

15th Report of the Monitor
Davis v. State, Case No. 170C002271B
February 19, 2025

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Introduction

This Monitor’s Report to the First Judicial District Court of Carson City summarizes the Defendants’ compliance with the terms of the *Davis v. State* Stipulated Consent Judgment (hereinafter “the Judgment”) from November 15, 2024, to February 19, 2025.

Under the new leadership of Executive Director Peter Handy, the Department of Indigent Defense (“the Department”) continues to take steps to comply with the Judgment, including, among other things, ensuring the qualifications of attorneys, managing the selection and reimbursement of counsel, managing payment for experts and investigators, working with counties to develop and improve their indigent defense plans, securing funds to reimburse counties for expenditures on indigent defense over their maximum contribution, providing free training and resources, and collecting and reporting on case and workload data.

At the same time, the Monitor flags compliance issues, as well as an overarching concern that the current statutory scheme does not protect the independence of the defense function. The compliance efforts and issues discussed in this Report are:

- **Lack of independence in the defense function** due to the selection and removal process for the State Public Defender and the Executive Director of the Department of Indigent Defense.
- **Failure to comply with the workload standards due to insufficient attorneys**, particularly in Nye and Churchill counties.
- **Oversight and compliance with standards of practice.** While the oversight attorneys are collecting and reporting on attorney performance in the *Davis* counties, the Department lacks a Deputy Director to systematically analyze and respond to concerns from the field.¹
- **Training and resources.** The Department continues to offer excellent CLE training, an annual training conference, and opportunities for attorneys to attend nationally recognized trial colleges.
- **Uniform workload reporting.** Most attorneys are reporting their indigent defense caseloads and hours worked, but several appear to have stopped reporting their hours. The majority still do not report hours spent on private cases, even when they are prompted by the Department.

¹ The Judgment directs the Defendants to create and maintain a system of oversight; ensure prompt screening for indigency; ensure that representation at initial appearance/arraignment occurs without delay and that attorneys argue for release or affordable bail; counsel against waiving substantive rights; ensure that client communication occurs per the standards set in ADKT 411; ensure that courts and jails provide space for confidential attorney-client meetings; ensure that all reasonable efforts to have confidential attorney-client meetings before an initial appearance. Judgment, 14-17.

I. Independence of the Defense Function

Nevada’s statutory scheme does not ensure the independence of the defense function for three reasons:

1. NRS 180.010 (2) empowers the Governor, rather than the Department, to select the State Public Defender.

Best practice to ensure independence of the defense function: The Executive Director of the Department selects the State Public Defender.

2. NRS 180.400 (2) empowers the Governor, rather than the Board, to select the Executive Director of the Department.

Best practice to ensure independence of the defense function: The Board selects the Executive Director of the Department.

3. NRS 180.400 (3) states that the Executive Director can only be removed for good cause, but either permits the Governor to unilaterally determine whether there is good cause or is subject to multiple interpretations.

Best practice to ensure the independence of the defense function: The Board decides whether to remove the Executive Director, and only for good cause.

On these points, the Sixth Amendment Center has submitted its advice, which is attached to this Report.² Each of these issues of independence is discussed below.

A. Independence of the Nevada State Public Defender (NSPD)

Under the current statutory scheme, the Governor appoints the State Public Defender.³ This statutory provision exists uncomfortably alongside another statute that states that the State Public Defender “serves at the pleasure of the Executive Director” of the Department on Indigent Defense, and that no one other than the Department may supervise the State Public Defender.⁴

² Letter from the Sixth Amendment Center, attached to this Report as Appendix A.

³ NRS 180.010 (2) (“The Governor shall appoint the State Public Defender for a term of 4 years, and until a successor is appointed and qualified”).

⁴ NRS 180.010 states:

1. The Office of State Public Defender is hereby created **within the Department** of Indigent Defense Services.
2. The **Governor shall appoint the State Public Defender** for a term of 4 years, and until a successor is appointed and qualified.
3. The **State Public Defender is responsible to the Executive Director.**
4. The State Public Defender:
 - (a) Must be an attorney licensed to practice law in the State of Nevada.

Nevada’s statutory scheme for appointing the state’s chief public defender is out of sync with best practices for ensuring the independence of the defense function. The ABA Ten Principles of a Public Defense Delivery System [hereinafter “the ABA Ten Principles”], referenced in the Judgment,⁵ start with the principle of independence of the defense function, stating that, “Public Defense Providers and their lawyers should be independent of political influence,” and overseen by “a nonpartisan board or commission.”⁶ The footnote to this Principle clarifies that “Independence should extend to the selection, funding, and payment of Public Defense Providers and lawyers.”⁷

On January 13, 2025, the Governor appointed Andrew Coates as the new Nevada State Public Defender. Before his appointment, Coates was employed as Deputy Counsel for the Governor. Coates had previously contracted with Nye County to provide indigent defense, but he does not have the experience to be qualified by the Department to represent clients in serious felony cases. At the February 6, 2025, Board meeting, Executive Director Peter Handy assured the Board that Coates will primarily serve an administrative leadership role rather than as an attorney representing individual clients in their criminal cases. Coates may serve admirably in his new position. At issue, however, is the *process of selection* itself. The Sixth Amendment Center, which conducted the 2018 study of indigent defense in rural Nevada, strongly recommends that the State Public Defender be selected by the Department of Indigent Defense rather than the Governor.⁸

B. Independence of the Department of Indigent Defense

1. Selection of the Executive Director of the Department

Under Nevada’s statutory scheme, “The Executive Director of the Department must be appointed by the Governor from a list of three persons recommended by the Board.”⁹

Nevada’s statutory scheme for appointing statewide public defender leadership is out of sync with best practices for ensuring the independence of the defense function. The Board should select the Executive Director.¹⁰ The National Legal Aid and Defender Association (NLADA)’s Guideline 2.10 for Legal Defense Systems in the United States describes the function and

(b) Is in the unclassified service of the State and **serves at the pleasure of the Executive Director.**

(c) Except as otherwise provided in NRS 7.065, shall not engage in the private practice of law.

5. **No officer or agency of the State**, other than the Executive Director and the deputy director selected by the Executive Director pursuant to NRS 180.420 who is responsible for carrying out the duties provided in NRS 180.430 **may supervise the State Public Defender.** No officer or agency of the State, other than the Executive Director or deputy director selected by the Executive Director pursuant to NRS 180.420 who is responsible for carrying out the duties provided in NRS 180.430 may assign the State Public Defender duties in addition to those prescribed by this chapter. (emphasis added).

⁵ Judgment, 9.

⁶ ABA Ten Principles of a Public Defense System, Principle 1, available here: <https://www.nlada.org/defender-standards/guidelines-legal-defense-systems/black-letter>.

⁷ ABA Ten Principles, footnote 2.

⁸ Sixth Amendment Center Letter, Appendix A.

⁹ NRS 180.400 (2).

¹⁰ NLADA Guideline 2.11.

composition of The Defender Commission, which is the equivalent of the Board of Indigent Defense.¹¹ The primary purpose of the composition of the Commission or Board is to “ensur[e] the independence of the Defender Director” and “insulation from party politics.” It is this Commission or Board that selects agency leadership in indigent defense.

After the Governor terminated former Executive Director Marcie Ryba two people applied for the position, one of whom was disqualified for not being an attorney. The other applicant was the Interim Executive Director Peter Handy. The statute requires three applications, but the Board at its November 21, 2024, meeting unanimously voted to recommend Peter Handy for the position, recognizing his service to the Department and his commitment to indigent defense. The Monitor draws attention to the appointment of Peter Handy not out of concern for his leadership. By all accounts he is both committed and capable. The problem is that interference with the defense function is *built into the statute*.

2. Removal of the Executive Director of the Department

In addition to the question of how the Executive Director is selected, there is the concern that the Governor’s ability to fire the Executive Director also interferes with the independence of the defense function.

Nevada’s statutory scheme empowers the Governor to remove the Executive Director, while also protecting the Executive Director from summary removal. The “Executive Director serves at the pleasure of the Governor,” and “may only be removed upon a finding of incompetence, neglect of duty, commission of an act that constitutes moral turpitude, misfeasance, malfeasance or nonfeasance in office or for any other good cause.”¹²

The Governor put the former Executive Director, Marcie Ryba, on administrative leave on Friday, August 30, 2024, and then terminated her appointment on September 20, 2024. Her termination was discussed at length in the Monitor’s November 18, 2024, report. To date, the issue of whether Ryba’s termination violated the Judgment’s requirement of independence of the defense function has not been fully aired. The Board is considering making a request for an advisory opinion from the Office of the Attorney General regarding whether the Board can seek outside counsel to investigate the issue.¹³ After the November 21, 2024, Board meeting, the chair, Laura FitzSimmons, resigned. Her stated reason for resigning is as follows:

The sudden and ill-advised termination of Marcie Ryba by Governor Lombardo’s staff led me to determine that, in spite of efforts by the Nevada Right to Counsel Commission to protect DIDS from political interference, the mission of DIDS and the commitment by BIDS in Davis was being undermined by the executive branch. I delved into the emails between DIDS and the Governor’s staff and learned that the executive branch had repeatedly stymied our efforts to secure access to the

¹¹ The National Legal Aid and Defender Association Guidelines can be found here: <https://www.nlada.org/defender-standards/guidelines-legal-defense-systems/black-letter>.

¹² NRS 180.400 (3).

¹³ Discussed at the Board’s November 21, 2024, and February 6, 2025, meeting.

funding that had been earmarked by the legislature for compliance. My attempts to address this with the Governor’s staff were rebuffed. I forced the issue and ultimately participated in a video call on November 21, 2024 with three members of BIDS and the Governor’s COS. The Governor listened to BIDS’ specific concerns. I informed him that effective at the conclusion of that call I was resigning from BIDS.¹⁴

The removal of the Executive Director of the Department without the Board’s knowledge, consultation, or action, demonstrates either that the statute has been violated or that the statutory scheme does not adequately protect the independence of the defense function.

It is the Board of Indigent Defense, not the governor as chief law enforcement officer, who should be empowered to both select and remove public defender leadership.¹⁵ Principle One of the revised ABA Ten Principles of a Public Defense Delivery System (2023) reaffirms the independence of the defense function, and that the selection and removal of public defender leadership must be free from judicial and political interference, and should not “be removed except upon a showing of good cause.”¹⁶

As previously noted, when leadership in public defense is removed from office, especially when by all accounts the leadership has vigorously advocated for public defense, it gives the clear appearance of political interference with the defense function.¹⁷ Independence—the absence of conflicts with the duty to provide zealous representation in public defense—is the bedrock of effective assistance of counsel.

Recommendations

To safeguard the independence of the defense function, the state should:

- Consider amending NRS 180.400 (2) so that (1) the Board selects the Executive Director of the Department of Indigent Defense and (2) the Board is the entity that can remove the Executive Director, and only for good cause.

¹⁴ As related directly to the Monitor by former Chair Laura FitzSimmons upon the Monitor’s inquiry about the reason for the Chair’s resignation (February 16, 2025).

¹⁵ Guideline 2.11, National Legal Aid & Defender Association’s Guidelines for Legal Defense Systems in the United States, available here: <https://www.nlada.org/defender-standards/guidelines-legal-defense-systems/black-letter>.

¹⁶ Principle 1, ABA Ten Principles of a Public Defense Delivery System (2023); *see also id.* at 8, n. 8 (quoting the ABA Standards for Criminal Justice: Providing Defense Services, Standard 5-4.1 (3rd ed., 1992) (“The chief defender should be appointed for a fixed term of years and be subject to renewal. Neither the chief defender nor staff should be removed except upon a showing of good cause. Selection of the chief defender and staff by judges should be prohibited”), available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis-claid-ten-princ-pd-web.pdf).

¹⁷ Alex Bunin, *Public Defender Independence*, 27 TEX. J. CIV. LIB. & CIV. RIGHTS 25, 47 (2022).

- Consider amending NRS 180.010 (2) so that the Executive Director of the Department of Indigent Defense selects the State Public Defender.
- Consider removing the requirement that the Executive Director and the State Public Defender must be licensed attorneys in Nevada. This restriction makes a national talent search impossible.
- Although there have been no issues concerning the Board’s independence, the State should consider amending the statute so that the Board’s composition complies with national standards, which require equal appointments from all three branches of government.¹⁸

II. Failure to comply with workload standards

As discussed in detail in the Monitor’s previous report, the State failed to comply with the workload standards by the November 2, 2024, deadline. Despite several new contracts and a new public defender hire, the following shortages remain:

- Nye County is short three (3) full-time attorneys and may need additional support to prepare newly contracted counsel to qualify for felony cases.
- Churchill County is short three (3) to four (4) full-time attorneys in its Office of the Public Defender and Office of the Alternate Public Defender.
- Lyon County is short at least four (4) attorneys, and potentially more depending on the number of attorneys tasked with full-time indigent defense in the contracting law firms.
- Douglas County is short at least three (3) attorneys but contends that it needs fewer attorneys because its contracting attorneys committed to work hours far exceeding the workload standards’ definition of full-time employees.

The state, not the counties, is responsible for complying with the Judgment and ensuring compliance with the Sixth Amendment right to effective assistance of counsel. It may be helpful, however, to review the county-level decisions that have contributed to the state’s failure to comply

¹⁸The independence of indigent defense boards and commissions is assured by drawing equally from all three branches of government. *Nevada Supreme Court Indigent Defense Commission Rural Subcommittee Report and Recommendations*, 10, In re: Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT 411 (Nev., filed Dec. 16, 2008) (“That the State of Nevada create and totally fund an independent, statewide oversight board to oversee the delivery of indigent defense services in Nevada. The board should consist of members from all three branches of government at both the state and local level, the State Bar, and other interested persons. The board will provide a source of accountability for indigent defense services.”). This accords with Guideline 2.10 of the National Legal Aid & Defender Association’s Guidelines for Legal Defense Systems in the United States, adopted by the ABA in Principle 1 of its revised Ten Principles of a Public Defense Delivery System (2023).

with the Judgment and then review the state-level decisions that have contributed to this compliance failure.

A. County-level decisions impacting attorney workloads

1. Contract amount too low (Nye County)

Counties have difficulty recruiting attorneys if the amount offered for the contract is not competitive with the hourly rate for appointed counsel or other legal employment opportunities. Nye County, previously short six (6) attorneys, is offering contracts at \$175,000/year for full-time (FTE) indigent defense. Nye County posted its announcement for letters of interest in positions as contract attorneys on November 19, 2024.¹⁹

On January 22, 2025, the Board of Commissioners for Nye County approved three additional contracts for FTE attorneys, Christopher Harrison, Angela Lizada, and Karen Hanks. None of the new attorneys are qualified by the Department to handle serious felony cases and one has never practiced criminal law (although she has substantial experience in civil trial practice). In public comment, Judge Walker expressed concern for the competence and effectiveness of the attorneys, without singling out any one attorney. The Department, through oversight attorney David Schieck, conveyed the Department's commitment to ensuring that the new contract attorneys are trained and mentored to provide effective assistance of counsel.²⁰

Compliance with workload standards is not simply a box to check off on the Judgment's requirements. As can be seen in Nye County, workload limits are needed to ensure effective assistance of counsel. To quote the Department's oversight attorney for Nye County, David Schieck, in his January 2025 Report:

The sheer volume of cases being assigned to each of the contract public defenders makes it impossible to comply with the above standards of performance. My observations convince me that the attorneys are attempting to provide the best defense possible and any shortfalls are due to lack of time to devote to each client as opposed to lack of effort. Hopefully the new contracts will ease this caseload problem and the inherent problems caused by the number of cases.²¹

Even with these new contracts, however, Nye County is short three (3) FTE attorneys. It is unlikely that the county will be able to attract qualified attorneys if its contract rate remains \$175,000/year. Compare the current hourly rate for appointed counsel, which is \$175 for non-capital cases and \$223 for capital cases.²² Thus, appointed counsel, working the equivalent of

¹⁹ The posting is attached to this Report as Appendix B.

²⁰ A recording of the January 22, 2025, meeting of the Nye County Commission Meeting can be viewed here: <https://www.nyecountynv.gov/AgendaCenter>

²¹ Nye January 6/16 Report, Appendix E.

²² The Department's memorandum on the hourly rate increase for appointed counsel is attached to this Report as Appendix C.

1,392.60 billable hours per year on indigent (non-capital) cases, will earn \$243,705—much more than the \$175,000 contract amount.

The excessive workload of the contract attorneys is exacerbated by the absence of a Counsel Administrator to assist with opening cases in Legal Server. The Nye County Plan for Indigent Defense Services requires an administrator, but no one has been hired for the position.

The Department has met with Nye County leadership and is considering a corrective action plan. On February 7, 2024, the Executive Director met with the assistant county manager to explain the process of a corrective action plan and the benefits of a locally based appointed counsel administrator to keep track of case assignments and assist in workload reporting. He will meet with county leadership again later this month.

2. County’s public defender salary too low (Churchill County)

Four (4) additional attorneys are needed in Churchill County to comply with the workload standards, three (3) for the Office of the Public Defender and one for the Office of the Alternate Public Defender.

The county’s initial approach to public defense was commendable. Both public defender offices are close to the courthouse; they are newly renovated, spacious, and well-equipped. And both the County Public Defender and the Alternate Public Defender have actively worked to recruit attorneys as well as law school interns. This has resulted in the hiring of one new attorney.

It is likely, however, that the salary range is not competitive enough to draw applicants. The salary for Deputy Public Defender I is posted as \$88,171.20, and the salary range for Deputy Public Defender II is posted as \$97,323.20 to \$112,860.80. Churchill’s public defender offices are in Fallon, which is a one-hour drive from Reno, where the Washoe County Public Defender offers a salary range of \$110,947.20 - \$237,785.60 for deputy public defenders.

The Department is considering a corrective action plan. In January, the Executive Director met with the judges and public defenders for the county, and he will meet with county leadership later this month to discuss how to increase the number of attorneys providing indigent defense in the county.

3. Contracting law firms may not have enough full-time defenders (Lyon County)

Lyon County requires a total of twelve (12) attorneys to comply with the workload standards. The Department has taken steps to determine the number of FTE attorneys providing indigent defense in Lyon County. The best-case scenario is that the county has eight (8) FTE attorneys, with some additional part-time contracts for appointed counsel in specialty cases and conflicts. Lyon County expressed to the Board that it disagrees with the workload standards,²³

²³ The Lyon County Board of Commissioners’ October 11, 2024, letter to the Department was attached to the 14th Report of the Monitor as Appendix H.

but—as previously reported—the county has assured the Department that it intends to work toward compliance with the existing standards.

The county contracts with two law firms, Mansfield and Mayo and Brock Law, to provide first-tier public defense, and a third law firm, Walther Law, to provide first-tier representation in juvenile cases, to provide representation in specialty courts, and to serve as conflict counsel in some situations. Another law firm, Silver State Law, provides conflict counsel in Lyon County, which may reduce the workload on the existing contract attorneys. Some detail is needed to understand the difficulty in determining whether there are enough attorneys to comply with the workload standards.

Firm 1 (committed to provide 5 FTE attorneys)

Brock Law is required to provide five (5) FTE attorneys. The firm consists of Kale Brock, who subcontracts with three (3) attorneys, Carl Hylin, Ray Arshenko, and Moria Demarais. If all four attorneys were full-time defenders in Lyon County, Brock Law would still be short one attorney for its contract with the county. Some of these attorneys, however, also have contracts in other counties. Brock Law reported 200.5 hours in Mineral County in the second quarter, and Carl Hylin is contracted as the alternate public defender in Mineral County, where he reported 224.2 hours and 74 hours of travel in the second quarter. Ray Arshenko accepts appointments in Humboldt County.

Law Firm 2 (committed to provide 3 FTE Attorneys)

Mansfield and Mayo agreed to provide three (3) FTE attorneys in Lyon County. The firm consists of four (4) attorneys authorized to practice in Nevada, Patrick Mansfield, Massey Mayo, Stevie DeSomber, and Jeremy Rausch. However, the firm also has a contract in Humboldt County to provide two (2) FTE attorneys, and DeSomber has a contract in Mineral County as contract counsel for up to 1,392 hours, or one FTE attorney, per year.²⁴

Walther Law has modified its contract, and the new contract does not specify the number of FTE attorneys required. The firm has one FTE attorney for the contracts. Walther Law covers up to 210 hours in specialty courts, all drug court and juvenile court appointments, as well as cases in which Brock Law has a conflict.

4. Contracts require up to 2,200 hours, contrary to workload standards (Douglas County)

The Department calculated that Douglas County required 8.8 FTE attorneys to comply with the workload standards. The County contracts with five (5) attorneys as well as two (2) additional

²⁴ DeSomber also appears regularly in Washoe County, but the firm told the Department that DeSomber is “winding down” her Washoe cases.

attorneys for initial appearance and specialty court hearings for an estimated 456-612 hours per year.²⁵

The outstanding issue, discussed in prior reports from the Monitor, is whether five (5) attorneys can agree to do the work of eight (8) attorneys and thereby meet the workload standards without adding additional contracts.²⁶ The Douglas County contracts for first-tier public defense state, “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 contract contains provisions requiring the attorney to refuse new cases if the attorney does not have “sufficient time.” For a solo practitioner, assuming two weeks of vacation per year, no other holidays, and no sick or personal time off, the attorney must work exclusively on their clients’ cases for 44 hours per week to reach 2,200 hours. In addition, the attorney must travel to various courthouses and jails, report their cases and hours, take regular CLE training, and conduct other business required to manage a law firm.

As discussed at length in the Monitor’s previous reports, it is the Monitor’s position that, regardless of a contract clause permitting attorneys to refuse cases, these contracts create economic disincentives to effective representation and therefore do not comply with the Judgment. Attorneys are assigned casework that may take up to 2,200 hours per year and thus are incentivized to spend less time on each case.²⁷

B. State-level decisions resulting in failure to comply with workload standards

NSPD salaries are not competitive

The NSPD remains understaffed and unable to fill vacancies. The NSPD currently has a new chief, Andrew Coates, who is primarily tasked with leadership of the office, and two full-time attorneys on staff, Jim Hoffman, the appellate chief, and Derrick Penney, serving as the Chief Deputy Public Defender in White Pine County.

NSPD has significant obligations to provide representation in the *Davis* counties. Of the *Davis* counties, White Pine County opted for the NSPD to serve as the public defender. Esmeralda, Lander, Lincoln, and White Pine counties have opted to have NSPD handle appellate representation, and Churchill, Lander, and White Pine have opted to have the NSPD handle death

²⁵ Of concern is that the hourly rate of compensation for 48-hour hearings is set in the contract at \$150 per hour, and \$125 per hour for specialty court representation. This is below the \$175 per hour rate set in the Board, although the regulations permit attorneys to contract for less than the hourly rate.

²⁶ A recent contract for up to 2,200 hours is attached to this Report as Appendix D. The Douglas County Manager contends that these contracts comply with workload limits. As discussed in the Monitor’s last report, the county leadership disagrees with the definition of an FTE attorney as performing 1,392.6 hours of casework per year.

²⁷ Judgment, 11-12 (prohibiting financial disincentives).

penalty cases. Churchill, Esmeralda, Lincoln, Lyon and White Pine—have opted to transfer parole and pardons cases to the NSPD.²⁸

The NSPD contracts with private attorneys as a stop-gap measure until it can attract new hires. It contracts with a private attorney to meet its obligation to provide representation in parole and probation cases. In White Pine County, the NSPD contracts with two attorneys to meet the workload standards and ensure adequate case coverage. Jane Eberhardy—an Ely-based attorney who previously held a full-time contract for public defense in White Pine County—provides up to 1,800 hours at an hourly rate, with a total not to exceed \$309,600, and Julie Cavanaugh Bill—an Elko-based attorney—provides up to 800 hours to cover juvenile cases.

With the addition of contract attorneys, White Pine County is in compliance workload standards. However, insofar as the NSPD Chief Appellate Defender continues to be deployed to White Pine County to provide trial-level representation, there is a risk that the NSPD’s skeletal staff will be out of compliance with workload standards for their other matters, including appeals and representation in other rural counties.

The workload study concluded that NSPD requires approximately five (5) FTE attorneys. The Department is analyzing whether that number is accurate given the last two quarters of caseload reporting and the changes in NSPD’s obligations. As of July 1, 2025, NSPD will provide public defense for Humboldt County. To stay within workload limits, the new Humboldt County office of the NSPD will require five (5) attorneys, two (3) investigators, and two (2) legal secretaries. Representing a shift from its prior representation in Carson City rather than an expansion of the office, these positions are included in the NSPD budget, and their funding is recommended in the Governor’s proposed budget. However, the vacancies remain unfilled.

Department cannot access earmarked funds to contract with attorneys

The Department has been unable to access funds earmarked by the legislature in AB 518 (7) (2023) to meet the workload standards, through either contracting with additional attorneys or providing financial incentives for attorneys to accept positions within the NSPD.

The legislature allocated sufficient funds for the 2023-2025 biennium to ensure the Department’s ability to comply with the workload standards. AB 518 (7)(1) (2023) set aside \$6,613,033 for FY 2023-2024 and \$6,306,880 for FY 2024-2025 for (a) “reimbursement of counties for costs in excess of their maximum contribution ... including, without limitation the costs of compliance with workload standards;” (b) the costs to the Department related to compliance with the *Davis v. State* consent judgment; (c) NSPD contracts with private counsel to provide representation in complex litigation; and (d) training and pay parity for indigent defense providers.

²⁸ NRS 180.450 (describing the voluntary and required mechanisms for transferring responsibility for a county’s indigent defense system to the NSPD).

The Department secured access to sufficient funds to reimburse the counties for defense expenditures over their maximum contribution, as well as for *some* compliance activities. Yet, as of the date of the Monitor’s November 2024 report, approximately \$4 million in earmarked funds remained for compliance with the Judgment and other activities designed to ensure effective assistance of counsel. The Department was unable to access these earmarked funds to comply with the workload standards.

The Monitor’s November 2024 report chronicled the Department’s efforts to find creative ways to meet the workload standards by offering attorneys incentives to join the NSPD and by contracting directly with additional attorneys who could be deployed to reduce the workloads of the attorneys with caseloads above the workload standards. As that report detailed, from February 2023 through August 2024, the Department submitted multiple requests to the Governor’s Finance Office for assistance with its efforts to comply with the *Davis* Judgment.²⁹ The Department sought to:

- hire contract attorneys
- supplement the salaries of NSPD attorneys to attract new hires
- provide travel reimbursement to NSPD attorneys
- establish an office of the NSPD in Clark County, from which new NSPD attorneys could be deployed to the rural counties nearby
- implement an attorney recruitment campaign

Aside from securing \$7,068 in travel funds, all other requests for assistance in complying with the workload standards by the November 2, 2024, deadline were declined or unanswered by the Governor’s office. Meanwhile, over four (4) million dollars remained in the funds allocated by the legislature to comply with the workload standards and other requirements of the Judgment. The Department simply has not been permitted to access the funds.

The former Executive Director made a final effort to comply with the workload standards. On August 28, 2024, about two months before the Judgment’s deadline for compliance with the workload standards, the former Executive Director Marcie Ryba, emailed the Governor’s Finance Office with a proposal to request AB 518 (7) funds sufficient for the NSPD to enter into contracts with ten (10) criminal defense attorneys. The former executive director wrote, “if counties are unable to fill the number of public defender positions required by the workload study, the state could step in with these 10 contract attorneys to provide coverage. In the end, the desire is to comply with the workload, as required by the consent judgment so that we can close *Davis*.”³⁰

The requests for funds to ensure compliance with the workload study were denied. The Governor put the Executive Director on administrative leave on Friday, August 30, 2024, and then

²⁹ AB 518 (7)(2) (2023) states, “Money appropriated ... may only be allocated by the Interim Finance Committee upon recommendation of the Governor, and upon submittal by the Department of Indigent Defense Services of documentation of the costs.”

³⁰ Emails between the Department and the Governor’s Office were included in the record for the October 17, 2024, Board Meeting as “Email Attachment-ADA Progress_Redacted” [hereinafter EMAIL], available here: https://dids.nv.gov/Meetings/2024/2024_Meetings/. This communication from former Executive Director Marcie Ryba can be found at EMAIL 049-50.

terminated her appointment on September 20, 2024. To date, the Department has not been able to access the earmarked funds necessary to either contract with sufficient attorneys to meet the workload standards or to incentivize recruitment to the NSPD.

It should also be noted that the Department continues to take admirable steps to build a pathway to public defender careers and recruit new attorneys to rural practice. Five (5) students are scheduled to participate in the LASSO program,³¹ two (2) in the spring semester, two (2) over the summer, and one in the fall. A recent law school graduate will be “silver tier” in the LASSO program; having accepted a position at the Carson City Public Defender, the student will receive a bar stipend. Additionally, the Department participated in the Pacific Northwest Consortium of Law School’s Career Fair on January 31-February 1, 2025. These efforts are likely to increase the number of recent graduates interested in rural practice. But the rate of pay must be competitive with the new attorneys’ other career options in public defense.

As noted in the Monitor’s previous two reports, to the extent that the attorney shortages are caused by insufficient funding and low salaries, the state runs the risk of violating both the Judgment and the Sixth Amendment. The Ninth Circuit upheld a preliminary injunction requiring Oregon to release pretrial detainees who, due to attorney shortages, had not been appointed an attorney within seven days.³² The Ninth Circuit laid the blame for the Sixth Amendment violation squarely on the state of Oregon’s “uncharted refusal to adequately pay lawyers.”³³ The court further stated, “Consistent with the Sixth Amendment, Oregon could solve this problem overnight simply by paying appointed counsel a better wage.”³⁴

Recommendations

- The state should either build up the NSPD through incentivized recruitment and retention efforts or change the statutory scheme that allows counties to opt into the NSPD for all or part of their indigent defense cases, perhaps conditioning the “opt-in” provision on adequate NSPD resources.
- The Department has a pressing need to be able to contract with attorneys to provide workload relief in counties that are out of compliance with the workload standards. The Department needs access to the funds to do this.

III. Additional Information on Compliance Efforts

The Judgment requires that minimum performance standards be assured in the following ways:

³¹ The Law Student Supervision Operation (LASSO) is described in detail on the Department’s website: https://dids.nv.gov/Job_Training/Job_Training/.

³² *Betschart et al. v. State of Oregon*, 103 F.4th 607, 614 (9th Cir. 2024).

³³ 103 F.4th at 622.

³⁴ 103 F.4th at 628.

- Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights.³⁵
- Client communication per the standards set in ADKT 411; provision of space for confidential attorney-client meetings; all reasonable efforts to have confidential attorney-client meetings before an initial appearance.³⁶
- Systems to identify and remove conflicts.³⁷
- Establishment of performance standards.³⁸
- Establishment of workload standards.³⁹
- Qualifications for attorneys.⁴⁰
- A system of oversight.⁴¹
- Attorney training and resources.⁴²

This section addresses (A) oversight, (B) training, and (C) workload reporting.

A. Oversight and compliance with performance standards

The Department’s Oversight Protocol for Indigent Defense Systems in Rural Nevada Counties sets forth the statutory mandate for on-site visits to determine compliance with minimum standards, court rules, and other rules, statutes, and constitutional provisions, and to generally ensure that “[r]epresentation of indigent defendants is being provided in an effective manner.”⁴³

As reported in the Monitor’s November 2024 report, the oversight system appears to be stalled in data collection, without much analysis and intervention. The last oversight report from the Department was posted May 1, 2024, by then Deputy Director Thomas Qualls. Since that time, the three contracting oversight attorneys—now called “oversight and compliance advisors”—continued to visit counties and submit forms, as well as some reports. The Department, however, does not have sufficient staff to review the materials submitted by the oversight attorneys, determine which issues need to be addressed for compliance, and then develop and implement a plan to address the compliance issues.

As discussed in the Monitor’s November 2024 Report, the removal of the Executive Director caused significant disruption in the Department’s ability to secure the state’s compliance

³⁵ Judgment, 14.

³⁶ *Id.* at 14-15.

³⁷ *Id.* at 12.

³⁸ *Id.* at 16.

³⁹ *Id.* at 17.

⁴⁰ *Id.* at 15.

⁴¹ *Id.* at 16-17.

⁴² *Id.* at 16.

⁴³ NRS 180.440(2)(1).

with the Judgment, despite the energetic and committed efforts of the then Acting Executive Director and the Deputy Director. Peter Handy is now the Executive Director, but his original position as Deputy Director remains unfilled. Moreover, the Department does not have any experienced criminal defense attorneys serving in leadership. There is no new Tom Qualls—experienced defense attorney and former Deputy Director—to guide the oversight process, pick up on concerning trends, and respond systematically to the information provided by the direct the oversight attorneys.

Wide variety in the material provided by the oversight attorneys

The Department provided the court observation forms and reports from the oversight attorneys to the Board, as requested by the Board during its November 21, 2024, meeting, for discussion at the Board’s February 6, 2025, meeting. The content of these documents was not, however, discussed in detail during the February 6, 2025, meeting.⁴⁴ The Monitor reviewed all documents provided by the oversight attorneys, and a summary follows.

For Lander and Douglas counties, Derrick Lopez submitted detailed court observation forms, as well as photographs documenting the new, confidential meeting space in the Stateline Justice Court. (Lopez also conducts oversight in non-*Davis* counties, including Elko, Humboldt, and Pershing.) Lopez’s observation forms provide detailed and narrative descriptions, organized by attorney and case. The Monitor has reviewed the court observation forms and found no concerns reported.

For Mineral County, oversight attorney John Kadlic observed court on December 3rd and 5th and submitted one “Summary of Observation Visit” for each day. The summary did not break down the observation by case and did not include any narratives about the cases or representation, but did include “yes” and “no” responses to the prompts copied onto the document. John Kadlic also observed court in Churchill County on December 12th and 17th. He submitted one “Summary of Observation Visit” for each day. The summary did not break down the observation by case and did not include any narratives about the cases or representation, but did include “yes” and “no” responses to the prompts copied onto the document.

John Kadlic observed court in Lyon County on December 10th and 18th and noted one concern. On the December 10, 2024 observation form, Kadlic flagged the issue of an attorney appearing by Zoom one hour late for court when she had thirteen (13) cases on the docket. It is unclear from the Summary of Observation Visit how this attorney performed in terms of the benchmarks (a substantial, confidential meeting with the client, arguing for pretrial release, counseling clients on the waiver of rights, etc.). More information particular to each case for each attorney would be helpful.

The reports and court observation forms from David Schieck are more detailed and contain more analysis. His counties are Esmeralda, Eureka, Lincoln, Nye, and White Pine. His Nye County

⁴⁴ The court observation forms and reports are attachments to the Board’s February 6, 2025, meeting, available here: https://dids.nv.gov/Meetings/2025/2025_Meetings/.

oversight has revealed pervasive inability to comply with performance standards because the caseloads are simply too high. He observed and noted the following problems in Nye County, most of which he attributes to extremely high caseloads, inadequate mentorship, and uneven distribution of cases.

1. A contract attorney's 17-year-old client pled guilty and was sentenced to prison with the client's family visibly upset in the back of the courtroom. The family told Schieck that the teenager only learned of the plea offer that morning and that there had been no opportunity for him to discuss the plea offer with his family.⁴⁵
2. Appointed counsel (who is now a contract attorney) inadequately advised his client regarding a plea offer and was insufficiently communicative with the court.⁴⁶
3. Appointed counsel accepts cases in numerous counties and is unavailable to appear in court on his court dates, raising the concern that he also has inadequate opportunity to confer with his clients.⁴⁷
4. Appointed counsel asks stand-in counsel to appear on his behalf for a guilty plea, and the client's factual questions make clear that the client has not had adequate communication with his lawyer.⁴⁸
5. Failure to present mitigation arguments, lack of familiarity with the Presentencing Report Investigation.⁴⁹
6. Insufficient time to litigate issues that repeatedly prejudice clients, such as the eight-week delay for a case to be arraigned in District Court.⁵⁰
7. Express concerns from the district court judge that an attorney would be ineffective as a matter of law at trial because that attorney waived his client's present for voir dire and jury selection and also failed to serve a subpoena on a witness.⁵¹
8. Failure of mentors, who partner with contract attorneys on cases more serious than the contract attorney's level of qualification, to show up at all.⁵²

Schieck also documented structural issues:

9. Pahrump jail no longer has the technology for attorneys to review digital discovery with their incarcerated clients.⁵³
10. In-custody defendants bound over from the Justice Court are waiting eight weeks for their arraignment in District Court. Schieck notes: "This is an issue that will most likely draw

⁴⁵ DIDS Attorney Observation Report, Gent (January 6, 2025), attached to this Report as Appendix G.

⁴⁶ DIDS Attorney Observation Report, Harrison (January 16, 2025), attached to this Report as Appendix H.

⁴⁷ DIDS Attorney Observation Report, Fritz (January 6, 2025), attached to this Report as Appendix I.

⁴⁸ DIDS Onsite Observation Report (January 27, 2025), attached to this Report as Appendix F.

⁴⁹ DIDS Attorney Observation Report, Shelton (January 6, 2025), attached to this Report as Appendix J.

⁵⁰ Nye County Onsite Visit Report (January 6 & 16, 2025) [hereinafter "Nye January 6/16 Report"], attached to this Report as Appendix E.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

some litigation in the near future. However, litigating such an issue takes time and caseloads are such that time is scarce and therefore cases keep grinding along.”⁵⁴

From these reports, it has become clear that the caseloads in Nye County are too high for the existing contract attorneys to provide effective assistance of counsel. The addition of three (3) attorneys—although only half the number of new attorneys required by the workload standards—should provide some reduction in caseloads, but only for lower-level cases because the new attorneys are not qualified to handle serious felonies.

For Lincoln County, David Schieck submitted an Onsite Visit Report. The district court judge for the Seventh Judicial District (Eureka, Lincoln, and White Pine) will retire on April 4, 2025. There is a death penalty case pending. In addition, there are no drug and alcohol programs, and no access to mental health evaluations. Out of jurisdiction evaluations have not met the court’s standards and, as a result, few cases are diverted for deferred adjudication.

Note that Esmeralda County also has a death penalty case. The contract attorney, Jason Earnest, is second chairing. For White Pine County, Schieck submitted forms for court observations that occurred on multiple dates, each form specific to counsel, including NSPD counsel Derrick Penney and Jim Hoffman, and contract counsel, Jane Eberhardy. There is no update on Eureka County on the jail issue discussed in the Monitor’s last report. Schieck is first chairing a murder trial in Nye County February 10, 2025, and will visit Eureka afterward.

Recommendations

- As recommended in the past Monitor’s reports, the Department is understaffed to review, consolidate, and respond to the oversight attorneys’ reports from the field. The Department needs to be adequately staffed to respond to the information provided by the oversight attorneys.
- The state should build funding for oversight attorneys into the Department’s budget to ensure continuity of this important mechanism for compliance with the Judgment and the Sixth Amendment right to effective assistance of counsel.

B. Training and resources

The Judgment states that the Defendants must offer “a systematic and comprehensive training program.”⁵⁵ The Department’s annual training conference will be held on April 2-4, 2025, in Reno. In addition, the Department is hosting a CLE with Jennifer Fraser, Chief Deputy Public Defender for Clark County, Juvenile Division, who will conduct a two-hour basic juvenile law training. The Department will host a Westlaw training program as well.

⁵⁴ DIDS Attorney Observation Report (December 12, 2024), attached to this Report as Appendix K.

⁵⁵ Judgment, 16.

The Department's trainings, including CLE courses and the annual conference as well as scholarships to trial colleges, are both successful and critical for compliance with the Judgment. The three new Nye County contracts provide an example of the increased need for training. All three new contract attorneys lack the experience and qualifications to represent people in felony cases. One is an experienced litigator but has no criminal court experience. Attorneys new to indigent defense must be provided with opportunities to attend trial colleges and CLEs tailored to ensuring their effective representation in serious criminal cases.

Finally, the Department is taking steps to ensure that all attorneys approved to represent indigent clients have completed their required CLE training. The Board's 2023 regulations require each attorney authorized by the Department to provide indigent defense to submit proof of five (5) CLE credits in criminal defense. As of February 18, 2025, 31 of the 140 attorneys were out of compliance with the CLE requirement despite the Deputy Director's repeated efforts at outreach. The CLEs are free and available to view online on demand. The Deputy Director continues to contact the attorneys to bring them into compliance, and, at the end of the month, will notify the counties and the attorneys that the out-of-compliance attorneys will not be appointed to cases until they complete the CLE requirement.

Recommendations

- The state should consider including all training funds for ongoing and annual training into the Department's budget rather than requiring the Department to apply for an allocation of interim funds on an *ad hoc* basis. The training budget should anticipate new defender training for a potential cohort of new public defense attorneys hired or contracted to meet the workload standards. The training budget should include funds to support attorneys who apply for and are accepted to trial colleges.

C. Uniform data collection and reporting

The Judgment requires that attorneys who provide public defense in the relevant counties document time for attorneys, investigators, experts, staff, and the total number of hours the attorneys spent working on private cases, and that the Department provide the data collected on rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.⁵⁶ The Board's regulations follow the Judgment's requirements.⁵⁷ The Department published its second quarter report on workload data, for October 1-December 31, 2024.⁵⁸

⁵⁶ Judgment, 18.

⁵⁷ Section 43 of the Regulations requires an annual report of the number and type of cases, their disposition, whether motions to suppress were filed, and the number of trials. Section 44 requires that attorneys providing indigent defense in the relevant counties document their time in increments to the tenth of an hour, the number of hours for attorneys, investigators, experts, staff, and the total number of hours the attorneys spent working on private cases. Section 45 requires attorneys providing indigent defense to use the Department's data collection system.

⁵⁸ Available at https://dids.nv.gov/Annual_Report/county-reports/.

Attorneys are reporting their hours spent on indigent defense in Churchill, Douglas, Eureka, Lander, Lyon, Mineral, and White Pine counties. Four of six attorneys in Nye County reported their hours spent on indigent defense.

However, there has been backsliding in compliance with the Judgment's workload reporting requirements.

Esmeralda County: The contract attorney did not report cases or hours.

Lincoln County: Neither of the two contract attorneys in Lincoln County reported their cases and hours.

Nye County: Two attorneys, Jason Earnest and Karl Shelton, did not report their hours.

Investigation and Experts

While a handful of attorneys report hours for investigators and experts, it remains impossible to determine whether attorneys are underreporting or simply not engaging investigators and experts. To make this determination, the Department compares invoices from investigators and experts to the number of hours reported. It is unclear whether the Department has the capacity to do this work given their present staffing issues.

Private workload reporting

The Judgment requires attorneys to report the total number of hours spent on private cases, but very few attorneys are complying with this requirement. The issue of private caseload is important in determining the overall workload of attorneys with full-time or more-than-full-time contracts to provide indigent defense.

Attorneys in compliance with private workload reporting: Blatnik (Nye); Brown (Douglas); Ence (Douglas); Stovall (Douglas); Brown (Eureka)

Attorneys who did not report private workload: Filter (Douglas); Stermitz (Douglas); Katschke (Lincoln); Manuele (Lincoln); Brock (Lyon & Mineral); Hysin (Mineral); Mansfield & Mayo (Lyon); Silver State Law (Lyon); Walther Law (Lyon); Duecker (Nye); Gent (Nye); Shelton (Nye); Shahani (Nye); Eberhardy (White Pine).

Recommendations

- The Department has a form that public defense providers fill out to report the hours spent on private casework. To be in compliance with the Judgment, the Department should ensure that attorneys are submitting their private workload on a quarterly basis.
- Per the Judgment, the Department should ensure that all expert and investigator hours are reported.

Looking ahead

Compliance with the Judgment may be in sight but still requires several important steps.

- Ensuring the independence of the defense function in general, and in the state’s public defense leadership in particular.
- Complying with the workload standards by adding additional attorneys, a task that may require competitive pay, incentives, and other means of recruitment and retention.
- Ensuring that the contracts between public defense providers and counties do not create economic disincentives forbidden by the Judgment.
- Supervising oversight attorneys and engaging in outreach and (if necessary) corrective action plans in those counties in which the system or attorneys are failing to provide effective assistance of counsel.
- Ensuring that attorneys are qualified by the Department for the types of cases that they are handling, and that attorneys are up to date on their required continuing education.
- Ensuring that contract attorneys continue to report their cases and hours on Legal Server.
- Establishing a method that ensures all contract attorneys report time spent on private cases.

Next steps for the Monitor

The Monitor awaits the decision whether the Defendant is out of compliance with the terms of the Judgment, and the next steps in this case. In the meantime, the Monitor will prepare to report on:

- Bill draft requests or proposed legislation aimed at compliance with terms of the Judgment.
- The Department’s oversight activities and qualification checks.
- Recruitment and efforts to comply with the workload standards, including incentives and increased rates of compensation for salaried public defenders.
- The impact of excessive workloads on the quality of representation, particularly in Nye County.

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February 19, 2025

Appendix A

Letter from the 6th Amendment Center



February 18, 2025

M. Eve Hanan, Esq.
Professor of Law, UNLV Boyd School of Law
Serving as the Monitor in *Davis v. State*, in her private capacity
evehanan@gmail.com

RE: Independence of the Public Defense System in the State of Nevada

The **Sixth Amendment Center (6AC)** is a 501 (c)(3) non-profit non-partisan organization that provides technical assistance and evaluation services to policymakers on fulfilling government’s Sixth and Fourteenth Amendment obligations to ensure effective assistance of counsel to indigent defendants facing a potential loss of liberty.

In September 2018, at the request of the state legislature, 6AC published a report after evaluating public defense services in rural Nevada, [The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services](#) (6AC Report).¹ 6AC has provided technical assistance to the state before, and since, publication of this report. This letter is provided for The Board of Indigent Defense Services (BIDS) at the request of M. Eve Hanan, Esq., serving as the Monitor in *Davis v. State*.

The Sixth Amendment of the U.S. Constitution requires the public defense function be independent from political and judicial interference.² When the state infringes on the public defense function’s “constitutionally protected” independence by allowing political or judicial interference into the system, the state risks a systemwide denial of the right to counsel.³

For this reason, national standards unequivocally declare that an independent state commission must oversee public defense services. National standards as old as the National Study Commission on Defense Services’ (NSC) *Guidelines for Legal Defense Systems in the*

¹ SIXTH AMENDMENT CENTER, THE RIGHT TO COUNSEL IN RURAL NEVADA: EVALUATION OF INDIGENT DEFENSE SERVICES (2018), https://6ac.org/wp-content/uploads/2024/02/6AC_NV_report_2018.pdf.

² *Ferri v. Ackerman*, 444 U.S. 193 (1979); *Polk County v. Dodson*, 454 U.S. 312 (1981) (the U.S. Supreme Court explains that an appointed attorney’s “ability to act independently of the Government” is an “indispensable element” to effective representation, and the state has a “constitutional obligation to respect the professional independence of the appointed attorneys with whom it engages.”).

³ *Strickland v. Washington*, 466 U.S. 668, 685 (1984); *United States v. Cronin*, 466 U.S. 648 (1984).

United States (1976) and as new as the American Bar Association's *Ten Principles of a Public Defense Delivery System* (2023) detail how the state should construct an independent state commission that is insulated from political and judicial interference.⁴ The standards state that the state commission must be appointed from diverse authorities, so that no one branch of government can exert more control over the system than any others, and "the primary consideration in establishing the composition of the Commission should be ensuring the independence of the Defender Director."⁵

Because independence is foundational to a constitutional public defense system, 6AC Report's first recommendation was for the State of Nevada to create a permanent Board of Indigent Defense Services (BIDS) that is independent of political and judicial interference. However, the current statutes that establish BIDS, The Department of Indigent Defense Services (DIDS), and define their authorities do not comply with this independence requirement.

6AC recommends the statutes be amended in the following ways to ensure an independent public defense system:

1. The composition of BIDS should have equal appointments from all three branches of government so that no one branch has more power than the other. Diverse appointments should not have more power than any single branch of government (e.g., the current statute allows counties to represent six of the 13 members).
2. The DIDS Executive Director should be directly selected by BIDS.
3. The DIDS Executive Director should be removed only for good cause by BIDS.
4. The DIDS Executive Director should have a 4- or 6-year term of office that is renewable.
5. The State Public Defender should be hired by the DIDS Executive Director, and the statute should be clear that DIDS has oversight authority of the State Public Defender.

6AC is available to provide further technical assistance upon request. Thank you for your leadership on this issue.

Sincerely,



Aditi Goel, Deputy Director
Sixth Amendment Center
aditi.goel@6AC.org
(617) 581-8136

⁴ AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 1 (2023) ("Public defense providers and their lawyers should be independent of political influence and subject to judicial authority and review only in the same manner and to the same extent as retained counsel and the prosecuting agency and its lawyers. To safeguard independence and promote effective and competent representation, a nonpartisan board or commission should oversee the public defense provider."); NATIONAL STUDY COMM'N ON DEF. SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, guideline 2.10 (1976) (the *Guidelines* were created in consultation with the United States Department of Justice (DOJ) under a DOJ Law Enforcement Assistance Administration (LEAA) grant).

⁵ NATIONAL STUDY COMM'N ON DEF. SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, guideline 2.10 (1976).

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Appendix B

Nye County Posting for Letters of Interest

**NYE COUNTY, NEVADA
LETTERS OF INTEREST INCLUDING QUALIFICATIONS FOR
PUBLIC DEFENSE SERVICES**

SUMMARY OF REQUEST

Nye County (“County”) is requesting Letters of Interest (LOI) including qualifications from attorneys and/or law firms interested in contracting for public defender services for indigent defendants appearing to answer criminal charges in the 5th Judicial District Court and the Beatty, Pahrump and Tonopah Justice Courts, Nye County, Nevada. It is the intent of Nye County to secure the services of independent attorneys and/or law firms to be primary counsel for courts located in Beatty, Pahrump and Tonopah. The contract shall be for an amount up to one-hundred-seventy-five thousand dollars (\$175,000) annually, depending on qualifications, payable in equal quarterly installments for the provision of all indigent defense services as outlined herein.

The successful applicant will contract with the County for provision of public defense services as an independent contractor and shall not be entitled to any County benefits of any nature whatsoever. The successful applicant will be responsible for the performance of all of the obligations under contract in conformance with the Nevada State Bar Association Rules of Professional Conduct, the ABA Model Rules of Professional Conduct and the Permanent Regulations of the Board of Indigent Defense Services, adopted October 6, 2021.

TIME SCHEDULE. The County will follow the following timetable, which should result in a selection of public defenders by January 22, 2025.

Issue request for LOI November 19, 2024
Publish in PVT newspaper Nov 27; Dec 6, 11, 20, 2024
Publish in TTB newspaper; Dec 5, 19
Deadline for Submittal of LOI 5:00 p.m., January 10, 2025
Contract Award January 22, 2025

SCOPE OF SERVICES - GENERAL DESCRIPTION.

The Attorney and/or law firm will represent adult criminal defendants that a court in Nye County has determined to be indigent, except for capital cases. The representation will include all stages of the criminal proceedings, including direct appeals, revocation of probation or parole, and specialty courts.

The Attorney and/or law firm will provide legal representation for a child alleged to be delinquent or in need of supervision when a Court orders the appointment in accord with NRS Chapter 62.

The Attorney and/or law firm agrees to perform the services of an attorney for a child, parent, or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.

The Attorney and/or law firm agrees to attend Justice Court 72-hour in-custody hearings on a rotating basis with other consortium counsel as scheduled.

The Attorney and/or law firm shall continue to perform services for any appointed client for which said Attorney is the counsel of record on the effective date of the agreement.

The Attorney and/or law firm agrees to provide legal services to Juvenile Court of Nye County.

The Attorney and/or law firm must demonstrate compliance with the standards and regulations of the Board of Indigent Defense Services pertaining to training, education, and qualifications by submitting an application to the Department of Indigent Defense Services.

[https://hal.nv.gov/form/DIDs/Application with the Department of Indigent Defense Services](https://hal.nv.gov/form/DIDs/Application%20with%20the%20Department%20of%20Indigent%20Defense%20Services)

INSTRUCTIONS

All LOI with qualifications should be sent to:

Lorina Dellinger
Asst. County Manager
Nye County
P.O. Box 153
101 Radar Road
Tonopah, NV 89049
ldellinger@co.nye.nv.us

All applications must be received by 5:00 p.m. PDT on January 10, 2025.

The materials will be presented to the Nye County Board of Commissioners on January 22, 2025.

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Appendix C

Memorandum on Hourly Rate Increase



**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

896 W. Nye, Suite 202 | Carson City, NV 89703
(775) 687-8490 | www.dids.nv.gov

Memorandum

DATE: December 31, 2024

TO: Indigent Defense Services Providers
Board on Indigent Defense Services
Department of Indigent Defense Services Designees
Washoe County Appointed Counsel Administrator
Director of Clark County Office of Appointed Counsel
Nevada Administrative Office of the Courts
Nevada Association of Counties
Rural County Administrators
Governor's Finance Office
Administrative Services Division

FROM: Peter Handy, Executive Director, Department of Indigent Defense Services

SUBJECT: Implementation of Increases to Hourly Appointment Rates for Attorneys Who Provide Indigent Defense Services

This memorandum provides information about adjustments to the hourly rates under Approved Regulation R033-23, Section 1 (NAC 180.____(1)). Pursuant to this regulation, the hourly appointment rate equals the prevailing federal CJA panel rate.

As of January 1, 2025, an attorney who provides appointed indigent defense services is entitled to receive an hourly compensation rate of:

- **\$175 an hour for non-capital cases, and**
- **\$223 an hour for capital cases.**

An "attorney who provides indigent defense services" means:

1. In a county whose population is less than 100,000, an attorney, other than a public defender, who is selected pursuant to NRS 7.115 to provide indigent defense services; or
2. In all counties, an attorney who is appointed pursuant to NRS 34.750 to represent a petitioner who files a post-conviction petition for habeas corpus.

In other words, the rate applies to all trial and direct appeal representation in any rural Nevada county and to post-conviction habeas cases in all 17 Nevada counties. Please note, the new rate does not apply to those who have contracted with a county for a flat rate or a different hourly rate. Please refer to any such contract for your rate, as applicable.

The new rates apply to all services performed on or after January 1, 2025. Where appointment of counsel occurred before January 1, 2025, the new hourly compensation rates apply to that portion of services provided on or after January 1, 2025.

Compensation for work completed during the periods below should be billed as follows:

- January 1, 2024 – December 31, 2024 | \$172 per hour for non-capital work and \$220 for capital work.
- December 15, 2023 – December 31, 2023 | \$163 per hour for non-capital work and \$210 for capital work.
- Dates prior to December 15, 2023 | \$100 per hour (or as provided by each county) for non-capital work and \$125 an hour for capital work.

Questions concerning the hourly rate may be directed to the Department of Indigent Defense Services at (775) 687-8490 or via email at didscontact@dids.nv.gov.

cc: Eve Hanan, *Davis* Monitor

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Appendix D

Douglas County Contract

CONTRACT FOR INDIGENT LEGAL SERVICES

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA

AND

Matt Stermitz Law, LLC

This Contract for Indigent Legal Services (the “Contract”) is entered into by and between Douglas County, a political subdivision of the State of Nevada (“County”), and Matt Stermitz Law, LLC (“Firm”). The County and Firm are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

WHEREAS, County, from time to time, requires the professional services of independent contractors; and

WHEREAS, it is deemed that the services of Firm are both necessary and desirable and in the best interests of County; and

WHEREAS, Firm represents that Firm’s attorneys are licensed to practice law in the State of Nevada, are in good standing with the State Bar of Nevada, and Firm duly qualified, equipped, staffed, ready, willing and able to perform and render the legal services required by the County.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein made, the County and Firm mutually agree as follows:

1. TERM AND EFFECTIVE DATE OF CONTRACT. The Contract will become effective October 1, 2024, and will remain in effect until **June 30, 2025**, unless earlier terminated pursuant to the terms of this Contract.

2. INDEPENDENT CONTRACTOR STATUS. The Parties agree that Firm, Firm’s attorneys, associates and employees shall have the status of an independent contractors and that this Contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted, to the parties, including that the Firm’s attorneys are not Douglas County employees and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the independent contractor or the County to the public employees’ retirement system;
- (5) Accumulation of vacation leave or sick leave;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

Firm and County agree to the following rights and obligations consistent with an independent contractor relationship between the Parties:

- a. Firm has the right to perform services for others during the term of this Agreement.
- b. Firm has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- c. Firm shall not be assigned a work location on County premises.
- d. Firm, at Firm's sole expense, will furnish all equipment and materials used to provide the services required by this Contract.
- e. Firm, at Firm's sole expense, has the right to hire associates and assistants as subcontractors, or to use Firm's employees to provide the services required by this Agreement.
- f. Firm or Firm's employees or contract personnel shall perform the services required by this Agreement, and Firm agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Firm.
- g. Neither Firm nor the Firm's attorneys, employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.
- h. County shall not require Firm or Firm's employees or contract personnel to devote full time to performing the services required by this Agreement.

Firm further certifies the following:

- i. Contactor is licensed by the State Bar of Nevada to provide legal services to members of the public and agrees to maintain the required professional license to practice law in active status and in good standing for the State of Nevada.
- j. Firm understands that Firm is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Firm understands that an IRS Form 1099 will be filed by County for all payments County makes to Firm.

3. INDUSTRIAL INSURANCE. Firm shall, as a precondition to the performance of any work under this Contract and as a precondition to any obligation of the County to make any payment under this Contract, provide the County with a work certificate and/or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Firm also shall, prior to commencing any work under the contract, complete and provide the following written request to a qualified insurer:

Matt Stermitz Law, LLC has entered into a contract with Douglas County to perform work from October 1, 2024, through June 30, 2025, and requests that the insurer provide to Douglas County (1) a certificate of coverage issued pursuant to NRS 616B.627 and (2) notice of any lapse in coverage or nonpayment of coverage that the contractor is required to maintain. The certificate and notice should be mailed to:

Douglas County Manager
Post Office Box 218
Minden, Nevada 89423

Contractor agrees to maintain required worker's compensation coverage throughout the entire term of the Contract. If Contractor does not maintain coverage throughout the entire term of the Contract, Contractor agrees that County may, at any time the coverage is not maintained by Contractor, order the Contractor to stop work, suspend the Contract, or terminate the Contract. For each six-month period this Contract is in effect, Contractor agrees, prior to the expiration of the six-

month period, to provide another written request to a qualified insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six-month period, Contractor agrees that County may order the Contractor to stop work, suspend the Contract, or terminate the Contract.

4. SERVICES TO BE PERFORMED. On an as-needed basis, the Firm will provide professional legal services including the following:

A. Firm will represent adult criminal defendants that a court in Douglas County has determined to be indigent. The representation will include all stages of the criminal proceedings including bail hearings and other court appearances, appeals and revocation of probation or parole, but not post-conviction proceedings.

B. Firm will provide legal representation for a child alleged to be delinquent or in need of supervision where a court orders the appointment in accordance with NRS Chapter 62A.

C. Firm agrees to perform the services of an attorney for a child, parent, or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the court orders the appointment of Firm pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.

D. If at any time during the representation of a person the Firm has reason to believe the person is not indigent, Firm must immediately notify the court.

E. If, at any time during the representation of a person, the Firm has reason to believe that there is a legal ethical conflict with that representation, Firm must immediately notify the Court.

F. If a defendant who is requesting appointed counsel due to indigence has contacted Firm concerning retaining that Firm for representation, that Firm will not be obligated to accept that appointed case. Firm must notify the appropriate court, by letter, of the contact with the indigent defendant prior to the proposed appointment, and the next law firm in the rotation will be appointed.

G. Firm shall perform all duties required under the Nevada Revised Statutes and by the Nevada Department of Indigent Defense Services ("DIDS") and Board of Indigent Defense Services ("BIDS"), including standards of performance, record keeping, time keeping and reporting requirements. However, in no event shall Firm be required to provide any information that would compromise client confidentiality, prejudice the rights or defense of any eligible client or violate any provision of the Nevada Rules of Professional Conduct.

H. Firm understands that DIDS, in collaboration with the National Center for State Courts ("NCSC"), performed a Rural Nevada Indigent Defense Services Weighted Caseload Study and submitted a Final Report in October 2023 that was subsequently adopted by BIDS on November 2, 2023. Although the Parties believe the BIDS Adopted Weighted Caseload Study is defective and requires additional study and revisions, for the purpose of this Contract, according to the BIDS Adopted Weighted Caseload Study, the case-related annual attorney year value is 1,392.6 hours per 1.0 full-time equivalent ("FTE") attorney.

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.

5. Standard Of Work.

A. In providing legal representation as set forth in Paragraph Four, Firm and Firm's attorneys, associates and employees must provide those services in a professional, competent, and effective manner. This includes, but is not limited to, interviewing the client, appearing at all court hearings or providing coverage for those court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations.

Firm shall:

- (1) Provide zealous, competent representational services in all cases;
- (2) Comply with the requirements of the DIDS Standards of Performance;
- (3) Comply with the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 41 of the Nevada Supreme Court;
- (4) Comply with all applicable laws and regulations;
- (5) Comply with the Nevada Rules of Professional Conduct ("NRPC");
- (6) Comply with the Douglas County Plan for the Provision of Indigent Defense Services (attached as Exhibit "A");
- (7) Agree to not accept cases for which the Firm is not approved by DIDS; and
- (8) Agree to not accept any case if Firm's attorneys do not have the experience, qualifications, and sufficient time to accept the appointment or is otherwise unable to provide competent legal representation in compliance with NRPC, ADKT No. 41, DIDS Standards of Performance, and the requirements of this Contract.

B. Firm agrees to staff and maintain an office in Douglas County, Nevada. Firm agrees to furnish a telephone number for use after normal office hours in any emergency that may arise where Firm's services are requested pursuant to the terms of this Contract to the Justice Courts, District Courts and District Attorney. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of Firm's practice as required by this Contract are the sole responsibility of Firm and are a part of Firm's compensation pursuant to Paragraph 6 of the Contract.

C. Firm's attorneys may engage in the private practice of law which does not conflict with Firm's professional services required pursuant to this contract.

D. Because Firm is an independent contractor for Douglas County, the Firm's attorneys and employees promise and agree to not sue, be a party to, or assist in any lawsuit against Douglas County.

E. Firm agrees to furnish to County a copy of the DIDS Eligible Provider Approval Letter (Exhibit "B") verifying the category of cases each of the Firm's attorneys are authorized to accept.

6. PAYMENT FOR SERVICES.

A. Firm agrees to provide the services set forth in Paragraph 4 at a cost not to exceed **One Hundred and Ninety-Eight Thousand Seven Hundred and Fifty Dollars and** (\$198,750) through the term of this Contract ("Base Compensation").

Payment of Firm's base pay will be made by the County to the Firm in three quarterly payments of \$66,250.00 to be paid on or before October 1, 2024, January 1, 2025 and April 1, 2025.

B. In addition to Firm's Base Compensation, Firm will be compensated for any weekend or holiday that a Firm attorney attends, or is required to be available (i.e., on standby), to attend weekend arraignment/pretrial release hearings at the rate of \$450.00 per day.

C. For legal services related to a child's welfare when a parent or other person is alleged to have abused or neglected a child, and the Court orders the appointment of Firm pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128, Firm will be paid supplemental fees at the statutory rate for any work performed beyond ten (10) hours per case for appointments pursuant to NRS 128.100.

D. The Firm may secure payment for extraordinary investigative costs, expert witness fees, forensic services, translators, laboratory analysis, or other legally necessary services if authorized in advance by the Douglas County Appointed Counsel Program Coordinator. Firm understands and agrees that the reimbursement of these extraordinary costs is subject to the limits and requirements of NRS 7.135. Firm agrees to submit invoices within ten days of the end of the prior month in which any extraordinary costs or other expenses were incurred and for which reimbursement is requested from the County. County will pay invoices it receives within a reasonable time. However, in no event will Firm be reimbursed or receive payment for travel expenses or any form of per diem expense.

E. The compensation specified above is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court may, for the reasons specified in NRS 7.125(4), award extraordinary fees to Firm in a particular matter, which are over and above the compensation specified provided that the statutorily prescribed procedures contained in Nevada law, including NRS 7.125(4), are complied with.

F. Firm agrees to submit invoices within ten days of the end of the prior month for the legal services provided to County, including any weekend or holiday hearings for which Firm seeks payment. County will pay invoices it receives within a reasonable time. A 1099 Miscellaneous Income Form will be issued by County to Firm at year-end for all amounts paid by County to Firm.

7. TERMINATION OF CONTRACT.

A. Either Party may terminate this Contract without cause, provided that a termination shall not be effective until 90 calendar days after the Party has served written notice upon the other Party. All monies due and owing up to the point of termination of the Contract shall be paid by County, and all pending cases that were produced for this Contract must be immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Firm will be reduced to the proportionate number of days worked by the Firm. The Firm must reimburse the County for any funds received to which Firm is not entitled due to the termination of the Contract.

B. If Firm should be unable to perform any or all of the duties required by reason of illness, accident or other cause beyond Firm's control, and the disability exists

for a period beyond ten (10) judicial days, Firm must provide, at Firm's own expense, a substitute attorney (which could include other contract attorneys) to perform the duties of the Firm during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of the Firm's duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this Contract, and the respective duties, rights and obligations of this Contract will terminate.

8. PROFESSIONAL LICENSE. Firm agrees to maintain the Firm's attorneys' professional license to practice law in active status and in good standing with the State of Nevada. Firm promises and agrees to notify the County Manager and the Douglas County Appointed Counsel Program Coordinator if an attorney with the Firm is brought before the State Bar of Nevada on any ethics charge or if a Firm attorney is arrested for any crime. Failure to maintain this license to practice law will result in the immediate termination of this Contract.

9. GENERAL LIABILITY INSURANCE. Douglas County's liability coverage will not extend to the Firm and Firm is required to acquire and maintain general liability insurance in the minimum amount of \$1,000,000 during the term of this Contract at Firm's sole expense. Proof of insurance must be sent to the Douglas County Manager. Such proof of insurance must be provided at least annually throughout the term of this Contract and Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such insurance.

10. LEGAL MALPRACTICE INSURANCE. Firm agrees to acquire and maintain malpractice insurance in the minimum amount of \$250,000 per claim and \$500,000 aggregate claims during the term of this Contract at Firm's sole expense. Proof of malpractice insurance must be sent to the County within five (5) business days upon request. Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such malpractice insurance.

11. NONAPPROPRIATION. Nothing in the Contract will be construed to provide Firm with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Firm will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Firm. Firm will have no claim of any sort to the unexpended funds.

12. CONSTRUCTION OF CONTRACT. The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court. The Parties mutually agree to not seek punitive damages against either Party.

13. COMPLIANCE WITH APPLICABLE LAWS. Firm promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or

requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws. County will not waive and intends to assert all available NRS chapter 41 liability limitations.

14. ASSIGNMENT. Firm will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the Douglas County Appointed Counsel Program Coordinator and must meet the qualifications under the Nevada Department of Indigent Services to represent the charged individual. If the Firm wishes to have a substitute attorney appear for the Firm due to vacation, illness or personal family matter, then the Firm may do so and is responsible for paying the substitute attorney. There is no requirement to have the Douglas County Appointed Counsel Program Coordinator approve such substitution if the substitution is for less than twenty-five judicial days per calendar year.

15. COUNTY INSPECTION. The accounting records and expense invoices of Firm related to the Contract will be subject to inspection, examination and audit by the County, including by the County Manager and Chief Financial Officer, to audit and verify the expenses claimed by Firm.

16. DELEGATION OF AUTHORITY. The Judges of the Ninth Judicial District Court and the Justices of the two Townships are expressly designated the authority to oversee and implement the provisions of this Contract. Such designations include the development of factors for determining whether a person is indigent and all other properly related matters related to the appointment of indigent defense counsel. The Douglas County Appointed Counsel Program Coordinator is expressly designated the authority to oversee and implement the provisions of this Contract. This authority includes the assigning of cases on a rotating basis among attorneys to ensure an equitable distribution, ordering/requiring monthly time summaries from attorneys, and preparing vouchers for the quarterly payments due to Firm. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

17. INDEMNIFICATION OF COUNTY. To the fullest extent permitted by law, Firm and its principals shall indemnify, hold harmless and defend County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Firm, its officers, employees and agents arising from or relating to this Contract. Firm will defend, hold harmless and/or indemnify County against such claims. Notwithstanding the obligation of Firm to defend County as set forth in this paragraph, County may elect to participate in the defense of any claim brought against County because of the conduct of Firm, its officers, employees and agents. Such participation shall be at County's own expense and County shall be responsible for the payment of its own attorney's fees it incurs in participating in its own defense.

18. MODIFICATION OF CONTRACT. The Contract and any attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

19. AUTHORITY. The Parties represent and warrant that they have the authority to enter into this Contract.

20. STANDARD OF CARE. Firm, its attorneys, agents and employees will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of the legal profession currently practicing under similar conditions and in compliance with the standards established by the Nevada Department of Indigent Defense Services and as required under the terms of this Contract.

21. THIRD PARTY BENEFICIARY. Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party, or to otherwise allow a third party to assert a cause of action against either Firm or County.

22. NOTICES. All formal notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

To County: Douglas County
Attn. County Manager
Post Office Box 218
Minden, Nevada 89423
Telephone: (775) 782-9821

To Firm: Matthew Stermitz, Esq.
Matt Stermitz Law, LLC
1512 Highway 395 N., Suite 3-C
Gardnerville, NV 89410
Telephone (775) 392-4440

IN WITNESS WHEREOF, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

Matt Stermitz Law, LLC

By: _____
Matthew Stermitz, Esq. (Date)

Douglas County

By: _____
Jenifer Davidson (Date)
County Manager

15th Report of the Monitor
Davis v. State, Case No. 170C002271B
February 19, 2025

Appendix E

Onsight Visit Report for Nye County (January 6 and 16, 2025)

ONSITE VISIT REPORT

Nye County (South)

Visit dates: January 6 and 16, 2025

I. Brief Narrative

Outreach and Compliance Advisor David Schieck traveled to Pahrump to observe Nye County District Court and Pahrump Justice Court. During the course of the onsite visit, several meetings were held with current public defenders and deputy district attorneys concerning the prospect of adding additional attorneys to the rotation of public defenders. Specifically, DIDS had been informed that the posting for new attorneys had yielded three applicants that would be on the County Commission Agenda for January 22, 2025. The three applicants, already on the DIDS attorney list, had limited felony experience, and would not be able to immediately take on full rotation of criminal cases. A number of the conversations with current public defenders concerned how to best utilize the potential of three additional attorneys with limited criminal experience. All three attorneys have been licensed for many years, but not concentrating on felony defense.

Additional conversations occurred regarding appointed counsel mentoring some public defenders on Category A felony cases to increase the level of cases that could be handled without appointing counsel. See Section IV below.

Jason Earnest reported that he is working with lead counsel Clark Patrick on the Esmeralda County capital case and visits were scheduled with the client. He remains of the opinion that the case will not be a capital case at some point, realistically due to the cost of such litigation to Esmeralda County. The preliminary hearing is still scheduled in February, 2025. If the case is bound over on first degree murder and the State files a Notice of Intent to Seek Death Penalty, the cost of preparing the mitigation case will be substantial as the client was only passing through Nevada and all mitigation will require out of state travel or record gathering.

II. Forty-eight (48) Hour hearings.

During the last month the only issue with respect to the 48 hour hearings is whether such hearings are necessary on Sunday when the hearings could have been held on Saturday or could be held on Monday. These concerns follow previous meetings between the Court

and attorneys that worked out a method by which Sunday hearings would not be required, except in rare circumstances. All hearings are being held within the 48 hour time period, but one hearing was held on a Sunday when it was not necessary to do so. It appears that the issue has been resolved with assurances it was not going to be repeated.

III. Facilities for Attorney-client privileged communications.

ICE no longer is housing inmates at the Pahrump Detention Center which has resulted in computers not being available for clients to review digital discovery. This issue came up in the murder case of Stephanie Vazzo. The Court had ordered that she be provided with access to a computer and to remain in Pahrump rather than Tonopah. Counsel had provided a flash drive with the digital discovery including video for the client, however, with the departure of ICE no device with a USB port was available for the defendant to use. The Court directed that an Order be served on the jail to make the necessary computer available. The case is on the verge of resolution so the issue may never come to a head, but I will monitor to see if accommodations were made for Vazzo to view the discovery.

IV. Issues with Appointed Conflict Counsel

Christopher Harrison handled a felony trial in Department 2 (Lane) commencing on January 6, 2025. I was unable to attend the trial, but made inquiries of Chief Deputy DA Brower and the Public Defenders concerning the trial. I was advised that the case had settled after the State rested its case, based on Judge Lane expressing concerns about claims of ineffective assistance of counsel should the case proceed to a jury verdict. This was confirmed to me by several of the public defenders. The case included a B felony for Leaving the Scene of an Accident and there were issues with respect to the chain of custody. Brower had inquired of the Court reporter concerning a transcript but none will be prepared because the case did not go to verdict. A JAVS recording of the trial may be available and I will review same if possible. I hesitate to offer any opinion about the quality of representation without having viewed the JAVS, but the consistent information relayed to me is that Harrison may require mentoring before handling another felony trial. Harrison had questionably waived his client's presence for voir dire and jury selection, failed to serve a subpoena on a State's witness that was released, accused a deputy DA of unethical behavior prompting an angry exchange, and challenged a law enforcement to arrest him because he had prescription medication in his pocket not in a prescription bottle.

My Court Observation Report also discusses an issue with Harrison on a case before Judge Wanker on January 16, 2025. There was a breakdown of communication between Harrison and Judge Wanker that impacted the entry of a fairly straight forward plea.

Harrison is one of the three applicants for a contract set for January 22, 2025.

I have received several indications of issues involving Nadine Morton on appointed cases. Her second chair public defenders, Karl Shelton and Jherna Shahani state that she does not communicate concerning their pending cases; does not appear until late, if at all, for Court appearances; and failed to ask for a continuance when the DA endorsed a new expert two weeks before trial. I spoke with Morton and she acknowledged that she has been very busy, but is only taking rural cases out of Nye County in addition to her Clark County case load. I have observed that she often does not appear on the cases, instead leaving appearances to the public defenders in Pahrump. This is not an effective mentoring formula and I would recommend that she not be appointed as lead counsel with a public defender as second chair in future cases. She is competent and appears to do good work on the cases she is appointed as sole counsel.

I have also received complaints from public defenders concerning cases where Tom Gibson is lead counsel for the purpose of mentoring for experience. Again, mentoring does not mean leaving second chair to make appearances on their own or be responsible for communicating with the client.

V. Interviews and Discussions with Attorneys

The majority of the discussions with the public defenders concerned the possibility of having three additional defenders under contract. The three listed applicants were not qualified to handle felony cases at this point, but could provide a substantial amount of assistance in misdemeanor, juvenile and CPS cases. Without doubt some training and mentoring is going to be necessary for each of three applicants, but the public defenders voiced a willingness to train the new attorneys on the particular unique aspects of criminal defense in Nye County

It was discussed that the three new attorneys would take on most of the new misdemeanor cases until achieving a full caseload and then fall into the standard rotation. A short mentoring period would be necessary, but after such, the three would be able to work into the rotation for in custody 48 hour hearings and on duty defenders.

It was later related to me by Alexis Duecker and Jherna Shahani that they had talked with DA Brian Kunzi about the three new positions and were told by Kunzi that he was going to have the agenda item pulled because the three applicants were not qualified to take positions. If this occurs and the agenda item is pulled Nye County will be in a crisis of criminal defense. The current attorneys are overworked and far outside of compliance with caseload standards, and if there is no help on the horizon I expect that the current defenders will not renew contracts or otherwise exercise self-help to reduce caseloads. The prospect that the District Attorney is inserting himself further into the efforts to

obtain additional counsel is very concerning. The prosecution, like the Court, should be no part of this decision concerning the defense function.

VI. Access to Resources

As discussed above there is an issue with defendants being able to review digital discovery in the Pahrump and Tonopah jails. Defendants are provided with tablets that allow for electronic communication with counsel, but the devices do not have the capability to accept USB transfers or to otherwise download digital discovery for review.

VII. Quality of Representation

The sheer volume of cases being assigned to each of the contract public defenders makes it impossible to comply with the above standards of performance. My observations convince me that the attorneys are attempting to provide the best defense possible and any shortfalls are due to lack of time to devote to each client as opposed to lack of effort. Hopefully the new contracts will ease this caseload problem and the inherent problems caused by the number of cases.

Caseloads are a problem as well as the level of experience for existing and potential public defenders.

VIII. Fair Judicial Treatment

In addition to the caseload numbers, the inability or refusal of the Court to move cases through in a timely manner is a problem. It takes weeks to get cases from bindover to arraignment and then any small glitch results in inordinate delays. Serious consideration should be given to increasing the number of District Court law and motion days. The current scheduling results in calendars that last from 9 in the morning into the evening. This is one of the reasons that experienced attorneys are not willing to enter into contracts with Nye County, preferring hourly appointment to account for the wasted time in Pahrump. The Court refuses to use Senior judges to cover calendars when not available resulting in delays in cases that could have been handled by a senior judge. The two departments will not provide cover for each other to alleviate delays.

IX. Recommendations

The Nye County Plan for the Provision of Indigent Defense Services provides for an “Appointed Counsel Program Coordinator” with the following duties:

“performs such duties and responsibilities as assigned by the Assistant County Manager as are reasonably necessary to oversee the program including **assigning cases on a**

rotating basis among the contract Attorneys to ensure an equitable distribution; monitoring case reporting requirements from attorneys; approving of and overseeing the use of substitute attorneys for the contract Attorneys, and; and all other properly related matters. . . .”

With Nye County adding three (3) additional attorneys to the existing six (6) public defender contracts an onsite Coordinator is essential and would alleviate many of the issues that currently exist. There is a disconnect between Nye County and the public defenders that would be solved if this position could be filled instead of just adding a number of attorneys to the mix. This position would be able to deal with mentoring and training issues.

If the three new positions are not added immediately as well as advertising for more experienced attorneys very quickly (likely at a higher rate than that of the three new contracts) a corrective action plan is going to be necessary to bring Nye County into compliance with *Davis* standards.

X. Next Steps

- Continue to monitor court proceedings and observe when possible trials;
- Observe the selection and/or approval process for new contracts;
- Schedule a trip covering the northern portions of Nye County

Dated, January 19, 2025

David Schieck

David Schieck

15th Report of the Monitor
Davis v. State, Case No. 170C002271B
February 19, 2025

Appendix F

Onsight Visit Report for Nye County (January 27, 2025)

ONSITE VISIT REPORT

Nye County

Visit date: January 27, 2025

I. Brief Narrative

Outreach and Compliance Advisor David Schieck traveled to Parhump for the morning Justice Court calendar and District Court law and motion calendar. It was expected that the three new contract attorneys would be starting on January 27, 2025 and the intent was to assist them in becoming acclimated to the court procedures as well as to introduce them to the various stakeholders in Nye County. This did not occur as the contracts had not yet been tendered to the attorneys for signature and as such they were not present. A series of emails have been sent since the Board of County Commissioners meeting on January 22, 2025 initiated by Kelly Blatnik Ford, regarding rotation of coverage and the emails expanded to Mrs. Ford stating that the contracts would not be ready for 4 to 6 weeks and that payment should not be expected for up to two months. I discussed this assertion with Alexis Duecker and Jherna Shahani and they both indicated that their contracts were signed in a matter of a day or two and there was no delay in payment of the contract amounts.

I did not learn of the latest emails from Mrs. Ford concerning the contracts until after she had concluded her cases on calendar and left the courthouse. Ms. Duecker indicated she was texting the attorneys that the information was incorrect.

This is a matter that should have been handled by the County once the approval was granted by the Board. To not have followed up with the new contracts which have a starting date of January 27, 2025 has now led to confusion and misinformation. DIDS is not the contracting agency for these attorneys, the contracts are with Nye County which seems to have little interest in moving to cure the need for additional attorneys.

It cannot be overlooked that there were only three applicants for three positions. The likely reason is the state of the criminal justice system in Pahrump, which at time appears to be in complete disarray. See Recommendation Section below.

II. Forty-eight (48) Hour hearings.

Judge Vitto is attending a Judicial Conference and therefore no 8 AM hearings were held, instead the in-custody hearings were held by Judge Pro Tem Foley. Alexis Duecker was the rotation public defender and indicated there were no issues.

III. Facilities for Attorney-client privileged communications.

In anticipation of the additional attorneys, the public defender office is being upgraded to include a scanner and a refrigerator, as well as new paint and wall coverings. This room is appropriate for out-of-custody client communications.

IV. Issues with Appointed Conflict Counsel

Christopher Harrison did not appear for his case on Judge Lane's calendar, instead asking Jherna Shahani cover his appearance. It was an arraignment case with a Guilty Plea Agreement but the out-of-custody client had factual questions about the case that Shahani could not answer so the case was continued to February 10, 2025. Harrison's absence was explained by Shahani that he had not received today's district court calendar. This was scheduled as an arraignment and a guilty plea agreement had already been prepared so there is some question as to why he would not have had this date already calendared.

Additional information was obtained concerning Nadine Morton's handling of a murder case with Jherna Shahani. It was reported to me that an in chambers meeting was held with Judge Wanker wherein it was expressed that there may be a question of ineffective assistance of counsel if the case proceeded on the scheduled trial date. The trial date was vacated to be reset. I had discussed this issue with Ms. Morton last week and she had indicated that the issue with an expert was due to a delay by the State in providing a gun for testing by a defense expert. It appears there may be more to this issue than previously reported.

V. Interviews and Discussions with Attorneys

I followed up on the JAVS recording of the Harrison trial in front of Judge Lane and learned that Chief Deputy District Attorney Keith Brower had received same from the Judicial Executive Assistant and I obtained the disc from him. He had not watched the JAVS yet.

VI. Access to Resources

Questions have arisen concerning the promptness of obtaining approval for expert and

investigation expenses. I suggested that requests should contain as much detail as possible to expedite review and avoid questions concerning the need or basis for the request.

VII. Quality of Representation

Caseload continues to be major impediment to the public defenders. As previously documented, questions have arisen concerning appointed counsel as first chair or mentors.

VIII. Recommendations

There needs to be an Appointed Counsel Contract Coordinator to deal with the defenders, the judges, County Administration, DIDS and the District Attorney's office. Personality issues are becoming a problem.

IX. Next Steps

Continue to monitor the caseload and performance of public defenders currently under contract.

Get the new contract attorneys on board, trained and handling cases.

Dated January 28, 2025

David Schieck

David Schieck

15th Report of the Monitor
Davis v. State, Case No. 170C002271B
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Appendix G

Court Observation Form (Gent) (January 6, 2025)

DIDS Attorney Observation Report		Reviewer	David Schieck
Date	January 6, 2025	County	Nye County
Court	District Court Department 2	Judge	Lane
Defense Attorney	Nathan Gent	Prosecutor(s)	Keith Brower
Attorney Present	Present	Number of Clients	3 Cooley, Herrick, Rossi
Defendants Present	Present	Custodial Status	Mixed
Hearing Types	Arraignment/Entry of plea in all three cases		
Attorney's Preparedness			
Did the Attorney appear for court?		Yes	
Did the Attorney have the file?		Yes	
Did the Attorney appear to have had a substantive, confidential meeting with each client before court?		Yes	
Did the Attorney appear prepared to handle their clients' cases?		Yes	
How prepared did the Attorney appear?			
Well prepared			
How knowledgeable was the Attorney about their cases?			
Appeared to be very knowledgeable			
The Attorney's courtroom advocacy skills were:			
Good			
How was the Attorney/client communication?			
Unknown			
Case Stage-Specific Issues			
Did the Attorney argue for pretrial release/OR, or for reasonable bail?		Yes, oral motion for OR	
Did the Attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case?		Unknown	
Did the Attorney appear to have counseled clients to refrain from waiving any rights at arraignment?		Yes	
Did the Attorney appear to adequately advise clients of the consequences of accepting a plea or going to trial, including any collateral consequences?		unknown	
Did the Attorney present mitigating evidence and provide argument at sentencing?		N/A	
Did the Attorney address the Presentence Investigation Report (PSI) and/or Psychosexual Evaluation/Risk Assessment appropriately?		N/A	
Did the court require defendant(s) to reimburse the entity for representation?		N/A	
Overall Assessments			
Does the Attorney appear to have a sustainable workload?		No	
Overall, does the Attorney appear to be providing effective representation to their clients?		Yes see below	
Remarks/Recommendations/Notes (continue on reverse):			
Ashlie Herrick - in custody client entered a guilty plea to Category C felony of attempted domestic battery. Oral motion for OR release after entry of plea was granted.			

Remarks/Recommendations/Notes, continued:

Tyler Rossi - out of custody, entered no contest plea to Attempt Possession of Child Pornography a category C felony. Joint recommendation for probation if he obtains an psycho-sexual evaluation showing unlikely to reoffend. If completes probation then will be reduced to a a non sexual gross misdemeanor.

Joshua Cooley - 17 year old in custody defendant entered a guilty plea to one count of attempted lewdness with a child under the age of 14, a category B felony (2 to 20 years). Due to his age Cooley had to be brought to court separate from the other in custody defendants. A recess was taken before his case was called and Gent met with Cooley in the back holding area and discussed the GPA. Nothing out of the ordinary happened during the plea canvass. Gent made an oral motion for an OR after entry of the plea which was denied by the Court after opposition by the State, during which the DA indicated his intention to be seeking prison for Cooley.

There were a number of spectators that had remained for the case to be called. It was the last case called during the calendar. One person was asked to leave the courtroom during the plea canvass, and several spectators were visibly upset by the proceedings. On the way out I spoke with an elderly distraught man who identified himself as Cooley's grandfather. The conversation was joined by the grandmother and uncle. They all expressed dissatisfaction with the plea, indicating that it had only been presented to Cooley that morning and they had no idea that he was pleading to up to 20 years in prison. They had only limited contact with Joshua due to his incarceration and had no contact with his attorney. They expressed a number of factual claims about the validity of the charges, including that the alleged victim was 15 not 14 at the time of the incident.

I provided by business card and told them they could call me with their concerns but that I had no knowledge of the underlying facts or strengths or weaknesses of the State's case. Mary Cooley, the grandmother, called me the next morning and asked what they could do to set aside the plea. I advised her to have a consultation with an attorney in order to get advice and direction, and that a Motion to Withdraw Plea should be filed before sentencing, as after sentencing such motions were routinely denied.

My concern is that a 17 year old entered a guilty plea to a Category B felony without the ability to discuss and consult with his family and perhaps not enough time to review discovery and defenses with his attorney before entry of plea. Judge Lane's plea canvass is not substantial, and certainly not as probing as Judge Wanker's canvass. If Cooley was only presented with the GPA just before Court and only discussed same during the break I question whether the pleas was knowingly entered under existing case law. I did not disclose this opinion to the Cooleys but rather directed them to consult counsel. Expect further reports on this case as I obtain additional information.

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Appendix H

Court Observation Form (Harrison) (January 16, 2025)

DIDS Attorney Observation Report		Reviewer	David Schieck
Date	January 16, 2025	County	Nye County
Court	District Court Department 1	Judge	Wanker
Defense Attorney	Chris Harrison	Prosecutor(s)	Dan Young
Attorney Present	In Person	Number of Clients	1 David Slotterback
Defendants Present	In Person	Custodial Status	In custody
Hearing Types	Arraignment/Plea		
Attorney's Preparedness			
Did the Attorney appear for court?		Yes	
Did the Attorney have the file?		Yes	
Did the Attorney appear to have had a substantive, confidential meeting with each client before court?		No	
Did the Attorney appear prepared to handle their clients' cases?		Yes	
How prepared did the Attorney appear?			
Fairly well prepared but the client seemed perplexed by some of the Court's questions			
How knowledgeable was the Attorney about their cases?			
Very knowledgeable			
The Attorney's courtroom advocacy skills were:			
Not sufficiently communicative with the Court and client			
How was the Attorney/client communication?			
Did not seem to be on the same page			
Case Stage-Specific Issues			
Did the Attorney argue for pretrial release/OR, or for reasonable bail?		N/A	
Did the Attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case?		N/A	
Did the Attorney appear to have counseled clients to refrain from waiving any rights at arraignment?		N/A	
Did the Attorney appear to adequately advise clients of the consequences of accepting a plea or going to trial, including any collateral consequences?		No	
Did the Attorney present mitigating evidence and provide argument at sentencing?		N/A	
Did the Attorney address the Presentence Investigation Report (PSI) and/or Psychosexual Evaluation/Risk Assessment appropriately?		N/A	
Did the court require defendant(s) to reimburse the entity for representation?		N/A	
Overall Assessments			
Does the Attorney appear to have a sustainable workload?		Yes	
Overall, does the Attorney appear to be providing effective representation to their clients?		No	
Remarks/Recommendations/Notes (continue on reverse):			
- David Slotterback. This was a guilty plea to a Category B felony for prohibited person in possession of a firearm with a maximum sentence of 28 to 72 months. The range of			

Remarks/Recommendations/Notes, continued:

punishment for this charge was 12 to 72 months. The client seemed not to understand the difference between the range of punishment and the maximum punishment. The Court has no patience for Harrison and once there was confusion kept making things more difficult and confusing. When Harrison gets anxious with the Court he tends to speak very quickly and the Court then uses the opportunity to chastise him to speak slowly and clearly. There is a history of animosity between them. Ultimately the Court passed the case for two weeks for Harrison to go over the plea agreement with the client. This plea should have been accomplished and not delayed for two weeks. The client is out of custody and the case could have just been put to later in the calendar to allow further discussion.

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Appendix I

Court Observation Form (Fritz) (January 6, 2025)

DIDS Attorney Observation Report		Reviewer	David Schieck
Date	January 6, 2025	County	Nye County
Court	District Court Department 2	Judge	Lane
Defense Attorney	Fritz/Earnest	Prosecutor(s)	Corey Juelke
Attorney Present	Earnest covering for Fritz	Number of Clients	1 Michael Gonzales
Defendants Present	In person	Custodial Status	In Custody
Hearing Types	Arraignment/Guilty Plea		
Attorney's Preparedness			
Did the Attorney appear for court?		No, Earnest covered	
Did the Attorney have the file?		No	
Did the Attorney appear to have had a substantive, confidential meeting with each client before court?		Yes	
Did the Attorney appear prepared to handle their clients' cases?		Yes	
How prepared did the Attorney appear?			
Earnest covered appearance for Fritz and was well briefed on the status of the case and client			
How knowledgeable was the Attorney about their cases?			
Earnest was not familiar with case, Fritz had prepared the client for the plea. See Below			
The Attorney's courtroom advocacy skills were:			
Not applicable			
How was the Attorney/client communication?			
It appeared that communication was good between Fritz and his client			
Case Stage-Specific Issues			
Did the Attorney argue for pretrial release/OR, or for reasonable bail?		Yes. Release pending sentencing	
Did the Attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case?		N/A	
Did the Attorney appear to have counseled clients to refrain from waiving any rights at arraignment?		N/A	
Did the Attorney appear to adequately advise clients of the consequences of accepting a plea or going to trial, including any collateral consequences?		Yes	
Did the Attorney present mitigating evidence and provide argument at sentencing?		N/A	
Did the Attorney address the Presentence Investigation Report (PSI) and/or Psychosexual Evaluation/Risk Assessment appropriately?		N/A	
Did the court require defendant(s) to reimburse the entity for representation?		N/A	
Overall Assessments			
Does the Attorney appear to have a sustainable workload?		See comments below	
Overall, does the Attorney appear to be providing effective representation to their clients?		Yes	
Remarks/Recommendations/Notes (continue on reverse):			
In this case Andrew Fritz was attorney of record but was not present due to appearances or proceedings in Elko. He had made arrangements for Jason Earnest to cover the case.			

Remarks/Recommendations/Notes, continued:

A record was made that Fritz had gone over the plea agreement with the client and the plea proceeded smoothly. After entry of plea Earnest made an oral motion for OR release pending sentencing. These were two Category E felonies involving stealing gas from a car and the State did not oppose the OR release which was granted.

The concern is that Fritz has spread himself throughout the State and is regularly not appearing in person on cases, often appearing via Zoom. Best practices require presence for entry of plea and may be why Earnest was asked to stand in for Fritz. I am sure there was a good reason why Fritz did not appear in Pahrump on this date, but it should not become a common practice.

I am aware that Fritz has cases in Elko, Lincoln and Nye Counties and court dates often conflict. This causes concern about client contact when the clients are so spread out.

There were no problems with the instant case, however it is a situation that needs to be monitored, and applies to a number of appointed attorneys and not just to Fritz.

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Appendix J

Court Observation Form (Shelton) (January 6, 2025)

DIDS Attorney Observation Report		Reviewer	David Schieck
Date	January 6, 2025	County	Nye County
Court	District Court Department 2	Judge	Lane
Defense Attorney	Karl Shelton	Prosecutor(s)	Corey Juelke
Attorney Present	PresentVirtual	Number of Clients	6
Defendants Present	Present, except 1 at Stein	Custodial Status	Mixed
Hearing Types	4 Sentencings, one status, one motion to Quash Bench Warrant		
Attorney's Preparedness			
Did the Attorney appear for court?		Yes	
Did the Attorney have the file?		Yes	
Did the Attorney appear to have had a substantive, confidential meeting with each client before court?		Yes	
Did the Attorney appear prepared to handle their clients' cases?		Yes	
How prepared did the Attorney appear?			
Well prepared for the sentencings, however questions about communication with clients			
How knowledgeable was the Attorney about their cases?			
Fairly knowledgeable			
The Attorney's courtroom advocacy skills were:			
Sufficient but room for improvement			
How was the Attorney/client communication?			
Appeared good in some cases but lacking in others.			
Case Stage-Specific Issues			
Did the Attorney argue for pretrial release/OR, or for reasonable bail?		N/A	
Did the Attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case?		N/A	
Did the Attorney appear to have counseled clients to refrain from waiving any rights at arraignment?		N/A	
Did the Attorney appear to adequately advise clients of the consequences of accepting a plea or going to trial, including any collateral consequences?		N/A	
Did the Attorney present mitigating evidence and provide argument at sentencing?		Argument not mitigation	
Did the Attorney address the Presentence Investigation Report (PSI) and/or Psychosexual Evaluation/Risk Assessment appropriately?		No	
Did the court require defendant(s) to reimburse the entity for representation?		No	
Overall Assessments			
Does the Attorney appear to have a sustainable workload?		No	
Overall, does the Attorney appear to be providing effective representation to their clients?		Yes	
Remarks/Recommendations/Notes (continue on reverse):			
-Condors-Little. In custody sentencing. Client had FTA'd at previous sentencing and was picked up on bench warrant. The agreement was jointly recommend 12-48 months and the			

Remarks/Recommendations/Notes, continued:

Court increased the amount to 28-70 months with credit for 363 days. No mention was made of reviewing the PSI with the client or of mitigating factors for the court to follow the recommendation of the parties.

-Dandre Gray. Out of custody sentencing. Client did not appear. Shelton had no representations to make as to why she was not present or concerning efforts to inform her of date or meet with her to prepare for sentencing. Bench Warrant issued.

-Robert Reeves. Out of custody sentencing. No mention of discussing PSI with client or any changes to the report. Did not argue facts or background or history of client regarding work or family etc. Received 24-60 sentence, suspended and placed on probation with referral for drug treatment deemed appropriate by P and P. However the Court then sentenced the client to 30 flat time in the Pahrump jail and the client was placed in custody. I inquired later, and this seems to be a common thing for Judge Lane to place a defendant in jail for 30 days before starting probation.

-Robert Steinberg. Out of custody sentencing. This case was negotiated to two Category C felonies with stipulation to maximum consecutive sentences of 24 to 60 months and a probation and drug court. The Court imposed the agreed sentence and then again took the client into custody for 30 days flat time in the Pahrump jail. There was no mention of the PSI or any corrections thereto and whether the client had reviewed same. No argument was made concerning mitigation or reasons not to impose the 30 days in jail.

-Kenneth Osborne. Motion to Quash Bench Warrant. Client had come to court previously and thought the case was on at 2:30 and not 9:00 so warrant issued. The warrant was quashed and trial was to be reset, but Shelton argued for the quashing based on his failure to keep client advised of court dates.

-Justin Scholtes. Status check on treatment. Client still at Stein trying to become competent. Passed to March for further status.

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Appendix K

Court Observation Form – Delay in District Court Arraignments (December 12, 2024)

DIDS Attorney Observation Report		Reviewer	David Schieck
Date	December 12, 2024	County	Nye County
Court	Nye County District Court Pahump	Judge	Wanker
Defense Attorney	Nathan Gent	Prosecutor(s)	Boskovich
Attorney Present	In person	Number of Clients	3 Banning; Franz; Kukes
Defendants Present	present and absent	Custodial Status	mixed
Hearing Types	Sentencing; sentencing; arraignmnet		
Attorney's Preparedness			
Did the Attorney appear for court?		Yes	
Did the Attorney have the file?		Yes	
Did the Attorney appear to have had a substantive, confidential meeting with each client before court?		Yes	
Did the Attorney appear prepared to handle their clients' cases?		Yes	
How prepared did the Attorney appear?			
Sufficiently prepared for these cases.			
How knowledgeable was the Attorney about their cases?			
Very			
The Attorney's courtroom advocacy skills were:			
Good			
How was the Attorney/client communication?			
Two cases appeared adequate, third case resulted in a bench warrant for failure to appear			
Case Stage-Specific Issues			
Did the Attorney argue for pretrial release/OR, or for reasonable bail?		N/A	
Did the Attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case?		N/A	
Did the Attorney appear to have counseled clients to refrain from waiving any rights at arraignment?		N/A	
Did the Attorney appear to adequately advise clients of the consequences of accepting a plea or going to trial, including any collateral consequences?		N/A	
Did the Attorney present mitigating evidence and provide argument at sentencing?		Argument only	
Did the Attorney address the Presentence Investigation Report (PSI) and/or Psychosexual Evaluation/Risk Assessment appropriately?		Yes	
Did the court require defendant(s) to reimburse the entity for representation?		No	
Overall Assessments			
Does the Attorney appear to have a sustainable workload?		No	
Overall, does the Attorney appear to be providing effective representation to their clients?		Yes	
Remarks/Recommendations/Notes (continue on reverse):			
-Christopher Banning. Sentencing was delayed as the victim was not available to speak. Client was out of custody and no prejudice from delay of sentencing to January 30, 2025, however			

Remarks/Recommendations/Notes, continued:

there seemed to be no reason to continue the case until the end of January, except for the Court's calendar. See comment below.

-Deborah Franz. Date set for sentencing and client tested positive for methamphetamine and amphetamine, a violation of her OR release. Sentencing was put off to January 30, 2025 and the the client taken into custody with referral to apply for drug court.

-Charles Kukes - Client not present and had missed the last court date also. Counsel had talked to client after the last court appearance and gave him the time and date for today's appearance. While one phone call on the day of the last appearance should have been enough to alert the client, better practices would dictate a written notice to the client after confirming his residence address and a follow up call a day or two before the new court date.

Comment: There is a recurring pattern of cases dragging to multiple court dates over months. Part of the problem is the antiquated process of calendaring and inefficiency in processing of cases. The number of court appearances for each attorney then impacts such things as staying in touch with clients to remind them to come to court and not test positive on the court date.

I was informed of in custody defendants being bound over from Justice Court and receiving a District Court arraignment date 8 weeks later from the justice court clerk who is provided the date from the District Court. Speedy trial within 60 days of District Court arraignment means very little when there is a 56 day wait for the arraignment. This is an issue that will most likely draw some litigation in the near future. However, litigating such an issue takes time and caseloads are such that time is scarce and therefore cases keep grinding along.