

IDS

OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

February 2, 2024 Quarterly Commission Meeting
Meeting Material

Commission on Indigent Defense Services

February 2, 2024

Proposed Agenda

10:00 AM – 3:00 PM

Call to Order

Dorothy Hairston Mitchell

Introductions

Adoption of Proposed Agenda

State Government Ethics Act Reminder

Members of the commission/committee are hereby advised of their duty under the State Government Ethics Act to avoid conflicts of interest & the appearance of conflict & are instructed to refrain from participating in any matter coming before this commission/committee with respect to which there is a conflict of interest or appearance of conflict

Minutes of October 20, 2023, Commission Meeting

Remarks from the Chair

Dorothy Hairston Mitchell

Welcome New Commissioner George Doyle

Welcome New Public Defenders

Thank Peter Mack for Service

Director's Report on IDS Business

Mary S. Pollard

2024 Agenda for Legislative Short Session

IDS 2023 Audit Report

IDS and State Defender Relocation Update

Staff Reports

New Invoice System

Chad Boykin/ Chris Sadler

Juvenile Felony Murder Project – Implementation Update

Eric Zogry

Commission Business

IDS Rules & Policies

New Invoice System

Chad Boykin/ Chris Sadler

Other Business

IDS Commission Committee Assignments

Dorothy Hairston Mitchell

Executive Session the Commission shall meet in closed session as allowed by G.S. 143-318.11(a)

(3) [t]o consult with an attorney employed or retained by the public body to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged.

Adjournment

Dorothy Hairston Mitchell

Next Meeting: May 3, 2024 (Location to be determined)



OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

NCIDS.org

NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES

MARY POLLARD

EXECUTIVE DIRECTOR
MARY.S.POLLARD@NCCOURTS.ORG

DOROTHY HAIRSTON MITCHELL

CHAIR

Memorandum

To: IDS Commissioners
Cc: IDS Director
From: Whitney Fairbanks, IDS Deputy Director/General Counsel & Designated Ethics Liaison
Re: State Government Ethics Act and Lobbying Laws¹
Date: Updated October 2021

This memo is intended to summarize the main aspects of the Election and Ethics Enforcement Act that impact individuals who serve on the Commission on Indigent Defense Services.¹

I. STATE GOVERNMENT ETHICS ACT

A. COVERAGE AND DEFINITIONS:

The State Ethics Act went into effect on October 1, 2006, and applies to all “covered persons” as of January 1, 2007². “Covered persons” include the following:

- “Judicial officers”: All Justices and Judges of the appellate and trial courts, District Attorneys, and Clerks of Superior Court, or any person elected or appointed to any of these positions prior to taking office. G.S. 138A-3(21).
- “Judicial employees”: The Director and Assistant Director of the Administrative Office of the Courts, and any other Judicial Branch employees who earn at least \$60,000 per year and are designated by the Chief Justice as a judicial employee. 138A-3(42).

¹ This memo is a revision of one originally drafted by Danielle Carman in January of 2008, which was drawn in large part from a Memorandum titled “State Ethics Act—Effective January 1, 2007,” which was authored by Pamela Weaver Best, AOC Deputy Legal Counsel, and distributed to judicial officials on December 15, 2006, as well as materials distributed at an October 11, 2006 North Carolina Academy of Trial Lawyers CLE titled “Ethics and Lobbying: The New Statute.”

²Effective December 18, 2018, the North Carolina General Assembly recodified Chapter 163A, Elections and Ethics Enforcement Act, into Chapter 138A, State Government Ethics Act. See S.L. 2018-46.

- “Public servants”: Judicial employees and voting members of public boards or commissions with more than advisory authority. G.S. 138A-3(3) & (70)i.

So, all members of the IDS Commission are “covered persons” under the Act’s definition of “public servants.”³ To date the Chief Justice has not designated any IDS employees as “judicial employees.” Chief Justice Martin also has not designated any IDS employees as “judicial employees.” Thus, the IDS Director, Appellate Defender, Capital Defender, Juvenile Defender, Parent Defender, Special Counsel Supervising Attorney, and Chief Public Defenders are not subject to the Act.

B. SPECIAL DUTIES OF THE IDS DIRECTOR AND IDS COMMISSION CHAIR:

The head of each State agency, and Chair of each board or commission subject to the Act, have special obligations that are set forth in G.S. 138A-15, such as:

- At the beginning of each IDS Commission meeting, the IDS Commission Chair must remind the members of their duty to avoid conflicts of interest or the appearance of conflicts of interest, and must inquire of members whether there is a possible conflict with any issue coming before the Commission. G.S. 138A-15(e).
- The IDS Director and IDS Chair must notify the Ethics Commission of all new public servants or other officials who are covered by the Act, and provide those public servants or officials with copies of the Ethics Act and any necessary disclosure forms. 138A-15(h).
- The IDS Director and IDS Chair must consider the need for the development and implementation of in-house ethics educational programs, procedures, or policies. 138A15(g).

C. OBLIGATIONS OF PUBLIC SERVANTS:

1. Annual Statements of Economic Interest:

All members of the IDS Commission (and anyone who may be designated in the future as a “judicial employee” by the Chief Justice) must file an annual Statement of Economic Interest (“SEI”) with the North Carolina Ethics Commission by April 15. Because all of the information in each year’s SEI must be current as of the last day of December of the preceding year, a SEI cannot be filed prior to January 1 of the filing year. G.S. 138A-22(d). All SEIs are public records. G.S. 138A-23.

³ This memo describes the obligations of an IDS Commissioner as a “public servant” under the Act. It does not describe any additional or different obligations of “judicial officers.” IDS Commissioners who are also judges should receive information and training about their obligations as “judicial officers” directly from the AOC and North Carolina Ethics Commission.

The SEI form requires reporting of your ownership or interest in certain assets and businesses as of December 31 of the prior year, including:

- Real estate, including personal residence;
- Interests in public or private corporations or other businesses;
- Vested trusts created, established, or controlled by the filing person; and
- All liabilities, excluding indebtedness on a personal residence.

See G.S. 138A-24 and the SEI long form for the full contents of the required disclosure. The Ethics Commission has instructed filers not to leave any questions blank or the form will be returned and the filer may be subject to a fine or sanction; if the answer to any question is “none,” the filer should write “none.”

The Ethics Commission has a duty to evaluate SEIs on a biennial basis and issue written opinions about the existence or lack of conflicts of interest and potential conflicts of interest. G.S. 1385-24(e). If the Ethics Commission cites an actual or potential conflict of interest with regard to any member of the IDS Commission, the conflict must be recorded in the Commission minutes and brought to the attention of the Commission by the Commission Chair. G.S. 138A-15(c).

All new IDS Commission appointees must file a SEI and have it evaluated by the Ethics Commission before their initial appointment can be effective. G.S. 138A-22(a). The only exception is that a public servant who serves on more than one board may file one SEI and, if that public servant begins membership on another covered board during the biennial cycle, s/he is not required to file another SEI and the Commission is not required to evaluate the existing one again.

Any public servant who fails to file the required SEI will be notified by the Commission within 30 days of the due date, with a copy to the designated ethics liaison. If the public servant fails to file the SEI within 30 days of receipt of the late notice, he or she will be subject to a \$250 fine. If the public servant fails to file the SEI within 60 days of receipt of the late notice, he or she will be subject to disciplinary action. G.S. 138A-25(b).

It is a Class 1 misdemeanor knowingly to conceal or fail to disclose required information on a SEI. G.S. 138A-26. It is a Class H felony knowingly to provide false information on a SEI. G.S. 138A-27.

2. Mandatory Ethics Education:

As public servants, all members of the IDS Commission are required to receive ethics education within six months of their appointment, and must receive refresher education every two years thereafter. The Act also requires the designated ethics liaison to receive that education. G.S. 138A-14(c) & (f). Unless the Chief Justice designates any IDS employees as “judicial employees” in the future, no other IDS staff members are subject to this requirement.

The Ethics Commission has developed an educational program that satisfies the ethics education and the lobbying education requirements. See Section II.B. below. The combined program is about 2 hours long. The Commission has also developed an on-line training program that satisfies

these requirements, which is available at <http://www.ethicscommission.nc.gov/education/eduOnline.aspx>.

3. Ethical Standards:

Public servants and other covered persons shall not knowingly use their public position in a manner that will result in a financial benefit to the person, a member of the person's extended family, or a business with which he or she is associated. G.S. 138A-31(a).

Public servants and other covered persons "shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition . . . shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a directory or biographical listing, or the charitable solicitation for a nonprofit business entity . . ." G.S. 138A-31(b).

In addition, public servants must protect against conflicts of interest by continually monitoring their financial, personal, and professional interests. G.S. 138A-35(b). Public servants must also refrain from taking any official action, up to and including abstaining from voting, if the public servant or a person with whom the public servant is associated "may incur a reasonably foreseeable financial benefit from the matter under consideration" and that benefit "would impair the public servant's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the public servant's participation in the official action." G.S. 138A-36(a) & (b). If the public servant is unsure whether there is a conflict, the public servant should disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. G.S. 138A-35(a) and 138A-36(d).

Recusal is the stated way of avoiding conflicts of interest. G.S. 138-36. However, otherwise disqualified covered persons are allowed to participate in official actions if the interest or reasonably foreseeable benefit accrues equally to all members of the particular profession, occupation, or general class. G.S. 138A-38(a)(1). It has been the IDS staff's belief that the exception in 138-38(a)(1) allows Commissioners who are also private appointed counsel to take part in official actions that impact payments to private attorneys in indigent cases, such as changes in the hourly rates. On May 22, 2008, the State Ethics Commission issued an advisory opinion, which provides that Commissioners who are also private appointed counsel may take part in official actions that impact payments to private attorneys in indigent cases, such as changes in the hourly rates private attorneys, under the "safe harbor" in 138-38(a)(1).

4. Gifts:

A covered person "shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person . . . or for another person, in return for being influenced in the discharge of the covered person's . . . official responsibilities." G.S. 138-32.

Covered persons “may not solicit for a charitable purpose any gift from any subordinate State employee.” This ban does not apply if the solicitation is a generic request to all employees, such as requests to contribute to the State Employees Combined Campaign. G.S. 138A-32(b).

In addition, public servants shall not “knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal registered under Article 8 of [Chapter 163A]. G.S. 138A-32(c). Nor may a public servant “knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

- (1) Is doing or is seeking to do business of any kind with the public servant’s employing entity.
- (2) Is engaged in activities that are regulated or controlled by the public servant’s employing entity.
- (3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant’s official duties.”

G.S. 138A-32(d). Prohibited gifts must be declined, returned, paid for, or donated to charity or the State. G.S. 138-32(g).

There are a number of exceptions to the gift ban that permit public servants to accept food and beverages for immediate consumption at public events (such as IDS Commission meetings), reasonable actual expenditures for educational programs or meetings, and plaques or non-monetary recognition mementos. G.S. 138A-32(f).

In addition, 138A-32(f)(10) provides that the gift bans in G.S. 138A-32(c) and (d) do not apply to “[g]ifts given or received as part of a business, civil, religious, fraternal, personal, or commercial relationship not related to the person’s public service or position and made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.”

5. Honoraria:

Covered persons shall not accept an honorarium for “conducting any activity where any of the following apply:

- (1) The employing entity reimburses the covered person . . . for travel, subsistence, and registration expenses.
- (2) The employing entity’s work time or resources are used.
- (3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person’s . . . official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person . . . in conducting an activity within the duties of the covered person . . . or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person . . .” G.S. 138A-32.

6. Other Compensation or Benefits:

Public servants and other covered persons “shall not solicit or receive personal financial gain” for acting in the public servant’s official capacity or for advice or assistance given in the course of official duties. G.S. 138A-33.

In addition, covered persons shall not cause a member of the covered persons’ extended family to be hired or appointed to a position over which the covered person has supervisory authority. G.S. 138A-40.

D. ADVISORY OPINIONS FROM THE ETHICS COMMISSION:

The Ethics Commission has authority to render advisory opinions if requested by a public servant or other covered person. G.S. 138A-13(a). A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. G.S. 163A-157.

E. DESIGNATED ETHICS LIAISON:

Each agency is required to designate someone on staff as the ethics liaison to advise public servants of their duties under the law and maintain communication with the Ethics Commission. G.S. 138A-13(f). (IDS has designated the IDS Deputy Director/General Counsel to serve as our ethics liaison.

F. VIOLATIONS, INQUIRIES BY THE ETHICS COMMISSION, AND ACTION ON COMPLAINTS:

The Ethics Commission can accept complaints, investigate, and conduct hearings on alleged violations by public servants. If the Commission finds by clear and convincing evidence that a public servant has violated the Act, the Commission may issue a private admonishment or refer the matter for appropriate action to the entity that appointed or employed the public servant. The Commission can also refer criminal matters to the Attorney General and local district attorney. G.S. 138A-12(m)(1).

Willful violations of the Act by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order that could lead to dismissal.

II. AMENDED LOBBYING LAWS:

A. COVERAGE AND DEFINITIONS:

In varying degrees, the lobbying laws apply to numerous individuals as defined by G.S. 120C-100:

- “Designated individuals”: Those subject to being lobbied, including legislators, legislative employees, and public servants (as defined above).

- “Liaison personnel”: Any state employee whose principal duties, in practice or as set forth in his or her job description, include lobbying legislators or legislative employees.
- “Lobbyist”: Does not include designated individuals who are acting in their official capacity or individuals registered as liaison personnel.
- “Lobbying”: Includes direct lobbying and goodwill lobbying.

Except for any person designated as a liaison personnel under G.S. 120C-500, the provisions of Article 8 of Chapter 163A do not apply to state employees when appearing solely in connection with matters pertaining to their office and public duties. G.S. 120C-700(3). Article 8 of Chapter 1163A also does not apply to any person appearing before a committee, commission, board, or council at the invitation or request of the committee or a member thereof. G.S. 120C-700(2)

B. OBLIGATIONS OF PUBLIC SERVANTS: LOBBYING EDUCATION:

As public servants, all members of the IDS Commission are required to receive lobbying education and awareness training within six months of their appointment, and must receive refresher education every two years thereafter. G.S. 120C-103(a). Any IDS employee who may be designated by the Chief Justice in the future as a “judicial employee” will also become subject to this requirement.

C. ADDITIONAL OBLIGATIONS OF LIAISON PERSONNEL:

Every State agency must designate at least one and no more than two liaison personnel to lobby for legislative action. G.S. 120C-500. Subsection (d) provides that the Chief Justice shall designate “at least one, but no more than four, liaison personnel to lobby for legislative action for all offices, conferences, commissions, and other agencies established under Chapter 7A of the General Statutes.” In March 2009, the Chief Justice designated the IDS Director as one of the four liaison personnel for Chapter 7A agencies.

Liaison personnel are generally exempt from the lobbying laws, but are subject to the registration, reporting, and gift ban provisions of Article 8 of Chapter 163A. G.S. 120C-501.

Violations of the registration and reporting provisions are generally Class 1 misdemeanors and may subject the violator to civil fines. G.S. 120C-602.

1. Registration:

Annually, liaison personnel must file with the Secretary of State a Liaison Registration form and a State Agency Authorization Statement. No registration fee shall be required. G.S. 120C-200 and 120C-501(b).

2. Reporting:

Liaison personnel must file quarterly lobbyist reports with the Secretary of State under G.S. 120C-402. G.S. 120C-501. “The report shall include all of the following for the reporting period:

- (1) All reportable expenditures made for the purpose of lobbying.

- (2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000).
- (3) Reportable expenditures reimbursed by the lobbyist's principal, or another person on the lobbyist's principal's behalf.
- (4) All reportable expenditures for gifts given G.S. 138A-32(f)(1)-(9), 138A-32(f)(11), 138A-32(f)(12), and all gifts given under G.S. 138A-32(f)(10) with a value of more than ten dollars (\$10.00)."

In addition, if the liaison personnel incurs reportable expenditures in any month while the General Assembly is in session, the liaison personnel shall file a monthly reportable expenditure report.

3. Gifts:

The gift ban in G.S. 120C-501) applies to liaison personnel with respect to legislators and legislative employees. G.S. 163A-346(e). Subject to the gift exceptions in G.S. 138A-3(32), liaison personnel may not directly or indirectly give a gift to a legislator or legislative employee.

However, liaison personnel may make political contributions to legislators. G.S. 138A-3(32) defines a "gift" for purposes of the State Government Ethics Act as anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-3(d)(1), (2), or (3). However, pursuant to G.S. 138A-3(3), campaign contributions that are properly received and reported as required under Article 23 of Chapter 163A are not gifts. In addition, while G.S. 163-278.13B provides that no lobbyist may make a campaign contribution as defined in G.S. 163-278.6 to a candidate who is a legislator, G.S. 120C-100 provides that the term "lobbyist" shall not include registered liaison personnel.

D. LIMITATION ON IDS COMMISSION APPOINTMENT OF LOBBYISTS:

There are limitations on the ability of the IDS Commission to appoint lobbyists or recent lobbyists as one of the Commission's three appointees to the IDS Commission. G.S. 120C-304 has been amended to provide: "A lobbyist shall not be eligible for appointment by a State official to, or service on, any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 120 days after the expiration of the lobbyist's registration representing that person." Any appointment made in violation of this section is void. G.S. 120C-304

E. NO STATE AGENCY MAY CONTRACT WITH A LOBBYIST:

G.S. 120C-500 provides that "[n]o State agency or constitutional officer of the State may contract with individuals who are not employed by the State to lobby legislators and legislative employees. This subsection shall not apply to counsel employed by any agency, board, department, or division authorized to employ counsel under G.S. 147-17."

III. FORMS & QUESTIONS:

- The following link is to the North Carolina Ethics Commission website: <http://www.ethicscommission.nc.gov>. The annual Statement of Economic Interest forms, including the long form and no change form, can be accessed at that site.
- For general questions about your obligations under Subchapter II of the State Elections and Ethics Enforcement Act (formerly the State Ethics Act) as a member of the IDS Commission, please contact:
 - Whitney B. Fairbanks, IDS Deputy Director/General Counsel & Designated Ethics Liaison, at (919) 354-7205 or Whitney.B.Fairbanks@nccourts.org; or
 - Kathleen Edwards, Associate General Counsel, State Board of Elections and Ethics Enforcement at (919) 814-3600 or Ethics.Commissions@ncsbe.gov.
- For questions about the Statement of Economic Interest, please contact Lisa Johnson, Disclosure and Reporting Manager, State Board of Elections and Ethics Enforcement, at (919) 814-3600 or lisa.johnson@ncsbe.gov.

For questions about the mandatory ethics education, please contact Sue Lundberg, Associate General Counsel, State Board of Elections and Ethics Enforcement, at (919) 8143600 or sr.lundberg@ncsbe.gov



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NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES

MARY POLLARD

EXECUTIVE DIRECTOR
MARY.S.POLLARD@NCCOURTS.ORG

DOROTHY HAIRSTON MITCHELL

CHAIR

To: Members of the Commission on Indigent Defense Services

Re: Reimbursement of Expenses

Thank you for donating your valuable time to serve on the IDS Commission.

Reimbursable Expenses

Upon request, IDS will reimburse all Commissioners for the following expenses associated with your attendance at IDS Commission meetings:

- 1) Mileage to and from your place of business and the Commission meeting location (currently at \$.625 per mile);
- 2) Parking if a receipt is provided; and
- 3) The actual cost of any overnight lodging, not to exceed \$78.90 plus actual taxes incurred, if a valid hotel receipt is provided.

In addition, Commissioners who are not state employees may claim a \$15 per diem for each day of official service. See G.S. 7A-498.4(j) and 138-5(a)(1). Beginning January 1, 2017, the IRS considers all non-state employee commission and board members who receive a stipend or per diem to be employees for employment tax purposes. This means per diem payments will be considered income subject to income tax and social security/Medicare tax withholding. If you request a per diem, IDS will enter you in the HR-Payroll system as a temporary employee and you will receive a W-2 rather than a 1099 at year end. This change only affects per diem payments and does not affect reimbursement payments for mileage, parking, or lodging. If you choose to waive the "temporary employee" compensation, you will need to complete the attached waiver.

There will be no charge for lunches provided to Commissioners who RSVP in advance. Instead, IDS staff have established a way to pay for Commissioner meals that are preplanned as part of a Commission meeting, and then get reimbursed for all of those meals directly.

Reimbursement Procedure

To claim your expense reimbursement, please complete the attached form (AOC-A-25) and mail or fax it to the following address within 30 days of the Commission meeting:

Office of Indigent Defense Services
Attn: Cati Rosu
123 W. Main St., Suite 400
Durham, NC 27701
Fax: 919.354.7201

A fillable version of the form is available at:

<http://www.nccourts.org/Forms/Documents/1028.pdf>.

Upon receipt, we will approve reimbursement and forward the form to our Financial Services Division for payment. Please indicate at the top of the form if you are not a state employee.

STATE OF NORTH CAROLINA
Judicial Branch
Indigent Defense Services

**REIMBURSEMENT OF TRAVEL AND
OTHER EXPENSES INCURRED IN THE
DISCHARGE OF OFFICIAL BUSINESS**

G.S. 138-6

INSTRUCTIONS: Forward the completed form (remove any blank pages) and all receipts/supporting documents (itemized hotel receipt, registration, parking receipts, advance approval, etc.) to ids.employee.reimbursements@nccourts.org in a single email. Include your first name, last name, and "travel" in the subject line of the email.

ATTESTATION REQUIRED

A state-owned vehicle is unavailable, the mileage rate of \$.625 per mile applies.

_____ (Supervisor Initials)

A state-owned vehicle is available, a private vehicle is being used by choice, the mileage rate of \$.33 applies.

_____ (Supervisor Initials)

☐ Office of Special Counsel ☐ Public Defender's Office
☐ IDS Staff
☐ Capital Defender
☐ Appellate Defender
☐ Juvenile Defender

(Defender District)

Payee's Name And Address <input type="checkbox"/> Check If Name Or Address Change	Position/Title	Headquarters (city)	
	Personnel No. (top of paystub)	Travel For (month and year)	Date Request Prepared

Under penalties of perjury, I certify this is a true and accurate statement of the city of lodging, expenses, and allowances incurred in the service of the State. If Federal GSA standard lodging rates are used, I affirm that I complied with the policy criteria for such rates.	I have examined this reimbursement request and certify that it is just and reasonable.	Total Cost	\$	\$ 0.00
Signature/e-Signature Of Claimant	Signature/e-Signature Of Supervisor	Less Advance	\$	\$ 0.00
	Name Of Supervisor	Reimbursement	\$	\$ 0.00

FOR USE BY IDS FINANCIAL SERVICES DIVISION

COMPANY	ACCOUNT	CENTER	AMOUNT	Date
	532714			Verified And Approved For Payment:
	532721			
	532724			

TRAVEL (show each city visited)			TRANSPORTATION			SUBSISTENCE			OTHER EXPENSES	
Day	From	To	(1) Mode	Daily Private Car Mileage	Amount	(2) Type	In-State	Out-of-State	Explanation	Amount
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time:	Return Time:	R			H				
	Category Totals For This Day:						\$ 0.00		\$ 0.00	\$ 0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time:	Return Time:	R			H				
	Category Totals For This Day:						\$ 0.00		\$ 0.00	\$ 0.00
CATEGORY TOTALS:						Transport.	In-State	Out-of-State		Other Exp.
						\$ 0.00	\$ 0.00	\$ 0.00		\$ 0.00

- | | | | |
|-------------------------|--------------------------|----------------|-----------------|
| (1) Mode of Travel: | (2) Type of Subsistence: | In-State | Out-of-State |
| P - Privately-owned car | B - Breakfast | \$ 10.10 | \$ 10.10 |
| A - Air | L - Lunch | \$ 13.30 | \$ 13.30 |
| B - Bus | D - Dinner | \$ 23.10 | \$ 26.30 |
| R - Rail | H - Hotel | \$ 89.10 + Tax | \$ 105.20 + Tax |
| | 24-hr. period | \$ 135.60 | \$ 154.90 |

Check List: (1) Claimant and supervisor signature
 (2) Depart and return times required + overnight status to claim meals
 (3) Must have itemized hotel receipt, credit card receipt not accepted.

NOTE: Purpose of trip must be noted, please indicate purpose of trip under city visited.

VOLUNTARY WAIVER OF PER DIEM

Indigent Defense Services Commissioners who are not state employees may claim a \$15 per diem for each day of official service. See G.S. 7A-498.4(j) and 138-5(a)(1). Beginning January 1, 2017, IDS is required to report Commissioner per diem fees to the Internal Revenue Service as income. (If you have any questions about the tax issues related to per diem payment as a Commissioner, consult a financial professional.)

WAIVER

I hereby waive payment of per diem fees as set forth in G.S. 7A-498.4(j) and 138-5(a)(1) for my services on the Indigent Defense Services Commission. I understand this waiver will continue in effect for all services related to IDS Commission business including Commission and Commission Committee meetings until such time as I submit a written revocation of this waiver to Indigent Defense Services.

Name of Commissioner

Date

Signature of Commissioner



EDUCATION REQUIREMENTS FOR PUBLIC SERVANTS

Public Servants must complete the Ethics and Lobbying Education program provided by the N.C. State Ethics Commission within **six months** of their election, appointment, or employment. We recommend that this initial training be completed as soon as possible. Once initial training is completed, it must be repeated every two years.

Our 90-minute on-demand online program is available on our website under the Education tab. For your convenience, here is the [link](#). The new program is compatible with portable devices such as phones and tablets.

Live webinar presentations are also offered every month. These presentations are 90 minutes in length and give the opportunity to ask questions of the speaker. Registration information for those can be found [here](#).

For questions or additional information concerning the Ethics Education requirements please contact Tracey Powell tracey.powell@ethics.nc.gov or (919) 814-3600.

Draft Minutes

2023.10.20 Meeting Minutes

Commission on Indigent Defense Services

Quarterly Meeting – October 20, 2023

Location: In-Person | The N.C. Administrative Office of the Courts, Raleigh, NC

Commissioner Attendees:

The Honorable Dorothy Hairston-Mitchell (Chair), Art Beeler (Vice Chair), Tonya Barber, Brian Cromwell, Marshall Ellis, Staples Hughes, Bryan Jones

Staff Attendees:

Jamie Blackwell (Business Analyst), Chad Boykin (Assistant General Counsel, Financial Services), Kevin Boxberger (Regional Defender), Amanda Bunch (Communications Specialist), Tucker Charns (Regional Defender), 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), Mary S. Pollard (Executive Director), Chris Sadler (Research Director), Max Silva (Legal Assistant), Shannon Simmons (Accounts Payable Manager), Rebecca Whitaker (Defender Policy and Planning Attorney)

Local and State Public Defender Program Attendees:

Dawn Baxton (District 14), Jason DeHoog standing in for Laura Gibson (District 2), Glenn Gerding (Appellate Defender), Jonathan McInnis (District 16A), John Nieman (Virtual-District 18), Eric Zogry (Juvenile Defender), Lindsey Moore Standing in for Chad Perry (Office of Special Counsel), Woodrena Baker Harrell (District 15B)

Other Attendees:

Beth Hopkins Thomas (NCPLS), Phil Dixon (UNC SOG), Jackie Parker (OSBM), Emily Mehta (NC Judicial Branch-Research, Policy, and Planning Manager), Julianna Kirschner (Research & Policy Associate), Meagan Pittman (Research & Policy Associate)

Call to Order

The meeting was called to order at approximately 10:10 a.m. by the Honorable Dorothy Hairston-Mitchell, who then proceeded with welcoming guests and by asking all attendees to introduce themselves.

Adoption of the Agenda

Commissioner Bryan Cromwell moved to approve the agenda. Commissioner Marshall Ellis seconded the motion. The agenda was adopted unanimously.

State Government Ethics Act

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

Minutes from July 28, 2023

Commissioner Art Beeler made a motion to approve the minutes from the July 28 meeting of the Commission on IDS. Commissioner Bryan Jones seconded the motion, and the vote to approve was unanimous.

Remarks from the Chair

Chair Hairston-Mitchell read a press release that honored Vice Chair Art Beeler, who was nominated and selected earlier in the year for the One Voice United National Medal of Honor's Lifetime Achievement Award for his work with the Federal Bureau of Prisons.

Chief Public Defender John Nieman of Guilford County will retire on November 30. Chair Hairston-Mitchell recognized this milestone by reading highlights from his career and by thanking him for serving 27 years in public defense and leadership. Executive Director Mary Pollard, Commissioner Staples Hughes, Whitney Fairbanks, Woodrena Baker Harrell, and Chair Hairston-Mitchell shared well wishes with Mr. Nieman. Mr. Nieman appreciated the kind words.

Chair Hairston-Mitchell applauded the IDS staff for managing the "ensuing chaos" from the October 9 launch of eCourts in Mecklenburg County as well as the October 10 launch of NCFS, the new North Carolina Financial System, which went live across the entire state. Kevin Boxberger served as the only PAC resource for attorneys navigating eCourts for the first time in Mecklenburg County. Timelines were adhered to by IDS contracts and fiscal staff. And every email and inquiry received timely and appropriate response.

The John Rubin Award presentation was postponed until after lunch.

Director's Report on IDS Business

2023 Legislative Session:

IDS Executive Director Mary Pollard reported that the Legislature supported Public Defender Office Expansion by authorizing eight (8) new offices to cover an additional 22 counties. She stated it took 50 years to cover 38 counties; next year, it will go from 38 counties to 60; and then hopefully all 100 counties by the end of the decade.

2023 Appropriations Act – Became Law October 2: (PD Expansion; PD and PAC Funding):

The approved expansion created 134 new FTE positions: 84 new assistant public defenders, 8 chief public defenders, and support staff. However, the Legislature did not approve additional funding to raise PAC rates. The last PAC rate increase was in 2022 after ten years of the rate staying the same. Even with PD expansion, PAC will still be needed across the state to assist with court appointed cases. She called for a grassroots movement of lobbying the legislators from individuals other than IDS staff. "We just have to do better by them (PAC)," she said. The salary allotments for chief public defenders increased by 10% for assistant public defenders: 4% across the board, with the remaining 6% to be used at the discretion of the chiefs. Six additional positions were funded for District 5 because they expanded from just New Hanover County into Pender County as well.

Caseload Standards for Defenders

Defender Policy and Planning Attorney Rebecca Whitaker discussed public defender workloads and the national caseload study. The purpose of her presentation was to give a preview to the Commission of what was involved in developing the current “accepted” workload standards. The Commission, by statute, must develop/establish workloads for public defenders and public appointed counsel in North Carolina, and is a reported 22 years late on this. A recent national study was conducted by the RAND Corporation (in collaboration the National Center for State Courts (NCSC); the American Bar Association (ABA) Standing Committee on Legal Aid and Indigent Defense (ABA SCLAD); and Stephen F. Hanlon, Principal, Law Office of Lawyer Hanlon). The report was published in September 2023. Whitaker began by exploring, first, the ethical considerations for defense work. She covered the Rules of Professional Conduct and discussed professional guidelines intended to prevent burnout and attrition. These, along with their usefulness in budgeting, personnel, and resource needs, are reasons to have caseload limits.

With the foundation for the study set, Whitaker went on to emphasize national headlines, which painted a picture of public defense, nationwide, being “underfunded” and “struggling.” Then, she covered the three primary, cursory frameworks that currently exist in the United States and North Carolina for caseload standards: (1) The 1973 NAC Standards, which have become the de facto authority. (2) The 2019 a NC-specific study by the National Center for State Courts ordered by the General Assembly. And (3) the new 2023 national workload study released in September from the NAPD and RAND Group. For each model, she gave background information, the “how” of the development of standards, and resulting numbers for each model.

The 1973 NAC standards were “never intended to be the monolith authority.” Still, these are what most states go by. The 1973 data were not empirically based; they did not account for various types of cases, for example high level and low-level felonies. And, in general, they are too high. Plus, research was done more than 50 years ago. This is why data from that study cannot be used as a basis for establishing caseload standards in NC.

From the 2019 North Carolina Assessment: Whitaker began by defining the terms case weights and weighted caseloads. She shared that the DELPHI Method was used in the NC study (and the 2023 NAPD study). The North Carolina research / assessment began in 2017. It examined how much time attorneys were spending on cases over a seven-week time span involving journal reports. Additional surveys were used to gauge how attorneys felt about their time. Delphi panels published the findings. Results called for a very tall order/unrealistic number to aim for.

The 2023 NAPD study made six recommendations. Essentially, the recommendations across the board are to either increase staffing or reduce caseloads. The 2023 national study was published in September. The collaboration included RAND, etc. and took into consideration the 2019 North Carolina study. It did not, however, include capital murder,

juvenile, parent rep, civil commitment—it was only for adult criminal cases, to the exclusion of capital murder. The NAPD study acknowledges that differences across states cannot be accounted for.

In conclusion, Whitaker stated that the NAPD study could be a basis or a starting point for our own state study. Caseload standards are a statutory mandate, and at the time of the meeting, IDS staff recommended allowing the strategic planning committee to delve into the task. The goal would be to adopt caseload standards to fulfill the requirements of the law and to use as guidelines for our own Public Defender offices. Staff are ready to assist with the task.

Commissioner Staples Hughes thanked Whitaker for the presentation and the good information here. Executive Director Pollard echoed the sentiment. Noting strong bi-partisan support, Pollard stated that IDS needed reliable numbers to work with. She challenged the Commission to work through this mandate with the Strategic Planning Subcommittee and to be in a place to adopt new NC standards by the October 2024 IDS Commission meeting.

****SHORT BREAK****

Report from General Counsel

Changes to State Torts Claims Act

IDS Deputy Director and General Counsel Whitney Fairbanks reported that the budget includes two specific, substantive law changes in addition to the PD expansion reported earlier by the Executive Director. (1) Previously, “confidentiality” would expire after three years; with the new 2023 Appropriations Act, confidentiality will “last” for any duration that the General Counsel and the IDS Commission deem necessary. (2) Section 143-291 was modified such that moving forward, the N.C. Industrial Commission is the sole forum for hearing all state negligence claims. (Note: There is a limit of \$1 million per incident.) Stemming from deposition in recent litigation, IDS reported to have guidelines and standards in place from 2004. Fairbanks reported that with expansion and increasing numbers of assistant public defenders and chief public defenders, it would behoove IDS to update existing guidelines and standards and to expand and improve those guidelines and standards; the Office of the General Counsel will undertake this task in the coming months.

Fiscal Reports

IDS Chief Fiscal Officer Aaron Gallagher re-introduced and praised Shannon Simmons, IDS Accounts Payable Manager for her outstanding work. Gallagher reported that the fiscal team recently attended the N.C. Deputy Clerks Conference in Wilmington to rebuild and establish rapport with clerks on the role of IDS and working together to process fee apps more efficiently. He also thanked several IDS staff for their outstanding efforts.

Gallagher began the report by emphasizing the IDS agency values and the importance of working as a team to ensure IDS is a responsible steward of taxpayers' monies. The Financial services team is made up of two distinct sections: Fiscal and Budget. The Fiscal section deals with accounts payable, compensation for PAC, experts, capital attorneys, capital experts, contract attorneys, training and travel for staff, and trade vendors. The counterpart to those duties is providing excellent customer service at every turn. Gallagher shared that IDS successfully processed 123,400 fee apps in FY 2022 and 119,532 in FY 2023. He shared data about peak months (esp. June) when IDS pays out the most in fee apps and he reported that the PAC are the group that receives the largest amount of compensation/payout from IDS. The volume of work that is done in the department is "tremendous." All work is still paper based. "It is not perfect, but we are getting the work done," said Gallagher. IDS has also been fortunate enough to be able to reimburse for parking, bar dues, and travel for staff; this can continue until there is no more money in the budget to cover these extra expenses. Gallagher shared some of the current challenges with eCourts and the new North Carolina Financial System (NCFS)—both of which have slowed down payments. And he projected additional challenges in the coming months as IDS continues to adjust to eCourts and the NCFS. He stated that attorneys deserve faster turnaround time for the vital work done for such an important cause. On the horizon, software like DefenderData and other automations of processes will further streamline efforts and ensure that work gets done more efficiently and effectively.

****LUNCH****

Budget Reports

Update on 2022-23FY Spending

Will Childs, IDS Budget Manager, reported spending in FY2023 was \$159.1 million. The FY2024 budget has not yet been certified, but it will be a \$164.4 million budget; in 2024, seven of the eight new PD Offices will be funded. The PAC Fund is being reduced so the money can go to the expansion of PD Districts. In FY2025, the eighth office (Johnston County) will be funded. This is only possible because the PAC fund will be decreasing to support PD expansion.

Projections for 2023-24 Budget

Childs projected, with the current demand, what the PAC spending would look like with NO further PD expansion. "This is not good," he said. Childs made the budget projections to the Commission: Child's noted that his current projections indicated IDS might be \$5 million short in FY2025, with no increases in appropriations. He explained that the new offices required a \$4.7 million cut in the PAC fund this year, and followed by \$9.7 million next, noting that those were recurring debts. The cuts will happen *before* the new demand is there. The money has already been moved from the PAC Fund; it will take the year to catch it up. "If you move the money before the demand moves, IDS is

going to take a hit.” It is the hope that the General Assembly will consider increasing appropriations to IDS so the problem of losing attorneys is not further exacerbated. But if not, IDS will run out of money (to pay PAC) in 2025. Example: In 2015 IDS stopped paying PAC in April. Each year, IDS must pay up the deficit before “starting” the new fiscal year.

Childs shared projections on PAC Demand through 2028 if PD expansion continued according to plan. If the General Assembly provided more money for PAC, IDS would have to make up the shortfall first. But an increase in *any* amount of money from the GA for the PAC Fund would eventually be used to increase PAC rates and address attorney deserts.

The General Assembly is investing in IDS in a way it has never before. Pollard said that IDS will remain “optimistic.”

Remarks from the Defense

Attorney Shortages and Recruitment

IDS Regional Defender Tucker Charns reported that she and Kevin Boxberger offer support and guidance to 18 counties in NC, working with contract attorneys. To illustrate the dire status of not having attorneys to do court appointed work, she used Vance County as an example. In this attorney desert, not one local attorney was available to represent clients. Charns herself was appointed to hundreds of cases, and even Amanda Bunch IDS Communications Specialist, was appointed to cases. Though she is not an attorney, Ms. Bunch started receiving calls from clients who stated the judge had given them her name and contact number, and they thanked her for being assigned to their case. Contract attorneys are paid monthly, and they do not have to wait until disposition to be paid. Contract attorneys can also “pause” their contracts as personal and professional needs require—still, caseloads are the number one reason attorneys terminate contracts. These “perks” of being a contract attorney enabled Charns and Boxberger to recruit enough attorneys to address the cases in Vance County. After much effort, there are now 6 attorneys who can take cases in Vance County. This was not a light undertaking.

Overview of Private Investigatory Project Pilot

IDS Regional Defender Kevin Boxberger reported that the pilot will make a way for attorneys to apply for investigator funding outside the court system. It is designed to promote a streamlined process and to encourage attorneys to use investigators. eCourts has complicated the process in the pilot counties because of workflow—complexity of e-signing sequences and other e-processing holdups. There is not an implementation date at this time. Aside from encouraging use, this pilot project will allow IDS to track the usage of and spending on investigators.

Recognition 2023 John Rubin Excellence in Training Award

The University of North Carolina School of Government Professor Phil Dixon awarded the 2023 “Ruby” Award to Joseph Ross, the Senior Litigator in the Federal Defender’s Office for the Eastern District of North Carolina. He tries more cases than nearly any federal defender attorney in the system. He has led multiple numbers of training courses for the University of North Carolina School of Government, the Federal Defender Services Office, his office, and other organizations around the country. Ross shared that John Rubin was the first person to ask him to consider teaching and speaking in front of crowds. After his first speaking engagement, he realized that people were listening to him and what he had to say. After that, he expanded beyond the state of North Carolina and the United States. And he would continue to teach, talk, and tell stories about his experience. Following his acceptance remarks, Ross further recognized Commissioner Marshall Ellis as a former mentee from the federal public defender office. Ellis acknowledged that he had learned much from Ross.

Commission Business

IDS Rules and Policies

IDS Remote Work Policy

Assistant General Counsel Chad Boykin reported that Section 16-12 of the Appropriations Act requires compliance and reporting on employees who work remotely. This was not an action item.

Juvenile Felony Murder Project – Implementation Update

Roster applications are open for the Juvenile Felony Murder Project. Applications can be filled out online at the website of the Office of the Juvenile Defender. To date, 13 applications had been received.

The report that created the office of the JD and the training at the SOG. Released 20 years ago this month. With problems and deficiencies, now NC is the national model for juvenile defense. This was not an action item.

Requests for Waiver of Fee App Deadline (2)

There were two action items for fee application deadline waivers.

The first was a waiver for a capital case in Wake County—an eCourts pilot county. Boykin’s recommendation was to pay the fee app with a 20% penalty, due to lack of information showing why it was prevented from being submitted on time. Pollard interjected that she believed 20% was too harsh a penalty.

The second was due to a covid-related backlog.

Commissioner Bryan Jones made a motion to pay the first waiver request in full, at 100%. Seconded by Commissioner Tonya Barber. The motion passed unanimously.

Commissioner Art Beeler made a motion to pay the second waiver request at 100%; seconded by Commissioner Tonya Barber. The motion carried.

Other Business

IDS Commission Committee Assignments

Chair Dorothy Hairston Mitchell reported that the Commission Committee assignments would remain essentially the same.

Adoption of the 2024 Commission Meeting Calendar

Proposed commission meeting dates were received. Motion to accept the 2024 meeting calendar was made by Commissioner Staples Hughes and seconded by Commissioner Tonya Barber. Motion carried.

Election of Chair and Vice Chair

Vice-Chair Art Beeler initiated the election of the Chair and Vice Chair for the upcoming year. Dorothy Hairston Mitchell and Bryan Jones agreed to serve. With no nominations from the floor, Dorothy Hairston Mitchell was elected as Chair for another year. With no other nominations from the floor, Commissioner Bryan Jones was elected as Vice Chair for one year. Both decisions received unanimous “ayes.” Chair Dorothy Hairston Mitchell thanked Art Beeler for his service.

Commissioner Art Beeler went on the record to state the reason he believes IDS is so important. “Yes, it is about representation, but it boils down to giving people who are in prison and who are not in prison, people who are on probation and who are not on probation... HOPE. And hope is not something that is talked about a lot in the criminal justice system, but hope in my view, is one of the most important parts of the criminal justice system... Most people don’t get it, but it’s a matter of giving PEOPLE who have been arrested ... hope. I hope you never lose that.”

GovOps

UNC SOG Professor Dixongave the Commission a brief update on the recently passed Gov Ops litigation, noting that SoG professor John Rubin was researching the legislation for the purposes of a possible memo. .

Amended Confederate Monument Statement

Chair Hairston Mitchell recused herself from voting. Vice Chair Beeler asked the Commissioners to review the amended statement. Language was included in the original version from December 2022, that seemed as if IDS was speaking on behalf of the Judicial Branch. Marshall Ellis recused himself from voting. The Commission voted to adopt the amended statement and post it on the IDS website. The motion was made by Bryan Jones and a second was made by Brian Cromwell. The motion carried.

Executive Session

Chair Hairston Mitchell stated that pursuant to GS 143-318 11(a)(6), the Commission needed to go into Executive Session "... to consider personnel matters.

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. The Commission voted to approve proposed salary increases for the NC Chief Special Counsel, Juvenile Defender, and Parent Defender.

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

Next Meeting: February 2, 2024 (Location – Virtual Only)

DRAFT

Director's Report on IDS Business



RESULTS OF THE 2023 INTERNAL CONTROLS AUDIT FOR INDIGENT DEFENSE SERVICES

PREPARED BY
NCAOC INTERNAL AUDIT
JANUARY 10, 2024



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About the North Carolina Judicial Branch

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs.

About the North Carolina Administrative Office of the Courts

The mission of the North Carolina Administrative Office of the Courts is to assist and equip the General Court of Justice to fulfill its constitutional mandate of timely dispensing equal justice under the law.

About the Internal Audit Program

The Internal Audit Program serves the Judicial Branch by authority of [G.S. § 7A-343\(3a\)](#) which provides the foundation for its existence along with its responsibilities. The mission of the Internal Audit Program is to provide independent, objective assurance and consulting activities that add value and improve the operations of the Judicial Branch. Our activities are conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*.



ENGAGEMENT OVERVIEW

Objectives

The engagement was termed an internal controls audit, and the objectives were to add value and improve operations of Indigent Defense Services (IDS) by independently evaluating the effectiveness and efficiency of internal controls designed to mitigate and detect significant risks.

General Statute

This audit was conducted in order to fulfill [G.S. § 7A-498.2\(d\)](#), which requires an annual audit by NCAOC.

Audit Procedures

To accomplish this objective, we gained an understanding of the relevant internal controls and performed audit procedures to test the internal controls' design and function. These audit procedures included interviewing employees, observing operations, analyzing data, and reviewing financial records and other documents.

Scope

Our audit scope covered the period July 1, 2022 through June 30, 2023, however, was expanded for certain audit procedures to include the most current processes, controls, and transactions.

Audit Standards

This engagement was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*.



OVERALL RESULTS

Audit Opinion Defined

Due to our understanding of the organization's risks and internal controls, the nature and extent of audit evidence gathered, the sufficient resources available to us, and our experience assessing similar organizations within the Judicial Branch, we feel we have the ability to express an audit opinion on the effectiveness and efficiency of internal controls. We also feel the need for an audit opinion exists, as it increases the value and clarity on the level of assurance given to our audit client.

This audit opinion is a limited assurance opinion, which means the possibility exists for significant issues to be present and go undetected by the audit process. For uniformity, we use the following tier grading system for our assessment of internal controls:

Internal Controls Grading System	
Effective	Controls evaluated are adequate, appropriate, and effective to provide reasonable assurance that risks are being managed and objectives should be met.
Some Improvement Needed	A few specific control weaknesses were noted; generally however, controls evaluated are adequate, appropriate, and effective to provide reasonable assurance that risks are being managed and objectives should be met.
Major Improvement Needed	Numerous specific control weaknesses were noted. Controls evaluated are unlikely to provide reasonable assurance that risks are being managed and objectives should be met.

Overall Audit Opinion – Effective

Overall Audit Score – 96.4%

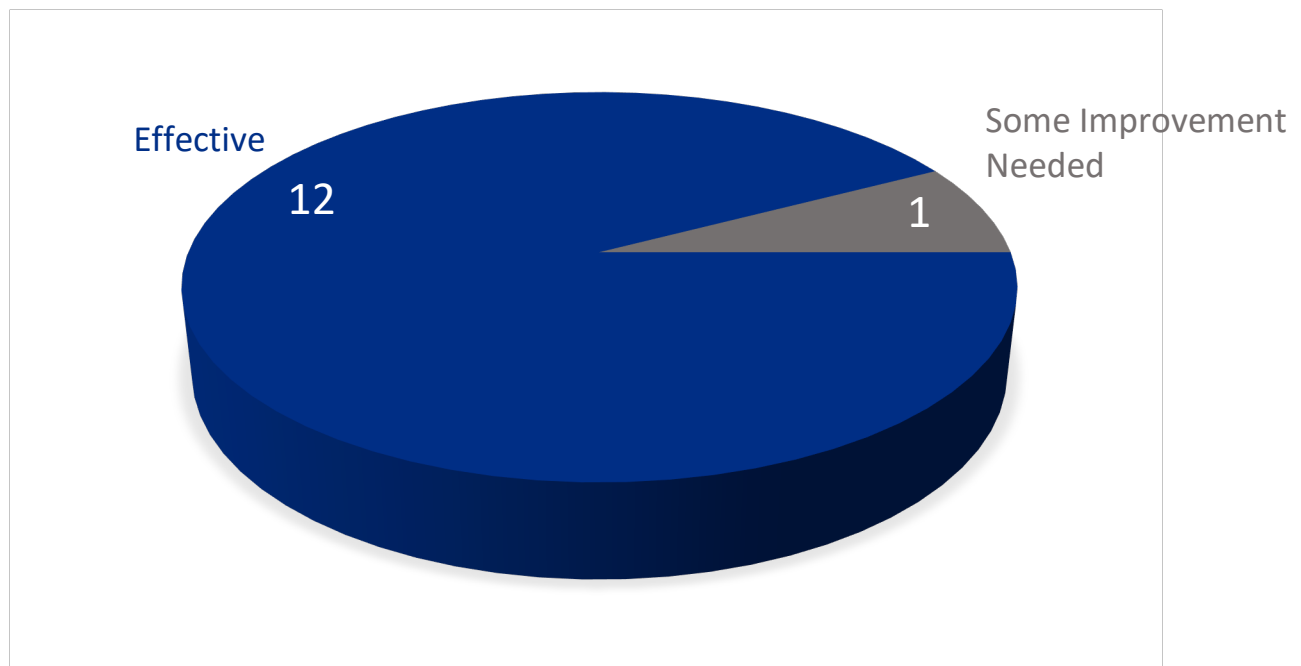


INTERNAL CONTROL EVALUATIONS

13 critical controls were evaluated including:

- Approval of attorney fee applications, including flagging those with certain characteristics to obtain multiple layers of approval
- Approval of time sheets to support hours spent by attorneys in capital cases or potentially capital cases
- Authorizations of judges to appoint attorneys to indigent defendants
- Authorizations of judges or IDS to use expert witnesses
- Compliance with policies for paying expert witnesses
- Authorizations of judges or IDS to use private investigators
- Compliance with the Travel Policy

The evaluation results are illustrated in the pie chart below:



There were no internal controls that required a documented action plan.



Staff Reports



NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES

MARY POLLARD

EXECUTIVE DIRECTOR
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OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

DOROTHY HAIRSTON MITCHELL

CHAIR

NCIDS.org

Memo

To: IDS Commission
From: Mary Pollard, IDS Director; Whitney Fairbanks, General Counsel, Chad Boykin, IDS Asst. Gen. Counsel; Christopher Sadler, IDS Research Director
Date: January 23, 2024

In October 2023, the NCAOC's expansion of eCourts and the State Controllers roll-out of a new accounting system led to a substantial slow-down in IDS's fee application processing time. Together, they added several steps and several minutes to the processing of the 11,000 monthly fee applications received for private assigned counsel (PAC). IDS is no longer able to issue payment 30 days from receipt and are currently issuing 60-90 days from receipt. The length of time needed for receipt of fee applications varies wildly by jurisdiction, and often takes months from the time the attorney submits the fee application to the court. This crisis is a threat to Indigent Defense in NC and must be resolved as quickly as possible.

Under authority of §7A-458, IDS proposes that the IDS Commission approve a modernization of the way PAC are paid. This memo briefly describes the proposal, the "Online Invoice Pilot," which will be fully described and voted on at the February 2, 2024, IDS Commission Meeting.

Attorneys handling adult criminal cases in eCourts counties will submit requests for payment (online invoices) through a new, dedicated IDS website. Attorneys will register with IDS and IDS will issue access credentials for the invoice portal. The portal will require two factor authentication and incorporate industry standard back-end security features.

Attorneys will enter limited information – county, case number, hours in court, hours out of court, and highest charge for automatic rate calculation. The portal will not collect Personally Identifying Information (PII). Attorneys will upload any supporting documentation as requested by the presiding judge or IDS policy. Attorneys will certify that they have e-filed a matching fee application for the matter through Odyssey.

The website will immediately transmit digital information to IDS. The data will be compiled, audited, and, if cleared through audit, imported directly into the state accounting system, eliminating the need for accounts payable staff to hand-key data.

IDS intends to create a dedicated email address where Judges can report reduced fees, which are rare, and instances where there are concerns about waste or fraud. Before roll-out, IDS policy will provide for IDS recoupment of any overpayment from the attorney using existing methods.

In addition to being faster, this system will provide information that allows us to conduct enhanced audits, much better than the existing decentralized paper-based system.

Other Business

Maine's court-appointed lawyers are 'saturated' with criminal, parental caseloads

A year after lawmakers agreed to pay court-appointed lawyers more for their work, the Maine Commission on Indigent Legal Services says the attorneys are being overwhelmed by an ever-growing backlog of cases.

Posted January 17

Updated January 17

Emily Allen Press Herald

4 min read

When Maine raised the reimbursement rate for defense attorneys taking court-appointed cases to \$150 an hour, the state had a record low number of lawyers available to represent poor Mainers.

A year later, the Maine Commission on Indigent Legal Services says it has fewer attorneys at its disposal than ever – even though lawmakers say they increased the rate to revive the state's rosters.



Jim Billings, executive director of the Maine Commission on Indigent Legal Services, at his office in Augusta. *Joe Phelan/Kennebec Journal file*

[Buy Image](#)

“It definitely sounds like that hasn’t happened,” Rep. Matt Moonen, D-Portland, co-chair of the Legislature’s Judiciary Committee, said during a meeting Wednesday.

The commission oversees a list of private attorneys who sign up to provide legal representation to people who cannot afford an attorney for criminal, juvenile and child protective cases, and for people facing involuntary commitment to a psychiatric hospital.

Jim Billings, the commission’s executive director, told the committee that Maine’s indigent defense system is struggling with an ever-growing backlog of criminal cases and protective custody petitions.

“There are attorneys that are just saturated with cases,” Billings said. There were only about 140 attorneys accepting new court-appointed cases as of Wednesday, Billings said, compared to more than 400 in March 2020.

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But the number of new cases coming in has not slowed down. The commission was responsible for taking on more than 32,000 new cases in 2023, it said.

Defense lawyers are burned out, Billings said. More than 75% of the attorneys the commission surveyed [last fall](#) said they felt overwhelmed by their work, and nearly half said the workload was getting worse as more courts started requiring in-person attendance after years of holding court hearings via Zoom.

“This suggests to me that attorneys are busy and aren’t willing to put themselves on the roster because they’re worried about getting a bunch of new cases,” Billings said.

RELATED

Judge appears wary of settlement that state, ACLU say could help poor Mainers obtain legal representation

Wednesday’s presentation marked a notable shift in the commission’s pleas to state lawmakers for help handling the state’s indigent defense crisis.

As of Friday, the courts told the commission that there were at least 85 Mainers in jail without a lawyer. The commission said the shortage of lawyers is “unacceptable” but that “the issue of the availability of counsel” who have limited capacity is poor framing.

While previous legislative sessions have focused on attorney pay increases and creating public defenders, Billings stressed to lawmakers Wednesday that there's only so much the commission can do on its own to tackle a problem not of its own making.

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“The solution to the issue of counsel availability does involve continued work recruiting and retaining both assigned and employed counsel but must absolutely include work on the part of outside stakeholders to reduce unnecessary charges; resolve matters through early diversion, treatment and education; and to dismiss those cases that may be reasonably dismissed,” the commission states in its [2023 annual report](#).

RELATED

State, ACLU say new settlement on indigent legal representation offers more immediate relief

The commission sends a report to the Legislature every year on its progress and needs. But many of the specific requests it made to lawmakers this year are key provisions in [a four-year settlement agreement](#) that it has tentatively reached with the American Civil Liberties Union of Maine, which sued the state in 2020 for allegedly failing to provide adequate legal representation to poor Mainers. As of Wednesday, a judge [was still considering](#) whether to approve the agreement and avoid a trial.

PLAN FOR PUBLIC DEFENDER OFFICES

The commission is asking lawmakers this year to commit to a long-term plan to open public defender offices around the state.

The commission already hired the state's first public defenders in late 2022 to staff its Rural Defenders Unit. It also began hiring attorneys for its first bricks-and-mortar public defense office in Kennebec County, the annual report said.

But it's now [asking for \\$8.9 million over the next couple years](#) to open an office with a goal of taking on about 30% of all criminal cases in the state. Billings said the commission is rethinking plans for a combined Cumberland and York county office. Having two could cost more, but would be better for covering the state's most populous counties.

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Some lawmakers pushed back on the cost. The public defense office plan doesn't require all the funds upfront, and Billings pointed to the state's projected \$265 million surplus for this fiscal cycle.

But Billings said another pressing problem is creating a plan to hire public defenders who can represent parents in protective custody cases. Private attorneys are carrying huge caseloads beyond their capacity, he said.

He acknowledged that many of the proceedings are confidential and are rife with conflicts of interest that prevent some attorneys from helping. In many cases, the courts need more than one attorney because there's more than one parent involved.

"The numbers that we're seeing in those cases make me think we should shift to employing some of those parents' attorneys sooner rather than later," Billings said.