

2024.02.02 Meeting Minutes

Commission on Indigent Defense Services

Quarterly Meeting – February 2, 2024

Location: Virtual Only via Webex | [YouTube Link to Recording](#)

Commissioner Attendees:

The Honorable Dorothy Hairston-Mitchell (Chair), Bryan Jones (Vice Chair), Art Beeler, Tonya Barber, Brian Cromwell, Marshall Ellis, Staples Hughes, Bryan Jones, Karen Franco, Caitlin Fenhagen, George Doyle, Miriam Thompson, The Honorable Joseph N. Crosswhite, Stacey Rubain

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), 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 16), Laura Gibson (District 2), Glenn Gerding (Appellate Defender), Jonathan McInnis (District 16A), Eric Zogry (Juvenile Defender), Wendy Sotolongo (Parent Defender), Chad Perry (Office of Special Counsel), Woodrena Baker Harrell (District 18), Jennifer Rierson (District 24), Niccoya Dobson (District 5), Deonte Thomas (District 10), Tonza Ruffin (District 7), Jacob Ward (District 15); Janna Allison (District 43), Thomas Woodrum (District 6), Jennifer Harjo (District 6), Ricky Champion (District 17), Beth Stang (District 42), Lydia Hoza (District 39), Cynthia Black (District 14)

Special Guests and Other Attendees:

Beth Hopkins Thomas (NCPLS), Phil Dixon (UNC SOG), John Rubin (UNC SOG), Jaclyn Arnette (NC OSBM), Casey Harris-Pratt (NC OSBM), Tina Yoogin (NCAOC), Jordan Samuel (NCAOC), Mark White (NCAOC), Kathleen Johnson (NC OSBM), Chiege Kalu Okwara, Esq. (Attorney), Charlotte Dover (Attorney), Nicole Malinko Neely (Attorney), Daniel Clifton (Attorney)

Call to Order and Introductions

The meeting was called to order at approximately 10:03 a.m. by the Honorable Dorothy Hairston-Mitchell, who then proceeded with welcoming guests and asking attendees to introduce themselves. After all IDS Commissioners introduced themselves, Chair Hairston Mitchell introduced George P. Doyle, a Chapel Hill trial attorney who was recently appointed to the IDS Commission by the North Carolina Bar Association. This was followed by introductions of IDS

staff, seasoned chief public defenders on the call, and then the seven new chief public defenders, who are working in seven new PD offices, effective January 2024. IDS Defender Policy and Planning Attorney Rebecca Whitaker shared bio/background information for each of the seven new chiefs. All other guests were acknowledged and welcomed to the meeting.

State Government Ethics Act

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

Adoption of the Amended Agenda

Chair Hairston Mitchell suggested the agenda be amended to have the staff reports come before the director's report, in addition to the adjustments already made to the order of the attendee introductions. Commissioner Stacey Rubain moved to approve the amended agenda. Commissioner George Doyle seconded the motion. The motion carried unanimously.

Minutes from October 20, 2023

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

Remarks from the Chair

Chair Hairston Mitchell expressed appreciation to IDS Executive Director Mary Pollard and staff for their assistance with assisting the new chief public defenders, helping to open their offices and for the work they do to ensure quality indigent representation in North Carolina.

Chair Hairston Mitchell recognized Peter "Pete" Mack, Chief PD for District 4, who retired at the end of February. Mack was not on the call, but the Chair congratulated him and thanked him for his service as an attorney, as a judge and for serving this country.

Staff Reports

New Invoice System:

Chad Boykin, IDS Assistant General Counsel, and Christopher Sadler, IDS Research Director, gave a presentation on OASIS—the Online Attorney State Invoice System. OASIS is a pilot program, built so PAC can electronically invoice IDS for fee apps submitted into eCourts File and Serve, with the expectation of significantly shortening the delays PAC experience while waiting to be paid for their work.

The Problem: The current PAC fee application processing system is increasingly burdensome to manage. PAC are generally awaiting payment for four to seven months from the completion of their work. PAC are coming off rosters and opting to no longer take on court appointed cases, due to not being paid in a reasonable amount of time.

Goal: To create a simple, efficient, and cost-effective means to ensure more timely payment of fee applications.

The Causes: Staff of five IDS employees process 11,000 fee applications per month. The current process is ten steps, during which a fee application changes hands at least five times before being mailed to IDS via USPS for processing. There are potential delays on the front end (before the fee app reaches IDS) and once the fee app reaches IDS, especially if there are errors and/or time lags at any step in the process. Upon receipt, IDS had historically been able to pay PAC within thirty days of receipt of the fee application. Since October, average payment from receipt time has increased from thirty to sixty to eighty days or more due to complications arising from the launch of the new North Carolina Financial System and eFile requirements in eCourts.

The Proposed Solution: IDS will build a simple, dedicated website for PAC to electronically invoice IDS after the fee app is submitted to eCourts. The site would be limited only to fee apps used for adult criminal cases at the trail level and only in eCourts counties. Due to security limitations, confidential cases such as juvenile delinquency, involuntary commitment, and parent defense will not be included in the program. PAC will enter only the basic information needed to pay them—no personal identifying information (PII).

Attorneys will enter invoice information. IDS will audit the invoice information and, once staff confirms that a matching fee application has been eFiled with the clerk of court, process the information for payment through NCFS. Judges will still sign the fee apps, but the signature is not needed on the front end, prior to IDS being able to pay the fee app.

How it works: Sadler shared an introductory video and provided a demonstration of preliminary site to show proof of concept to the Commission. If approved, the final page will feature improved looks, feel and functionality.

OASIS is tied to eCourts only to audit/make sure the corresponding paper fee app exists, and attorneys are entering information to generate a payment and to eliminate waiting for fee apps to reach IDS via the U.S. Mail Service to be processed.

Following the presentation, some commissioners expressed concerns about overbilling, fraud, waste and abuse, and potential security issues. Boykin and Sadler explained that OASIS will help IDS identify and address these occurrences more quickly than at present due to error prevention features that are built into the system. Receipts are generated through OASIS so attorneys can know that IDS received their fee app.

Web and data security will not be compromised because OASIS requires no PII, uses two-factor authentication, uses industry standard web security protocols, and involves security updates and maintenance from the existing vendor.

IDS asked the Commission to approve the rollout of the OASIS system. After some discussion Commissioner Staples Hughes applauded the efforts and asked some follow-up questions about

security and likelihood of a potential breach. Commissioner Art Beeler raised concerns about OASIS operating with eCourts. But Boykin explained that the two systems are separate; they work in tandem with each other but remain independent-standing systems. Commissioner Brian Cromwell expressed concern about the possibility of overbilling. Boykin explained that OASIS data will help IDS spot fraud, waste, and abuse more quickly because of the patterns that will become apparent if an attorney is not reporting/billing honestly.

The team also fielded questions from Mecklenburg County PAC attorney Nicole Malinko Neely, who was on the call. And explored why judges still need to sign fee apps (particularly for recoupment purposes, reductions of fee app amounts—which are rare—political considerations, etc.).

Commissioner Hughes made the motion to approve the rollout of the OASIS system. Commissioner Beeler seconded the motion, which passed with a unanimous vote.

BREAK

Director's Report on IDS Business

2024 Agenda for Legislative Short Session:

Executive Director Pollard summarized the successes of the long session. Because 2024 is a short session, IDS will make several budgetary requests to address existing needs. In addition to requesting several million dollars in non-recurring funds to relieve stress on the PAC Fund, IDS intends to request \$300K for technology and hardware needs. The request also will include funding to:

- move two receipt supported positions to appropriated positions,
- create new, additional positions for the Office of the Capital Defender, the Office of the Appellate Defender, and the Office of Special Counsel.

IDS 2023 IDS Audit Report:

Executive Director Pollard reported that IDS was pleased and not surprised that the agency was given the highest grade of “effective” on its FY2023 audit, which is the equivalent of an A+ on a 100-point grading scale. This demonstrates that IDS is a responsible steward of state funds.

IDS and State Defender Relocation Update:

Executive Director Pollard reported that IDS will not pursue the relocation at this time. Noting that current operating costs and post-PD expansion made the budget too tight for an immediate move. Recalling that the recommendation from October’s quarterly meeting was that the current location was “[N]ot feasible to sustain in the long term,” Pollard advised that IDS will continue to pursue a move, looking for a suitable location and “realistic” funding to support a relocation by mid-year 2025.

Chair Hairston Mitchell stated that the Commission trusts the Director’s judgment on this matter and the Commission is dedicated to ensuring working conditions and locations for all staff are safe, comfortable, and reliable spaces.

Staff Reports

Juvenile Felony Murder Project:

State Juvenile Defender Eric Zogry gave an update on the number of applicants for the Juvenile First-Degree Murder Project to date. The goal is for a roster of 50 attorneys (number is based upon data from the counties participating). At the time of the meeting, OJD had received 33 applicants, half of which were already approved; others still may need minimal training or some other small requisite to qualify them. An application adjustment was made to allow for attorneys who are already on the capital roster to bypass some steps in the application process.

Set-Off Debt Presentation – Chad Boykin, Assistant General Counsel:

Boykin reported on the status of three issues related to Set-off Debt and recoupment, underscoring the importance of the issues because of possible impacts IDS revenues and especially the PAC Fund.

Whenever a client is found guilty and recoupment of attorney fees and expenses (at 8% interest, plus the \$75 appointment fee) is ordered, then recoupment is assessed either as (1) an order to pay as a condition of probation, or (2) the amounts are docketed as a civil judgment and are collected via Department of Revenue (“DoR”) intercepts of NC tax refunds or NC Education Lottery winnings.

Issue 1

Boykin reported that the data files being sent to DoR by AOC through eCourts were not correct. eCourts is not sending principal debts to DoR for collection and is instead only sending the 8% interest fee and the \$75 appointment fee. Further, eCourts does not automatically calculate the interest for judgments docketed in it. The end result is that only the \$75 appointment fee was being sent on new judgments in the eCourts counties.

Therefore, reported total intercepts from eCourts counties are considerably less than what they should be, which in turn, causes lower amounts of intercepts in recouped fees.

Issue 2

IDS sent a memo to NCAOC January 19. A second inquiry was sent January 26, and to date, AOC has not provided IDS with a timeline for when this might be fixed. IDS will continue to follow up with the AOC and update commission appropriately.

Without automation, clerks must manually apply the intercepts to the judgments, and this is laborious and time consuming.

The risk to the IDS budget is wrongful intercepts, which could lead to a net loss for IDS. Refunds greater than that initially intercepted would have to be paid back, with interest, by IDS, *plus* the \$5 DOR fee. And as eCourts continues to expand *without* this automation, the risk grows exponentially in a way that is not favorable for IDS or taxpayers. IDS was told a module is being tested, but there is nothing more to report/no estimated time for arrival.

Issue 3

All civil judgements for attorney fees in eCourts must be manually flagged as ESOD (“Eligible for Set-Off Debt”) in the system. Reports showed that this flag was not usually being applied. This meant that debts in eCourts were not being sent to DOR. (JATF-Judgment for Attorneys’ Fees.) This Non-Compliance with the Set-Off Debt Statute was reported to NCAOC October 2023. A new, NCAOC-developed means to modify cases in bulk is in production, but there is no ETA.

Most of the cases that are recoupment eligible are not being sent to the Department of Revenue; of those that are, only the appointment fee and the interest are being sent. This affects eCourts counties only, for now. IDS needs a setoff debt module that will allow automation to offset these problems.

Commissioner Staples Hughes stated that these are the issues the General Assembly needs to be made aware of, given that they have to do with financing the indigent defense system.

Executive Director Pollard stated that these issues would be highlighted in the FY2023 Annual Report and that she also intended to talk to legislators individually about them.

Boykin reported that the latest iteration of the setoff debt module was January 29, but had no further details about where NCAOC is in the testing stage.

Commission Business

Other Business

IDS Commission Committee Assignments

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

Executive Director Pollard explained that the committee called “Strategic Planning External” will follow through on the October presentation dealing with workload standards for North Carolina. The “Strategic Planning Internal” committee will task tech to look at digital discovery, best practices, software/tools recommendations, etc.

Deputy Director Fairbanks was to follow up with commissioners in the following week regarding committee assignments.

Executive Session - Not needed. The Chair referenced a confidential memo in which Whitney Faribanks, IDS Deputy Director and General Counsel, provided an update on current litigation regarding state pursuant torts claim. Noting that it may be the late summer meeting before there is new information for the Commission and she was recommending no action at this time, the Commission elected not to go into executive session.

All agenda items having been addressed, the Chair adjourned the meeting at 1:04 p.m.

Next Meeting: May 3, 2024 | In-person at the Whitted Building in Hillsborough, NC