

Utah Indigent Appellate

IADD

Defense Division

“Defendants have a constitutional right to effective assistance of counsel on appeal.” Bruner v. Carver, 920 P.2d 1153, 1157 (Utah 1996)

Indigent appeals and IADD Timeline

1994: The Supreme Court Task Force on Appellate Representation of Defendants recommends “the formation of a statewide appellate public defender’s office[.]”

2008: Chief Justice Durham: “The issue of appellate and post conviction representation is a long standing area of concern.”

2016: SB 155 creates the Indigent Defense Commission, which Chief Justice Durrant described as “a positive *first* step[.]”

2020: SB 139 establishes IADD. In that first year, IADD is assigned 20 cases, all are handled by contract attorneys.

2021: IADD begins handling cases directly. Before the end of the year, IADD expands to representing parents appealing decisions to separate them from their children.

2022: IADD is tasked with being the only option—other than pro bono attorneys—for courts to appoint counsel in post-conviction.

2023: The first full year for IADD with three separate sections. For the year, **121 cases** are assigned to IADD across the three sections.

2024: IADD is assigned **148 cases**, with most handled by its seven full-time and two part-time attorneys.

Who we are

Chief Debra M. Nelson

Deputy Ben Miller
Appellate Section Head Wendy Brown
Family Defense Section Head Alexa Mareschal

Full-time staff attorneys:
Dylan Carlson, Lyla Mahmoud, Ramon Ortiz, Jason Richards

Part-time attorneys:
Kirstin Norman, Angela McGuire

Support staff:
Ashlee Olson, Natalie Hernandez, Maricel Freestone

Article

The Right (and Wrong) to Self-Representation

by Wendy M. Brown

Every person accused of a crime has the constitutional right to the assistance of counsel, as well as the corollary right to self-representation. The latter cannot be exercised without a knowing and voluntary waiver of the former. But a rash of recent decisions from the Utah Court of Appeals raises the question whether we, as criminal practitioners, fully understand what is required for a valid waiver of counsel.

Aimed at judges, prosecutors, and criminal defense attorneys, this article seeks to explain recent case law and provide practical guidance. Together, we can ensure that no one is deprived of their constitutional rights without making the informed decision to give them up.

Patton, West, and Lee

In the span of less than a year, the Utah Court of Appeals issued three opinions reversing criminal cases because the people charged had not knowingly and intelligently waived their right to counsel.

First, in *State v. Patton*, 2023 UT App 33, 528 P.3d 1249, Patton indicated he was “not worried about” the case and would represent himself. *Id.* ¶ 3. The trial court advised him of the maximum penalties associated with the charges he faced. The court also explained,

[T]he county attorney’s office is staffed with attorneys who are familiar with the Rules of Criminal Procedure and the Rules of Evidence. So I anticipate that if you represent yourself, you’ll probably be operating at a bit of a disadvantage, but if you still want to do that and represent yourself, you can.

Id.

The court asked, “Do you still want to represent yourself?” and Patton said, “Yes, sir.” *Id.*

Next, in *State v. West*, 2023 UT App 61, 532 P.3d 114, West had been tried and convicted with the assistance of counsel. *See id.*

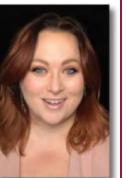
¶¶ 5, 9. After trial, she “filed several pro se post-trial motions, claiming in each that she was no longer represented by counsel.” *Id.* ¶ 11. Before sentencing, the trial court asked West “if she would ‘like a new lawyer,’ to which [she] responded in the negative.” *Id.* ¶ 12. This exchange was unaccompanied by “any colloquy and without questioning West about her understanding of the significance and the risk of proceeding without counsel.” *Id.*

Finally, in *State v. Lee*, 2024 UT App 2, 542 P.3d 974, Lee informed the trial court, at his arraignment, that he no longer wanted his retained attorney to represent him. *Id.* ¶ 3. Asked whether he wanted to hire a different attorney, Lee answered, “I haven’t made that decision today yet, but for right now, I’m choosing to represent myself.” *Id.* (internal quotation marks omitted). The trial court indicated skepticism that Lee would be able to represent himself but nevertheless asked what the court of appeals called “a few superficial questions.” *Id.* ¶¶ 1, 3. These questions covered how many criminal cases the defendant had been involved in, how many times he’d been involved in any type of court case, whether he had ever represented himself, whether he was familiar with the Utah Rules of Criminal Procedure, and why Lee believed it would be in his best interest to represent himself. *Id.* ¶ 3.

After engaging in this questioning, the trial court

“provisionally” found that [the defendant] had knowingly and voluntarily waived his right to counsel but remained “not entirely convinced,” promising to “have more of a discussion” about waiver at a

WENDY M. BROWN is the Criminal Appeals Section Head for the Utah Indigent Appellate Defense Division.



Utah Bar JOURNAL

Appellate Section Head Wendy Brown authored an article for the Sept/Oct issue of the Utah Bar Journal.

2024 in review

Our attorneys represented clients in **119** of the **148 (80.4%)** cases assigned to IADD

Filed over **100 appellate briefs**, over a **dozen** cert petitions, four PCRA petitions, over **25 substantive motions**, counsel in four reported victories

Presented training sessions hosted by the **IDC**, **UACDL**, **Utah Bar Appellate Practice Section**, **Federal Defender Services of Idaho**, **ABA**, **NAPD**, **NACDL**, and **NLADA**.



Our Family Defense Appeals Section, Jason Richards, Alexa Mareschal, and Kirstin Norman after presenting at the ABA's National Conference on Parent Representation

11 reported COA wins since start of 2023
the most of any single office!

2024 UT App 47

THE UTAH COURT OF APPEALS

STATE OF UTAH, IN THE INTEREST OF K.J., M.J., AND K.J.,
PERSONS UNDER EIGHTEEN YEARS OF AGE.

D.F. AND K.J.,
Appellants,
v.
STATE OF UTAH,
Appellee.

Opinion
Nos. 20230102-CA and
20230103-CA
Filed April 4, 2024

First District Juvenile Court, Logan Department
The Honorable Bryan P. Galloway
No. 1218130

Alexandra Mareschal, Kirstin Norman, and Jason B.
Richards, Attorneys for Appellant D.F.

Emily Adams, Attorney for Appellant K.J.

Sean D. Reyes, Carol L.C. Verdoia, and John M.
Peterson, Attorneys for Appellee

Martha Pierce, Guardian ad Litem

JUDGE RYAN M. HARRIS authored this Opinion, in which
JUDGES GREGORY K. ORME and JOHN D. LUTHY concurred.

2023 UT App 24

THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,
v.
BEVERLY ANN ELKFACE,
Appellant.

Opinion
No. 20210550-CA
Filed March 9, 2023

Seventh District Court, Price Department
The Honorable Jeremiah Humes
No. 211700006

Wendy Brown, Attorney for Appellant

Sean D. Reyes and Natalie M. Edmundson,
Attorneys for Appellee

JUDGE MICHELE M. CHRISTIANSEN FORSTER authored this Opinion,
in which JUDGES DAVID N. MORTENSEN and RYAN M. HARRIS
concurred.

CHRISTIANSEN FORSTER, Judge:

2024 UT App 159

THE UTAH COURT OF APPEALS

TIMOTHY JAMES PETERSON,
Appellant,
v.
STATE OF UTAH,
Appellee.

Opinion
No. 20220765-CA
Filed November 7, 2024

Third District Court, West Jordan Department
The Honorable Chelsea Koch
No. 210903613

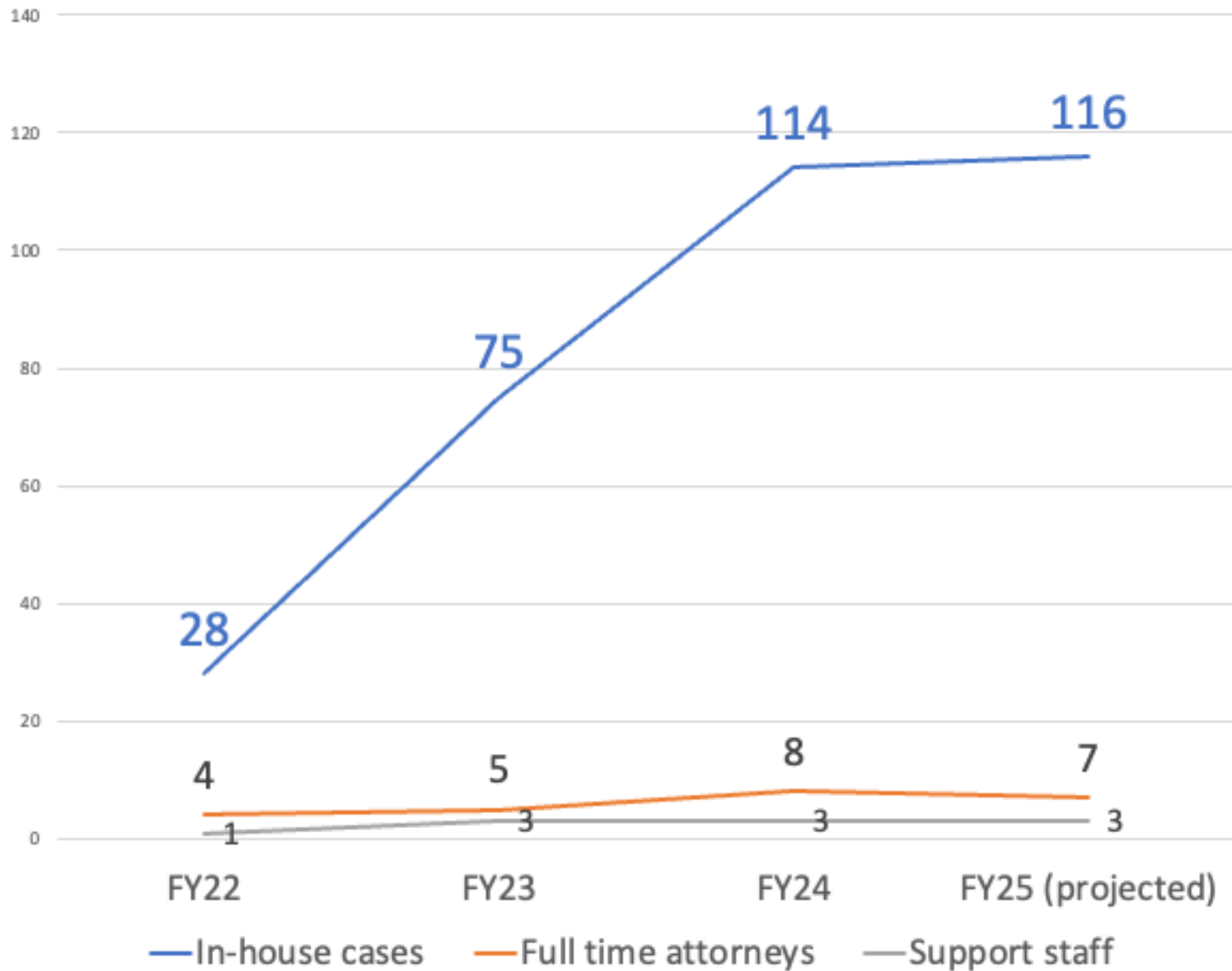
Dain Smoland, Debra M. Nelson, and
Benjamin Miller, Attorneys for Appellant

Sean D. Reyes and Daniel L. Day,
Attorneys for Appellee

JUDGE RYAN D. TENNEY authored this Opinion, in which
JUDGES GREGORY K. ORME and AMY J. OLIVER concurred.

Judge:

IADD caseloads and Staffing



State v. Allred, 2024 UT App 163

“In recent years, this court has seen a **marked uptick** in the number of requests that it has received for extensions in criminal appeals, and these requests have come from both sides.”

“Of note, this court previously granted the equivalent of **five 30-day extensions** in *State v. Allred*, **eight 30-day extensions** in *State v. Vine*, and **sixteen 30-day extensions** in *State v. Sombra-Delgado*. In each case, the State then requested an additional extension,”

Outgoing v. Incoming

Criminal Appeals

FY24

3.7 opening briefs/month

5.5 new cases/month

FY25

4.6 opening briefs/month

7.0 new cases/month

PCRA

FY24

4 amended petitions filed

25 new cases

FY25

2 amended petitions filed

11 new cases

Criminal appeals

Suggested caseload standards

Caseload Recommendations for Utah Indigent Appellate Attorneys by University of Utah, June 2023:
Average of 14 cases per year per attorney

NLADA suggests maximum 20 units per attorney per year based on type of case, length of record, steps taken

4 total attorneys

106 appellate briefs filed since start of FY24

140 open cases

82 in initial briefing stage

20 unassigned cases (backlog)

Effective 5/4/2022

78B-9-109. Appointment of pro bono counsel or counsel from Indigent Appellate Defense Division.

- (1) (a) If any portion of the petition is not summarily dismissed, the court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis or from the Indigent Appellate Defense Division, created in Section [78B-22-902](#), to represent the petitioner in the postconviction court or on postconviction appeal.

Postconviction

Staffed with one part-time attorney

Initial expectation: 3 appointments per year

Reality: 50 appointments since Fall 2022
11 already in FY25

Estimated at least **5 years to handle** assigned cases at current staffing (assumes no more appointments)

Now versus then...

* 2025 cases based on projected totals through December 16, 2024

