

SCOPE OF REPRESENTATION

IDS Policy:

This policy is intended to clarify some common questions about the scope of representation of indigent clients, and is not intended to be a comprehensive or exhaustive list of contractors' or public defenders' duties to their clients. In all situations described in this policy, the assigned contractor or public defender shall first determine whether there is a potentially meritorious claim to raise, or a valid and ethical action to take on behalf of a client, and the following obligations apply only if the contractor or public defender has so determined. The following obligations do not apply after the assigned case is finally disposed at the trial level and do not extend to representation on direct appeal in the Appellate Division.

(1) Adult Criminal Cases:

(a) If a contractor or public defender is assigned to a case that ends in a deferral or diversion (including a G.S. 90-96 deferral), the contractor or public defender has an obligation to ensure that the case is dismissed if the deferral or diversion is successful or to defend the client against the charge if the deferral or diversion fails.

(b) If a client fails to appear, the assigned contractor or public defender shall continue to represent the client on the original charge(s) and any related failure to appear charge, regardless of whether the client is rearrested, until:

(i) the prosecutor voluntarily dismisses the charge(s) with leave; or

(ii) for a period of six (6) months after the date of the failure to appear, at which point the contractor or public defender may file a motion to withdraw.

(c) At or prior to the time of final disposition at the trial level of a client's Driving While Impaired ("DWI") case, the assigned contractor or public defender has an obligation to seek to obtain a limited driver's privilege for the client.

(d) If a client's property has been seized as part of a criminal case or pursuant to a criminal forfeiture, at or prior to the time of final disposition at the trial level of a client's criminal case, and upon request of the client, the assigned contractor or public defender has an obligation to file a petition for the return of the client's property or to contest the forfeiture.

(e) At or prior to the time of final disposition at the trial level of a client's Driving While License Revoked ("DWLR") case, and upon request of the client, the assigned contractor or public defender shall take reasonable and appropriate steps to address any issues underlying the DWLR, if those issues are in the same county as the pending DWLR case. For underlying issues in other counties, the contractor or public defender shall give the client limited advice and guidance on how the client can address the matters.

(f) If a contractor or public defender is assigned to represent a client who has one or more prior convictions in North Carolina state court that are subject to challenge (*e.g.*, a guilty plea without counsel), one or more of the prior convictions would impact the trial or sentencing in the currently assigned case, and:

(i) The prior conviction(s) is(are) in the same county as the pending case: The contractor or public defender shall take reasonable and appropriate steps to challenge the prior conviction(s), including filing and litigating a motion for appropriate relief ("MAR"); for an extraordinarily complex MAR, a contractor may seek additional compensation outside of the

contract or a reduction in the contract's annual minimum and maximum number of disposed cases; or

(ii) The prior conviction(s) is(are) in another county: The contractor or public defender shall write to the Chief District Court Judge or the Senior Resident Superior Court Judge in the county of the prior conviction(s) and ask the Court to appoint local counsel to investigate and potentially file a MAR; or the contractor may seek prior approval from IDS to investigate, file, and litigate a MAR in the other county for additional compensation outside of the contract or for a reduction in the contract's annual minimum and maximum number of disposed cases.

(2) Juvenile Delinquency Cases:

(a) If a contractor or public defender is assigned to a case that ends in a deferral or diversion, the contractor or public defender has an obligation to ensure that the case is dismissed if the deferral or diversion is successful or to defend the juvenile client against the petition if the deferral or diversion fails.

(b) If a juvenile client fails to appear, the assigned contractor or public defender shall continue to represent the juvenile on the original petition(s) and any related failure to appear/secured custody order, regardless of whether the juvenile is rearrested, until:

(i) the prosecutor voluntarily dismisses the petition(s) with leave; or

(ii) for a period of six (6) months after the date of the failure to appear, at which point the contractor or public defender may file a motion to withdraw.

(c) At or prior to the time of final disposition at the trial level of a juvenile's case, and upon request of the juvenile, the assigned contractor or public defender has an obligation to file a petition for the return of the juvenile's property.

(3) Abuse/Neglect/Dependency and Termination of Parental Rights Cases (Respondent Attorney and Respondent GAL Services):

(a) A contractor's or public defender's representation includes attendance at and participation in mediations, child planning conferences, and pretrial conferences, as well as child and family team meetings to the extent possible.

(b) Prior to October 1, 2013, if a contractor or public defender is assigned to a case in which the abuse/neglect/dependency petition alleges that the client is a responsible individual pursuant to N.C. Gen. Stat. § 7B-807(a1) or the client completes a petition for judicial review and the case is consolidated with the abuse/neglect/dependency case pursuant to N.C. Gen. Stat. § 7B-324(b), the contractor or public defender has an obligation to represent the client at the responsible individuals hearing. If neither of those preconditions are met, the contractor or public defender shall have no obligation to represent the client at the responsible individuals hearing. Effective October 1, 2013, placement on the responsible individual list can no longer be consolidated with an abuse/neglect/dependency case.

(4) Child Support Contempt and Other Contempt Cases:

If a contractor or public defender is assigned to a pending child support contempt or other contempt case, including cases assigned on a per session basis, and the contractor or public defender has identified a motion that, if successfully litigated, would constitute a defense in the contempt proceeding, such as a Rule 60 motion or a motion to challenge paternity, the contractor

or public defender has an obligation to file such motion(s) because the State has introduced “the potential curtailment of the indigent’s personal liberty.” *McBride v. McBride*, 334 N.C. 124, 126, 431 S.E.2d 14, 16 (1993). The contractor or public defender shall also give the client limited advice and guidance on how the client can address other related matters, including recommending other motions such as motions to modify a child support obligation.

Adoption:

Policy adopted May 29, 2012; updated October 8, 2012, June 24, 2013, July 28, 2014, and December 1, 2014.

Authority:

G.S. 7A-498.3(c), 7A-498.5(c)(4).