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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 13th 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.

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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 1st 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