



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

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

ONSITE VISIT REPORT

Nye County, Part II : Pahrump

Visit date: March 30-31, 2022

I. Brief Narrative.

Prior to our March visit, on February 25, 2022, **Executive Director Marcie Ryba** and **Deputy Director Thomas Qualls** met with **County Manager Lorina Dellinger** over zoom. We discussed a number of the issues brought to light by our previous visits to Goldfield and Tonopah. We also discussed necessary revisions to the Indigent Defense Plan and the attorney contracts.

Specifically, we discussed the 48-hour hearings which will be required starting July 1, 2022. Lorina plans to request an increase in the compensation amounts of the attorney contracts in light of the additional work that will be necessary. We discussed the deficits in reporting in Nye County attorneys' first quarterly reports. She is also considering an increase to the contract amount to cover the reporting work required by *Davis*, with the hopes that this will allow the attorneys to hire an assistant to handle the reporting.

We also discussed Judge Klapper's concerns about the lack of adequate attorney meeting space convenient to her courtroom, as well as her concerns about attorneys showing up to court when they have a schedule conflict with Pahrump courts. We discussed the possibility of adding a contract conflict attorney to cover Tonopah, to remedy that issue.

We also discussed amending the plan regarding indigent screenings, because there is not currently an administrator handling screening. Since screenings will likely be performed by judges starting July 1, at 48-hr hearings, it is likely the plan will be amended accordingly.

Finally, we discussed at some length changes that Nye County could make regarding how it provides Indigent Defense, including adding more attorneys, designating a conflict attorney to Tonopah, creating a County Public Defenders Office (and an APD), and opting in to the NSPD for appeals, DP, a conflict office, or full representation.

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Following up on our zoom meeting with Lorina Dellinger, on March 30, Marcie and Tom traveled to Pahrump for oversight visits on March 30-31. On March 30, we met again with **County Manager Lorina Dellinger**, as well as **Chief Justice of the Peace Lisa Chamlee**, **District Court Judge Kimberly Wanker** and **District Court Judge Robert Lane**. Justice of the Peace Jasper is currently out of the office, due to health issues. On March 31, we observed in-custody arraignments before **Justice of the Peace Gus Sullivan**, and we met with contract public defenders **Ronnie Boskovich**, **Nadine Morton**, **Nathan Gent**, and **Jason Earnest**. Afterwards, we continued our conversation with Judge Lane.

On March 30, we met with **Lorina Dellinger**, along with **Judge Chamlee**, at the Courthouse complex at 1520 E. Basin Road, in Pahrump. We discussed the county's proposed changes to the Indigent Defense Plan. Lorina indicated that the new draft budget includes a position for an Appointed Counsel Administrator, an additional public defender contract, and increases to the public defender contract amounts. We also discussed the possibility of removing non-indigent defense work from the public defender contracts. There was a question raised as to whether the Board of Commissioners will support all these increases. Lorina intends to bring these matters before the Board later this month (April). DIDS will stay in touch with Lorina regarding this issue and possibly appear before the Board for presentation and/or to answer questions, either live or by zoom.

Additionally, we discussed the upcoming 48-hour hearings with Lorina and Judge Chamlee. The public defenders are not currently required to cover these hearings, so the new plan and the new contracts will need to address this issue. We discussed the possibility that the Appointed Counsel Administrator could coordinate appearances, and that all contract public defenders could appear by rotation. If both the Administrator and the new PD contract are approved by the Commissioners, then there could be a 7-week rotation, i.e., each person would only be required to do Saturday hearings once every 7 weeks.

Finally, with Lorina still present, we discussed the request from the public defenders to have the county provide a computer in the courthouse, so that defendants who do not have a computer, but are required to do online Domestic Violence classes, could have centralized access to a public computer to fulfill the requirement.

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With Judge Chamlee, we discussed the 48-hour hearings in more detail. She is fine with most of the hearings being remote. We also discussed that this is appropriate given that the attorney appearing has not yet been appointed, and so should avoid being privy to confidential information about the case. She plans to issue a Standing Order regarding remote appearances. Additionally, she informed us that we can watch any of the justice court proceedings on zoom. The link is on their website. She also informed us that, due to a recent covid-related administrative order, justice court hearings may be in person, but only litigants, witnesses, and victims may attend. The courtrooms are closed to other persons.

Chamlee states that everyone in the system can see that the public defenders are currently overworked and do not have adequate time for their caseloads. She believes the contracts should be longer than one year, to provide some consistency in the system and to give the attorneys some job security. Chamlee held one of these positions years ago. The pay for the contract has not changed since then. (It hasn't changed since they started contract public defenders in 2013.) She fully understands that at the current contract rate, \$150,000.00 / year, and after overhead is paid, the attorneys are not ending up with much. She told us that when she had the contract, she did the math on how much was left after paying overhead, divided by the number of hours she was working, and she made approximately \$15/hr. This is not a sustainable amount for the high-level work required and the stress involved.

After our discussion on the issue, Judge Chamlee also thinks it is a great idea for the county to opt-in to the NSPD for direct appeals and death penalty cases. This will take pressure off the attorneys holding these contracts and off the county resources.

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Later on the 30th, we met with District Judges Wanker and Lane. Judge Lane had to leave early, to take care of his son. Both judges are still approving fee requests for experts and investigators. We discussed the new procedures and the statute requiring all such requests to go through our office now. We will also follow up with Lorina on this.

We also discussed the selection of counsel process. Judge Lane does not like it as it is and would like a list of current rotation every week so that he can tell the defendants who their attorney is.

Both judges expressed concern about the current status of competency evaluations. The court does not currently have a plan to replace the Lakes Crossing facilitation. They largely believe that it is the attorneys' obligation to find a replacement for the Lakes process.

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We asked Judge Wanker what she sees needing improvement. She agrees that public defenders are underfunded and overworked. She is concerned with pay parity, as well. The current situation creates an environment in which the attorneys do not always have time to meet with clients prior to court, and sometimes results in mistakes in things like plea memos. She states that the court system in general in Nye County is underfunded.

We discussed that one of the contract public defenders bought a copier / printer out of her own funds, to place in the courthouse, so that the public defenders would have access to it for copying, editing, and printing court documents. As neither the district attorney nor the courthouse will allow them to use their equipment. (And, like most courthouses in Nevada, there is no public defender-dedicated space there.)

Wanker strongly supports the creation of a county public defenders office. This would give the attorneys more resources to do their jobs, including support staff, and possibly social worker(s) and investigator(s), in addition to more sustainable pay. We followed this up with a long discussion about holistic defense and her support of the same, including alternative sentencing. She would like to establish a mental health court in Nye County, but the court has not been given the resources to establish it. The judge also noted the lack of attorneys on either side of the aisle coming to drug court. She stated that the district attorneys never appear, and only two contract attorneys come regularly. She would like for all public defenders to attend drug court training.

There also seems to be an issue of parity in plea negotiations, as not all public defenders get the same kind of plea deals for the same or similar cases.

Judge Wanker showed us her courtroom (photos attached) and we discussed attorney/client meeting space, and she acknowledged that there is a shortage in Nye County, including in Tonopah. There are two spaces right outside her courtroom in Pahrump, for atty-client meetings (photos attached). Judge Wanker proposed the same configuration in Tonopah, as there is more seating space in the courtroom than necessary, but the funding to build the spaces was not granted. There is a large meeting room outside the justice court, but it appears to be used for multiple purposes, so it may not always be available.

We also discussed the options for the county to opt-in to the NSPD for direct appeals and death penalty cases. She is in favor of these measures, as well.

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On the morning of March 31, we observed in-custody arraignments before Justice of the Peace Gus Sullivan, who was visiting from Beatty. And we noted a couple of things that were concerning. In at least two instances, it appeared that a warrant was issued by the court for failure to pay a traffic fine, and the defendants were taken into custody and brought before the court. Both defendants appeared indigent and were represented by one of the public defenders. We have made inquiries since then, as to whether they were provided with counsel at the initial entry of plea. (As of this writing, we have not received a definitive answer.) If they were not represented, we believe there may be an *Alabama v. Shelton* issue. (The Sixth Amendment does not permit activation of a suspended sentence upon an indigent defendant's violation of the terms of his probation where the State didn't provide him/her with counsel during the prosecution.) Further, in these situations it seems that the court should not be able to impose a jail sentence for the failure to pay under AB416 (2019), which modified the procedures for traffic ticket fine collection. We followed up on these concerns with the attorneys. We have also proposed a state-wide training on *Shelton* for similar situations.

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Meeting with the attorneys. After court on March 31, we met with public defenders **Ronnie Boskovich, Nadine Morton, Nathan Gent.** We met with attorney **Jason Earnest** briefly, before the hearings with Judge Sullivan.

The attorneys discussed that, in addition to their regular county caseload, they handle federal prison cases. There is a federal prison in Nye County, and apparently the county has contracted with them to handle these charges, which are filed by the county district attorney. (I do not believe they are paid separately for these cases. Though we are exploring whether they could be.) This situation creates a problem sometimes for Nye County inmates, who must be shipped up to Tonopah, to make room for federal prisoners. This makes access to their attorneys more difficult sometimes.

Under their current contracts, non-capital, Category A felonies are able to be billed separately, pursuant to NRS 7.125. Not everyone was aware of this. So we will follow-up to make sure they are billing separately on these cases.

We discussed with them many of the same issues we discussed with the judges and Lorina, including crushing caseloads and low pay. After discussing the options, they each like the idea of an organized county public defenders office. They are interested in an office with better salaries, assistants, an investigator, benefits, case coverage, and the possibility of student loan forgiveness. If no county PD office created and the amount of their contracts are not significantly increased, some may not renew the contracts.

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After meeting with the attorneys, we met with Judge Lane, again, this time for a longer meeting. He like the idea of an organized public defender office, as well. He like the current public defenders and supports giving them more money. Lane also commented more than once that he likes our optimism, but has been around a long time and is a little skeptical.

We discussed various options to reduce the indigent defense attorney caseloads, including the county removing DCFS cases from their workloads. Judge Lane is concerned about removing DCFS cases from the public defenders' workloads, as he does not think there are enough qualified local counsel to handle those cases. We informed him that the court can seek Title 9 DCFS grants to pay for appointed counsel, which might attract attorneys from the Las Vegas area to take those cases.

II. Oversight Criteria.

1. Client Communication

- a. It appears the attorneys are doing their best with pre-court client communication, especially under the circumstances. Though Judge Wanker expressed some concerns, due to their heavy caseload burdens, when we observed court on March 31, the public defender was prepared and seemed to have a solid knowledge of her clients and their circumstances.

- b. There may be an issue with access to some clients if being held in Tonopah. We will follow-up on that.
- c. There is limited meeting space. In District Court, there are two rooms attached to Judge Wanker's courtroom. It is unclear if these are always available, but it is pretty good accommodation. There is one large room adjacent to the Justice Court.

2. First Appearances

- a. Attorneys are currently appearing, in person or virtually, for all first appearances.
- b. The county does not currently have a settled plan for 48-hr hearings / weekend hearings. Though Tonopah is currently holding them, virtually. The public defenders are not currently contracted to handle weekend hearings and do not plan to attend without additional compensation / amendment to their contracts.
- c. Judge Chamlee stated that the court will handle the Saturday hearings through a judge *pro tem*, and that attorneys will be allowed to attend virtually.
- d. We discussed with Chamlee, Lorina Dellinger, and with the attorneys the possibility of a rotational system, in which they would only need to appear one Saturday every seven or so weeks. (Provided an appointed counsel administrator is hired, and an additional public defender contract is added.)

3. Preparedness / Knowledge of Case

- a. We did not witness any unpreparedness of the attorneys. Overall, the judges seems to have respect for them and the jobs they are doing. Judge Wanker did express that she was concerned that their caseloads sometimes prevented them from being able to meet with their clients for an appreciable amount of time before court.

4. Investigation / Experts

- a. For some reason, these requests are still being submitted to the district court judges. We discussed this with both the judges and the attorneys and believe the new statutory process will be undertaken moving forward. We did, again, encourage the use of both when talking with the attorneys.

III. Next Steps.

We followed-up with Lorina Dellinger, by email, to discuss the increase to the contracts and the possibility of creating a county public defender office in the near future.

We will follow up with Judge Lane's staff regarding advising them of the rotation of attorneys, possibly for Monday morning hearings.

IV. Photos

1. Atty-client meeting room 1, with copier purchased by one of the public defenders. These two rooms are adjacent to the gallery seating in district court.



2. Atty-client meeting room 2.



3. District Court.



4. District Court, seating adjacent to atty-client rooms (similar to how federal courtrooms in Reno, NV are designed).



5. High-flying balloon to mirror our optimism at creating a better, more sustainable indigent defense system.



6. Sunrise picture, just because.

