

Patricia D. Cafferata, Esq.
P.O. Box 20357
Reno, Nevada 89515-0357
775-825-2694
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

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**

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

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 times 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)

20240110112555001.pdf;

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

dids.nv.gov

**Justice. Equity.
Support.**



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OVERSIGHT NSPD 007



RE: Resignation of NSPD

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
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Outlook

RE: Ely Muni Court Meeting

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

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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>
Sent: Thursday, February 29, 2024 3:58 PM
To: Marcie Ryba <mryba@dids.nv.gov>; Thomas L. Qualls <ThomasQualis@dids.nv.gov>; Peter P. Handy <P.Handy@dids.nv.gov>
Cc: Melanie A. LaChapelle <malachapelle@nspd.nv.gov>
Subject: Ely Muni Court Meeting

Marcie,

OVERSIGHT NSPD 009

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.
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RE: State Public Defender Appointment

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
(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
pdcafferata@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

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

David Schieck



Outlook

FW: Hensley 24CR105

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

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](#)

From: Eve Hanan <eve.hanan@unlv.edu>
Sent: Tuesday, September 3, 2024 2:40 PM
To: Stephen Bishop <SBishop@whitepinecountynv.gov>
Cc: dmslaw.llc@outlook.com <dmslaw.llc@outlook.com>; Steven Dobrescu <SDobrescu@whitepinecountynv.gov>; Gary Fairman <GFairman@whitepinecountynv.gov>; Jasen Hutchens <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> 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

From: Kristi Valencia [mailto:kmvalencia@nspd.nv.gov]
Sent: Tuesday, September 3, 2024 7:46 AM
To: Justice Court <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

Phone (775) 430 0386

Fax (775) 687-4993

NEVADA STATE PUBLIC DEFENDER COMMUNICATION

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FW: White Pine County Murder case

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

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 DAVID SCHIECK

3. Date of Observation MARCH 28, 2024

4. Type of Hearing ARRAIGNMENT

5. Judge(s) STEPHEN BISHOP

6. Pre-observation meeting with judge(s)? NO - ZOOM

7. Indigent Defense Attorneys Present:

NONE

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.)

NO. SEE BELOW

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

NO-SEE BELOW

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

N/A

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

N/A

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

NO. NO ATTORNEY WAS PRESENT AND THE COURT CONDUCTED THE ARRAIGNMENT AND SET A PRELIMINARY HEARING WITHIN 15 DAYS WITHOUT COUNSEL.

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

N/A

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

N/A

• Does the attorney appear to have a sustainable workload?

N/A

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

N/A

9. Assessment and Evaluation of County System.

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

THESE WERE TWO PRISON CASES THAT WERE ON FOR ARRAIGNMENT. DATE OF INCIDENT WAS DEC. 2022.

NOT SURE OF THE COURT'S RATIONALE OF COMPLETING THE ARRAIGNMENT WITHOUT COUNSEL UNDER THE

CIRCUMSTANCES. ONE DEFENDANT HAD ALREADY PAROLED AND RATHER THAN A SUMMONS THE AG

REQUESTED A WARRANT.

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](#)

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

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From: Patricia D. Cafferata <pdcafferata@nspd.nv.gov>
Sent: Tuesday, October 8, 2024 9:03 AM
To: Brenda Roberts <B.Roberts@dids.nv.gov>
Cc: Peter P. Handy <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>
Sent: Monday, October 7, 2024 12:31 PM
To: Patricia D. Cafferata <pdcafferata@nspd.nv.gov>
Cc: Peter P. Handy <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

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From: Patricia D. Cafferata <pdcafferata@nspd.nv.gov>
Sent: Friday, October 4, 2024 11:09 AM
To: Brenda Roberts <B.Roberts@dids.nv.gov>
Cc: Peter P. Handy <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

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

Cc: Peter P. Handy <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

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

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