

## **2025.02.07 Meeting Minutes**

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

**[Link to Meeting Recording](#)**

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#### **For Review at the Quarterly Meeting – May 2, 2025**

Location: The UNC School of Government & Virtual Option via Zoom

##### **Commissioner Attendees:**

Bryan Jones (Chair), Cara Bridges, George Doyle, Marshall Ellis (*virtual*), Caitlin Fenhagen, The Honorable Dorothy Hairston Mitchell, John Nieman, Stacey Rubain (*virtual*), Miriam Thompson (*virtual*), The Honorable Scott Ussery

##### **Staff Attendees:**

Chad Boykin (Assistant General Counsel, Financial Services), Jamie Blackwell (Business Systems Analyst), Sonia Colon (Budget Manager), Whitney Fairbanks (Deputy Director/ General Counsel), Aaron Gallagher (Finance Officer), Angela Henderson (Contracts Administrator), Mary S. Pollard (Executive Director), Christopher Sadler (Research Director), Max Silva (Legal Assistant), Sharif Deveaux (IDS Regional Defender)

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

Janna Allison (District 43), Dawn Baxton (District 16), Ricky Champion (District 17), A. Traynham Dorn (District 13), Philip Elkins (District 21), Laura Gibson (*virtual*) (District 2), Jennifer Harjo (*virtual*) (District 5), Jack Moody (*virtual*) (District 20), J. Chad Perry (Chief Special Counsel), Robert Sharpe (Capital Defender), Wendy Sotolongo (Parent Defender), Beth Stang (*virtual*) (District 42), Deonte' Thomas (*virtual*) (District 10), Jacob Ward (*virtual*) (District 15), Eric Zogry (Juvenile Defender), Joshua Willey (*virtual*) (District 4)

##### **Other Attendees:**

Jackie Parker Arnette (OSBM), Jonathan McInnis, James “Jimbo” Perry

##### **Call to Order and Introductions**

The meeting was called to order shortly after 10 o'clock by IDS Commission Chair Bryan Jones, who then proceeded with the welcome.

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

The agenda was adopted unanimously.

##### **State Government Ethics Act**

Chair Jones reminded the Commissioners of their responsibilities under the State Government Ethics Act.

## **Minutes of November 15, 2024, Commission Meeting**

Commissioner John Nieman moved to approve the minutes of the November 15, 2024, IDS Commission meeting. Commissioner Dorothy Hairston Mitchell seconded the motion. The minutes were adopted as written.

### **Remarks from the Chair**

Chair Jones welcomed the new commissioners and all guests. The Honorable Judge and IDS Commissioner Dorothy Hairston Mitchell administered the Oaths of Office for two new IDS Commissioners. First was the Honorable Scott Ussery, followed by Cara Bridges. Commissioner Ussery is Chief District Court Judge for Bladen, Brunswick, and Columbus counties and was appointed by NC Supreme Court Chief Justice Paul Newby. Commissioner Bridges is the NC Department of Public Safety's Director of Policy and Strategic Planning and was appointed by former Governor Roy Cooper.

Chair Jones recognized and thanked Chief Jonathan McInnis of Defender District 21 (Scotland and Hoke counties), who retired in December. The Chair noted that McInnis is, to date, the longest serving chief in public defense in North Carolina.

Chair Jones welcomed and introduced Jack Moody (the new chief public defender for Defender District 20) and Phillip Elkins (the new chief public defender for Defender District 21).

### **Report on Private Assigned Counsel**

#### **Attorney Incentives Survey**

Chris Sadler, IDS Research Director and Joseph Oder, IDS Senior Research Associate, shared key findings from the attorney incentives survey conducted in the fall of 2024. The goal of the survey was to help IDS gain deeper insights into the factors that influence attorneys' decisions to accept indigent defense cases and to provide the Commission information needed to make decisions that may enhance recruitment and retention of Private Assigned Counsel (PAC) attorneys.

Sadler cautioned the Commission that incentives must be carefully designed so as not to generate unintended consequences. He noted that both incentives and barriers shape the public defense system in North Carolina, and he talked about how removing barriers is just as important as developing incentives with clear objectives, to ensure IDS and the Commission take action to affect meaningful change.

Sadler covered the Methodology of the 2024 IDS Attorney Incentives Survey. The survey was conducted from October 11 through October 29, 2024, using SurveyMonkey as the distribution platform. It was sent to more than 32,000 active members of the bar.

IDS received 1,115 responses, resulting in a 3.4% response rate. Sadler pointed out that while this may seem low, it is statistically significant. He said with this sample size, the results have a 95% confidence interval with a 2.89% margin of error. This means that IDS can be 95% confident that the survey results reflect the views of the entire population of attorneys within a less than 3% margin of error.

Together, Sadler and Oder went over responses from three “pockets” of respondents, to present some key findings:

- Attorneys who do not take indigent cases.
- Attorneys who take our case types (e.g., criminal defense) but do not take appointed cases.
- Attorneys who take appointed cases.

The two largest groups surveyed were attorneys who only accept retained cases and attorneys who handle a mix of retained cases and assigned cases.

#### Key Findings:

- Attorneys who practice adult criminal defense made up the highest number of respondents, which aligns with expectations for adult criminal cases to make up a significant portion of indigent defense work.
- Understanding *why* attorneys do not take indigent cases helps identify strategies to encourage their participation. Despite not being involved in indigent work, 31% of these attorneys expressed an *interest* in handling indigent cases. The following factors play a role in the “gap” between participation and interest:
  - Insufficient training
  - Workload or time constraints
  - Financial considerations
- Respondents ranked specific incentives that might encourage them to take on indigent cases. The top three incentives were: higher pay/better reimbursement structures; specialized training; and mentorship from experienced defenders.
- Of the attorneys who only take private retained cases, 77% had taken court appointed work in the past. The top reasons why they stopped doing so were:
  - Too little compensation
  - Excessive caseloads
  - A shift in practice focus/moving to areas of the law that better aligned with career goals, financial needs or firm priorities.
- When asked if they would return to indigent defense, 58% said yes, citing that increased compensation, manageable caseloads, and assistance with offsetting the cost of legal software could bring experienced attorneys back to court appointed work.

- Findings show that private attorneys who do retained work AND court appointed work would be open to taking on more indigent cases if the following incentives were in place”
  - Increased compensation
  - Help offsetting the cost of legal software
  - Reduced/manageable caseloads
- Of the attorneys surveyed who do indigent work, the top reasons why they choose to do so indicate personal beliefs in the importance of the work. Leading responses were:
  - A commitment to public service
  - High value on ensuring Constitutionally guaranteed representation for all
  - Personal and ethical beliefs

Sadler and Oder went on to illustrate financial challenges by examining three case scenarios:

- High-level felony: Attorneys would typically earn at least \$3,000 in private practice, but through indigent defense, they would earn only \$1,445.
- Low-level felony: In private practice, they would make at least \$2,000, while indigent defense pays just \$520 for the same work.
- Misdemeanor: Private practice pays a minimum of \$1,000, but indigent defense, only \$325.

The comparison made clear that it is extremely difficult to compete with private practice rates. This financial gap is substantial, and it presents a great challenge to recruitment and retention of qualified attorneys for indigent defense work.

Sadler described how differential pay (a wage adjustment based on specific conditions) could be one strategy to address the shortage of indigent attorneys in areas that are known as “attorney deserts.” And while most attorneys said higher pay alone wouldn’t incentivize them to relocate to an attorney desert, they indicated it *would* encourage them to commute and take on cases in these areas.

At the conclusion of the presentation, Sadler said the analysis provided at the February 7 meeting represented findings from only one portion of the broader survey. Next, the Research Team will focus on leveraging additional survey data to construct supply curves and to conduct further causal analysis. There will be more reports from the survey at a future Commission meeting(s).

### **Attorney Deserts**

James “Jimbo” Perry, Executive Director of the N.C. Chief Justice Commission on Professionalism, was invited to talk about the work that the Chief Justice’s Commission is doing to address attorney deserts. He said that there is a lawyer for every 157 people in

Raleigh and Charlotte, NC. And about 88 counties in North Carolina do not have enough lawyers.

Mr. Perry shared how he spends a lot of time with law students. He said he talks to them about the privilege it is to work with individuals in need who have little. He said it is important to connect with students who not only have the vision to be a zealous and honorable advocate, but who care about our state and their communities and want to help others.

Mr. Perry went on to talk about how he “rebranded” or “relabelled” attorney desert to attorney “oasis.” (not to be confused with the statewide payment system). For Mr. Perry, he views each attorney “desert” as an oasis of opportunity to make a difference. He said as a native of Kinston, NC, he has lived in an attorney desert for most of his life. “But it’s not a desert at all,” he added. And that is what he uses to recruit law students who have the calling for public service. He invites them to consider moving to smaller towns and cities where they can get to know their communities and be known and become part of the local fabric.

He said further that “big” law firms recruit by inviting undergraduate scholarship students to visit/tour the firm even before law school. This he calls long-term recruiting, and it works well with internships/mentorships for 3Ls who might live and work where they experience their first taste of defense work. NC IOLTA has the *Oasis Internship* now.

Mr. Perry encouraged chiefs and anyone who cares enough to make progress to visit students in elementary, middle and high schools to talk about how great it is to be a lawyer.

### **Director’s Report on IDS Business**

IDS Executive Director Mary Pollard outlined IDS’s 2025 Agenda for the Legislative Long Session noting that there are two things that can fix the challenges of funding the PAC: Money and time.

(For a detailed list of IDS’s 2025 Agenda for the Legislative Long Session, see pages 31-35 in the [IDS Commission Meeting Materials for February 7, 2025](#))

The following are included:

1. Sufficient non-recurring PAC money to get through the next two fiscal years
2. Recurring Funding to Implement a Rate increase for PAC
3. Additional Staff for Existing PD Offices
4. New PD Office Expansion
5. Funding for Two (2) Administrative Positions
  - a. Recruitment and Retention Coordinator
  - b. Contract and Vendor Administrator
6. Shift IDS Financial Serviced Positions to Appropriations

7. Statewide Defender Office Positions
8. Lease Costs for Office of Special Counsel
9. Fully Fund Digital Discovery (Axon Justice) Licenses
10. Indigency Determination Pilot Project
11. Fund PD Travel Costs

Pollard also provided highlights of agency work over the last quarter:

- IDS staff spent a day with leaders at the UNC School of Government brainstorming the future of training for public defenders. While the training offered through SOG is good, it is not sufficient, especially for PAC. One idea is to expand training and make it accessible in more regions and partnership with N.C. Advocates for Justice to offer a “boot camp” and mentorship model to train lawyers who want to do indigent work.
- Staff worked with the Caldwell County Indigent Committee recently to amend their appointment plan to include a waiver for the felony rosters.
- OASIS expanded most recently to Cabarrus County, a flat fee county; early feedback indicates members of the bar there are excited about certainty of cash flow and knowing when they will get paid.
- IDS Staff attended the NC Bar Association Awards, thanks to Commissioner George Doyle’s sponsorship. There, the closing remarks given by the Honorable Judge Tom Murry of the North Carolina Court of Appeals and immediate past chair of the Criminal Justice Section for the NCBA, addressed the need for adequate funding for indigent defense and the Association’s adoption of a standing resolution in support of sufficient funding for indigent defense.

Pollard also updated the Commission on Chief Public Defender Robert “Bert” Kemp’s state bar ethics inquiry about conflict case coverage in multi-county districts. The Bar referred the proposal to a subcommittee. Pollard has requested that a Chief Public Defender and the Appellate Defender were present for the meetings.

The additional \$8.2 million allocated to the PAC Fund in December 2024 will float the agency only through June. Pollard noted that IDS anticipates having to cease PAC payments mid-June. And even if the Legislature does not approve a budget by the end of the current fiscal year, a “level fund” continuing budget will go into effect July 1, that will allow IDS to recommence paying the PAC. In addition, Pollard suggests that the Commission consider promoting work on decriminalizing (traffic) Class 3 misdemeanors, which would save the agency a lot of money.

### **Staff Reports**

**New Attorney Project** – Regional Defender Tucker Charns updated the Commission on the New Attorney Project, which include additional incentives and support for less experienced attorneys designed to ensure readiness to contract.

## **Commission Business**

### **IDS Commission Appointment**

Assistant Director Whitney Fairbanks advised the Commission that following Commissioner Karen Franco's resignation from the Commission there currently was one open seat. Per G.S. 7A-498.4((b)(11), subject to certain residency restrictions, the seat would need to be filled by a Native American who also is not an attorney. After a brief discussion, the Commission advised that staff should begin the process of identifying qualified candidates for the seat.

### **IDS Commission Committee Assignments**

Chair Bryan Jones read the titles of each IDS Commission subcommittee and their respective charges. For subcommittee assignments [please click here](#).

## **Executive Session**

Pursuant to G.S. 143-318.11(a)(3) and (6) and G.S. 143-318.10, the minutes of the closed session will be withheld from public inspection.

## **Adjournment**

All agenda items having been addressed, the Chair adjourned the meeting.

**Next Meeting: May 2, 2025 | Location: The UNC School of Government**