



123 W. Main Street, Suite 700
Durham, NC 27701
919-560-3380
www.ncids.org

Indigent Defense Services

FY02 North Carolina Office of the Appellate Defender & Private Appellate Counsel Cost-Benefit Analysis



May 2003

⋮

FY02 North Carolina Office of the Appellate Defender & Private Appellate Counsel Cost-Benefit Analysis

Purpose

To assess the relative cost and quality of the indigent legal representation being provided by Assistant Appellate Defenders (AADs) and private counsel in appellate cases in fiscal year 2002.

Conclusion

The results of this study led to the following conclusions.

1. On average, AADs have a lower hourly rate than private counsel—\$50.57 for AADs vs. \$86.81 for private attorney capital appeals and \$68.56 for private attorney non-capital appeals.
2. On average, AAD appellate cases had more positive dispositions more often than private counsel appellate cases. In FY02, AADs secured some form of relief for their clients 31.3% of the time versus private counsel’s 13.2% of the time.
3. AADs have the potential to be more cost-effective than private counsel due to their lower hourly rate and higher quality representation, as long as they are at least as efficient as private counsel.

Whether this potential was fulfilled is not known because AAD hours per case may be significantly under-reported. After adding up the hours reported spent on cases and providing support services to private counsel, 43% of AAD available attorney hours remain unaccounted for. How AADs spent these hours determines how cost-effective AADs were in FY02. The worst-case scenario is that in FY02, AADs may have cost approximately \$37,000 more than private counsel to provide higher quality appellate representation—5.2% higher cost for a 21% improvement in disposition outcomes. It is not absolutely certain, however, that AADs do in fact cost more than private counsel for reasons that will be explained in detail later in the report. (See Key Finding #5 for complete details)

4. AADs provide support to private counsel by providing case consultations and a clearinghouse of materials, as required by N.C. General Statute § 7A-498.8. This support acts to: 1) improve the quality of legal representation being provided by private counsel,¹ and 2) help reduce overall private counsel appellate costs by reducing the number of hours private counsel would have needed to complete appellate cases without this support.

¹ This assumes private counsel appellate representation would be worse without these services. There is currently no hard data available to confirm this.

5. AADs average slightly higher caseloads than recommended by NLADA caseload standards. NLADA recommends appellate attorneys should carry no more than 24 appellate work units per year. In FY02, AADs completed approximately 25 work units per attorney using a heavier caseload standard than that employed by NLADA. While NLADA attributes 10 work units per capital case, the Office of the Appellate Defender (OAD) assigns 7 work units per capital case. Under the NLADA standard, it would take 2.4 capital cases to equal 24 work units. Under the OAD capital standard, it takes 3.4 capital cases to equal 24 work units.

Key Findings

1. The Appellate Defender estimates that approximately 8% of all appeals are handled by AADs and 92% by private counsel, with 58% of capital appeals handled by AADs. This is a rough estimate. OAD and IDS have developed a database so a more precise breakdown will be available in future years.
2. In FY02, AADs appear to have provided higher quality legal representation than private counsel. On average, AAD case outcomes were better than private counsel case outcomes—31.3% of AAD appeals resulted in some form of relief vs. 13.2% of private counsel appeals.
3. Overall, the cost of one hour of AAD time is less than the cost of one hour of private appellate counsel time—\$50.57 for AADs vs. either \$68.56 for non-capital appeals or \$86.81 for capital appeals for private counsel. The higher rate for capital appeals is due to the more extensive use of paralegals, as well as expert witness expenses in preparing MARs pending appeal or seeking relief under the mental retardation bill pending appeal.
4. On average, AADs reported fewer average hours per work unit per case than private appellate counsel. In order to compare appellate caseload, appeals were compared by case type and number of work units per case based on the number of trial transcript pages. The way work units were defined is explained in detail in the body of this report.

| | No OAD Appeal Cases | No. of Work Units | OAD Avg. Hrs per Work Unit | PAC Avg. Hrs per Work Unit |
|----------------------|---------------------|-------------------|----------------------------|----------------------------|
| Sup Ct. Capital | 10 | 73 | 35.8 | 39.5 |
| Sup. Ct. Non-Capital | 7 | 23 | 59.3 | 63.7 |
| COA Civil | 1 | 1 | 150.0 | 45.9 |
| COA Criminal | 50 | 106 | 45.0 | 45.4 |
| All Case Types | 68 | 204 | | |

5. The overall cost-effectiveness of AADs and private counsel cannot be determined because a large number of available AAD attorney hours remain unaccounted for. After adding up all the hours AADs spent on casework and the 1,061 hours they spent supporting private counsel, only 56% of their available hours are accounted for. Some of these hours would have been spent in staff and other organizational activities; however, it is unlikely that all of these unaccounted for hours (43% of their total time) would have been spent in this manner. How these unaccounted for hours were spent is the key to determining the cost-effectiveness of AADs. Depending on how these unknown hours were spent, three alternative conclusions regarding efficiency are possible:
 - Option 1. AADs under-reported the number of hours they spent on cases. AADs are as efficient or more efficient than private counsel, but they spent extra time per case in order to provide a higher quality product. AADs cost 5.2% more in FY02 (or a total of \$36,738) more than private counsel to produce a 21% increase in quality.



- Option 2. The unaccounted for hours were spent on a heavier than average pending caseload in FY02. While the cost of pending cases appears this year, the benefits of these cases do not appear until next year, with the result that AADs appear less cost-effective than private counsel when in fact they are as cost-effective. If we include the cost of AAD pending caseload, then AADs saved \$61,837 compared to what it would have cost if private counsel had handled both the AAD disposed cases and the portion of pending caseload that was above normal.
- Option 3. AADs are as efficient as their hours report and deliver a higher quality product, but because significant numbers of hours are unaccounted for, are less cost-effective than private counsel. AADs could have disposed of significantly more appeals than they did. Their wasted time cost as much as \$36,738 in lost productivity.

Quality of Representation

Looking at all FY02 appellate case outcomes, AADs had a significantly higher percentage of cases that resulted in some form of relief for their clients than private counsel—33.3% vs. 12.6%.

| FY02 AAD & PAC Appellate Case Dispositions | | | | |
|--|------------------|---------------|-------------------|---------------|
| Disp. | OAD No. Cases | % | PACs No. Cases | % |
| No Relief | 40 | 60.6% | 239 | 81.6% |
| Relief* | 22 | 33.3% | 37 | 12.6% |
| Pending or Unknown | 4 | 6.1% | 17 | 5.8% |
| Total | 66 | 100.0% | 293 | 100.0% |

** Relief means that the appeal resulted in some form of relief ranging from a new sentencing hearing to the conviction being vacated. Including guilty plea and probation violation appeal dispositions did not negatively impact these percentages.*

In order to control for differences in types of appellate cases, which could skew the results, the study performed a similar analysis comparing only PAC and AAD cases that were similar in terms of case type, court, and number of trial transcript pages (see Attachment C for more detail). The results of the second analysis were very similar to the first analysis. OAD appellate cases resulted in some form of relief 31.3% of the time compared to PAC appellate cases, which resulted in some form of relief 13.2% of the time.

| Percent of FY02 Appellate Case Dispositions that Resulted in Some Form of Relief by Case Type (Looking only at PAC appellate cases that match the types of cases given to APDs) | | | | |
|--|-----------|--------------|-----------|--------------|
| % of FY02 Appellate Case Dispositions Resulting in Some Form of Relief | | | | |
| Case Type | OAD | | PAC | |
| | No. Cases | % of Total | No. Cases | % of Total |
| COA Criminal | 16 | 32.0% | 18 | 10.5% |
| Sup. Court Non-Capital | 1 | 14.3% | 4 | 40.0% |
| Sup. Court Capital | 4 | 40.0% | 4 | 26.7% |
| All Cases | 21 | 31.3% | 26 | 13.2% |

Both analyses suggest that, on average, AADs are providing more effective legal representation than private counsel on appellate cases.

In addition, AADs spent a percentage of their time, as statutorily required, improving the quality of legal representation being provided by private counsel through consultations and maintaining a clearinghouse of materials. In FY02, AADs estimated they spent 7% of total available attorney hours (or 1,061 hours) assisting private counsel, at a cost of \$53,655.

The precise number of hours spent assisting private counsel is not known. AADs did not keep time sheets in FY02 and this estimate represents their best guess. As of FY03, AADs are required to keep timesheets so we will have more accurate data in the future.

The Appellate Defender predicts that more accurate time data will show that AADs actually spend significantly more than 7% of their time assisting private counsel. The fact that the number of hours spent working on cases also appears to be underestimated (which is discussed in detail later) lends support to this speculation.

Cost

The cost of indigent appellate representation is a function of two factors: 1) the cost for an hour of attorney time (rate), and 2) the number of hours it takes an attorney to dispose of a particular type of case (efficiency).

1. Attorney Rate

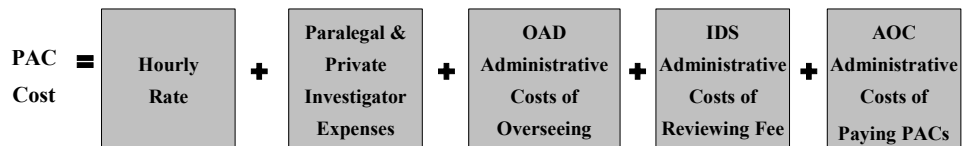
Assistant Appellate Defenders (AADs)

The hourly cost of AADs is calculated by dividing total office costs (including salaries, benefits, support staff, travel, supplies, equipment purchases, overhead, etc.) by the number of available AAD attorney hours.

The total cost of the OAD (after deducting position costs dedicated to the administration of private counsel appellate cases) was \$792,956. The total number of attorney hours available in FY02 was 15,681. In FY02, the cost of one hour of AAD time was \$50.57.

Private Appellate Counsel

Private counsel are paid a standard rate of \$65 per hour for non-capital appeals and \$85 per hour for capital appeals. In addition to this hourly cost, there are administrative costs which also need to be accounted for, including the administrative costs of appointing and overseeing private appellate counsel appellate cases, the administrative costs of IDS reviewing appeal fee applications, the Administrative Office of the Courts' cost to pay PAC fee applications, plus the expert and paralegal expenses associated with preparing MARs pending appeal or seeking relief on the grounds of mental retardation during the pendency of the appeal.



The average expert and paralegal fees per appellate case in FY02 was \$280 for capital cases and \$8 for non-capital cases. The cost to the OAD to appoint and manage cases and administer rosters in FY02 was \$181 per case. The cost to IDS to review and process appellate fee applications was \$19 per fee application and, on average, there are two fee applications per appellate case.

| | | |
|---|---|-----------------------|
| Private Counsel Capital Hourly Cost | = | \$85 + \$499 per case |
| Private Counsel Non-Capital Hourly Cost | = | \$65 + \$227 per case |

•
•
•
•
•
•
•
•

Prorating the \$499 in administrative expenses to an hourly basis, capital appeals incur \$1.81 per hour in administrative expenses. Prorating \$227 in administrative expenses to an hourly basis, non-capital appeals incur \$3.56 per hour in administrative expenses.

Including administrative costs, the total hourly rate for private counsel is:

Private Counsel Capital Hourly Cost = \$86.81 per hour
Private Counsel Non-Capital Hourly Cost = \$68.56 per hour

Indigent defense costs that are the same to both OAD and private appellate counsel, such as court reporter costs, were omitted. The \$1.18 per fee application administrative cost to pay private counsel was not included in the hourly rate calculations, as this cost is not currently borne by IDS.

In FY02, one hour of AAD time cost at least 33% less than one hour of private counsel time—\$50.57 compared to \$68.56 for non-capital appeals and \$86.93 for capital appeals. The higher rate for capital appeals is due to the higher hourly rate paid for capital appeals and the more extensive use of paralegals and expert witnesses.

2. Average Hours per Type of Case (Efficiency)

The second factor that determines cost is the amount of hours attorneys need to dispose of similar types of cases—their rate of efficiency.

Different types of appellate cases require different amounts of work. For example, on average a capital appeal will require more hours of work than a non-capital appeal. The study looked at the average hours attorneys take to handle four types of appellate cases: capital appeals, Supreme Court non-capital appeals, Court of Appeals criminal appeals, and Court of Appeals civil appeals.

Even similar types of appeals, however, will require different amounts of work depending on the complexity of the case and the legal issues involved. In order to help account for complexity of case, the study applied as much of the case-weighting standard developed by the NLADA as was possible.² NLADA's case weighting standard attributes to a case 1 work unit for every 500 pages of trial transcript, 10 work units for capital appeals, and one-half work unit for guilty plea appeals.

This study attributed to each appeal 1 work unit for every 500 transcript pages, capital appeals were awarded 7 work units for up to 3,500 transcript pages with an additional work unit for every 500 pages above this, and appeals with 50 or fewer transcript pages were assumed to be guilty plea or probation violation appeals and were given one-half a work unit.

Note that NLADA standards attribute a flat 10 work units to a capital case. This study used 7 base work units plus bonus units for every 500 transcript pages above 3,500 per capital case because the OAD has a long history of using this methodology when assigning caseloads to both AADs and private counsel. Looking at FY02 appeals by case type and number of transcript pages, the study concluded that while there were limitations (See Section *Limitations*), there was enough correlation between work units and number of hours to proceed.

² National Legal Aid & Defender Association (NLADA), 1980. *Standards & Evaluation Design for Appellate Defender Offices*, p. 46-47.

Assistant Appellate Defenders (AADs)

For all appellate cases disposed by AADs in FY02, the study researched the number of trial transcript pages, calculated the number of work units for the appeal, and determined the number of hours per work unit for that case based on the number of hours the AAD estimated they had worked on the case. An average hours per work unit per type of appeal for AADs was then calculated.

Private Assigned Counsel

For all private counsel FY02 cases for which IDS had complete hour and cost data, the study researched the number of trial transcript pages, the number of work units per case, and the number of hours per work unit. An average hours per work unit per type of appeal for private counsel was then calculated.

Overall, AADs reported fewer average hours per work unit to dispose of appellate cases.

| | No OAD Appeal Cases | No. of Work Units | OAD Avg. Hrs per Work Unit | PAC Avg. Hrs per Work Unit |
|----------------------|---------------------|-------------------|----------------------------|----------------------------|
| Sup Ct. Capital | 10 | 73 | 35.8 | 39.5 |
| Sup. Ct. Non-Capital | 7 | 23 | 59.3 | 63.7 |
| COA Civil | 1 | 1 | 150.0 | 45.9 |
| COA Criminal | 50 | 106 | 45.0 | 45.4 |
| All Case Types | 68 | 204 | | |

Since AADs disposed of only one Court of Appeals civil appeal in FY02, an average hourly rate cannot be determined for this type of appellate case.

However, there is a significant discrepancy with reported AAD hours. Adding up the hours AADs spent on cases in FY02 plus the time they spent assisting private counsel through consulting, etc. accounts for only 57% of available AAD attorney hours.³ There are several ways these unaccounted for hours might have been spent:

1. Staff and other organizational activities
2. Under-reporting hours spent on cases
3. Under-reporting hours spent assisting private counsel
4. Work on above-average number of pending cases
5. Non-productive hours

The Appellate Defender believes the discrepancy lies in the fact that AADs underestimate the number of hours they work on cases (and to a lesser extent supporting private counsel) for two reasons:

1. AADs were not required to keep time records in FY02. The standard practice was to dispose of a case and then estimate time spent from memory, which is difficult to do with any real accuracy.
2. Historically there has been a tendency to under-report hours out of concern for the client.

As of FY03, the Appellate Defender is requiring AADs to keep time logs. IDS expects to have more accurate case hours data in the future.

Given the large number of AAD attorney hours not accounted for, the current study cannot conclude with any certainty that AADs are in fact more efficient than private counsel.

³ Total available attorney hours = 15,681. Hours reported working on cases = 7,890. Add 1,000 hours providing support to private counsel and a total of 8,890 hours are accounted for and 6,791 hours (43% of hours) are not accounted for.



Costing Out AAD Appellate Cases

Using the same case-weighting system used earlier, the study compared what it cost to dispose of AAD appellate cases to what it *would* have cost if private counsel had disposed of this *same* group of cases. (See spreadsheet on following page)

It would have cost \$36,738 *less* if private counsel had disposed of these appellate cases, although the findings also suggest there would have been some loss in the quality of representation provided as well.

Since AADs have a much lower hourly rate than private counsel, there are two possible explanations as to why the AAD total cost is higher than private counsel total cost:

1. AADs are not accurately reporting the number of hours spent on cases for the reasons explained in detail earlier in this report.
2. The assumption that pending caseload is stable from year to year, and therefore not a factor when costing out cases, is erroneous.

The Issue of Pending Case Work Load

The length of time it takes to dispose of appeals routinely exceeds one year. This could cause the rate at which cases close to be *uneven* even though the rate at which AADs are working remains *constant*. This means that some years would have a higher number of closed cases and a lower number of pending cases, while other years would have the reverse. If in fact pending caseload does vary from year to year, then years with higher pending caseloads would result in underestimating the amount of casework being performed by AADs, which would in turn underestimate what it *would* have cost private counsel to do this work, with the net result of making AADs look less cost-effective than they are.

To determine the effect of pending caseload, trend data on AAD pending caseload is needed, but was unavailable. However, the study did look at trend data on the number of cases disposed of annually by AADs to determine if there was a pattern of high case-closing years followed by low case-closing years (see table). There is clearly a wide range in the number of annual case closings, but a pattern of above average case closings followed by a year of below-average case closings did not occur. As there are a number of factors that influence annual case closings, including personnel vacancies, differing proportions in the types of appellate cases, or training new staff, this lack of pattern does not necessarily rule out the possibility that pending caseload is negatively skewing the cost outcome results.

FY02 was a below-average year for case closings for the AADs. At the end of the year, AADs had a pending caseload of 93 cases—137% of the number of cases they closed that year. If we assume that this pending caseload represents a caseload that is above average, then the portion of pending caseload that is above average would need to be factored into the cost analysis.

Since AADs carried a 37% higher number of pending cases than closed cases, pending cases received one-third the credit of disposed cases. This assumes that two-thirds of the casework inherent in these pending cases is normal. If a one-third credit for pending cases is added into the cost analysis, AADs become more cost-effective than private counsel and saved IDS just over \$60,000 in FY02 (see spreadsheet on next page).

| OAD Annual Case Dispositions | | | |
|------------------------------|-------------------------|------------------------------|-----|
| FY | OAD Closed Appeal Cases | A=Above Avg. B=Below Avg. | |
| 93 | 67 | B | |
| 94 | 103 | A | |
| 95 | 65 | B | |
| 96 | 98 | A | |
| 97 | 82 | A | |
| 98 | 43 | B | |
| 99 | 73 | B | |
| 00 | 62 | B | |
| 01 | 81 | A | |
| 02 | 69 | B | |
| All Years | | 743 | |
| Average | 74.3 | | |
| Median | 71 | | |
| Low | 43 | High | 103 |
| Variation | 60 | | |

FY02 OAD Appeal Cases Costed Out if Handled by Private Assigned Counsel

(cases closed in FY02)

| FY02 OAD Appeal Cases Costed Out if Handled by Private Assigned Counsel | | | | | | | | | | | | | | | | |
|---|-----------------------------|--------------------------|-----------------|-------------------------------|----------------------------------|------------------------------|---|----------------------------------|--|---|---|---|---|--------------------------|--|---------------------|
| (cases closed in FY02) | | | | | | | | | | | | | | | | |
| Attorney Fees | | | | | Expert Fees & Expenses* | | | | | Processing Cases Costs | | | Total Cost to IDS | Total Cost to State | | |
| Case Type | OAD Total No. of Work Units | Avg. Hours per Work Unit | PAC Hourly Rate | Cost if PAC Worked Work Units | OAD Total No. of Cases | No. of Fee Apps (2 per case) | Avg. Expert & Paralegal Fees per Appeal Fee App | Avg. Expenses per Appeal Fee App | Total Expert Fees & Expenses for All Cases | OAD Proc. Costs per Case (Note: can figure out per case or per work unit) | IDS Proc. Costs per Fee App for PAC Cases | Total Processing Costs if PAC had handled Cases | Total Attny, Expenses & Expert Costs if PAC had handled Cases | AOC Proc. Costs per Case | Total AOC Proc. Costs if PAC Handled Cases | Total Cost to State |
| Sup Ct. Capital | 73 | 39.5 | \$ 85 | 245,098 | 10 | 20 | \$ 280 | \$ 698 | \$ 19,546 | \$ 181 | \$ 19 | \$ 2,189 | \$ 266,832 | \$ 1.18 | \$ 23.60 | \$ 266,856 |
| Sup Ct. Non-Capital | 23 | 63.7 | \$ 65 | 96,888 | 7 | 14 | \$ 3 | \$ 164 | \$ 2,329 | \$ 181 | \$ 19 | \$ 1,533 | \$ 100,749 | \$ 1.18 | \$ 16.52 | \$ 100,766 |
| COA Civil | 1 | 45.91 | \$ 65 | 2,984 | 1 | 2 | \$ - | \$ 58 | \$ 116 | \$ 181 | \$ 19 | \$ 219 | \$ 3,319 | \$ 1.18 | \$ 2.36 | \$ 3,321 |
| COA Criminal | 106 | 45.37 | \$ 65 | 313,189 | 50 | 100 | \$ 3 | \$ 73 | \$ 7,526 | \$ 181 | \$ 19 | \$ 10,946 | \$ 331,662 | \$ 1.18 | \$ 118.00 | \$ 331,780 |
| Total | 203.6 | | | \$ 658,158 | 68 | | | | \$ 29,517 | | | \$ 14,887 | \$ 702,563 | | \$ 160.48 | \$ 702,723 |
| OAD Office Budget Adjusted** | | | | | | | | | | | | | \$ 792,956 | | | 792,956 |
| Hours spent assisting private counsel (1,061 hours at \$50.57/hr) | | | | | | | | | | | | | \$ 53,655 | | | |
| AAD case cost | | | | | | | | | | | | | 739,301 | | | |
| AAD Office Savings/Loss | | | | | | | | | | | | | \$ (36,738) | | | \$ (90,233) |
| Percent of ADD cost above private counsel cost | | | | | | | | | | | | | 5.2% | | | |
| <i>Credit for Pending Caseload: (only one-third actual of case weight)</i> | | | | | | | | | | | | | | | | |
| Sup Ct. Capital (20) | 6.7 | 39.5 | \$ 85 | 22,383 | 1 | 2 | \$ 280 | \$ 698 | \$ 2,228 | \$ 181 | \$ 19 | \$ 250 | \$ 24,861 | \$ 1.18 | \$ 2.69 | \$ 24,863 |
| Sup Ct. Non-Capital (1) | 0.3 | 63.7 | \$ 65 | 1,380 | 0 | 0 | \$ 3 | \$ 164 | \$ 19 | \$ 181 | \$ 19 | \$ 12 | \$ 1,412 | \$ 1.18 | \$ 0.13 | \$ 1,412 |
| COA Civil (1) | 0.3 | 45.9 | \$ 65 | 995 | 0 | 0 | \$ - | \$ 58 | \$ 7 | \$ 181 | \$ 19 | \$ 12 | \$ 1,014 | \$ 1.18 | \$ 0.13 | \$ 1,014 |
| COA Criminal (71) | 23.7 | 45.37 | \$ 65 | 69,794 | 4 | 8 | \$ 3 | \$ 73 | \$ 609 | \$ 181 | \$ 19 | \$ 886 | \$ 71,289 | \$ 1.18 | \$ 9.55 | \$ 71,299 |
| Total Pending Case Credit | 31 | | | | | | | | | | | | \$ 98,575 | | | \$ 98,588 |
| OAD Office Savings/Loss w/ Pending Case Credit | | | | | | | | | | | | | 61,837 | | | 8,355 |
| *Expert Fees and Processing costs assumes that, on average, PACs submit two fee apps per case. | | | | | | | | | | | | | | | | |
| **OAD budget adjustments include: 1) excluding the cost of 1 position that was erroneously coded to the OAD Office when the position is actually working for the Capital Defender, 2) excluding transcript costs which are the same for both PACs and AADs, 3) excluding the cost of OAD staff time devoted to overseeing appellate cases being farmed out to private counsel (75% of Appellate Defender's time, 75% of 1 admin position, and 50% of a second admin position), and 4) including of the cost of IDS staff time devoted to overseeing the OAD Office (1% of the IDS Director's position). | | | | | | | | | | | | | | | | |
| ***PAC avg. work units per attorney calculated by adding up the total hours PACs would have taken to handle OAD cases, dividing by 1,920 to determine number of attorneys needed in one year, and then dividing the total number of work units completed in the year by the number of attorneys. [9,238.3/1,920=4.81 then 203.6/4.81=42.3] | | | | | | | | | | | | | | | | |
| ****OAD cost per work unit = OAD adjusted budget / Total No. FY02 Work Units. PAC cost per work unit = (% of time on capital cases x Avg. No. Hrs per Work Unit x \$85) + (% of time on non-capital x \$65 x avg. no. hours per work unit) + average expert fee expense + OAD proc. cost + IDS proc. cost. | | | | | | | | | | | | | | | | |
| FY02 AAD & PAC Appellate Case Dispositions | | | | | Cost for Superior Product | | | | | | | | | | | |
| Disp. | OAD No. Cases | % | PACs No. Cases | % | % OAD extra cost (Loss/PAC cost) | | | | | 5.2% | | | | | | |
| No Relief | 40 | 60.6% | 239 | 81.6% | % OAD extra cost (Loss/PAC cost) | | | | | | | | | | | |
| Relief* | 22 | 33.3% | 37 | 12.6% | if include Pending credit | | | | | | | | | | | |
| Pending or Unknown | 4 | 6.1% | 17 | 5.8% | (results savings not a loss) | | | | | -8.8% | | | | | | |
| Total | 66 | 100.0% | 293 | 100.0% | | | | | | | | | | | | |
| * Relief means that the appeal resulted in some form of relief ranging from a new sentencing hearing to the conviction being vacated. Including plea and probation violation appeal dispositions did not negatively impact these percentages. | | | | | | | | | | | | | | | | |

Limitations

Limited Predictive Applicability

This study calculated the cost and quality of private counsel appellate work based on appeals closed in FY02. These results are not necessarily predictive of future private appellate counsel cost or quality because a new roster-based appointment system has been implemented. The pool of appellate attorneys in FY03 and beyond will likely be significantly different than the pool of appellate attorneys for FY02 closed cases. Consequently, the average cost and quality of representation private appellate counsel provide in FY03 and beyond will likely be significantly different as well.

Impact of Appellate Defender Appointment Authority

The Appellate Defender appoints appellate attorneys to appeals by trying to best match case requirements to individual attorney skills and experience. To some extent, the cost and quality of AADs and private counsel appellate work is the result of how well the Appellate Defender matches specific case needs to attorney abilities, although the extent to which this appointment authority influences relative cost and quality is unknown.

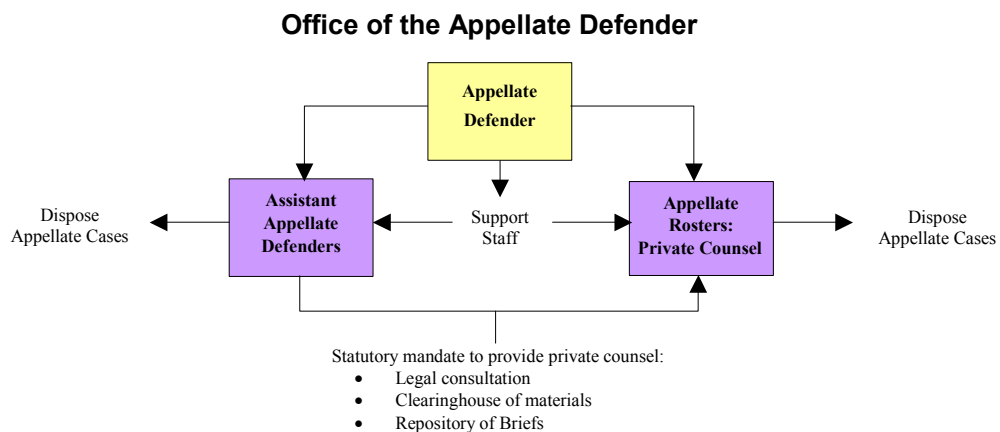
Work Unit Measure Shortcomings

The definition of a work unit as applied in this study has significant shortcomings. If the definition of a work unit were accurate, one would expect the average hour per work unit to be consistent across appeal case types. Instead, the average hours per work unit fluctuated significantly in different types of cases. This indicates that this study is not accurately comparing caseload across the board.

Recommendations

Indigent defense representation at the appellate level is not organized into two distinct service delivery options, as is the case at the trial level where public defender offices and private assigned counsel operate independently of each other to provide clients with legal representation.

With the advent of the Office of Indigent Defense Services, AADs and private appellate counsel are essentially hired and managed under the auspices of the Appellate Defender.



The Appellate Defender directly hires Assistant Appellate Defenders and private counsel are in effect “hired” when they apply to the Appellate Defender to be placed on the Appellate Roster(s). The Appellate Defender chooses which attorney will take which appellate cases. Moreover, N.C. General Statute § 7A-498.8 requires AADs to provide private counsel with legal consultation and a clearinghouse of materials and briefs in order to enhance the quality of legal representation being provided by private counsel. The more effectively the Appellate Defender matches attorney abilities to specific case needs and provides support to private counsel, the more efficiency and quality differences between AADs and private counsel will disappear.

Therefore, it is counter-productive to compare AADs and private counsel as if the Appellate Defender plays no role in the cost and quality of the representation they provide. It is also unproductive to expect AADs to assist private counsel and then compare each product as if it were produced independently of each other.

A more useful approach would be to assess how cost-effectively the Appellate Defender is managing both AADs and private counsel together to provide appellate representation in North Carolina. Such an approach would look at the total cost and quality of appellate work, both AAD and private counsel, from year to year. It would seek to answer questions such as: *How well is the Appellate Defender managing the private counsel rosters? How effectively is the Appellate Defender matching specific case needs to attorney abilities, whether AAD or private counsel? Is the overall quality and cost of appellate work improving, staying level, or getting worse?*

A more productive cost-benefit assessment would provide the Appellate Defender with the tools to make better decisions on how to most cost-effectively combine the abilities of AADs and private appellate counsel. Such a study could help provide tools that would allow the *Appellate Defender* to assess attorney cost and quality on an individual basis and identify when it would be cost-effective to expand or shrink the size of the permanent staff.

The implementation of the IDS database and requiring AADs to keep accurate time records is the first step to developing the tools that would enable the Appellate Defender to make more cost-effective decisions and IDS the ability to assess appellate work as a whole from year to year. The Appellate Defender has recognized the importance of this data collection to efficiently oversee appellate representation and is working with IDS to take steps to ensure its completeness.

If you have any questions or comments, please call or write Margaret Gressens at the address below.

Margaret Gressens
IDS Office
Research Analyst
123 West Main Street, Suite 700
919-560-3380
Margaret.a.Gressens@nccourts.org; www.ncids.org



Attachment A:
N.C. General Statute §7A-498.8

§ 7A-498.8. Appellate Defender.

(a) The appellate defender shall be appointed by the Commission on Indigent Defense Services for a term of four years. A vacancy in the office of appellate defender shall be filled by appointment of the Commission on Indigent Defense Services for the unexpired term. The appellate defender may be suspended or removed from office for cause by two-thirds vote of all the members of the Commission on Indigent Defense Services. The Commission shall provide the appellate defender with timely written notice of the alleged causes and an opportunity for hearing before the Commission prior to taking any final action to remove or suspend the appellate defender, and the appellate defender shall be given written notice of the Commission's decision. The appellate defender may obtain judicial review of suspension or removal by the Commission by filing a petition within 30 days of receiving notice of the decision with the Superior Court of Wake County. Review of the Commission's decision shall be heard on the record and not as a de novo review or trial de novo. The Commission shall adopt rules implementing this section.

(b) The appellate defender shall perform such duties as may be directed by the Office of Indigent Defense Services, including:

- (1) Representing indigent persons subsequent to conviction in trial courts. The Office of Indigent Defense Services may, following consultation with the appellate defender and consistent with the resources available to the appellate defender to ensure quality criminal defense services by the appellate defender's office, assign appeals, or authorize the appellate defender to assign appeals, to a local public defender's office or to private assigned counsel.
- (2) Maintaining a clearinghouse of materials and a repository of briefs prepared by the appellate defender to be made available to private counsel representing indigents in criminal cases.
- (3) Providing continuing legal education training to assistant appellate defenders and to private counsel representing indigents in criminal cases, including capital cases, as resources are available.
- (4) Providing consulting services to attorneys representing defendants in capital cases.
- (5) Recruiting qualified members of the private bar who are willing to provide representation in State and federal death penalty postconviction proceedings.
- (6) In the appellate defender's discretion, serving as counsel of record for indigent defendants in capital cases in State court.
- (7) Undertaking direct representation and consultation in capital cases pending in federal court only to the extent that such work is fully federally funded.

(c) The appellate defender shall appoint assistants and staff, not to exceed the number authorized by the Office of Indigent Defense Services. The assistants and staff shall serve at the pleasure of the appellate defender.

(d) Funds to operate the office of appellate defender, including office space, office equipment, supplies, postage, telephone, library, staff salaries, training, and travel, shall be provided by the Office of Indigent Defense Services from funds authorized by law. Salaries shall be set by the Office of Indigent Defense Services. (2000-144, s. 1.)

Attachment B:
FY02 Private Appellate Counsel Case
Administrative Processing Costs

| | A | B | C | D | E |
|----|---|-------------|--|--|---|
| 1 | FY02 Processing Time by Sharon Hogan on Appeal Fee Applicatons | | | | |
| | Estimate Based on Sample | | | | |
| 2 | | Time | New Case | Interim/Final | expenses |
| 3 | Gant | 6 n | | i | y |
| 4 | McKisson | 9 n | | i | y |
| 5 | Owens | 13 n | | i | y |
| 6 | Stowers | 13 y | | f no recoup | y |
| 7 | Cornell | 21 y | | f | y |
| 8 | Harris | 6 n | | f | n |
| 9 | Jackson | 15 n | | f | n |
| 10 | Webster | 6 n | | f | n |
| 11 | mccarthur | 7 n | | f | n |
| 12 | crutchfield | 8 n | | i | y |
| 13 | reynolds | 5 n | | i | y |
| 14 | Laforte | 6 y | | f | y |
| 15 | lopez | 7 n | | f | y |
| 16 | wood | 8 y | | f | y |
| 17 | oakley | 22 y | | f | y |
| 18 | avg | 10.13 min | | | |
| 19 | | | | | |
| 20 | FY02 IDS PAC Appeal Processing Costs | | | | |
| 21 | | | Total Salary + Benefits + Longevity | % of Time Process PAC Appeal Fee Applications <small>(no. appeal fee apps X avg time of 10.13 per fee app)</small> | PAC Appeal Fee Applications Processing Costs |
| 22 | Sharon Hogan | | \$ 85,409.57 | 6.6% | \$ 5,604.61 |
| 23 | Tye Hunter | | \$ 171,538.11 | 5.0% | \$ 8,576.91 |
| 24 | Total Cost IDS Appeal Processing Cost | | | | \$ 14,181.51 |
| 25 | No. Appeals processed in FY02 | | | | 746 |
| 26 | IDS Processing Cost per Appeal | | | | \$ 19.01 |
| 27 | <i>Source: For number of appeal fee apps--Sharon Hogan, CFO.</i> | | | | |
| 28 | | | | | |
| 29 | | | | | |

| | A | B | C | D |
|---|---|-------------|------------------------------|---|
| 1 | FY02 PAC Appeal Fee Applications | | | |
| 2 | Appeal | FY02 | FY03 (YTD 1/31/03) | |
| 3 | Capital | 72 | 10 | |
| 4 | Non-Capital | 662 | 612 | |
| 5 | Capital Expert | 6 | | |
| 6 | Non-Capital Expert | 6 | | |
| 7 | Total | 746 | 622 | |
| 8 | | | | |
| 9 | <i>Source: Sharon Hogan, IDS CFO.</i> | | | |

| | A | B | C | D |
|----|---|----------------------|------------------|------|
| 1 | FY02 Real Total Cost of OAD | | | |
| 2 | Budget | Cost | | |
| 3 | FY02 OAD Expenditures | \$ 972,713.00 | | |
| 4 | Court Reporter Expenditures (excluded from analysis) | \$ (11.00) | | |
| 5 | Shelby McCoy-Pettiford (remove from OAD Budget) | \$ (35,829.41) | | |
| 6 | Malcolm Hunter Overseeing OAD Office (1% of time) | \$ 1,715.38 | | |
| 7 | OAD FY02 Expenditures Adjusted | \$ 938,587.97 | | |
| 8 | <i>Position Cost Adjustments for Work Overseeing Cases Handled by PAC Attorneys</i> | | | |
| 9 | Staples Hughes (75%) | \$ 91,682.75 | | |
| 10 | Ann Marie DeLong (75%) | \$ 34,674.56 | | |
| 11 | Betsy Gurganus (50%) | \$ 19,274.79 | | |
| 12 | Total Cost of Administrating PAC Appeal Cases | \$ 145,632.10 | 15.5% | |
| 13 | Total FY02 Real Cost of OAD Office | \$ 792,955.87 | | |
| 14 | Total Available Attny Hours in OAD Office (8.83 x 1,920) | 15,681 | | |
| 15 | OAD Attny Hourly Cost | \$ 50.57 | | |
| 16 | OAD Attny Hourly Cost Unadjusted for staff time spent overseing PACs | \$ 51.01 | | |
| 17 | | | | |
| 18 | Percent of Appellate Office Time Spent Enhancing PAC Quality (e.g. consulting, mooting) | | | |
| 19 | | Cost of Time | Attny Hrs | |
| 20 | Beth Posner (1%) (7 months) | \$ 525.45 | 11.2 | 19.2 |
| 21 | Barbara Blackman (12.5% consulting & brief bank PAC cases) | \$ 11,557.88 | 240.0 | |
| 22 | Aaron Carlos (2%) | \$ 924.63 | 38.4 | |
| 23 | Anne Gomez (14%) | \$ 9,082.50 | 268.8 | |
| 24 | Janet Moore (2%) (2/3 thirds time) | \$ 1,297.13 | 25.6 | |
| 25 | Daniel Pollitt (2.5%) | \$ 2,940.78 | 48.0 | |
| 26 | Ben Dowling-Sendor (9%) | \$ 9,730.02 | 172.8 | |
| 27 | Charlesena Walker (10%) | \$ 8,075.69 | 192.0 | |
| 28 | Connie Widenhouse (5%) (2/3 thirds time) | \$ 4,161.89 | 64.0 | |
| 29 | Total Attny Time Cost to Office of Appellate Defender of Quality Enhancing Activities | \$ 48,295.97 | | |
| 30 | Total Attny Hours devoted to Enhancing PAC Quality | | 1,060.8 | |
| 31 | | | | |
| 32 | OAD Available Attorney Hours for Appeal Cases | | | |
| 33 | Total Attny Hours in OAD Office (9.584 attnys x 1,920) | | 18,401.3 | |
| 34 | Attny Hours Adjustment: Beth Posner 5 month LWOP | | (800.0) | |
| 35 | Attny Hours Adjustment: 12 months vacancies | | (1,920.0) | |
| 36 | M. Montgomery (4 mos) | | | |
| 37 | J. Edgerton (3.5 mos) | | | |
| 38 | D. Carman (4.5 mos) | | | |
| 39 | Total Available Attny Hours in OAD Offices Adjusted (8.83 attny x 1,920) | | 15,681.3 | |
| 40 | % of Attny Hours devoted to Enhancing PAC Quality | | 6.8% | |
| 41 | Total Attny Hours Available for Appeal Case Work | | 14,620.5 | |
| 42 | OAD Administrative Processing Costs of PAC Appeal Cases | | | |
| 43 | Total Cost of Administrating PAC Appeal Cases | \$ 145,632.10 | | |
| 44 | FY02 Total No. PAC Appointments by OAD | | 805.0 | |
| 45 | Cost per PAC Appeal Appointment | \$ 180.91 | | |
| 46 | <i>Source: State of NC General Ledger System Authorized Monthly Budget Report for the Period Ending June 29,2002. Run date: 7/17/2002,</i> | | | |
| 47 | <i>ATBD701. OAD appointments source: OAD, Appointments of Private Appellate Counsel by the Appellate Defender FY 2001-2002.</i> | | | |
| 48 | <i>Salaries were calculated by adding 24.95% to annual salary for benefits. Benefits include: FICA 7.65%, Hospitalization 11.7%, Retirement</i> | | | |
| 49 | <i>3.9%, and Disability, Life, and Unemployment 1.7%. All salaries include longevity bonus where applicable.</i> | | | |
| 50 | <i>Shelby McCoy-Pettiford was removed from OAD budget because she works for the Capital Defender and her salary was erroneously placed</i> | | | |
| 51 | <i>under OAD.</i> | | | |
| 52 | | | | |
| 53 | | | | |



Attachment C:
Matching AAD and PAC Appellate
Cases by Court, Type of Case, and
Number of Trial Transcript Pages

**Matching OAD and PAC Appellate Cases by Court, Type of Case,
and Number of Trial Transcript Pages**

| Case Type | OAD | | PAC | |
|--|-----------|----------------|-----------|----------------|
| | No. Cases | % of All Cases | No. Cases | % of All Cases |
| <i>COA Criminal</i> | | | | |
| No. Cases < 100 tp | - | 0.0% | 65 | 27.4% |
| No. Cases ≥ 100 tp | 50 | 100.0% | 172 | 72.6% |
| No. Cases ≥ 600 tp | 20 | 40.0% | 27 | 11.4% |
| No. Cases ≥ 1,500 tp | 11 | 22.0% | 9 | 3.8% |
| No. Cases ≥ 2,000 tp | 6 | 12.0% | 5 | 2.1% |
| No. Cases ≥ 100 and <600 tp | 30 | 60.0% | 145 | 61.2% |
| No. Cases ≥ 600 and <1,500 | 9 | 18.0% | 18 | 7.6% |
| No. Cases ≥ 1,500 and <2000 tp | 5 | 10.0% | 4 | 1.7% |
| No. Cases ≥2000 tp | 6 | 12.0% | 5 | 2.1% |
| <i>Sup. Ct. Capital Appeals</i> | | | | |
| No. Cases <1,000 tp | 0 | 0.0% | 0 | 0.0% |
| No. Cases >1,000 and ≤3,500 tp | 8 | 80.0% | 15 | 65.2% |
| No. Cases >3,500 tp | 2 | 20.0% | 8 | 34.8% |
| <i>Sup. Ct. Non-Capital Appeals</i> | | | | |
| No. Cases <200 tp | - | 0.0% | 8 | 33.3% |
| No. Cases >200 and ≤ 2,000 tp | 4 | 57.1% | 13 | 54.2% |
| No. Cases > 2,000 tp | 3 | 42.9% | 3 | 12.5% |
| <small>Document: AdditlQualAnalysis.xls; Desc, 8/25/03</small> | | | | |

| Percent of FY02 Appellate Case Dispositions that Resulted in Some Form of Relief by Case Type | | | | |
|---|-----------------|---------------|--------------------|---------------|
| (Looking only at PAC appellate cases that match the types of cases given to AADs) | | | | |
| % of FY02 Appellate Case Dispositions Resulting in Some Form of Relief | | | | |
| Case Type | OAD | | PAC | |
| | No. Cases | % of Total | No. Cases | % of Total |
| COA Criminal | 16 | 32.0% | 18 | 10.5% |
| Sup. Court Non-Capital | 1 | 14.3% | 4 | 40.0% |
| Sup. Court Capital | 4 | 40.0% | 4 | 26.7% |
| All Cases | 21 | 31.3% | 26 | 13.2% |
| Court of Appeal Criminal Appeals | | | | |
| Disp. | OAD (≥100) | | PAC (≥100 tp) | |
| | No. Cases | % of Total | No. Cases | % of Total |
| No Relief | 28 | 56.0% | 143 | 83.1% |
| Relief | 16 | 32.0% | 18 | 10.5% |
| Unknown | 6 | 12.0% | 11 | 6.4% |
| Total | 50 | 74.6% | 172 | 100.0% |
| Supreme Court Non-Capital Appeals | | | | |
| Disp. | OAD (≥200) | | PAC (≥200 tp) | |
| | No. Cases | % of Total | No. Cases | % of Total |
| No Relief | 6 | 85.7% | 5 | 50.0% |
| Relief | 1 | 14.3% | 4 | 40.0% |
| Unknown | 0 | 0.0% | 1 | 10.0% |
| Total | 7 | 100.0% | 10 | 100.0% |
| Supreme Court Capital Appeals | | | | |
| Disp. | OAD (≥1,000) | | PAC (≥1,000 tp) | |
| | No. Cases | % of Total | No. Cases | % of Total |
| No Relief | 6 | 60.0% | 11 | 73.3% |
| Relief | 4 | 40.0% | 4 | 26.7% |
| Unknown | 0 | 0.0% | 0 | 0.0% |
| Total | 10 | 100.0% | 15 | 100.0% |
| <p><i>PAC appellate case adjustments included:</i></p> <ul style="list-style-type: none"> -- No COA criminal PAC cases with <100 transcript pages --No Supreme Court Non-Capital PAC cases with <200 transcript pages --No Supreme Court Capital PAC cases with <2,000 transcript pages <p><i>These cases were excluded because OAD AADs did not handle any appellate cases similar to these and we wanted to compare dispositions of the same types of cases as closely as possible.</i></p> | | | | |