

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

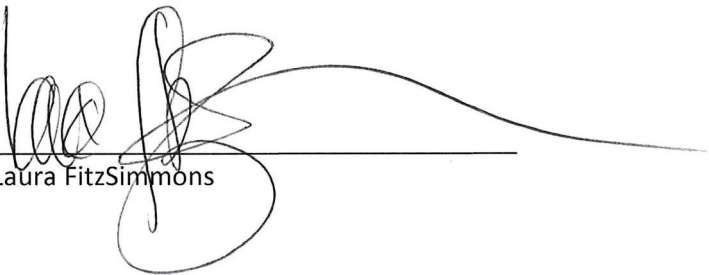
See, 13th Report of the Monitor, *Davis v. State*, Case No. 170C002271B, August 19, 2024, page 4.

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

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

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

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



Laura FitzSimmons