

OCTOBER 30, 2020 MEETING MINUTES

Commission on Indigent Defense Services

Quarterly Meeting – October 30, 2020

Location – Virtual

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

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

Local and State Public Defender Program Attendees: Dawn Baxton (District 14), Robert Kemp (District 3A), Jonathan McInnis (District 16A), Shari Neal (Parent Defender’s Office), Shari Neal (Office of Parent Defender), John Neiman (District 18), Robert Sharpe, Jr. (Capital Defender), Susan Seahorn (District 15B), Samuel Snead (District 28), Wendy C. Sotolongo (Parent Defender), Beth Stang (District 29B), Deonte Thomas (District 10), Dolly Whiteside (Chief Special Counsel), Eric Zogry (Juvenile Defender)

Other Attendees: Olivia Howes (School of Government), John Rubin (School of Government), Michael Spinosi (School of Government), Morgan Weiss (State Budget Management)

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

State Government Ethics Act Reminder

Jordan reminded the Commissioners of their responsibilities under the State Government Ethics Act. Commissioner Hughes reminded the Commission that he also served on the Board for North Carolina Prisoner Legal Services, a contractor with IDS. Commissioner Beeler reminded the Commission that he is a part-time, temporary employee with Department of Public Safety.

Approval of December 13, 2019, April 24, 2020 and June 18, 2020 Commission Meeting Minutes

Chair Jordan opened the floor for members to discuss the minutes from the December 13, 2019, April 24, 2020 and June 18, 2020 Commission Meetings.

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

Chair Jordan welcomed new Commissioners William “Gus” Anthony and Brian Jones to the Commissioners and gave them a moment to introduce themselves.

Chair Jordan then introduced new Executive Director Mary Pollard and gave her a moment to introduce herself and describe her vision for IDS and the NC public defense system.

Pollard informed the Commission that in her first 90 days she had met with IDS staff and statewide defenders. She also noted that some of the changes she was considering included:

- Changes to the Public Defender (PD) nomination process;
- Review of RFP contract program;
- Long-term planning for expanding Public Defender Offices (PDO); and
- Minor, attainable things such as completing website redesign; expanding training for PAC; updating IDS Rules, policies, and performance guidelines.

Vice-Chair Mitchell took a moment to congratulate Chair Jordan as the president elect of the State Bar.

Fiscal Report

IDS Chief Fiscal Officer, Elisa Wolper, provided the Commission with a fiscal report. Wolper started by noting that a trend comparison like the one she had provided during past third quarter meetings might not be as useful to them as it had been in years past because 2020 was an anomaly.

Wolper then walked the Commission through IDS’s funding and spending.

Funding

- The FY20 budget, including county funding, was about \$140 million.
- IDS’s General Fund appropriation is about \$125 million.
- Approximately \$10 million in funding comes through recoupment.
- The remaining portion of IDS’ funding comes through contracts with local municipalities for PDO personnel and other smaller sources including:
 - Cy-pres awards, which can range from a few thousand to several hundred thousand dollars;
 - A handful of small grants and one six figure federal grant; and
 - FY21time limited funding to purchase equipment connected to federal Covid-19 relief.

Wolper reminded the Commission that she and NC Parent Defender Wendy Sotolongo had been working with AOC and DHHS over the last 18 months to get the pieces in place so that it could pulldown significant ongoing federal funding for some child welfare cases.

Wolper went over the receipt portion of IDS funding. She advised that recoupment was difficult to project because a substantial portion comes through the set-off debt program, which is a program run the NC Department of Revenue that intercepts state taxpayer's overpayments if he/she owes a debt—e.g., attorneys' fees—to the state. Because it impossible to model who will file a tax return, who will win the lottery, and who has a prior judgment for attorney's fees, it is almost impossible to project receipts. The other part of recoupment is collections through the Clerk of Court; there was a four percent decline in recouped funds during first quarter of FY21 compared to same time last year, which Wolper noted was not as great a decline as she had expected.

S.L. 2020-83 increased the attorney appointment fee from \$50 to \$75 and added a new \$2 general court of justice fee, both of which are intended to increase IDS funding through increased recoupment. While effective for costs assessed on December 1, 2020 and after, IDS will not realize much money from it immediately. Wolper projects it may generate approximately \$800 thousand in FY21. However, she also cautioned that while our budget is increased to reflect the new receipts, when receipts are not recouped, IDS cannot spend the money.

Wolper explained that IDS was very low in the priority list for fees and fines, which means that when a defendant pays through probation or the clerk's office, other fees and fines are satisfied before attorneys' fees. However, IDS is higher in the priority list for the debt set-off program which is why a significant portion of its recoupment is through debt set-off. In recent years the portion recouped through set-off debt has grown while the portion recouped through the clerk's office has shrunk.

Spending

- The largest chunk of IDS's spending is for private assigned counsel on a case-by-case basis or by contract.
 - Approximately \$7.6 million is used to compensate attorneys in the RFP contract system, with around 155 different contract attorneys.
 - A smaller portion is used to compensate attorneys for non-RFP contracts. Non-RFP contractors include NCPLS, the Council for Children's Rights, and a still small but growing number of contracts for parent defense and juvenile delinquency at the trial level.
 - IDS counts PAC cases based on fee applications, which are usually but not always attached to dispositions.
- The second biggest chunk of IDS spending is personnel costs for defender programs, both the local programs and the specialized statewide programs.
 - 300 PDs and APDs providing direct representation to clients in 35 counties
 - Work spans all cases types from misdemeanor to capital cases, from civil to criminal, and from trial to appellate work

- In FY20, PDs reported 133 jury trials and 234 first degree murder cases. IDS counts PD cases based on the number of dispositions, which may understate their work.
- Wolper noted that the PDOs reported almost 80,000 cases disposed during FY20. She expressed no surprise at the low number given the effect of the pandemic on filings and dispositions. However, she noted that while the offices were as busy as ever, there had been a downward trend in dispositions for many years even before pandemic.
- The smallest amount of IDS spending continues to be on administration. Wolper noted that it was unlikely that there was another agency with a smaller percentage of its budget going to administration.
- Across all types of representation, IDS spends the most on superior court criminal cases while the greatest number of dispositions is in the district court.
- IDS' and PDO's operating budgets continue to be very lean, with nothing left over at the end of a fiscal year even with some counties contributing to the cost of their local defender programs.

Spending Trends

- A growing portion of IDS' spending is on district court civil cases, including parent defense and the high-volume civil commitment work.
- The amount of IDS spending on experts and other support services for private counsel has continued to grow annually.
- During the first quarter of FY21, IDS spent \$3.1 million on PAC and experts used by both PAC and OCD/LPD in capital cases.

FY20 Spending and FY21 Projections

Wolper walked the Commission through the rolling average for IDS spending since July 2018. She highlighted several months of higher than trend dispositions in late summer/ fall of 2019. Wolper said she did not know why IDS' spending was higher during that time period but that did not think the increase had anything to do with IDS. She reminded the Commission that the demand on the IDS fund largely was driven by outside forces such as local LEO and judicial policies.

Noting that interim payments typically represented around 1.7% of IDS fee applications, Wolper pointed to spike in interims paid in the last quarter of FY20. Wolper speculated this was the result of IDS encouraging attorneys to seek and judges to grant interim payments during the court slow-down. Wolper advised that it was better to spend the money during FY20 because we knew we had availability then. She expressed satisfaction that interim payments had been beneficial to both the attorneys (paid despite reduction in dispositions) and IDS (spread the cost out).

In addition to changes in when attorneys billed, Wolper said she was also keeping a close eye on the number of withdrawals during the court slow-down. Withdrawals are monitored as a possible proxy for attrition in the ranks of attorneys providing public defense. Since the system needs a robust army of qualified attorneys, IDS was concerned that the pandemic and related economic downturn might lead some attorneys to leave the practice.

Other matters of interest from end of FY20:

During FY 20, the PDOs relayed anecdotes of large case backlogs. This is difficult to interpret since AOC data shows not only a decline in dispositions beginning at the end of March 2020 but also a decline in filings. However, the number of pending cases in those counties on June 30, 2020 was 6% higher June 30 of 2019. The PDOs also relayed anecdotes of mass dismissals of minor charges by certain DAs.

If FY20 was an anomaly, Wolper said that IDS' contractor system at least provided some predictability in spending and some assurance that at least a portion of the PAC continued to be paid during the last quarter. While IDS would have to spend some time truing up the contracts due to shortages and overages created by the pandemic and court slow-down, spending on the system was still more predictable than case-by-case PAC spending.

Commission Chair Jordan asked how IDS paid Contractor when they were paid for a guarantee of disposing of cases. Chief Regional Defender Charns explained that Contractors are paid based on assignment of cases and that because the courts had continued to assign contractors cases during the court slow-down, which those contractors would eventually dispose of and because the contract period was ongoing, the risk of overages was mitigated. Wolper added that many of the contractors were ahead of their expected disposition range before the court slow-down.

Wolper highlighted several initiatives IDS undertook during the last quarter of FY20 to mitigate the impact of the pandemic on PAC in addition to encouraging interim payments. It worked with the School of Government to subsidize registration for trainings historically provided for public defenders. It also expanded coverage for video conferencing with in-custody clients.

Wolper noted that not only had IDS ended FY20 with available funds but is also was likely to end FY21 with available funds because spending was well below normal, principally because of the continued slowdown in court activity and dispositions. She added that, if she could conclude with certainty that IDS would end FY21 with available funds, then she might feel comfortable advising the Commission that it could raise rates.

Wolper noted that, because of the substantial slow down their spending during FY20, the Office of State Budget Management (OSBM) does not expect the state's financial situation to deteriorate substantially in FY21 even if receipts are depressed.

Wolper turned to the conversation to projecting availability for the current fiscal year (FY21). She reminded the Commission that while there was the new "appropriation" through increased

fees she had discussed earlier, that there was no additional appropriation for IDS during the 2020 legislative session, because the General Assembly was unable to override the Governor's veto of the 2019 budget bill.

Wolper explained that if spending in the last half of FY20 had looked like the spending during the first four months of the fiscal year, then IDS would likely have ended FY20 with approximately \$4 million in carry forward debt. However, due to the halt in dispositions at the end of March 2020, the fiscal year looked more like the prior three fiscal years. If FY21 spending continues as is, then IDS will end the fiscal year with an approximate balance of \$4 million in the PAC fund .

Wolper projected that IDS would not see the impact of the pandemic until FY22 or FY23. She explained that the court system's limited capacity to process pending cases would spread the backlog out over several years. Despite the limiting effect of the system's capacity, Wolper expressed concern that the coming years would be difficult.

Wolper used spending on capital cases to illustrate her concerns about IDS' financial outlook in a year or two. In a normal year, Wolper would expect IDS to spend around \$7.5 million on capital defense each quarter. IDS spending during the first quarter of FY21, was down. She cautioned, however, that spending was less because there were fewer dispositions, not fewer cases. Consequently, IDS expects it to increase to normal levels as the courts begin to open. Adding to the concern, the expected \$7.5 million in spending on capital cases during a normal year has been around \$12 million for the last couple of years.

Wolper cautioned the Commission that if one effect of the pandemic was increased poverty rates and a related increase in the number of people eligible for court appointed counsel, then IDS could expect significant increases in demand and a return to those years where IDS saw spending climb year after year.

Wolper then turned the Commission's attention to rate increase. She reminded them that over the course of the last several years, the Commission had directed IDS to implement targeted rates as funds were available. In response IDS increased high level felony by \$5 in 2017 and lower level felonies by \$5 in 2018. However, during the 2019 legislative session, the Commission and IDS asked for an additional \$17 million in funding to allow it to implement meaningful increases to current PAC rates.

During its fall 2019 meeting, the Commission voted to use any additional appropriation the General Assembly approved to increase the district court rates currently still at \$55 an hour, where it has been stuck since May 2011, by \$5. Wolper cautioned that this would be an expensive increase because misdemeanor district court is the highest volume court.

She also reminded to Commission of other increases it had considered in the past including only increasing higher level cases or serious misdemeanors such as DWI. She clarified that the latter

would cost about \$6 million. It also had considered a 5% increase in non-capital appellate spending, because it would lead to only a modest increase in spending and would likely not affect IDS' ability to do other things.

Wolper said that due to concerns about IDS ability to sustain increased rates on annualized basis, she was more comfortable considering one-time expenditures, especially those that might lead to savings down the road. She lamented the fact that IDS might finally have some money to implement technological efficiencies just as AOC implements a freeze on technological development outside of its ICMS program.

Wolper also pointed out that it would be beneficial to the system and to IDS if we could take money from the PAC fund and transfer it to the PDOs and State Defender programs for the creation of targeted positions. She noted that, at this time, IDS does not have legislative permission to do so.

Commissioner Hughes asked Wolper to explain cy pres awards. Wolper explained that cy pres funds are excess funds or funds that otherwise cannot be distributed from class actions or other suits that by statute are directed to IDS and legal aid. She further explained that they are difficult to predict. One year they might be a couple of thousands of dollars and the next they might be over 100 thousand.

Wolper concluded with an update on IVE funding. Previously federal funding was only made available to attorneys who represented child welfare agencies; however, the federal government had revised its policy on reimbursement to include attorneys who represent parents. Because the money is only available in cases where at least one child is in the custody of the local child welfare agency, Wolper and NC Parent Defender, Wendy Sotolongo, had spent the last 18 months working with NCDHHS on defining eligible cases.

Wolper said she and Sotolongo predicted that 25% of child welfare cases would be eligible for federal reimbursement. Because IDS spends around \$11 million dollars a year on parent defense, the reimbursements could be substantial, perhaps even enough to allow the Commission to increase the rate in child welfare cases. However, eligibility technicalities made it difficult to reliably forecast the reimbursement. Pollard noted that Sotolongo had been thinking creatively on ways the money could be used to support the attorneys who do the work even if not in the form of hourly rate increase.

Commission Chair Jordan thanked Wolper for her update and then turned the floor over to IDS Executive Director Pollard for additional updates.

Discussion of Legislative Session

Pollard reminded the Commission that the 2021 legislative session is a budget session. She said that IDS would continue to advocate for increased funding for the PAC. She thanked Wolper for assisting her in understanding the formal budget request process with OSBM and less formal

process with the General Assembly. She echoed Wolper's concerns about the combined impact of the pandemic on state revenues and increased eligibility rates but expressed some optimism that IDS would be able to make the point that continued underfunding now will be costly later. She noted increased bipartisan support for criminal justice reform over the last several legislative sessions, pointing to the supportive questions and comments she got from members of both parties during a recent presentation she gave to a house committee.

Other requests she would like the Commission to consider include:

- Flexibility to move money from PAC fund to PD fund for targeted position creation; and
- Targeted PDO expansion.

Pollard advised that she also expected several recommendations from the Governor's task force on which she served as the public defense representative. For example, the task force had discussed counsel for all misdemeanors and representation at first appearance, both of which would cost IDS money. She advised she would continue to monitor recommendations so that the IDS Commission would be prepared if they started to look like possibilities.

Chair Jordan thanked Pollard for her update and then turned the floor over to NC Capital Defender Rob Sharpe.

Capital Defense 8 Case Limit

Sharpe advised the Commission that his office had 1,478 open cases in October 2018 and about 1,600 in February 2020, which was a net gain of about 5.8 cases per month over the sixteen months. Because dispositions halted in March 2020, but case numbers continued to increase, his office saw a thirteen percent increase in open cases between February and September 2020. He predicted a 25% increase by the end of February 2020, if the trend continued.

Sharpe said the need for qualified attorneys to take on capital cases has increased. He noted two recent retirements in his office and his work on relocating and filling the positions based on geographic need. He estimated one position would be filled before the end of the year and the second would be filled early in the new year. Due to the heavy caseloads his assistants were carrying, he did not think the office could onboard two new attorneys over the holidays.

Roster recruitment remains a priority. Sharpe reported that as of October 30, 2020, he had 369 attorneys on the roster of which 122, or 33%, had been added within the past five years. He said he had recently sent out a letter to the Chief Resident Superior Court Judges. He asked the Judges to recommend trial counsel for possible recruitment and received favorable response. Sharpe noted that approximately 10 new PAC have been added to the capital roster due to this effort. He also asked all current roster members who have not taken a case within the past two years to agree to take at least one new case.

Sharpe turned the discussion to IDS' eight-case cap for potentially capital cases. Sharpe described it as a "soft cap" that allowed him to exceed eight appointments based on various factors laid out within the policy. He pointed out that the cap is only applicable to PAC and not Assistant Capital Defenders, many of whom currently have more than eight open potentially capital cases. The "hard cap" beyond which he has not gone is ten.

Sharpe conceded that the eight is optimal case cap as it protects clients, but he informed the Commission that unless recruitment and retention improve, he soon would need to move the "soft cap" to ten cases. In support of his position he noted that as long as the IDS PAC rate was less than 50% of the federal panel rate and as long as NC PAC continue to make effectively less than they did in 2011, recruitment and retention will continue to be a problem.

Sharpe concluded by saying he considered this an emergency. Noting that lowering qualification standards would, in his opinion, be more dangerous than increasing the cap he asked the Commission to consider allowing him to raise the "soft cap" to ten potentially capital cases.

Chair Jordan opened the floor to discussion. Commissioner Fenhagen asked Sharpe what he would consider when deciding whether to assign a ninth or tenth case to a PAC. She asked specifically whether he would consider the attorneys experience or length of time on the roster. Sharpe assured the Commission that length of time on the roster would be considered in each case. He advised that his office already was making efforts to assign mentors to attorneys in their first year on the roster.

Commissioner Fenhagen asked Sharpe if he had an idea how many attorneys would be willing to accept nine or ten potentially capital cases. Sharpe answered, not many.

Commissioner Beeler asked what Sharpe's long-term plans were. He noted that raising the cap does not address the real issue which is attracting qualified attorneys. He reminded the Commission that this has been an issue the entire time he has been on the Commission. Chair Jordan added that Pollard gets emails and phone calls from Superior and District Court Judges from around the state complaining about the lack of qualified attorneys in all case types.

Commissioner Hughes observed that the ultimate solution to this problem is the abolition of capital punishment. He posited that the Commission might need to consider cautiously advocating for the abolition as the financially smart thing to do.

Commissioner Hughes then asked Sharpe whether there were places in the state where there was a surplus of capital PAC. Sharpe answered that Robeson and Cumberland counties had the greatest demand. As a result, he relocated an ACD position from New Hanover to Robeson. He also moved a Buncombe position to Robeson. He added that there was a real dearth of counsel in the northeastern part of the state. In one county, he had two attorneys on the roster, but they were in the same firm. He noted that the pressure was lower in some of the PD districts as the Chiefs had stepped up and taken a lot of appointments.

Commissioner Hughes followed up by asking if it was possible to utilize out-of-county appointments. Pollard commented that times may have changed such that out-of-county appointments were no longer as controversial as they once were. She pointed out that judges call her regularly and ask for out-of-county appointments because the in-county attorneys are struggling under untenable caseloads.

Circling back to Commissioner Beeler's question about the legislature, Pollard said that the Commission and IDS needed to be ready to explain just how much money IDS spends on capital post-conviction and remind them how it looked in the 1990s when NC did not have performance standards or case caps.

Alamance County Early Representation Project

Pollard pointed the Commission to the complaint in the ACLU/Alamance County case and quickly briefed them on the litigation. Even though IDS was not a party to the litigation, the former Executive Director Maher agreed to contract with attorneys to provide representation in district court for first appearances.

Jeff Connolly, Regional Defender, worked to identify demand and attorneys to cover it and IDS signed contracts with three attorneys in July 2020. Sometime in August or September, the Alamance bench began asking the IDS contract attorneys to cover unscheduled superior court appearances as well. While this was outside IDS contractual obligation, because the cost was relatively low and in the interest of gathering more data, Pollard agreed to cover the additional superior court work until the end of October.

Pollard informed the Commission that in the first 90 days of the contract, IDS paid approximately \$15,000 to cover the sessions it had contracted to cover. The additional unscheduled superior court session was only about \$720 more. She then highlighted some additional numbers from August and September:

- IDS contract counsel represented 41 clients in first appearances in superior court of which the court released three;
- One IDS contract counsel represented one hundred clients in the district court, of which the court released 35; and
- One IDS contract counsel represented 118 in the district court, of which the court released fifty.

Pollard said that she believes counsel at first appearance helps; however, she noted that it may take a long time before IDS has enough data to tell how much. She pointed out that the courts releases might also be motivated by the pandemic or by the additional steps the judges must take in order to impose a bond.

Pollard recommended that IDS continue to cover the costs during the injunctive relief period of the litigation. She noted the costs were currently nominal and IDS had the ability to cover it now and probably throughout the injunctive relief period.

Pollard asked the Commission to keep in mind that Alamance is one of 100 counties. IDS does not cover representation at first appearances in any of the other counties unless it is through public defender offices. If there comes a time when—either by statute or court order—IDS is required to provide counsel at first appearance within 48 hours of being arrested for minor misdemeanor charges, then IDS will have to spend a lot more money.

If the legislature passes a bill that requires representation at all first appearances, then it will have to provide additional funding. Pollard is concerned, however, that instead we will see a county-by-county litigation-based approach, which will not come additional funding.

NCAOC eCourts Initiative

Pollard reminded the Commission that AOC had informed IDS in the summer of 2019 that it would no longer allow changes or enhancements to legacy computer systems, even if they were fully funded initiatives, while AOC continued work on development and rollout of an integrated case management system. Beginning sometime in 2021, the AOC will migrate the PDOs to the new system. Because the migration might take up to five years, the freeze on enhancing current systems or implementing new innovations, has frustrated several judicial branch actors.

Pollard gave the example of UpTrust, an innovative text messaging program that would make it easier for APDs to communicate with their clients. PDOs that have used UpTrust report a significant decline in failures to appear. UpTrust has agreed to provide the service for free for one year and has tentatively secured outside funding for another year. However, AOC has declined to provide the eight to ten hours of TSD time IDS would need in order to implement the technology. Pollard noted that the programming IDS needs is not for an enhancement or change to a legacy system; rather, it is simply a program to port the information currently in CCIS-PD to UpTrust. AOC also rejected various suggested work arounds, including IDS providing the programming work.

Pollard concluded by advising the Commission that it is likely to hear updates on technology frustrations at most future meetings given the lengthy rollout period for ICMS and AOC's firm commitment to only making legislatively mandated changes. Pollard advised that IDS might be able to ally itself with the DA's conference if it decides to seek legislative mandates for technology fixes or improvements.

Commission Business

IDS Commission Statement on Diversity and Inclusion

Sarah Olson, NC Forensic Resource Counsel, updated the Commission on the IDS Diversity Committee's work on a statement on diversity and inclusion. She presented the statement and outlined the various steps the committee had taken to develop it, including reviewing statements of several similarly situated organizations, including the American Bar Association, the North Carolina Advocates for Justice, the North Carolina Association of Defense Attorneys, the North Carolina Department of Health and Human Services, and the code of ethics of the North Carolina Division of Adult Corrections.

Because diversity and inclusion are essential to fulfilling Indigent Defense Service's mission, the IDS Commission is committed to fostering diversity, inclusion, and equity in the public defense community. Diversity in the public defense community better ensures fair and just outcomes for a diverse client base.

Diversity is an evolutionary concept and encompasses race, ethnicity, sex, age, mental and physical ability, sexual orientation, gender identity and expression, religion, nationality, marital and parental status, and other characteristics and experiences. With greater diversity, we can be more creative, effective, and just, bringing more varied perspectives, experiences, backgrounds, talents, and interests to the practice of law and the administration of justice.

We pledge to facilitate diversity in hiring, retention, and career development within the public defense community. We recognize that achieving diversity is a process that requires an ongoing renewal of our commitment to strategies of inclusion.

Olson advised the Commission that drafting a statement and following it up with a plan is the approach recommended by the Office of State Human Resources. It is also the model that the NCAJ followed. Olson proposed that if the Commission adopted the policy, then staff and the Diversity Committee would begin the work of developing a diversity plan which would lay out the committee's priorities and serve as a roadmap for implementing diversity initiatives that further the ideas mission.

Commissioner Fenhagen said she considered the statement to be important and the ensuing diversity plan even more so. She asked if the Commission could include a directive to create a plan in the statement.

Commissioner Beeler moved to adopt the statement subject to Commissioner Fenhagen's suggestion that staff include a directive to develop a diversity plan in the statement.

Chair Jordan asked all Commission present to indicate yes if they agreed with Commissioner Beeler's motion. Seven Commissioners voted yes and the statement, subject to including Commissioner Fenhagen's suggestion that language directing IDS to develop a diversity plan using community input and statistical analysis was adopted.

2021 Meeting Calendar

Fairbanks proposed the Commission meet on the following dates during 2021:

- January 22,
- April 9,
- July 30, and
- October 29.

Commissioner Hughes moved that the Commission adopt the proposed dates. Seven Commissioners voted yes and the proposed 2021 calendar was adopted.

Election of Vice-chair

Chair Jordan nominated Vice-chair Mitchell to continue her service as vice-chair of the Commission. Commissioner Fenhagen moved the Commission for a vote on the nomination. Seven Commissioners voted yes and Vice-chair Mitchell was re-elected to serve as vice-chair for 2021 and 2022.

Waiver of 1-year Fee Application Deadline

Pollard drew the Commission's attention to a request to waive the 1-year submission deadline for a fee application from attorney Walter Peregoy. The waiver request was submitted too late for the Executive Director to approve and would require Commission approval. Mr. Peregoy submitted the application late because his office was flooded during a natural disaster. Seven Commissioners voted to grant the waiver.

State Ethics Commission Reminder

Fairbanks reminded the Commissioners that they were subject to the State Ethics Act and therefore required to take ethics training within six months of appointment and every other year thereafter. She further advised that Commissioners are required to submit a statement of economic interest by April 15 of each year and admonished that failure to comply could result in a fine or in removal from the Commission.

Quarterly Misconduct Report

Fairbanks advised the Commission that the NC State Bar had disciplined two attorneys who IDS regularly pays. She noted that one is a contractor and Chief Regional Defender Charns was aware of the issue and working with the attorney. The other attorney was a roster attorney who practiced in Henderson and Buncombe counties. She advised that the Executive Director, Chair, and Vice-chair had discussed the matter and concluded that IDS should reach out the PDs in Henderson and Buncombe to make sure they were aware of the

suspension and monitoring the attorney. The Commission indicated comfort with staff's plan of action.

The Commission took a ten-minute break then resumed the meeting in executive session.

The IDS Commission went into Executive Session at 12:10 pm to discuss litigation matters. The minutes of the Executive Session are being withheld from public inspection pursuant to and to G.S. 143-318.11(a)(3). It returned to open session at 1:10pm.

Meeting adjourned by acclamation at 1:15pm.