



STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES

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OVERSIGHT REPORT

Douglas County

Visit date: March 15, 2023

Conducted by: Peter Handy, Deputy Director

I arrived at the Douglas County Judicial and Law Enforcement Center building prior to 8:00am on March 15, 2023. For this oversight visit, I was present in the East Fork Justice Court, observing from the gallery. From my position in the gallery, I had a clear view of the attorneys, the judge, and the video monitors present in the courtroom.

Outside of the courtroom there were several areas where private or semi-private meetings could occur, including two large, fully walled, enclosed areas with a door and several small, partially-enclosed booths/desks.

I observed the 8:30am calendar, which consisted of first appearances of in-custody defendants.

Presiding was the Hon. Paul Gilbert, Justice of the Peace of the East Fork Township.

The defendants were present via Zoom link to the jail. Present with the defendants was Nadine Morton, Esq., who had ample time to meet with each of the clients beforehand to discuss the complaints filed against them, advise them of their rights, review advisory of rights and waiver forms as applicable, and to obtain information which could be (and was) utilized to address bail and conditions of release. None of the attorney/client conversations prior to Court beginning were audible or visible from the Courtroom. The defendants and Ms. Morton appeared to have all of the appropriate paperwork needed in all but one case, wherein an additional complaint was forthcoming from the State.

The State had an attorney present in the courtroom who handled all of the matters – DDA Sibley.

The Hon. Paul Gilbert met or exceeded constitutional, statutory, and regulatory standards relating to the 5th, 6th, and 14th amendments to the US Constitution. Justice Gilbert is a "lay judge" but has served as a judge *pro tempore* in the East Fork Justice Court since 1986. Justice Gilbert appropriately notified defendants whether they were found to be indigent based on their financial disclosures, after inquiry wherein additional information was needed, or after additional information was provided by the defendant or counsel for the defendant. Justice Gilbert advised defendants to ask for the counsel who would be provided at no cost to them, and upon request, properly advised them that the Department would select counsel for them and that they would be notified of the counsel selected.

Ms. Morton appeared, communicated, and acted professionally and appropriately at all times. She appeared to have established a good rapport with the clients, even though the representation was only for the purpose of holding the initial appearance. Ms. Morton zealously argued for an OR release, reduction in amount of bail, and/or easing of conditions of bail as applicable for every defendant. Working with the clients as needed, Ms. Morton reacted promptly, professionally, and appropriately to Court questions and arguments made by the State.

I stayed and observed the 9:00am calendar, which consisted of status checks of defendants who had retained private counsel or were appearing pro per and for initial appearances for defendants who had bailed out and not yet been arraigned. (Note: I'm using the term "status checks" to cover a broad range of proceedings: observed proceedings included continuances of cases, trial settings, preliminary hearing settings, entries of plea, sentencings, and a probation violation admission).

The defendants were present in the gallery and were invited to the counsel table by the court after their case was called. There were no failures to appear, so observation of a FTA and related setting of bail and limits of extradition could not be observed. These proceedings were conducted in a substantially similar manner as the earlier proceedings.

The State was represented by 2 attorneys – handling the majority of the cases was DDA Sibley. Handling a minority of Cases was DDA Odgers.

I was able to observe three different contract-holding indigent defense providers who appeared as privately retained counsel -- Christopher Day, Nadine Morton, and Maria Pence. Each attorney appeared, communicated, and acted professionally and appropriately at all times. I was able to compare Ms. Morton's performance during these proceedings with her earlier performance and observed consistency in her advocacy for her clients.

Each attorney reacted promptly, professionally and appropriately to Court questions and arguments made by the State. The attorneys all relayed information

on their client's behalf effectively, communicated and confirmed plea agreements with specificity, made appropriate arguments for sentencing highlighting appropriate mitigating circumstances, set trials, and appropriately argued for bail reductions and modifications of conditions of release as needed. Based on my observations today, I have no reason to suspect that the performance of either Ms. Pence or Mr. Day was any different than would be observed in proceedings wherein they represent contractually obligated indigent clients.

I was able to observe court staff delivering documents from the court to defendants or their counsel after their cases were heard and court staff was not giving legal advice or interpreting any of the documents provided to any persons at the window.

The Court took a recess until it began its afternoon calendar. I observed the 1:30pm (afternoon) calendar, which consisted of status checks of in-custody defendants represented by appointed counsel.

The defendants waited for their cases to be called in a holding area outside of the courtroom or in the jury box within the courtroom and were escorted to the counsel table by bailiff when their case was called.

The State had an attorney present in the courtroom who handled all of the matters – DDA Towne.

I was able to observe three different contract-holding indigent defense providers who appeared as appointed/selected counsel for the defendants, including Martin Hart, Brian Filter, and Maximilian ("Max") Stovall. Apparently, the contract-holding attorneys rotate their appearances such that these three attorneys' clients are scheduled for status checks every other week while the other two attorneys' clients are scheduled for the intervening alternate weeks – providing for more time for each attorney to meet and confer with their clients, convey and discuss any offers from the State, and to allow for more flexibility in their schedules.

Each attorney appeared, communicated, and acted professionally and appropriately at all times. Each attorney reacted promptly, professionally and appropriately to Court questions and arguments made by the State. The attorneys all relayed information on their client's behalf effectively, communicated and confirmed plea agreements with specificity, made appropriate arguments for sentencing highlighting appropriate mitigating circumstances, set trials, and appropriately argued for bail reductions and modifications of conditions of release as needed.

I stayed and observed the 2:00pm (afternoon) calendar, which consisted of status checks of out of custody defendants represented by appointed counsel.

The State was represented by 2 attorneys – handling the majority of the cases was DDA Towne. Handling a minority of Cases was DDA Smith.

I was able to observe the same three contract-holding indigent defense providers who appeared as appointed/selected counsel for the defendants – Martin Hart, Brian Filter, and Max Stovall. Additionally, I was able to observe a law clerk of Mr. Stovall, a Mr. Linneman (sp?), who appeared under a SCR 49.3 limited practice authorization.

Each attorney (and the law student) appeared, communicated, and acted professionally and appropriately at all times. Each attorney reacted promptly, professionally and appropriately to Court questions and arguments made by the State. The attorneys all relayed information on their client's behalf effectively, communicated and confirmed plea agreements with specificity, made appropriate arguments for sentencing highlighting appropriate mitigating circumstances, set trials, and appropriately argued for bail reductions and modifications of conditions of release as needed. Mr. Linneman was appropriately supervised and Mr. Stovall intervened as necessary (which only occurred in one instance) to ensure the client's interests were appropriately protected and represented.

The Court permitted two defendants to appear by Zoom during the observed proceedings. One entered a guilty plea to a driving under the influence charge. Mr. Hart was the defendant's attorney, and he was present in the courtroom and relayed that the defendant was appearing via Zoom because he had covid. It was clear that the defendant and Mr. Hart had communicated about the Zoom appearance and the nature of the proceeding, as the defendant appeared and acted well-prepared. The other defendant was permitted to appear by Zoom due to late notice (by the Court) of the hearing date and time.

Mr. Hart was appointed to represent one defendant who had filed a fugitive motion to dismiss and to proceed in proper person. Mr. Hart moved orally to withdraw from the case based on the contents of the fugitive motion, making clear that there was a difference of tactical choices to defend the case, strategic differences in how to handle case, that he and the defendant did not "see eye to eye about legal issues." Apparently, the defendant had previously received a *Faretta* canvas. The court re-canvassed the defendant today. After the canvass, the defendant indicated he wanted to continue in proper person without any attorney to represent him. The defendant further articulated that he wanted to continue to trial as soon as possible in proper person. The defendant stated, "Mr. Hart's a good Attorney, no doubt. Nothing bad to say about him."

One defendant, represented by Mr. Hart, entered a naked plea to an amended criminal complaint alleging one count of misdemeanor battery constituting domestic violence, instead of going to trial which was going to be scheduled. The defendant

was properly canvassed as to his rights and waiving those rights. The defendant reported that he was satisfied with Mr. Hart's counsel. It was unclear whether the plea was entered against the advice of his attorney. In speaking with Mr. Hart after the court recessed, he reported to me that his client believed that entering a naked plea to the amended charge was in his best interest and had his support, but was against his recommendation. The plea offer from the District Attorney's office would have required a mutual recommendation for 30 days in the County jail, and while the case wasn't indefensible, the client worried that a trial may expose more facts than would be desired before the sentencing judge such that a 30 day recommendation may be ordered as the sentence. According to Mr. Hart, the defendant believed his best chance at a lower sentence was enhanced by pleading guilty and taking responsibility for the actions, completing the required courses and paying the requisite minimum fines, and then seeking a less severe penalty.