



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

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OVERSIGHT REPORT

Lyon County: Yerington

Remote Contact

Report Date: October 20, 2022

I. Brief Narrative.

Over the past few months, there have been a few issues with the Lyon County Plan, as it concerns finding appropriate and available conflict counsel in a timely manner. Prior to that, the Department was forced into litigation with an independent appointed counsel in Lyon County over billing practices, which resulted in the attorney withdrawing from all his Lyon County cases, also causing issues with securing appointed counsel.

The Orrin Johnson Litigation.

Going in chronological order, on June 29, 2022, Deputy Director Thomas Qualls attended a virtual court hearing before District Court Judge John Schlegelmilch regarding appointed attorney Orrin Johnson's motion to withdraw as counsel in numerous Lyon County cases. Johnson attached an affidavit to his motions to withdraw which accused the Department, among other things, of arbitrarily striking time from his bills. Johnson also alleged that the acts of the Department were personal and vindictive, because he has been an open critic of the Department since its creation.

The court ordered both Lyon County officials and the Department to appear at the hearing and provide explanations regarding the issue. Lyon County was forced to hire outside counsel. And the Department was represented by Senior Deputy Attorney General Sophia Long. Lyon County officials and Mr. Qualls provided statements to the court at the virtual hearing.

The only portions of Johnson's bills that were stricken were those in which he billed for administrative time, including preparing invoices. The amounts stricken were miniscule, approximately \$40 per bill, amounting to less than 1% of the total billing. Johnson admitted at the hearing that the entries in question were activities performed by his clerical assistant, and not him. The Court found that billing for administrative time and/or for his assistant's time was specifically prohibited by Johnson's contract with Lyon

County, and that the actions of the Department in striking those entries were not unreasonable. Nevertheless, the court allowed Mr. Johnson to withdraw from all cases and authorized him to be able to bill for all his time in drafting the motions to withdraw and preparing for the hearing. As any denial in billing from the Department could have been appealed to the court anyway, the Department approved all of this billing.

Johnson's sudden departure from numerous cases, meant that all the cases had to be reassigned and new counsel had to be brought up to speed on the proceedings. The litigation also resulted in considerable unnecessary costs to the County in billing and attorneys fees.

Problems Regarding the Lack of a Second Tier /Conflict Office.

Both Lyon County and Elko County have only one tier of representation in their indigent defense plans. The Department also serves as Appointed Counsel Administrator for both counties. The lack of a second tier conflict office or contract(s) in both counties has placed considerable strain on the Department's limited resources over the last year. The geographic location of both counties often makes it challenging to secure conflict counsel. In general, the courts have worked with the Department to continue settings as necessary in order to accommodate counsel's ability to appear.

Several times in the last few months, however, the judges in Lyon County have contacted the Department and expressed frustration in having to repeatedly continue cases, as well as concerns over the quality of representation of some appointed attorneys, particularly those from Clark County who are not able to easily meet in person with their clients. On October 18, 2022, Director Ryba and Deputy Director Qualls attended another Lyon County court-ordered hearing, this time before Judge Leon Aberasturi. The Judge was concerned about a case in which two different counsel had been appointed, and the believed that the defendant had not had adequate in-person contact with counsel, in part due to the geographic location of the attorneys. The Judge entered an order no longer allowing zoom appearances.

Ryba and Qualls provided the court detailed information about the specific actions the Department had taken in the case at issue, as well as the steps the Department and the County had taken over the course of the last year in effort to make Lyon County's plan sustainable and effective. Both the Department and County explained that there is a statewide shortage of indigent defense attorneys (as well as prosecutors). The Department additionally explained that due to a shortage in staff, the Washoe County Public Defender recently began conflicting off all felony cases, which subsequently pushed an unusual amount of cases down to Washoe County appointed conflict counsel. Because most of the attorneys who take appointed conflict cases in Lyon County are these same Washoe County attorneys, the move by the Washoe PD has affected the availability of Washoe attorneys to continue to take Lyon County cases. Ultimately, the judge decided to continue to allow zoom appearances and to work with the Department to continue cases when necessary to accommodate the schedules of busy conflict attorneys.

Lyon County has recently contracted with a law firm that is willing to take a minimum of six Lyon County appointed cases a month, beginning in January of 2023. This is a little less than 1/3 of the monthly conflict numbers, but it is a start. Both the Department and Lyon County management continue to work on recruiting more attorneys to Lyon County's appointment list, as well as trying to find attorneys who are willing to take a mandatory amount of cases a month.

Appointed Counsel Administrator and Other Possible Solutions. The Department has suggested that the creation of a local Appointed Counsel Administrator in Lyon County could help with this process, including developing closer relationships with any holdouts to the DIDS qualified list.

Additionally, the Department has repeatedly advocated for the creation of a conflict office, either by establishing a Lyon County conflict office or by opting in to the State Public Defender for conflicts. Lyon County continues to resist this idea. County management also raised the valid point that if such an office(s) were created, it would still be difficult to find attorneys to staff it.

Finally, we have suggested that Lyon County consider copying the Carson City conflict contract model and broadly advertise – with our assistance --- a similar or higher contract amount.

III. Next Steps.

1. Lyon County is reaching out to an attorney who applied for the most recent opening for a conflict contract in Carson City.
2. Both Lyon County and the Department continue to work to recruit more attorneys willing to commit to a mandatory number of cases.
3. Because Washoe County recently approved a proposal to pay conflict attorneys \$150/hour for all cases, no matter the case level, Lyon County is considering raising its hourly rates again for appointed cases, in order to continue to attract attorneys from Washoe and other places.