



Lombardo mum on shortfall for death penalty, post-conviction attorney fees

By: [Dana Gentry](#) - June 12, 2024 5:00 am



(Getty Images)

State funding for private attorneys and expert witnesses who take on post-conviction work, including appeals for death row inmates, is depleted, according to officials, leaving legal professionals struggling to keep their employees and families afloat while ensuring the rights of their clients.

“Those bills are just sitting on someone’s desk in the governor’s office,” says Betsy Allen, a Las Vegas attorney who estimates close to half of her practice consists of post-conviction work for the state. She says she’s owed close to \$30,000. “Would you work for six months without being paid? The governor’s office won’t even respond.”

Gov. Joe Lombardo is refusing to acknowledge the lack of funds. His spokeswoman, Elizabeth Ray, said via email the Governor’s Finance Office “is conducting a routine review of the post-conviction claims related to the public defender’s budget account. Following sufficient review and approval, the claims will be paid according to the correct operating procedure.”

But an email from the director of appointed counsel for Clark County, Susan Bush, to Allen and other attorneys in March says a budget shortfall, not a review, is holding up payment. Bush wrote that because of a “mid-year hourly rate increase the **STATE** (emphasis included) has exhausted their PCR (post-conviction relief) budget for

RYBA TERMINATION 001

Clark County this year.”

Bush went on to say invoices received after March 20 “will take 60-90 to be paid. The State must now request additional funds as the invoices come in, and it is a lengthy process. Please keep this timeframe in mind and plan accordingly.”

For Allen, who has three children attending the University of Nevada, Reno, and a small business to run, planning accordingly is a challenge.

“It’s been 20 years since we got a raise, and because of the raise, the money has been depleted from the account. It’s been 90 days since we submitted invoices and now they’re saying it could be August or later before we get paid,” said Allen.

The reimbursement rate for private attorneys increased this year from \$100 to \$172 an hour, except for capital cases, which were previously billed at \$125 an hour, and increased to \$230.

Additional funding is not on the agenda for Thursday’s meeting of the Interim Finance Committee, which appropriates money outside the biennial legislative sessions.

A number of attorneys plan to comment during the IFC meeting.

“These cases are all extremely difficult, demanding, intricate, time consuming and time sensitive,” attorney Karen Connolly, who currently has three capital post-conviction cases, wrote in a letter to IFC. “They require daily work and commitment from me and my team; they all require experts and investigators who are waiting to be paid.”

The attorney adds she may not be able to continue working without being paid, a move that could have legal ramifications.

Defendants “have right to post conviction counsel who are in turn entitled to be paid for work done,” she wrote. “The lack of funding could be infringement upon their constitutional rights.”

Attorney Michael Lasher wrote to the IFC that the state’s failure to pay the attorneys and experts is “not only unfair, but amounts to a Fifth Amendment takings issue for which the state is liable for the amount owed and reasonable interest.”

Lasher says he intends to shift his practice to work that has a funding source.

“I saw that Governor Lombardo wrote an Op-Ed for the New York Times, professing to care for working families,” Lasher wrote. “I am one of those people, with a small law practice funded exclusively by state and local governments.”

A state website detailing budgets indicates an account titled “post conviction relief” began the fiscal year with \$1.2 million, which has all been spent. A second account labeled “statutory contingency – post con” had \$417,000, which has also been depleted.

The governor’s spokesperson declined to say how much is owed to attorneys.

“Following the review process, we can provide you with a dollar amount of outstanding claims,” said Ray, who did not respond to additional questions about the review.

“The governor cannot unilaterally decide that someone doesn’t get the PCR work,” said Allen. “That is a breach of the separation of powers. I bet what they owe me there is zero review going on. They ran out of money and just don’t want to ask for more.”

About 20 attorneys in Clark County are affected by the lack of funds according to Bush, who says no one has stopped taking cases from the state as a result of the delay.

An attorney who asked not to be named said she takes post-conviction cases “only sometimes” because of the delay in getting reimbursed.

“There is a long history of us getting screwed and not being paid timely,” says Allen. “When the Department of Indigent Services took over, we finally started getting paid on time.”

The Department of Indigent Services’ (DIDS) [annual report](#) for 2023 says it is “committed to reducing economic disincentives by promptly compensating appointed counsel and reimbursing counties for their public defense expenses over their maximum contribution,” adding direct payments from DIDS “should make reimbursement even more certain and rapid for the counties.”

Allen, in an email last week, asked DIDS whether attorneys can expect to wait two to three months for current invoices.

“I am hoping not, but in all honesty, I have no idea,” Cynthia Atanzio of DIDS responded. “We have been asked to accumulate as many claims as possible so that the Governor’s Finance can appropriate the best estimate of the amount needed prior to fiscal year end (June 30, 2024).”

“This is such an important issue to us, so it is our priority to get an answer,” Marcie Ryba of DIDS wrote in another email to Allen on June 5.

DIDS declined to speak with the *Current* after it was directed by the governor’s spokesperson to send inquiries to her.

Allen says Lombardo is “defying the statute” by not paying the attorneys for their court-appointed work. She and others are contemplating legal action against the state. For now, she’s sending Lombardo a letter asking for late fees.

[Editor’s Note: This article is updated with additional quotes from affected attorneys.]

Laura FitzSimmons

From: Ryan Cherry <rcherry@gov.nv.gov>
Sent: Tuesday, September 3, 2024 12:44 PM
To: Laura FitzSimmons
Subject: RE: Resending message about DIDS Director Termination

Laura,

You are correct. Ms. Ryba was offered a resignation agreement, Friday morning. She has 3 weeks from Friday to sign or reject the resignation agreement. The due date for that decision is September 30, 2024. While Ms. Ryba is contemplating that agreement she has been placed on paid administrative leave. As a result, the Indigent Defense Board may consider putting forward three candidate recommendations to fill her position, but they will not be eligible to fill the role until after September 20, 2024 if Ms. Ryba doesn't sign the resignation agreement before then.

The decision to move DIDS forward without Ms. Ryba was based on the authority given to the Governor under NRS 180.400(3)(b). Without going into too much detail, the Governor's Office has experienced growing communication barriers with Ms. Ryba, accusations of hostile workplace environment under her direction, as well as a loss of confidence in her abilities to effectively carry out the duties of the Director.

Should you have any additional questions, please feel free to contact me on my cell.

Thanks,

Ryan Cherry
Chief of Staff
Governor Joe Lombardo
101 North Carson Street
Carson City, NV 89701
rcherry@gov.nv.gov
775-857-9000 cell

From: Laura FitzSimmons <Laura@fitzlamblaw.com>
Sent: Tuesday, September 3, 2024 9:41 AM
To: Ryan Cherry <rcherry@gov.nv.gov>
Cc: Laura FitzSimmons <Laura@fitzlamblaw.com>
Subject: Resending message about DIDS Director Termination

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

Dear Mr. Cherry:

I learned on Friday that you required Marcie Ryba, the DIDS Executive Director, to meet with you at your office at 11:00 a.m.. My understanding is that in that very brief meeting you informed Ms. Ryba

that she could either sign a voluntary termination agreement or be terminated in three weeks. She returned to the DIDS office to find that you had deployed a law enforcement officer to the premises to insure her orderly exit.

I am the Chair of the Indigent Defense Board and need to inform our board, immediately, about what happened on Friday. Accordingly, please tell me, *as soon as you can*, why you terminated our Executive Director. I will then inform the Board what happened, and why. I will also seek their input on a date for an emergency board meeting. The information you provide to me will be passed along to the board and impact how quickly that meeting needs to take place and the issues that will need to be addressed.

FitzSimmons

Sincerely,
Laura

Chair

P.S. I am resending this message which I sent on 9/1. I am hoping to get to the top of your inbox after a three day weekend so that you can respond quickly.

Laura FitzSimmons

From: Ryan Cherry <rcherry@gov.nv.gov>
Sent: Thursday, September 5, 2024 12:39 PM
To: Laura FitzSimmons
Subject: Follow-up 9/5/24 meeting

Laura,

Thanks again for coming in this morning. Below is a copy of the email from Peter to Jim recapping their conversation on Friday, August 30th.

Per your request, we're working on the summary outlining our understanding of the governor's office's oversight of DIDS. Pending our anticipated production of that summary to you in the near future, I want to make clear that we're confident the scope of the issues addressed by Jim with Peter last Friday fall within the areas that will be outlined in the summary of the governor's office's oversight in that those issues are related to finance and the *Davis* decision.

Ryan Cherry
Chief of Staff
Governor Joe Lombardo
101 North Carson Street
Carson City, NV 89701
rcherry@gov.nv.gov

From: Peter P. Handy <P.Handy@dids.nv.gov>
Sent: Tuesday, September 3, 2024 12:39 PM
To: Jim Wells <jimwells@gov.nv.gov>
Cc: Nathan Hastings <hastings@gov.nv.gov>; Andrew Coates <acoates@gov.nv.gov>; Dylan K. Tedford <dktedford@gov.nv.gov>; Brenda Roberts <B.Roberts@dids.nv.gov>
Subject: Friday Meeting Recap

Hi Jim,

I just wanted to send an email confirming our (the Department's) action following our Friday meeting.

With Marcie on admin leave, the board may not solicit or interview for her position's replacement until after such time as the position becomes vacant. I'll keep the board within its limitations on the scope of agenda items regarding that issue until appropriate.

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; that the post-conviction approval/payment process is revised to conform to appropriate roles for the NSPD/DIDS, including ensuring the forms accurately reflect the types of

requests being made; and I'll have our team review the FY24 county fiscal reporting for errors and develop some best practices/guidelines for review to ensure that appropriate amounts are being collected by the NSPD and paid by/to the Counties, as appropriate.

As requested, we will also conduct a review of the AB518 Section 7.3 funding to determine the accuracy of reported weekend bail hearings and days attorneys reported as being on "stand-by" for hearings. The counties are required to provide their annual reports of the funding to LCB and us on October 1, so we will be using that information, along with our reported data, to conduct this review.

We will proceed with the contract for a part time attorney to cover the remaining workload in White Pine County.

Please let me know if there's anything I've left out or if you have any questions or concerns about the above (or anything else).

If I need any assistance, I'll reach out to Andrew and Dylan.

I very much appreciate the information and direction provided - I'll be in contact with you/your office as needed.

Best regards,



Peter P. Handy (he/him)
Deputy Director
Acting Executive Director
Department of Indigent Defense Services
896 W. Nye Ln, Suite 202
Carson City, NV 89703
(775) 687-8490 (office)
(775) 687-8495 (direct)
p.handy@dids.nv.gov

Laura FitzSimmons

From: Ryan Cherry <rcherry@gov.nv.gov>
Sent: Thursday, September 5, 2024 12:50 PM
To: Laura FitzSimmons
Subject: FW: Follow up on Post Conviction Duplicates
Attachments: FY24 Outstanding Post Conviction 1499-12.xlsx; FY24 Outstanding Post Conviction 1499-12 BM 2.xlsx

Laura,

Here is the email chain between Marcie, Budd and myself on the June invoices.

Ryan Cherry
Chief of Staff
Governor Joe Lombardo
101 North Carson Street
Carson City, NV 89701
rcherry@gov.nv.gov

From: Ryan Cherry <rcherry@gov.nv.gov>
Sent: Friday, June 21, 2024 3:10 AM
To: Marcie Ryba <mryba@dids.nv.gov>
Cc: Budd Milazzo <bmilazzo@finance.nv.gov>
Subject: Re: Follow up on Post Conviction Duplicates

Marcie,

Sitting here with a bit of insomnia and going through emails. The response you sent yesterday afternoon doesn't quite align with the spreadsheets that were provided from your office last week regarding outstanding post-conviction payments and the final list that was approved one reviewed by GFO.

I have attached both of those versions to this email. You can see a difference of more than \$66k between those two sheets. These discrepancies were caught in the review process, but the fact that such a margin of error existed in the original excel sheet DIDS used for tracking invoices could be problematic in the future.

I encourage you to review these docs and develop an understanding of how the issue occurred. If we can prevent these errors on the front end it would prevent any additional delays reconciling invoices in the future.

Thanks,

Ryan Cherry
Chief of Staff
Governor Joe Lombardo
101 North Carson Street
Carson City, NV 89701
rcherry@gov.nv.gov

From: Ryan Cherry
Sent: Thursday, June 20, 2024 5:12 PM
To: Marcie Ryba <mryba@dids.nv.gov>
Cc: Budd Milazzo <bmilazzo@finance.nv.gov>
Subject: Re: Follow up on Post Conviction Duplicates

Thanks for the clarification, Marcie. Appreciate the follow-up.

Ryan Cherry
Chief of Staff
Governor Joe Lombardo
101 North Carson Street
Carson City, NV 89701
rcherry@gov.nv.gov

From: Marcie Ryba <mryba@dids.nv.gov>
Sent: Thursday, June 20, 2024 5:10 PM
To: Ryan Cherry <rcherry@gov.nv.gov>
Cc: Budd Milazzo <bmilazzo@finance.nv.gov>
Subject: Follow up on Post Conviction Duplicates

Hi, Chief Cherry,

So nice to meet with you today. I wanted to let you know that when I returned to the office, I inquired with my staff about the concern duplicate bills were being submitted to ASD for payment and processing.

I just wanted to update you that upon checking, no duplicates were submitted by DIDS to ASD for payment. Budd has also confirmed this.

We are aware that there was at least one invoice where ASD used the case number rather than the invoice number – for the payment of a case where there were multiple (not duplicate) bills. These bills each had the same case number, but a distinct invoice number. Using the case number, the bill initially appeared to ASD to be a duplicate because it was under the same case number, but it was in fact a separate and distinct bill.

I am sure this error occurred because there was such a high priority for payment. And the issue has since been resolved.

Thank you,
Marcie

Marcie Ryba | Director
State of Nevada

Joe Lombardo
Governor



Peter Handy
Deputy Director

Brenda Roberts
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

MEMORANDUM

To: File

From: Cindy Atanzio, Department of Indigent Defense

Date: October 9, 2024

Re: Post-Conviction Claims

DIDS was advised by the Governor's Finance Office to hold post-conviction claims when funds were depleted. Funds were depleted in March 2024. Claims were accumulated and held by DIDS between March 2024 and June 2024.

Post-conviction claims are received from Office of Appointed Counsel, Appointed Counsel Administrator, and some attorneys.

As claims were received, they were added to excel log sheet for the purpose of being able to give an estimate of the funds needed for IFC or BOE. Claims included were claims where vendor numbers had not been issued, stale claims, and duplicates.

On June 12, 2024, Budd Milazzo contacted Jaime Hamtak and wanted to know how much was outstanding for post-conviction claims. Jaime sent the ongoing excel spreadsheet advising that the numbers were inflated due to stale claims. See email number one advising the amount was not accurate.

On June 13, 2024, Jaime was advised to submit all claims to Budd for processing. As claims were being scanned for emailing to Budd duplicates were located and pulled. No duplicates were ever processed. See email number two.

RYBA TERMINATION 009

From: Jaime Hamtak
Sent: Wednesday, June 12, 2024 1:05 PM
To: Budd Milazzo <bmilazzo@finance.nv.gov>
Cc: Cynthia Atanzio <catanzio@dids.nv.gov>; Marcie Ryba <mryba@dids.nv.gov>; Bet-Nimra Torres. Perez <Bet-NimraPerez@dids.nv.gov>; Peter P. Handy <P.Handy@dids.nv.gov>; Daniel Marlow <dmarlow@admin.nv.gov>; Donald Carlson <d.carlson@admin.nv.gov>
Subject: Outstanding FY24 Post Conviction Claims NRS 34.750

Budd,
The spreadsheet total is slightly higher since the stale amounts were added in.
I will not send any more copies of the claims unless/until requested. 😊

Thank you,

jaime



Jaime Hamtak
Management Analyst II
Fiscal Services
State of Nevada (NV)
Department of Indigent Defense Services (DIDS)

Number Two

From: Jaime Hamtak
Sent: Thursday, June 13, 2024 8:49 AM
To: Budd Milazzo <bmilazzo@finance.nv.gov>; Donald Carlson <d.carlson@admin.nv.gov>
Cc: Peter P. Handy <P.Handy@dids.nv.gov>; Marcie Ryba <mryba@dids.nv.gov>; Bet-Nimra Torres. Perez <Bet-NimraPerez@dids.nv.gov>; Cynthia Atanzio <catanzio@dids.nv.gov>
Subject: RE: payment processing plan for pending PCR invoices 1499-12

Budd and Don,
Attached are the updated spreadsheet and memo for the outstanding Post Conviction claims.
When invoices are not paid timely, the attorneys think they did not send them, and resend them.
Being a month or more in-between, it is difficult to see the duplications.
The duplicates and some claims pending vendor registration were removed, lowering the amount. 😊

Thank you,

jaime



