

2022.01.28 MEETING MINUTES

Commission on Indigent Defense Services

Legislative

Quarterly Meeting – January 28, 2022

Location: Virtual

Commissioner Attendees: Dorothy Hairston Mitchell (Chair), Art Beeler (Vice Chair), William “Gus” Anthony, Art Beeler, Brian Cromwell, Caitlin Fenhagen, Karen Franco, Staples Hughes, Brian Jones, Jan Pritchett, Stacey Rubain

Staff Attendees: Chad Boykin (Financial Services Staff Attorney), Susan Brooks (Defender Administrator), D. Tucker Charns (Chief Regional Defender), William Childs (Budget Director), Jeff Connolly (Regional Defender), Kristen DeSimone (Legal Assistant), Whitney Fairbanks (Deputy Director), Margaret Gressens (Research Director), Angela Henderson (Juvenile Contracts Administrator), Stephen Lich (Researcher), Sarah R. Olson (Forensic Resource Counsel), Susan Perry (Legal Assistant), Mary S. Pollard (Executive Director), Elisa Wolper (Financial Officer)

Local and State Public Defender Program Attendees: Woodrena Baker-Harrel (District 15B), Dawn Baxton (District 14), Jennifer Harjo (District 5), Paul James (District 21), Robert Kemp (District 3A), John Neiman (District 18), Laura Powell (District 29A), Robert Sharpe, Jr. (Capital Defender), Samuel Snead (District 28), Wendy C. Sotolongo (Parent Defender), Beth Stang (District 29B), Kevin Tully (District 26), Dolly Whiteside (Chief Special Counsel), Eric Zogry (Juvenile Defender)

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

Hairston Mitchell introduced and welcomed new Commissioner Karen Franco, appointed by the Indigent Defense Services Commission.

Approval of October 28, 2021 Quarterly Commission Meeting Minutes

Hairston Mitchell opened the floor for members to discuss the minutes from the last Quarterly Commission Meeting. The minutes were approved by unanimous vote.

State Government Ethics Act Reminder

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

Commission Business

Commissioner Beeler presented a motion to appoint Hairston Mitchell to the Commission seat (NCGS 7A- 498.4(b)(11)) recently vacated by the Honorable Lisa V. Menefee. Rubain seconded the motion and all Commissioners present voted in support of the motion.

Remarks from the Chair

Hairston Mitchell thanked Margaret Gressens, IDS Research Director, for her many years of service to IDS and to the public defender community.

Director's Report on IDS Business

Director Pollard introduced William Childs, Budget & Planning Director, to the Commission.

Alamance County Early Representation Project. Pollard reminded the Commission that IDS had ceased funding the project following the General Assembly's enactment of SB 350 which made it clear that the General Assembly did not intend to fund counsel at first appearances. Pollard informed the Commission that, as requested during the October 28 meeting, she had investigated alternative funding which would allow IDS to continue the program without using PAC funds. Former Commissioner Jenni Owen made grant funding available through the Office of Strategic Partnerships so that the program could continue for the time being. Commissioner Fenhagen expressed appreciation that IDS had secured funding for the project.

Contract Defender Program Update. Pollard updated the Commission on the offices work to replace the large-scale RFP contract program with the Managed Assigned Counsel ("MAC") highlighting the staff's work with the NC Administrative Office of the Courts' procurement team to issue an RFP for an online timekeeping and billing tool. She reminded the Commission that the timeline for ending the current system and starting the new one is short: pilots in June followed by full release in December.

IDS' Eight Year Plan. Pollard informed the Commission that Staff was making progress on the eight-year plan. Pointing to growing interest and excitement surrounding public defender expansion, she expressed her desire to expedite development. Acknowledging that it was ambitious, she stated her intent to have a plan with all funding requests necessary to implement it ready for the 2023 Long Session.

Other Matters. Pollard apprised the Commission on the status of a handful of other projects including:

- As in all prior years, IDS received the highest marks possible in its annual audit;
- Progress of IT director search;
- Website reception and work on standalone site for Office of Parent Defender;
- Progress of NC Administrative Office of the Courts' Remote Proceedings Taskforce and its work to continue using remote proceedings in some cases after the pandemic ends;
- Upcoming NC Administrative Office of the Courts' meeting on clearing pandemic related court backlogs; and
- IDS resource video.

Fiscal Year 2023 Budget & Preparing for the Expansion Budget. Pollard then turned the meeting over to Budget Planning Director William Childs who advised the Commission that he was working with Wolper and Pollard to develop an expansion budget for the Governor and the General Assembly. He noted that the request would focus on a pragmatic expansion of the public defender program. Specifically, he said that IDS intends to request funding to expand the District 5 office to include Pender County (currently only includes New Hanover) and to split District 2 from District 1 (currently appointed Chief Public Defender for District 1 staffs satellite offices in District 2).

Fiscal Report

Final FY22 Budget & Projections for Biennium. Chief Financial Officer Elisa Wolper provided an analysis of IDS' year-to-date spending but cautioned that it was still too early in the fiscal year to provide a fine level assessment. She noted that while spending to date looked more like FY2019 than either FY2020 or FY2021 she still projected that IDS would end the fiscal year with unspent money in the PAC fund without moving money from lapsed salary.

Wolper highlighted the trends in current year spending that most significantly impacted her cash flow analysis:

- Staggered staffing in new District 27B;
- Increased average fee application size;
- Significant increase in the number of capital assignments;
- New PAC rates;
- Inability to model receipts from set off debt until tax season gets underway;
- Increased receipts from new General Court of Justice Fees; and
- IVE Funding/ Parent Defender Reimbursement, which started coming in during January 2022.

Turning to projections for the next fiscal year, Wolper expressed concern that IDS would see “real growth” in demand in the coming fiscal year. However, she noted that IDS would also realize savings from District 27B during that year. She summed it up by predicting that IDS would need to move lapsed salary to the PAC fund as early FY2023 but reminded the Commission that there is nothing unusual about that.

Pollard relayed to the Commission the overwhelming expression of appreciation from the field for the Commission's work to implement PAC increases. Hughes requested Commissioners and others be mindful of the impact of rate increases on the clients who will see larger judgements for attorneys' fees.

Update from the Field

OJD Planning for Youth Homicide Appointments. Eric Zogry, Juvenile Defender, and Kim Howes, OJD Project Contractor, outlined the Office of Juvenile Defender's ongoing Youth Homicide Project planning. Zogry provided the Commission with a high-level procedural description of youth homicide law. Because there is no death penalty for children charged with murder, the cases are not covered by the Office of the Capital Defender and appointment of counsel is made at the local level. Further, because there is not a lot of overlap in the juvenile and criminal attorney rosters, there often is a gap in representation between the transfer proceeding, which occurs in the juvenile division, and the trial proceedings, which occur superior court.

Howes then walked the Commission through OJD's plan to close or tighten the gap in services. Using the Office of Capital Defender's appointment procedures as model, Howes told the Commission that OJD was focused on creating and maintaining a roster of qualified attorneys and moving the appointment authority from the bench to OJD.

Sam Snead, Chief Public Defender for District 28, expressed his opinion that a centralized plan was good. He asked whether OJD had considered having the attorney from the criminal division shadow the attorney in the juvenile division and pondered whether that would help attract attorneys who want to do the work but are hesitant to get on the juvenile roster. Zogry said OJD was exploring that model. Hairston Mitchell pointed out that the paired model works especially well in cases where the child is likely to be returned to the juvenile division.

Commissioner Hughes asked whether the juvenile expert role in select cases could be filled by an Assistant Juvenile Defender. Zogry said OJD was exploring that as an option given the AJDs already provide some direct representation. He acknowledged that limited human resources and time impact the office's ability to take many assignments. Howes pointed out that because the office consults on cases throughout the state, conflicts also limit its ability to take on direct representation.

Public Defender Association. Laura Powell, Chief Public Defender for District 29A, gave the report of the Public Defender Association. Powell commended the recently appointed new chief public defender in District 27B, Lydia Hoza, to the commission. She also updated the commission on the collective concern of the chiefs with efforts across the state to deal with the covid related backlogs. Powell reminded the Commission that, even at the height of Covid, she, the other Chiefs, and the APDs had been working every day on behalf of their clients, especially their incarcerated clients. She finished by thanking the Commission for its work to raise the PAC rates, noting that it would make it easier for the public defenders to recruit conflict counsel.

Commission Business

2022 Committee Assignments. Hairston Mitchell turned the Commissions attention to the committee assignments memorandum in the written materials. She reminded the

Commissioners that work done in the committees makes the Commissions work easier and advised anyone with questions to contact her, Pollard, or Fairbanks.

Chief Special Counsel Recruitment Policy. Fairbanks updated the Commission on the recruitment process for the Chief Special Counsel position. She read the names of the Commissioners who approved the plan into the record.

Requests for Relief from Judgments. Chad Boykin, Financial Services Staff Attorney, began by describing the issue to the Commission. Historically, if a former client complained to the Clerk of Superior Court when their state income tax return was intercepted by the Department of Revenue and used to offset a judgement for attorney's fees, the Clerk would sometimes cancel the interest accrued on the debt. In 2020, General Counsel for the Administrative Office of the Court advised clerks to discontinue the practice. In response, IDS was working through the Budget Committee on internal procedures.

Requests for Waiver of Fee Application Deadline. Boykin moved on to the pending Requests for Waiver of Fee Application Deadline, all of which fell outside the deadline for Director Approval and, therefore, required Commission approval. Boykin walked the Commission through the requests and relayed Staff's recommendation that they all be approved for payment. Beeler made a motion to pay the full fees for all requests, which Cromwell seconded. All Commissioners present voted to approve full payment.

Evidence.com. Boykin explained some of problems the public defender offices were having with digital technology, including their own outdated technology and expensive storage. He said that, after significant research, Staff believed that a contract with Evidence.com for the public defender offices would alleviate many of those problems. He analogized the program to NetFlix, explaining that the evidence will be stored to the cloud and the public defenders could stream it as needed.

Report of Review Committee. Fairbanks informed the Commission that the Review Committee met earlier in January and reversed Capital Defender Sharpe's decision to remove attorney Mark Key from the capital roster while disciplinary matters were pending with the NC State Bar. The decision came with a specific direction to Sharpe to provide additional oversight and support to Mr. Key.

Meeting adjourned by acclamation at 12:30pm.