say 28 to 33 and 35 to 37 of these regulations apply only to counties with a population of less than 100,000. It would then call out section 34, by not including it as having applied to our urban counties, as well as rurals.

Chair Fitzsimmons inquired if everyone was comfortable with that? We are not voting, but wanted to make sure everybody is heard, and we are considering all voices.

Patty Cafferata clarified her opinion is her opinion, and not from the office. It seems we need standards, and we have talked a lot about them. When the state advertises for a position, there are requirements, or the functional equivalent, and who would determine that, but you may want to have an escape hatch. You may have somebody that is good, that you may want to consider, but with the three or five-year requirement, it makes it very hard. They may not meet the standards or functional equivalent.

Chair Fitzsimmons stated in light of the conversation we have had, saying that we have an escape hatch, waiver, exception, or whatever, DIDS figures there are going to be the people to make the determination.

Patty Cafferata commented you do not want the judges picking the attorneys, which is in the *Davis* opinion.

Joni Eastley agreed, and confirmed it is in the opinion.

Chair Fitzsimmons asked if the staff would like to say or defend anything, considering the work put into this.

Director Ryba said we are very grateful to have this discussion and receive guidance. What has been heard from this discussion is the changes we would like to make in section 29 are to modify the language to "the provisions of sections 28 to 33 and 35 to 37 apply only to indigent defense services in counties whose population is less than 100,000." Then in section 34, we are deleting "must meet the criteria set forth in Supreme Court Rule 250." And add the requirement of a three or five year qualification of practicing in Nevada. Then for comprehensive training, we will specifically add mitigation training because we heard that is very important. There has been discussion of an exception or waiver and the feedback is maybe we create a committee of leadership from different counties and would request guidance on the language for this. Would the Board like us to submit these to LCB for review? If they find it appropriate, which takes several weeks to months, then we can hold a public hearing. We could again have this conversation and make sure the language is correct and take whatever steps appropriate. This is where we are seeking guidance if there is specific language we want as to who can determine the exception or if we want to completely delete the exception to these requirements.

Chair Fitzsimmons commented there will be no voting on anything today, but feels comfortable with the consensus on these issues, what we would like changed, and does not want to delay submitting this to LCB.

Todd Weiss explained this will probably work with DIDS making the changes to the proposed regulations, as discussed here today, and present them to the Board at the next meeting. There will have to be a vote on approving the regulations, as proposed at the next meeting.

Chair Fitzsimmons stated that would be at the June meeting in Carson City. Next she stated that the final action in today's workshop is for public comment. BPS is there anyone on the phone for public comment?

4. Public Comment

BPS advised to provide public comment to press *9. There were no callers for public comment at this time.

5. Adjournment.

Chair Fitzsimmons thanked all the participants and closed the workshop at approximately 1:40pm.