

JANUARY 22, 2021 MEETING MINUTES

Commission on Indigent Defense Services

Legislative

Quarterly Meeting – January 22, 2021; 10:00AM – 2:00pm

Location: Zoom

Commissioner Attendees: Darrin Jordan (Chair), Dorothy Hairston (Vice Chair), William “Gus” Anthony, Art Beeler, Brian Cromwell, Joseph Crosswhite, Caitlin Fenhagen, Staples Hughes, Bryan Jones, Channing Jones, Stacey Rubain

Staff Attendees: Susan Brooks (Defender Administrator), D. Tucker Charns (Chief Regional Defender), Jeff Connolly (Regional Defender), Kristen DeSimone (Legal Associate), Whitney Fairbanks (Deputy Director), Margaret Gressens (Research Director) Carmen Jarmon (Financial Analyst), Sarah R. Olson (Forensic Resource Counsel), Mary S. Pollard (Executive Director), Elisa Wolper (Financial Officer)

Local and State Public Defender Program Attendees: Dawn Baxton (District 14), Cynthia Black (District 12), Glenn Gerding (Appellate Defender), Robert Kemp (District 3A), Laura Powell (District 29A), Samuel Snead (District 28), Wendy C. Sotolongo (Parent Defender), Dolly Whiteside (Chief Special Counsel), Eric Zogry (Juvenile Defender)

Other Attendees: Andrew Heath (NCAOC Executive Director), Mario Richardson (IDS Contractor)

The meeting was called to order by Darrin Jordan, who then proceeded with the welcome and conducted a roll call of members participating via telephone.

Approval of October 30, 2020 Quarterly Commission Meeting Minutes

Jordan opened the floor for members to discuss the minutes from the October 30, 2020 Commission Meeting.

Beeler moved to approve the minutes without amendment. Mitchell seconded the motion. The minutes were approved by unanimous vote.

State Government Ethics Act Reminder

Jordan reminded the Commissioners of their responsibilities under the State Government Ethics Act.

Jordan introduced NCAOC Director Andrew Heath to the Commission. Director Heath updated the Commission on the NCAOC’s Covid-19 protocols, including expiring and amended orders.

Director Heath also updated the Commission on the status of the NCAOC's e-Courts project, noting the pilot counties would "go-live" in the summer of 2021 followed by a three year roll-out.

Jordan then introduced new Executive Director Mary Pollard and welcomed new Commissioners William "Gus" Anthony & Bryan Jones.

Director's Report on IDS Business (Mary Pollard)

Executive Director Mary Pollard updated the Commissioners on the status of several central office projects.

- The Contracts Review Project was underway with Margaret Gressens, Research Director, well into identifying and compiling necessary data. Pollard said she expected to update the Commission at its next meeting.
- Susan Brooks (Defender Administrator) was researching best practices in Public Defender appointment process. Staff has invited the Sixth Amendment Project to present at the next Commission meeting.
- Regional Defenders, Tucker Charns and Jeff Connolly, were working to have the IDS website redesign live by March 1.
- Having conducted a handful of virtual townhall meetings with contract defenders, Pollard was moving to virtual brownbag lunches with the PD offices beginning next month.
- Given the uncertainties created by Covid-19, Pollard renewed the Central Office Lease in Durham for two rather than five years.

Remarks from the Defense (Dolly Whiteside)

Chief Special Counsel, Dolly Whiteside, provided the Commission with an update on her office, and Special Counsels' work during the pandemic.

Fiscal Report (Elisa Wolper)

CFO Elisa Wolper provided the Commission with a fiscal update. She began by advising the Commission that staff was at the early phase of its annual expansion budget and forecast work.

Update on 2021FY Spending & Recoupment (Elisa Wolper)

Pre-pandemic, Wolper considered IDS spending on PAC to be stable and almost fully funded. She reminded the Commissioners that most of the funding for the PAC comes from the General Assembly's annual appropriation, although it also is supplemented by the minimal lapsed salary generated in central and PD offices. Given the impact of the pandemic, Wolper ventured that she was not worried about funding for the remainder of the fiscal year.

Other matters of note for 2021 spending:

- Debt set-off was unpredictable but had been a steady and increasing funding source over the last few years. She advised no reason to be concerned things would change this year.
- Given the pandemic shut down might affect most of the fiscal year, she predicted that IDS might end the year with about \$5 million in revenue.
- Despite the pandemic and the fact that the mail had been unpredictable, demand was consistent and manageable.
- One reason IDS' spending generally kept pace with prior years was due to the large volume of contract work for which spending remained constant.

Wolper noted that while having \$5 million left over at the end of the year does not mean that IDS will have an extra \$5 million the following year, she felt comfortable advocating for some expansion. Future revenue generated by the \$15 increase in the appointment fee and the new \$2 General Court of Justice fee would justify a targeted rate hike. Wolper also noted that the expected availability in current funds might make opening a new public defender office easier, since some costs associated with opening a new public defender office are non-recurring. Alternatively, the Commission could consider increasing the rates; however, all costs associated with rate increases are recurring.

2022FY Budget Requests (Elisa Wolper/ Mary Pollard)

Wolper updated the Commission on the ongoing expansion budget request process through the Office of State Budget Management. Wolper informed the Commission that staff intended to ask for the following.

- \$17 million for meaningful but not full PAC rate restoration continues to be IDS' top priority.
- Funding to create positions in specialized defender programs where the use of PAC is not ideal.
- A two-part request for funding to begin a statewide public defender program. Part one would fund a strategic plan for expansion. Part two would fund several new or expanded public defender offices over the biennium (Cleveland/Lincoln Counties; expanding District 5 into Pender County; and splitting Districts 1 and 2).
- Funding for the IT strategic plan.

Targeted Rate Increases

Pollard turned the Commission's attention to the memo in their supplemental materials discussing targeted rate increases. She noted upfront that the memo did not include parent defense because she and Wendy Sotolongo, Parent Defender, were hopeful that IDS might soon have an alternative funding stream to supplement those rates.

As explained by Pollard, the issues considered when developing the suggested rate increases included:

- Growing lack of qualified counsel in high level felony cases and potentially capital cases.
- The increasing complexity of DWIs and the frequency with which they are handled in superior court.
- The relative low number of other high-level felonies and potentially capital cases proceeding non-capitally and the related limited impact on demand of increasing rates for those case types.

Pollard noted that the memo did not include contracts but that it had been brought to her attention by regional defender staff that prior rate increases had included contracts, and that past representations had likely been made to contractors that they would be the beneficiaries of interim rate hikes. Wolper estimated that adding contracts would increase demand by approximately \$200 thousand and that she was comfortable with that.

Fairbanks noted that increasing rates in contracts might be an administrative burden and suggested moving forward for hourly rates and tabling contracts. Mario Richardson explained that while we often hold adjustments to contract until they are renewed, a hold this time would be harder to justify because renewal dates were pushed forward due to the impact of Covid-19 on contractor workload.

Pollard requested the Commission move forward with both if it decided to move forward at all. Pollard noted that given the history she would like the Commission to consider raising contractual rates this time, but that going forward it should be clear that contract rates would remain the same for the negotiated term and would only be raised upon renewal.

Commissioner Beeler moved the Commission to increase the rates, including the contractors' rates but delegated to staff how the comparable contractor increase would look. Hughes seconded the motion. All Commissioners in attendance voted yes.

Pollard thanked the Commission.

Discussion of Legislative Session (Mary Pollard)

IDS Proposed Initiatives

Pollard noted that funding matters discussed earlier by Wolper are the thrust of IDS' legislative session priorities. Other priorities might include NCPLS expansion budget and CJLeads access.

PD Expansion

Pollard reminded the Commission that at least three local jurisdictions continue to actively pursue new or expanded PD offices—a new office in Cleveland/Lincoln Counties; expanding

District 5 into Pender County; and splitting Districts 1 and 2. She opined that this expansion made sense for quantitative and qualitative reasons.

Commission Business (Darrin Jordan)

Update on Work of Diversity Committee (Dorothy Mitchell)

Hairston presented the most up-to-date draft of the Diversity Commission's proposed statement on diversity.

Fee Deadline Waiver Requests (Whitney Fairbanks)

Fairbanks asked the Commission to consider four requests for deadline waivers, noting three required Commission action and the other was included because it was from the same attorney and included for the same reasons. Noting that the provided justification might not normally merit waivers, given the impact of the pandemic on finances and on the way people do business, staff recommended the Commission approve the waivers.

C. Jones moved to approve; Fenhagen seconded. All Commissioners present voted to approve the waiver requests with percentage cuts as recommended by staff.

Executive Session (Darrin Jordan)

The IDS Commission went into Executive Session at 1:00pm to discuss litigation and personnel matters. The minutes of the Executive Session are being withheld from public inspection pursuant to and to G.S. 143-318.11(a)(3) and (a)(6).

The Commission returned to open session at 1:56pm.

All Commissioners present voted to appoint Juvenile Defender Eric Zogry to a new four-year term from January 1, 2021 to December 31, 2025.

All Commissioners present voted to appoint Capital Defender Robert Sharpe, Jr. to a new four-year term from January 1, 2021 to December 31, 2025.

Meeting adjourned by acclamation at 2:00pm.