

## **2023.07.28 Meeting Minutes**

### **Commission on Indigent Defense Services**

---

#### **Quarterly Meeting – July 28, 2023**

Location: Virtual Only | Zoom

#### **Commissioner Attendees:**

The Honorable Dorothy Hairston-Mitchell (Chair), Art Beeler (Vice Chair), Tonya Barber, Marshall Ellis, Caitlin Fenhagen, Karen Franco, Bryan Jones, Stacey Rubain, Miriam Thompson

#### **Staff Attendees:**

Chad Boykin (Assistant General Counsel, Financial Services), Kevin Boxberger (Regional Defender), Amanda Bunch (Communications Specialist), William Childs (Budget Manager), Whitney Fairbanks (Deputy Director/ General Counsel), Aaron Gallagher (Finance Officer), Angela Henderson (Contracts Administrator), Carla Huff (Recruitment and Training Coordinator), Stephen Lich (Senior Researcher), Sarah R. Olson (IDS Resource/Forensic Counsel), Mary S. Pollard (Executive Director), Chris Sadler (Research Director), Max Silva (Legal Assistant)

#### **Local and State Public Defender Program Attendees:**

Laura Gibson (District 2), Jennifer Harjo (District 5), Glenn Gerding (Appellate Defender), Lydia Hoza (District 27B), John Nieman (District 18), J. Chad Perry (Chief Special Counsel), Robert Sharpe (Capital Defender), Sam Sneed (District 28), Bud Woodrum (District 5), Eric Zogry (Juvenile Defender)

#### **Other Attendees:**

Beth Hopkins Thomas (NCPLS)

#### **Call to Order**

The meeting was called to order at 10:05 a.m. by the Honorable Dorothy Hairston-Mitchell, who then proceeded with the welcome of Mr. Marshall Ellis as a new Commissioner and by asking all attendees to introduce themselves.

#### **Remarks from the Chair**

Chair Hairston-Mitchell welcomed all in attendance and shared some employment/background details and career highlights about newly appointed Commissioner Marshall Ellis.

Commissioner Ellis had taken the oath of office prior to the July 28 convening.

#### **Adoption of the Agenda**

Commissioner Bryan Jones moved to approve the agenda, as amended to introduce newly appointed Commissioner Marshall Ellis at the top of the agenda. Commissioner Caitlin Fenhagen seconded the motion. The agenda was adopted unanimously.

## State Government Ethics Act

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

## Director's Report on IDS Business

IDS Executive Director Mary Pollard started the meeting by thanking the behind-the-scenes IDS office staff who continue to stay on top of day-to-day administrative tasks such as handling incoming and outgoing mail, incoming phone calls, printing, etc., even though the HVAC system on the fourth floor in the Durham office has been out since June 26. She thanked Lyn Turner, Max Silva, Cliff Bellamy, Kristen DeSimone, and Angela Henderson by name. Director Pollard also thanked the set-off debt staff, Julie Saunders, and Miranda Evans, of the Fiscal Department. Despite numerous procedural changes due to the implementation of eCourts, the team still reported \$5,265,520 of Department of Revenue receipts for this tax season, which is up almost \$700,000 more than last year.

### 2023 Legislative Session:

Executive Director Pollard stated there was not much to report since what was shared at the previous meeting in late April. It was anticipated that **the State budget** would be up for consideration again mid-August. IDS was hopeful the budget will allow for PD Office expansion. Director Pollard reported that PD expansion had **attracted local press**, especially regarding current attorney shortages. Local clippings of recent media coverage were included in the meeting packet. She said law makers and policy makers are receptive about the issue. Executive Director Pollard stated further that the reporter/producer in the WRAL piece incorrectly interpreted the data provided to them; an assertion made in the article was inaccurate, and she planned to ask for a correction and/or request that writers clarify data with IDS before publishing. Other than that, the piece was positive, and well received.

### 2023 Appropriations Act (PD Expansion; PD and PAC Funding)

Executive Director Pollard reported there was no pending legislation that would change the scope and services for which IDS is responsible, and there was no pending legislation that would affect PAC rates or work caseloads.

### Alternative Licensing Proposal

Executive Director Pollard reported she attended a recent meeting with Supreme Court Justice Berger, Jr., as well as Jessica Smith from the UNC School of Government about an Alternative Licensing Proposal, which Berger is a proponent of. The intent is to help with the attorney shortage in rural areas. In the written proposal, **law school graduates who did not pass the Bar could practice law in distressed counties under the 3<sup>rd</sup> Year Practice Rule and could potentially earn licensed status via means other than passing the Bar Exam**. Executive Director Pollard expressed concerns to Justice Berger about a lack of qualified attorneys to appropriately supervise the unlicensed attorneys who might be allowed to practice under this proposal. At a subsequent **Equal Access to**

**Justice** meeting, the topic was explored further. The proposal would be broadened not only to cover indigent defense, but also D.A.s' offices, and non-profits that provide legal aid. **Executive Director Pollard said there will likely be a Legislative Study Committee about the topic and that she will stay abreast of developments.**

Chair Hairston-Mitchell said this was concerning and she thanked Director Pollard for working with that Commission to address legal deserts in our state.

Chair Hairston-Mitchell reported also that **IDS Executive Director Mary Pollard was appointed to the Board of Legal Specialization with the N.C. State Bar.**

## **Fiscal Reports**

IDS Chief Fiscal Officer Aaron Gallagher reported a that IDS hired a new Accounts Payable Supervisor, Shannon Simmons. All the backlogs of employee reimbursements for travel and conference attendance were cleared. The contact information on the IDS website was also up to date, regarding whom to contact for each county with questions about fee apps. He encouraged attendees to call him or Ms. Simmons directly to field questions about fee applications, so the remaining staff can focus on keying the documents for payment. Mr. Gallagher and Chad Boykin, Assistant General Counsel, would be attending the Assistant and Deputy Clerks Conference in Wilmington to share what IDS is, how IDS works, and how clerks can collaborate with IDS to ensure that PAC attorneys are paid in a timely manner. **The state of fiscal affairs is "healthy," stated Mr. Gallagher.**

### Update on 2022-23FY Spending

Will Childs, IDS Budget Manager, reported that **FY2022-23 expenses were \$159.1 million in spending for the year. This was an increase in spending from \$140 million last year and just under \$130 million the year before.** Reasons cited were the increased volume of court operations, increased spending for PAC, and the additional costs associated with the new public defender offices. Per fund, spending for the PAC, PD, and Admin funds were approximately 54% for the PAC Fund, 44% for Public Defender Fund, and 2% for Administration. IDS has the leanest administration budget of all the N.C. State government. Mr. Childs will report on the budget in more detail at the October Commission meeting.

### Projections for 2023-24 Budget

Mr. Childs said he hoped to provide information about the FY2023-24 budget at the next meeting.

### Relief from Civil Judgments (if any)

Assistant General Counsel Chad Boykin shared cases in which the director granted Relief from Civil Judgments since the last meeting. He asked the commissioners to refer to the

meeting packet for more details. One case dealt with medical issues/disability; the other involved a sentence that was commuted, short of a pardon.

## Staff Reports

### MAC Program

IDS Regional Defender Kevin Boxberger and IDS Contracts Administrator Angela Henderson gave a report on the status of the Managed Assigned Counsel (MAC) Program, including a high-level overview of the program, and the challenges and opportunities being faced. He shared data on the number of attorneys who are currently serving, the numbers who have left/paused the program, and the reasons provided to him as to why some attorneys paused or terminated their contracts. Mr. Boxberger reported that of 111 attorneys in the MAC Program, 45 were paused (from one or more lists) at the time of the meeting; 11 terminated. The state is experiencing attorney shortages in both MAC and non-MAC counties. **The main reasons for pauses and terminations of contracts include increased and unsustainable workloads, procedural delays due to Odyssey, and prolonged lengths of time to reach resolution and/or disposition.** He reported that cases are taking longer to resolve, using data directly from the NCAOC website. Attorneys *and* clients are adversely affected. Since 1973, the ABA recommended a limit of 150 felonies and 400 misdemeanors per year. Mr. Boxberger anticipated that the ABA would release new standards soon, which would reflect lower numbers. **Volume was not the only issue; low pay rates that do not account for inflation, taxes, increases in overhead costs, and employee salaries also contributed.** Compensation rates are key for both recruitment and retention of attorneys.

Commissioner Caitlin Fenhagen thanked Mr. Boxberger for sharing the “stark” overview of attorney shortages and the high-level review of the MAC Program. She whether caseload limits were an option. Mr. Boxberger explained that getting jurisdictions to abide by the limits would be a great challenge.

Commissioner Fenhagen questioned at what point does the commission admit we cannot appoint attorneys without the legislature’s help paying attorneys appropriately and ensuring caseloads are manageable. She went on to express her opinion that this was “a call to a crisis.” With such large caseloads, she wondered what oversight is there for attorneys to see their clients who are in custody? With the large caseloads, opportunities for attorneys to see clients in custody are diminishing; she expressed extreme concern for the clients and their families.

Commissioner and Vice Chair Art Beeler also posed the question about a cap on the number of cases for contract attorneys. He asked, “Are we going to take this to the State Bar?” Mr. Boxberger said that one possible recourse is encouraging and empowering MAC and non-MAC attorneys to **file motions to withdraw from court-appointed cases, citing the Constitution and the Rules of Professional Conduct.**

**Another possibility that is being explored is a regional non-profit to contract with IDS to provide legal services.** There is momentum toward this, but it would not be a long-term fix. IDS needs additional funding so it can increase compensation rates.

Executive Director Pollard explained that, if there *were* set caseload limits, judges still may not appoint an attorney at all, or they may appoint someone unwillingly, both of which could lead to undesirable outcomes for the client. It is a crisis. IDS will continue to educate stakeholders and lawmakers, but more lawyers from across North Carolina are needed to do the work.

Mr. Boxberger reported that currently, five MAC counties offer virtual meetings with clients who are incarcerated. He said further, **while virtual meetings can fill an immediate need, encrypted Zoom meetings with clients are still no substitute for in-person meetings.**

Commissioner Tonya Barber, a practicing attorney in Wayne County, said physically going to the jails can waste valuable time. With two jails and one annex in Wayne County—all of which operate differently—videochats have helped significantly. She has her staff set up afternoons just for jail meetings.

Executive Director Pollard pointed out that Carla Huff, IDS Recruitment and Training Coordinator, and Amanda Bunch, IDS Communications Specialist, were on the call. She said, together they are improving recruitment efforts. These two alone can't solve the crisis or keep up with the demand, but their dedicated efforts toward recruitment of PAC and new Law School graduates to do the work of public/indigent defense and service would help.

**Angela Henderson, IDS Contracts Administrator, shared the step-by-step process by which MAC attorneys submit spreadsheets for payment each month for payment.** She expressed the need to automate this tedious process, as all work is done manually at this time. Automation could increase efficiencies and potentially prevent overpayment and duplicate payments.

#### Update on Technological Initiatives/Responses

IDS Business Analyst Jamie Blackwell gave an update on current technological initiatives of IDS and future goals. Since he came to work for IDS in February, Mr. Blackwell assisted with eCourts challenges and completed a complete work-through/evaluation of current IT resources and needs. He reported **that IDS contracted with JusticeWorks for its defenderData product that will be used to track time and ensure the MAC attorneys are paid** via a more efficient and user-friendly process for MAC counsel to report expenses. **The Go-Live date is February 1, 2024, for defenderData.** At the time of the convening, IDS was one month ahead of schedule in this implementation plan. Mr. Blackwell said he continues to upgrade existing IDS databases and consolidate other access databases, with the ultimate goal of modernizing all IDS systems overall.

## Minutes:

Commissioner Bryan Jones made a motion to approve the April 28 Commission Meeting Minutes as presented. Commissioner Thompson seconded the motion, after which the minutes were unanimously approved.

## Remarks from the Defense

### NC Office of Special Counsel

Chief Special Counsel Chad Perry provided a year-in-review update. April was his one-year anniversary as Chief Special Counsel. New attorney staff (3), one new legal assistant, and one cross training with office at Central Regional Hospital. Practicing commitments at the state facility is different from Raleigh office. Mary Vilas, special counsel, retired in February with 35 years of experience in the field. Relationships among the four office sites are improved. OSC is one office with four locations. Connections among each office and connections with IDS and PDs from across the state who represent indigent clients are growing. He reported that OSC has focused on training over the past year.

Mr. Perry shared the numbers of dispositions from state hospitals from FY 22-23. He said in the Raleigh Office the number of dispositions were unknown largely because of the launch of eCourts (Wake County is an eCourts pilot county.) He did report that during the previous fiscal year, the Raleigh OSC office reported more than 9,000 dispositions. Mr. Perry said the State hospitals have about 30 cases per week, vs. 100 cases per week in the Raleigh office.

Challenges included the failure of eCourts to fully consider commitment proceedings and how they work. He said, “Commitments are even more challenging [than adult criminal law cases in the four pilot counties].” He said that IVCs have many unique moving parts—hospitals, clerks, doctors, nurses, etc. And none of these categories of staff who are involved in IVCs were trained in eCourts.

As a result, he said the Raleigh office cannot accurately track cases. Offices have data on the numbers of cases they are aware of. But these are too often inconsistent with what the clerks have docketed. OSC is still “feeling errors” from the first week of the eCourts rollout. Therefore, there was no final data on the number of dispositions for the Raleigh office from FY22-23.

Mr. Perry reported that there are three new hospitals coming to North Carolina. They are:

- **Raleigh Oaks**, Garner (100 beds)
- A children’s facility - **Hope Center for Peace**, Fuquay-Varina (15 beds for kids)
- **R.J. Blackley** (to be converted to a 50-bed unit for juveniles/youth)

**UNC Wake Brook** is slated to close in September and a private hospital is to take over. The Raleigh office services all areas of Wake County except North Raleigh.

A new 2027 facility through **Wake Med** will include 150 beds.

Mr. Perry reported the biggest issue facing the OSC is incarcerated individuals who are waiting on beds; this is a systemic and a national issue.

He said further:

- A robust mental health budget is needed in North Carolina.
- Hospitals do not have qualified/adequate staff to take inmates who are awaiting transport.
- The lines of communication are open between OSC and the assistant public defenders from across the state who represent these clients.

He said he is in conversation with Disability Rights NC and is hopeful there will be policy changes to ensure all incarcerated individuals receive due process.

“Jail is not the ideal place to receive treatment, but it is a start,” he said.

#### North Carolina Prisoner Legal Services – Year in Review

Beth Hopkins Thoams, the Executive Director at NCPLS since 2020, shared an overview and update from the organization. At the time of the convening, there were more than 30,000 incarcerated individuals in NC prisons.

#### Highlights from the presentation included:

- NCPLS contracts with IDS to provide meaningful access to the courts. They work to correct illegal sentencing of clients.
- They have 19 attorneys and 14 support staff.
- They communicate exclusively via letters.
- They provide services with a mission to “empower and educate” through free legal representation, educational materials, and self-help packets.

Ms. Hopkins Thomas shared some key litigation accomplishments/successes. She provided data in the form of the numbers of “days saved” with a cost savings per day per prisoner.

Ms. Hopkins Thomas reported that Mary Pollard had previously led Hepatitis C litigation – this led to better screening, education and treatment, and the litigation was successfully settled in 2021. For this, NCPLS received national recognition from the Impact Fund.

- Future concerns included a spike in workflow from COVID-19 trial backlog, expansion of the scope of the work to involve a 25-year judicial review of life sentences (there

is a mandate for this but no hearing rights/procedures), and working with other groups to address solitary confinement litigation for the upcoming year.

## **Commission Business**

### IDS Rules and Policies

#### Providing Legal Representation in Juvenile Murder Cases – Update

The Commission on IDS approved rules for the Juvenile First Degree Murder Project in April 2023. State Juvenile Defender Eric Zogry shared a plan/timeline of the progression of the project. He said his staff are now working in four major areas: (1) process for appointment and payment of attorneys, and approval and payment for experts (2) creating a roster (3) continual and additional training and (4) stakeholder outreach to build awareness. He said he may come back to the Commission in October to ask for/approve a launch date.

#### Expert Payment Authorization – Change in Workflow

Executive Director Pollard advised the Commission that the Director of IDS will no longer sign off on expert fee apps. The Executive Director will continue to review and sign Capital fee applications and Capital Post-Conviction fee applications, but moving forward, Cati Rosu and her team will review capital expert fee apps, and Cati will sign/authorize all capital expert fee applications. (In non-capital expert fee apps, the judge authorizes payment for services.) Pollard noted that for various reasons signing and bringing little value to the process. No vote needed, information item.

### IDS Commission Appointments

#### Reappointment of Commissioner Fenhagen to the IDS Commission.

Motion by Bryan Jones, seconded by Stacey Rubain. The reappointment of Commissioner Fenhagen to the Commission on IDS was unanimously approved.

#### NCPLS Board

Kellie Mannette was reappointed to the NCPLS Board. Ms. Manette had previously expressed a desire to be reappointed to the NCPLS Board. She will serve a second term as the IDS appointee to the NCPLS Board. Executive Director Mary Pollard provided one other name to the Commission to vet was Tom Maher. The motion was made by Caitlin Fenhagen and was seconded by Karen Franco. The motion was unanimously approved.

### Other Business

#### Quarterly Misconduct Report (if any)

IDS Deputy Director and General Counsel Whitney Fairbanks reported that there was one attorney whose misconduct had led to censure. She included the information in the



meeting packet for the commissioners. No action was needed because the attorney had not submitted bills for services to IDS in more than 2.5 years. This was shared as an information item only.

Requests for Waiver of Fee Application Deadline (if any)

There were no waivers to be heard at the July meeting.

Executive Session

Pursuant to GS 143-318 11(a)(3), the Commission went into closed session to consult with an attorney employed or retained by the public body to preserve the attorney-client privilege between the attorney and the public body.

Motion to go into Executive Session made by Art Beeler.

Second by Bryan Jones, with a unanimous vote.

**The Commission returned to open meeting around 3:15PM.** No action was recorded from the executive session.

All agenda items having been addressed, the Chair adjourned the meeting at 3:15PM.

**Next Meeting:** October 20, 2023