

IDS

OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

May 1, 2026 Quarterly Commission Meeting
Meeting Material

Commission on Indigent Defense Services

May 1, 2026

Proposed Agenda	10:00 AM – 3:00 PM
Call to Order	Bryan Jones
Introductions	
Adoption of Proposed Agenda	
State Government Ethics Act Reminder	
<i>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</i>	
Minutes of February 20, 2026, Commission Meeting	
Remarks from the Chair	Bryan Jones
Remarks from the Director	Mary Pollard
Executive Session the Commission shall meet in closed session as allowed by G.S. 143-318.11(a) (6) [t]o consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.	
Update on Education and Training	Phil Dixon & Danny Spiegel
Update from the Field	
Office of Capital Defender	Robert Sharpe, Jr.
Recruitment & Retention	
Intern Opportunities and Placement in High Need Areas	James “Jimbo” Perry
Agency Business	
Forensic Resource & Expert Services Update	Sarah Olson
eCourts Working Group Status Update	James Blackwell
Commission Business	Bryan Jones
Committee Assignments	
Fee Deadline Waiver(s)	Chad Boykin
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 in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged.	
Adjournment	Bryan Jones
Next Meeting: August 7, 2026 TBD	



MARY POLLARD

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OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

BRYAN JONES

CHAIR

NCIDS.org

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).
- “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

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.”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. 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. 138A3(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



NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES

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OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

BRYAN JONES

CHAIR

NCIDS.org

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 \$89.10 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 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)

- | | |
|--|---|
| <input type="checkbox"/> Office of Special Counsel | <input type="checkbox"/> Public Defender's Office |
| <input type="checkbox"/> IDS Staff | |
| <input type="checkbox"/> Capital Defender | _____ (Defender District) |
| <input type="checkbox"/> Appellate Defender | |
| <input type="checkbox"/> Juvenile Defender | |

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 Supervisor	Less Advance	\$	\$ 0.00
Signature/e-Signature Of Claimant	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		\$ 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		\$ 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.

Payee's Name

Personnel No.

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
TOTALS BROUGHT FORWARD:					\$ 0.00		\$ 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		\$ 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		\$ 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		\$ 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		\$ 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		\$ 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		\$ 0.00
CUMULATIVE CATEGORY TOTALS:					Transport.		In-State	Out-of-State		Other Exp.
					\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00

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

Minutes from February 20, 2026

2026.02.20 Meeting Minutes

Commission on Indigent Defense Services

For Review at the Quarterly Meeting – May 1, 2026

Commissioner Attendees:

Bryan Jones (Chair), Miriam Thompson (*virtual*) (Vice-Chair), Cara Bridges, Robert K. Corbett III (*virtual*), Marshall Ellis, The Honorable Dorothy Hairston Mitchell, John Nieman, Stacy Rubain (*virtual*), The Honorable Scott Ussery

IDS Staff Attendees:

Chad Boykin (Assistant General Counsel, Financial Services), Amanda Bunch (Communications Specialist), Whitney Fairbanks (Deputy Director/ General Counsel), Aaron Gallagher (Finance Officer), Joshua Hummel (IDS Data Analyst), Joseph Oder (Senior Research Analyst), Sarah R. Olson (Forensic Resource Counsel) (*virtual*), Mary S. Pollard (Executive Director), Christopher Sadler (Research Director), Max Silva (Legal Assistant), Rebecca Whitaker (Defender Policy and Planning Attorney), Carla Huff (Recruitment and Training Coordinator), Sonia Colon (IDS Budget Manager), Tucker Charns (IDS Regional Defender), Daniel Meier (IDS Regional Defender)

Local and State Public Defender Program Attendees:

Janna Allison (District 43) (*virtual*), Dawn Baxton (District 16) (*virtual*), Niccoya Dobson (District 5), A. Traynham Dorn (District 13) (*virtual*), Glenn Gerding (Appellate Defender), Laura Gibson (District 2), Woodrena Baker Harrell (District 18), Burcu Hensley (APD, District 10), Annick Lenoir-Peek (Parent Defender), J. Chad Perry (Chief Special Counsel), Adam Phillips (District 14), Robert Sharpe (Capital Defender) (*virtual*), Jennifer Rierson (District 24), Eric Zogry (Juvenile Defender), Yolanda Fair (Office of the Juvenile Defender) (*virtual*), Laura Powell (District 41) (*virtual*), Kevin Tully (District 26) (*virtual*), Annick Lenoir-Peek (Parent Defender), Jacob Ward (District 15) (*virtual*)

Other Attendees:

Meredith Randolph (NC Legislature), Beth Hopkins Thomas (Executive Director, NCPLS) (*virtual*), Bhairavi Jayaraman (NC Legislature), Laura Ashleigh

Call to Order and Introductions

The meeting was called to order at 10:02 a.m. 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 21, 2025, Commission Meeting

The minutes from the November 21, 2025, IDS Commission meeting were presented for consideration and were unanimously approved.

Remarks from the Chair

Chair Jones opened the meeting with introductions, and he took time to recognize Cynthia “Cindy” Black and Adam J. Phillips. Black retired as chief public defender for Cumberland County at the end of December. Mr. Phillips is the new chief public defender for Cumberland County; he was sworn in on January 1, 2026.

Remarks from the Director

Legislative Update

Executive Director Mary Pollard shared there was still no biennial budget. A mini budget within the continuing budget resolution gave IDS \$10 million, which helped ensure IDS’s ability to pay PAC through the end of the fiscal year.

Director Pollard and Deputy Director Whitney Fairbanks presented to the JPS Oversight Committee in January. The Committee wanted to hear about the status of PD expansion, how the agency handles conflicts and conflict reporting as well as challenges in data collection. Pollard reported that while PAC spending has continued to rise overall, it is generally declining in the districts where new PD offices opened during 2024. Overall, attorneys are spending more time on cases as a result of unfamiliarity with eCourts and other factors.

Commissioner Scott Ussery stated that Director Pollard’s presentation to the JPS Oversight Committee was professional and very well received by legislators.

Director Pollard said that the Office of State Budget Management (OSBM) asked for IDS’s requests for the Governor’s proposed budget. IDS requested:

1. Additional PAC funding.
2. Additional staff for the Appellate Defender, Capital Defender, and the Mecklenburg County PD Office to respond to new deadlines imposed by Iryna’s Law imposes and to maintain parity with the Mecklenburg County DA’s office, which received 10 new positions as part of the legislation.
3. \$91,000 for an Online Indigency Affidavit Pilot Program to replace handwritten affidavits of indigency with tablets.

Other Agency Updates

Director Pollard also advised the Commission that Jamie Blackwell, IDS Business Analyst and Process Manager, collected and developed 15 priorities the agency would like to see to improve Enterprise Justice. She promised future updates from her and Mr. Blackwell on the status of the requests.

Director Pollard introduced Daniel Meier, new IDS Regional Defender.

Director Pollard was named to represent IDS and agency-stakeholder interests on a committee created to examine new and different ways of providing legal services in legal deserts, what can be done.

PAC RATES DISCUSSION

Chair Jones opened a discussion about what it would take to increase the hourly PAC rates, noting that more than a decade had passed since the last rate increase and that the 2022 increase had not erased the real-dollar loss created by the 2011 cut and inflation. He raised the question of whether IDS's effective management of the PAC fund was obscuring the urgency of the problem from the General Assembly, and whether allowing the fund to run out would create the kind of crisis that would compel legislative action.

Director Pollard provided historical context, tracing the rate from the original \$75 per hour through the 2011 cut to \$55, the 2022 increase to \$65, and the long-term projection at the time of that increase that the PAC Fund would become insolvent as early as 2025. She noted that \$75 in 2011 would be worth \$105 in 2026, underscoring that the current \$65 rate represents a significant real-dollar deficit. Fiscal Officer Aaron Gallagher confirmed that despite new PD offices absorbing some cases, federal IV-E revenue, and repurposed lapsed salary, IDS would not get through the current fiscal year without exhausting the PAC fund but for the mini-budget Director Pollard mentioned earlier.

Commissioners debated the risks and merits of Chair Jones's proposal. Commissioner Ussery cautioned that deliberately running out of money could backfire, leaving IDS without credibility before the General Assembly at a critical moment. He and others agreed that educating both the bar and legislators was essential, and that the case should be made clearly that North Carolina will continue to struggle with legal deserts at \$65 per hour. Commissioner Mitchell suggested the Commission shift its focus from explanation to encouragement, proposing that new Regional Defender Daniel Meier, himself a former PAC attorney, could serve as an ambassador to attorneys who remain unaware of what IDS does to advocate for them. She also expressed a desire to empower PAC attorneys to advocate for themselves the way they advocate for their clients. Capital Defender Rob Sharpe urged the Commission to avoid continuing to defer action and proposed seeking legislation tying the PAC rate to legislative increases for state employees. Director Pollard suggested seeking legislation tying the rate to

inflation, so the Commission would not find itself revisiting the same conversation in another decade.

Commissioner Ussery reported that in District 15, only three PAC attorneys remain on the roster. His recent outreach to the district bar revealed that attorneys simply cannot afford to take appointed cases at the current rate. Director Pollard confirmed that at \$65 per hour, PAC attorneys are losing money, and noted that while agency staff call legislators, PAC attorneys must do the same. Deputy Director Whitney Fairbanks reported a modest net gain in PAC numbers over the last two years, but noted the statewide roster remains around 450 attorneys below its 2018 level and has not rebounded from pandemic-era losses. Commissioner Ussery suggested that presenting a state-employed public defender and a PAC attorney side by side to legislators to illustrate that one receives regular pay increases while the other has received nothing in twenty years could be a compelling advocacy tool.

The Commission did not act but agreed that advocacy to the General Assembly and to the bar must continue and intensify.

AGENCY BUSINESS

Workload Standards – IDS Defender Policy and Planning Attorney Becky Whitaker gave a presentation to review the status of IDS’s workload standards project. Highlights from Whitaker’s presentation, which is available on request, included an historical overview on workload studies and a refresher on the North Carolina-specific assessment that was conducted by NCIDS and NCSC and released in 2019 (2019 NC Workload Study).

Whitaker noted that two paragraphs from the findings from a 50-year-old study produced the de facto standards by which agencies still measure workloads today. Whitaker observed that much has changed with caseloads (e.g., backlog from the pandemic) and technology (e.g., boom in digital discovery), and strain on time and resources (e.g., eCourts) since the 2019 NC Workload Study. While many of its findings still are valid, including recommendations for improving court processes, increased use of social workers, and using a weighted caseload model to calculate the workload annually, a revised workload study was overdue.

Whitaker said the Research and Development Team had developed a cutting-edge approach to monitoring caseloads that shifts from hard case numbers, caps/ceiling to a pressure release valve with methods that move away from.

AGENCY BUSINESS

Recruitment and Development

IDS Recruitment and Training Coordinator Carla Huff reported that in 2025, IDS interacted with and connected with more than 100 law school graduates from across the country; 88 thus far in 2026; 150 for 2027; and 36 for 2028.

She said what we can offer to law students upon graduation remains the question. Huff noted that the top four answers to that question are mentorship, support, assistance with student loans, and housing.

In 2025, the IDS Development Committee set goals to develop ideas and actions that can realistically be implemented and align with agency mission and values. Current constraints, including staffing and funding, mean this can only be achieved through partnership, collaboration, and leadership.

Huff provided the commission with an update on work currently underway, which included:

- On the first Friday of each month, IDS hosts a one-hour new PAC orientation designed to provide information and answer questions offer a space for fellow PAC attorneys to have conversations and make connections that will benefit them later as they begin to take on indigent work.
- The UNC School of Government developed a six-hour boot camp, which was quickly expanded to 12 hours to benefit defenders on a variety of topics.
- The Resources Team will establish resource libraries to house three key defender manuals in regions and eventually every county across the state. And IDS produces a quarterly newsletter for PAC including access to new resources, information, tech tips and more.

Update from the Field – Office of Special Counsel

North Carolina Chief Special Counsel J. Chad Perry updated the Commission on the work of his office, in the four years since his appointment. Perry noted that over the last four years, OSC has:

- disposed of more than 49,000 cases over the last four years;
- Enjoyed unprecedented litigation success including victories in 61 out of 63 motions and hearings
- Relocated to the NC Judicial Center from the historic Dorothea Dix Campus
- Provided best practices and IVC compliance for the onboarding for three hospital systems
- Actively participated in policy discussions to propose statutory revisions to ensure the legislative process is informed by frontline legal experience, which he added, will be very important in 2026
- Overseen the creation of accessible legal resource pamphlets to improve public literacy regarding the commitment process
- Increased office visibility at the Disability Rights Conference, CLE presentations, speaking engagements for the NC Bar Association and NCCU's "Thrive Thursdays" to help develop the next generation of attorneys
- Launched a pilot program to help clients get IDs for greater access to services
- Prepared for a 150-bed expansion of WakeMed which is planned for 2027
- Strategized for the December 2026 rollout of Iryna's Law, which will greatly impact caseloads through mandated psychiatric evaluations for specific defendant populations

Perry characterized the office's work as committed to the principle of treatment over incarceration and the protection of clients' due process rights—despite the very delicate balancing act right now of public safety vs. clients' rights and wishes and wellbeing.

Commission Business

IDS Commission Appointment (Dorothy Hairston Mitchell Seat)

Commissioner John Nieman endorsed Guilford County Superior Court Judge Tonia Cutchin for the seat being vacated by Commissioner Hairston Mitchell. Neiman stated that Cutchin was a former APD in Guilford County, experienced on the district and superior court benches, and invested in quality indigent defense. Commissioners Hairston Mitchell and Rubain echoed his sentiments. Commissioner Ussery made a motion to appoint Judge Cutchin to fill the seat and Commissioner Hairston Mitchell seconded the motion. The motion passed unanimously.

Parent Defense Policy Change: Petitions for Rehearing

Parent Defender Annick Lenoir-Peek apprised the Commission of OPD's policy in practice that attorneys do not need the client's approval, which is required for other petitions, to file a petition for rehearing to correct factual errors in opinions. She advised that OPD intended to adopt the practice as formal policy because of the significant limitation on hours, the rarity of these hearings, and the rarity of orders for recoupment.

Fee Deadline Waivers

Assistant General Counsel Chad Boykin presented a total of six PAC attorneys with a total of 24 fee application deadline waivers for consideration by the Commission. Given the show cause and time frames, it was recommended that the Commission approve the recommendations as presented. Chair Jones made a motion to approve the recommendations, which was seconded by Commissioner Hairston Mitchell and was unanimously approved.

Executive Session

At 1:17 p.m., Chair Jones made a motion, which was seconded by Commissioner John Nieman, to go into executive session to hear an update on litigation and to vote on the recipient of the 2026 John Rubin "Ruby" Excellence in Training Award.


Open session was convened at 1:47 p.m., during which Deputy Director Fairbanks read into the record that the recipient for the "Ruby" award was selected by the Commission with a unanimous vote and that the name of that person would be withheld until which time it is publicly announced at the 2026 Spring Public Defender Conference on May 6 in Cherokee, NC.

All agenda items having been addressed, the Chair adjourned the meeting at 1:51 p.m.

Next Meeting: August 7, 2026

Location: High Point University Law School

Update on Education and Training




Conflicts Involving Former Clients

IDS Commission, May 1, 2026
 Daniel Spiegel, Assistant Professor of Criminal Law, Procedure, and Evidence
 UNC School of Government

1

ROAD MAP


- Foundational Principles
 - Conflicts involving Co-D's
 - Concurrent Clients
 - Same or Substantially Similar Matter
- Cross-Examination Involving Prior Conviction
- Did Conflict Originate Inside or Outside PD office?
- Does PD Office Possess Material Information?
- Remedies- Informed Consent or Screening/Notice
- Amended Rule 1.10



2

First Principles

- Co-Defendants – “grave” potential for conflict
 - But theoretically possible! (4 conditions under Rule 1.7(b))
 - Some conflicts are *non-consentable*
- Concurrent Clients
 - One is a witness in another’s case
 - Greater potential for conflict than with former clients
 - Can’t represent two clients at the same time where interests are directly adverse or representation is materially limited



3

First Principles

• Successive Clients – Same or Substantially Similar Matter

- Significant risk of conflict
- Yet possible, even where:
 - *the interests are materially adverse and*
 - *the lawyer acquired material information from former client,*
- with informed written consent. Rule 1.9(b)



4

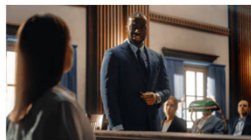
Informed Consent



5

Cross-Examination Using Prior Conviction

- Witness in current case was previously represented by public defender office.
- The prior representation resulted in a conviction.
- Unpublished Ethics Opinion- 98 Ethics Decision 9
- Concern of:
 - "Spillover" beyond bare fact of conviction into confidential territory
 - "Pulling Punches"



6

Pulling Punches



7

"Spillover" Problem



8

Material Information



9

Former client represented in-house or not?

The diagram illustrates a transition of a former client. On the left, a person with glasses and a white coat stands in front of a building. An arrow points to the right, where the same person is now standing in front of a different building, indicating a change in representation.

10

Amendment to Rule 1.10

- Effective April 1, 2026:
- **...(g) Disqualification pursuant to Rule 1.9 as prescribed by Paragraphs (a) and (b) of this Rule when applied to members of a public defender's office may be resolved by following the screening and notice requirements** as set out in Subparagraphs (c)(1) and (c)(2) of this Rule.



11

Screening and Notice

The slide features two images. On the left, a person in a dark jacket and light pants stands in a modern office with large windows and a curved ceiling. On the right, there is a close-up of a document titled 'LEGAL NOTICE' with a pen resting on it.

12


Ethical "Wall" or Screen



13

Former Clients: Conflict and Remedy


- Is there a conflict?



14

Former Clients: Conflict and Remedy

- What is the remedy?
- After amendment...



15

Screening and Notice: How to do it?

- Two issues to explore with new rule:
 - 1) Chief must decide if representation can ethically proceed using screening and notice to neutralize any potential issues.
 - 2) If Chief concludes that it is appropriate, what measures should be taken to effectively screen? See Rule 1.0 cmt. 9.
 - Written acknowledgment?
 - Reminders?
 - Limiting access to files? Paper? Electronic?

16

Potential Dilemmas: Loyalty and Trust

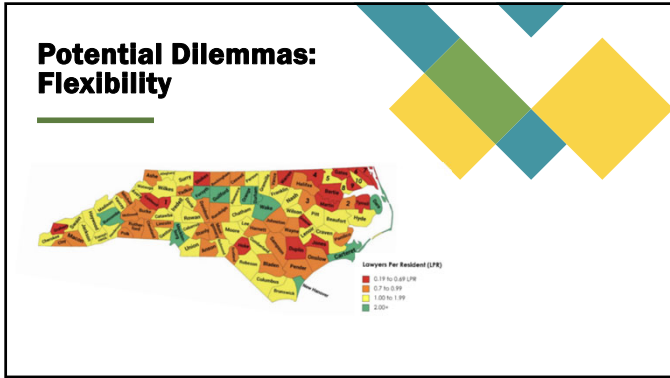


17

Potential Dilemmas: Legal Deserts



18



19

Questions?

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Conflicts Involving Former Clients in Criminal Cases: Questions and Answers

Daniel Spiegel, UNC School of Government (Draft for IDS Commission, 4/21/26)

This paper addresses common questions that arise related to potential conflicts of interest involving former clients in criminal cases.¹

It is common in public defender offices, especially in offices that represent the great majority of indigent defendants in a particular jurisdiction, for witnesses in current cases to be former clients of the office. In some cases, the former client may have a criminal conviction arising from the prior representation, and the lawyer for the current client may need to cross-examine the former client. In some cases, the office has received information during the prior representation that may have a bearing on the current case. The lawyer who represented the former client may have left the office or still be on staff. Alternatively, a lawyer within the office may have represented the witness while previously employed at another firm.

On a near-daily basis, Chief Public Defenders must decide whether conflicts exist and whether to keep cases in-house or “farm them out.” These decisions can be challenging as the above permutations present different ethical concerns. To take the first example, where a former client of the office will be cross-examined as a witness in a current client’s case, impeaching the former client using a conviction arising from a case the office handled could implicate the loyalty and zealousness of the lawyers involved, or simply result in awkwardness. Furthermore, the cross-examination might “spill over” into areas that should remain confidential between the former client and the former lawyer. Considering another scenario, even where there is no prior conviction to use for impeachment, confidential material information derived from a prior representation must remain off-limits when, for example, a lawyer is engaged in plea negotiations on behalf of a current client.

After briefly addressing other types of conflicts to lay the foundation for the discussion, the paper proceeds in question-and-answer format, offering guidance to defenders on issues that frequently arise involving potential conflicts between current and former clients.

I. First Principles: Conflicts Involving Co-Defendants, Concurrent Clients, and Successive Clients in the Same Matter

Before delving into conflicts involving current and former clients, we begin with a brief discussion of conflicts involving co-defendants, concurrent clients, and conflicts involving

¹ The author thanks John Rubin for his support and his previous work in this area. See Defender Manual, Chapter 12, *Right to Counsel*, Appendix 12-1.

representation of successive clients in the same or substantially related matter. See Rules 1.7 and 1.9. The principles involved in these types of conflicts relate to those involving former conflicts, so it is worthwhile to begin with these foundational concepts.

A. Conflicts between co-defendants. A baseline principle is that lawyers should “ordinarily” decline to represent co-defendants in a criminal case given the “grave” potential for conflict. See Rule 1.7 cmt. 23 (Rule 1.7 deals with conflict involving current clients). However, the Rules contemplate that a lawyer could theoretically represent co-defendants where several conditions are met: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client, (2) the representation is not prohibited by law, (3) the representation does not involve assertion of a claim by one client against another, and (4) each affected client gives informed written consent. Rule 1.7(b). The commentary to Rule 1.7 explains that certain conflicts are *non-consentable*, meaning that it would not be reasonable for the lawyer to believe that competent and diligent representation is possible, and the lawyer thus cannot properly ask the client to consent. See Rule 1.4 cmts. 14, 15. For example, the co-defendants might have antagonistic defenses or one co-defendant may seek to cooperate against the other.

B. Conflicts between current clients where one client is a witness or victim in another client’s case. As compared to conflicts arising between current and former clients discussed below, the potential for conflict is significantly greater where the representation is concurrent, as the duty of loyalty to each client may preclude simultaneous representation. See Rule 1.7 cmt. 1. Where the two clients have interests that are “directly adverse” to each other, simultaneous representation is generally not permissible. See Rule 1.7(a)(1); Rule 1.7 cmt. 6 (need to cross-examine a client in case involving another client may result in “directly adverse conflict” because testimony might be “damaging” or because client might “feel betrayed”). Simultaneous representation is also generally impermissible where representation of one client may be “materially limited” by the responsibilities to the other client, see Rule 1.7(a)(2); Rule 1.7 cmt. 8 (key question is the likelihood that “a difference in interests will eventuate”). Yet, as discussed above in the context of representation of co-defendants, where the four conditions under Rule 1.7(b) are met, representation of concurrent clients may be permissible, though potentially inadvisable.

C. Conflicts between successive clients in the same or substantially similar matter. Finally, conflicts that arise when a lawyer represents a client in the same matter as that in which the lawyer previously represented a former client may also potentially be addressed by seeking informed written consent from each affected client. See Rule 1.9 (addressing duties to former clients). Rule 1.9(b) contemplates that seeking informed written consent may be appropriate even where the former client’s interests are materially adverse to the current client *and* the lawyer acquired confidential, material information from the former client. However, again, some conflicts are non-consentable in light of the particular facts, recency of the former representation, and other circumstantial nuances. Furthermore, even where it may be ethical to seek informed consent, it may not be advisable in light of available alternatives.

Implications for informed consent with conflicts involving former clients. Crucially for our purposes in delving into conflicts involving former clients, the examples above of representation of co-defendants, clients with concurrent potential conflicts, and representation of successive clients in the same matter demonstrate that even in circumstances where a “grave” or heightened potential for conflict exists, it is possible for representation to continue in limited circumstances where the involved clients give informed written consent. The potential conflicts involving former and current clients are as a general matter less stark, and we will see that informed written consent again comes up as a core “remedy” to allow continued representation in certain circumstances. Informed written consent ensures that a client understands the full context of the representation, the risks of proceeding, and the potential for a conflict to develop or become problematic.

Important Note: An amendment to Rule 1.10 became effective April 1, 2026. The change allows for screening the former assistant public defender and giving notice to the former client as an alternative “remedy” to informed consent in most cases with potential conflicts involving former clients, including those involving representation of successive clients in the same or substantially similar matter. See Rules 1.10(g); 1.9. The practice of screening and notice is discussed further below.

II. Conflicts involving Former Clients

Relevant Factors

In determining whether a conflict exists where a lawyer or a lawyer's firm previously represented an individual involved in a given case, several factors come into play. These include:

- Did the prior representation result in a conviction?
- Where did the prior representation occur- inside the firm or outside the firm?
- Does anyone currently in the firm have knowledge of material information related to the prior representation?
- Does the firm possess case files from the prior representation with information material to the current case?

The examples below address different combinations of the above factors, providing guidance on common scenarios.

Question 1

A lawyer's firm currently represents a criminal defendant in a criminal case. One of the State's witnesses in the current case was a client of that lawyer in a previous case. The previous case against the State's witness ended in a conviction. The lawyer does not represent the client but is a member of the firm that represents the current client. Is there a conflict?

As a general matter, this appears to be a conflict. The State Bar addressed this question in an unpublished opinion. See 98 Ethics Decision 9 (Oct. 14, 1998) (unpublished); Rule 1.9. In 98 Ethics Decision 9 (unpublished), the State Bar first expressed concern about the use of confidential information obtained during the prior representation, which would violate the former client's rights. The State Bar was also concerned that the defender might pull punches during the cross-examination out of deference to the former client, thereby violating the current client's right to zealous representation. See *id.*² The State Bar recognized that the conviction was publicly available,³ but was concerned that additional material information related to the prior representation might be used on cross-

² See also, 2003 FEO 14 (Oct. 21, 2004) (this published ethics opinion cites to the unpublished opinion, 98 Ethics Decision 9, and relies on its analysis in analyzing conflicts involving prosecutors who previously represented defendants and defense lawyers who previously prosecuted clients).

³ See Rule 1.9(c)(1), (2); Rule 1.9 cmt. 8.

examination that was not “otherwise publicly disseminated.” See Rule 1.9(c)(1).⁴ The lawyer’s knowledge of this additional material information is imputed to other lawyers in the firm under Rule 1.10. See *also* RPC 65 (public defender office considered equivalent of a single law firm).

However, it is notable that the analysis in the unpublished opinion relies on a determination that there is a “high probability that the lawyer will delve into facts relative to the conviction that are not public record... or, in forgoing such questions, fail adequately to represent the lawyer’s current client...” See 98 Ethics Decision 9. The opinion also encourages the lawyer to consider whether the representation of the current client would be any different were it not for the duty of confidentiality to the former client. Thus, where a lawyer can predict with confidence that cross-examination will be limited to the bare fact of conviction (neither the lawyer nor the firm is in possession of any additional material information, or there is no conceivable way for such information to be introduced), it is arguably consistent with the reasoning in the opinion to conclude that no conflict exists and to continue the representation. There remains the awkwardness of cross-examining a former client of the firm regarding a conviction arising from a matter in which the former client was represented by the firm, but this does not appear to preclude representation of the current client, given the somewhat restricted duty of loyalty to former clients. *Compare* Rule 1.7 cmt. 6 with Rule 1.9 cmt. 1. In considering whether a conflict exists, the lawyer should also consider the recency and relevance of the former representation, as well as the relative centrality of the former client’s testimony in the current case. For example, if the former client plays a minimal role in the current matter (e.g., as a custodian of business records) or the credibility of the witness is not crucial to the case, the potential need for aggressive cross-examination and the likelihood of spillover into confidential topics may be minimal.⁵

Hypotheticals:

The following example in which there is likely an untenable risk that cross-examination will “spill over” into confidential information beyond the bare fact of the conviction derives from

⁴ Note that Rule 1.9 was amended in 2022, see <https://www.ncaj.com/news/nc-state-bar-council-adopts-3-opinions-approves-proposed-rule-revisions>; the applicable language at the time of the 1998 unpublished opinion considered whether the information was “generally known.” See Rule 1.9 (1998).

⁵ See John Rubin, *Defender Manual*, Chapter 12, Right to Counsel, Appendix 12-1, p. 12-72 for further discussion of the way in which the concern in 98 Ethics Opinion 9 regarding confidentiality may be both over-inclusive and under-inclusive (over-inclusive in that cross-examination is generally limited to the fact of conviction under Evidence Rule 609, and under-inclusive in only addressing cross-examination rather than other contexts in which material information may be used, such as during plea bargaining).

a conversation with a Chief Public Defender: A lawyer in a firm previously represented a client in a drug matter. This former client is now an alleged victim in a pending case where the current client is charged with breaking into the home of the former client. Though it is certainly possible that information obtained during the prior representation would not be admissible on cross-examination of the victim, one can also imagine that information related to the alleged victim's prior substance use disorder, familial and community ties, and housing situation might naturally become relevant during impeachment or as substantive information. Between this concern and the inherent awkwardness of cross-examining a former client about a conviction obtained through the prior representation, this would almost certainly be a conflict.

A contrasting hypothetical: A lawyer in a firm represented a client in a DWI case eight years prior. There was no indication of substance use disorder, and the former lawyer has no memory of the prior case. The former client is now an alleged victim in a misdemeanor assault case involving neighbors. It may well be that the current lawyer can be confident that cross-examination would be limited to the bare fact of conviction and thus no conflict exists.

Question 2

Is there still a conflict if 10 years have elapsed since the date of conviction or release from confinement under Rule 609?

Probably not. A conflict is unlikely to exist if 10 years have elapsed because the conviction is presumptively inadmissible under Evidence Rule 609. However, if the defense could reasonably prevail in advancing an argument under Rule 609(b) that the probative value of the conviction substantially outweighs the prejudicial effect and thus the prior conviction is admissible for impeachment purposes, then a conflict may exist for the reasons discussed above.

Question 3

Does a conflict exist if the lawyer anticipates that the matter will not proceed to trial but will instead be resolved by plea?

Rule 1.7 cmt. 8 states that a critical question in identifying conflicts of interest is “the likelihood that a difference in interest will eventuate.” If the lawyer is confident in her professional judgment that the current matter will proceed to a negotiated resolution or dismissal and that cross-examination of the witness will not “eventuate,” the lawyer may

reasonably conclude that no conflict exists. However, a conflict would exist if the lawyer were to “foreclose courses of action that reasonably should be pursued on behalf of the client,” such as proceeding to trial and cross-examining the witness, or taking related steps. See Rule 1.7 cmt. 8. Although in this situation, it may well be that the conflict arising from cross-examining a former client will not “eventuate,” it may not be advisable to proceed with the representation given that circumstances can change rapidly (as can the client’s wishes as to how to proceed), resulting in a trial and the attendant need to confront the former client.

Furthermore, if the current lawyer has access to information from the former representation that could be used to “materially advance the [current] client’s position” then a conflict would exist, notwithstanding the fact that the lawyer anticipates that the matter will be resolved without a trial. See Rule 1.9 cmt. 3. The concern is the risk that the lawyer might improperly use confidential information derived from the prior representation. For example, if a firm possessed confidential information from the representation of a former client, a key witness for the State, that the witness had a severe substance use problem, this knowledge could give rise to a conflict.

Question 4

Does informed written consent address the conflict above?

Yes. If the lawyer is concerned that a conflict exists in Question 1, the representation could continue if the former client gives informed written consent to the representation and the expected cross-examination. See Rule 1.9(b). Rule 1.0(f) defines informed consent as “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate to the circumstances.”

In addition, the lawyer should obtain informed consent from the current client given the potential concern that the lawyer might show improper restraint in cross-examining the former client.

It does not appear that the district attorney must be notified that informed consent has been obtained in the above situation, as the prosecutor is not the attorney for the witness, but rather represents the state. There may, however, be circumstances where notifying the state is preferable.

Important Note: An amendment to Rule 1.10 became effective April 1, 2026. The change allows for screening the lawyer who represented the former client from the current matter and providing notice to the former client of such screening, rather than requiring the lawyer

to obtain written consent (see below for further discussion of this course of action). This remedial measure would only be available within public defender offices (and the North Carolina Department of Justice) and would require the Chief Public Defender to determine in each individual case whether the representation can reasonably be carried out within ethical bounds. See Rule 1.10 cmts. 12, 13.

Question 5

If a conflict exists and the lawyer chooses not to pursue these remedial measures, or the former client does not consent, how should the lawyer proceed?

The lawyer should move to withdraw from the representation. See Rule 1.16.

Question 6

Is the analysis different if the lawyer who handled the prior matter for the firm has now left the office?

Maybe. If no material information remains within the firm now that the lawyer who represented the former client has left the firm, one may plausibly determine that no conflict exists under the reasoning above. See Rules 1.10(a), (b).

However, if material information that could be revealed during “spillover” from the cross-examination on the prior conviction remains in the memories of the firm’s current lawyers or staff, or in the firm’s case files, a conflict likely exists. Again, there remains the awkwardness of cross-examining a former client of the office using a conviction arising from a case the office handled. However, the reasoning of the unpublished opinion above (98 Ethics Decision 9 (unpublished)) is based on the likelihood of cross-examination “spilling over” from the bare fact of conviction to additional material information. Where the former lawyer has left the firm and the likelihood of such spillover is close to zero, no conflict appears to exist.

As discussed above in Question 4, a conflict arising in this scenario can be addressed by seeking informed written consent from the former client. Seeking written consent in this scenario where the lawyer who represented the former client has left the firm may be more appropriate than in that above given the more attenuated nature of the conflict.

Note: As noted above in Question 4, in light of the amendment to Rule 1.10, screening and notice provisions may now be used instead of written consent.

Question 7

Is the analysis different if the former client was represented outside the firm by a lawyer who has now joined the firm?

The conflict analysis is generally the same as above, as once the prior lawyer has become associated with the current firm, the potential conflict is imputed to the firm. See Rule 1.10(c), 1.11(b).

However, prior to the recent amendment to Rule 1.10, the remediating measures were different where the conflict originated outside the office as opposed to within the office. Where the lawyer for the former client represented the client *outside the firm*, the conflict can be addressed by screening the lawyer from any involvement with the current representation and providing notice to the former client of such screening measures (so that the witness can ascertain compliance). See Rule 1.10(c), 1.11(b).

Prior to the amendment, where the conflict originated within the office, informed consent rather than screening and notice was required. The rules appeared to treat potential conflicts originating from within the firm differently from those originating from outside the firm. The reasoning appeared to be that conflicts originating from outside the firm are easier to “quarantine” when the lawyer joins the firm and can be handled through screening measures, whereas conflicts originating from within the firm are more difficult to contain (the representation may have involved multiple lawyers and staff) and thus require the former’s client consent.

However, after the amendment, screening and notice is appropriate regardless of whether the conflict originated within or without. See Rule 1.10(g).

Screening a lawyer is defined under Rule 1.0(l) as “the isolation of a lawyer from any participation in a professional matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.” More detailed screening measures are discussed in Question 11 below.

Question 8

What if the prior representation occurred inside the firm, but did not result in a conviction?

If there is no conviction arising from the prior representation, the key question is whether the firm possesses material information.

If no attorney in the firm has access to material information that could be used against the former client to advance the position of the current client, then no conflict exists. See Rule 1.9.

However, if material information remains in the firm either in the memory of the lawyers or staff or in case files, then a conflict would exist that would require written consent from the former client to continue the current representation.

Furthermore, Comment 3 to Rule 1.9 states that a “conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.” Thus, even the former attorney believes *subjectively* that she has no recollection of any information that would be material to the current case, if the previous representation was extensive, recent, related, or some combination of the three, and one would reasonably expect the former attorney to possess such material information (*objectively*), then a conflict may exist. See also, *Worley v. Moore*, 370 N.C. 358, 365 (2017) (“In applying Rule 1.9(a), the trial court considers the circumstances surrounding each representation to objectively assess what would “normally” have occurred within the scope of that representation”).

Note: As noted above in Question 4, in light of the amendment to Rule 1.10, screening and notice provisions may now be used instead of written consent.

Question 9

What if the prior representation (not resulting in a conviction) occurred outside the office, but the lawyer whose firm handled the prior matter has now joined the firm representing the current client?

If the former lawyer is in possession of material information that could be used to advance the position of the current client, then a conflict exists, but it could be addressed by screening the former lawyer from the current matter and providing notice to the former client of such screening. See Rule 1.9; 1.10(c). If the former lawyer is in possession of no such material information, then no such conflict exists.

Again, however, note that there is language in the commentary to Rule 1.9 that allows for “inferences, deductions or working presumptions” about how lawyers work together to determine whether the former lawyer possesses material information. See Rule 1.9, cmt. 6.

This sounds like the objective test discussed in the question above. However, there is also language in the commentary that states that Rule 1.9(b) only disqualifies a lawyer who represented the former client at a different firm where the lawyer has “actual knowledge” (referring to the situation in which the former lawyer’s firm represented the former client, but the lawyer did not represent the client directly). See Rule 1.9, cmt. 5.

Question 10

What if a current client is making a proffer to the State to provide information and this information implicates a former client or is explicitly offered to build a case against a former client?

Although the relationship in which a client provides information that could be used to prosecute a former client is likely more antagonistic than that when a former client is cross-examined during the current client’s trial, the analysis is similar. The key question is whether the current lawyer has access to material information that was obtained from the former representation that could be used to further the current client’s endeavor to cooperate with the State. See Rule 1.9 cmt. 3 (matters are “substantially related” if there is a “substantial risk that information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter”). The risk is likely to be significant that information obtained from the former client could “spill over” into the current client’s proffer, and thus a conflict almost certainly exists where the lawyer is in possession of material information. See *also* Rule 1.9 cmt. 3.

Furthermore, a conflict may exist independently of the question of whether the lawyer is in possession of confidential, material information from the prior representation. If the lawyer’s loyalty to the former client prevents the lawyer from taking all appropriate steps to improve the current client’s position, then this would also constitute a conflict and require withdrawal.

However, if the former representation occurred many years previously, and no material information remains in either the minds of those involved in the current representation or the firm’s files, it is conceivable that the relationship between the two matters is sufficiently attenuated such that no conflict exists.

After the amendment to Rule 1.10 discussed above, this conflict could potentially be addressed through informed consent or screening and notice. However, given the directly antagonistic nature of the conflict and the fact that the proffer may be made in secret, seeking such consent may be impossible, impracticable, or ill-advised. Such a conflict may also be non-consentable.

Question 11

What practical considerations arise in implementing screening and notice?

Amended Rule 1.10(g) now allows for screening and notice as a remedy for most conflicts involving former clients. In determining whether representation of the current client can ethically continue after screening and notice, Chiefs should speak with attorneys and staff involved in the former client's case if they are still in the office. Chiefs should also consider reviewing the former client's case files. Where Chief Public Defenders determine that representation can ethically continue, they should consider appropriate measures to ensure that the remedy of screening and notice is applied effectively. Comment 9 to Rule 1.0 provides helpful guidance on effectuating screening:

The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

Technological measures also may exist to ensure that attorneys do not have electronic access to prior files.

CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0100 - CLIENT-LAWYER RELATIONSHIP

27 NCAC 02 RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer, including a prohibition under Rule 6.6, and the prohibition does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
 - (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
- (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:
- (1) the personally disqualified lawyer is timely screened from any participation in the matter; and
 - (2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.
- (d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
- (e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.
- (f) The disqualification prescribed by Paragraphs (a) and (b) of this Rule when applied to members of the North Carolina Department of Justice may be resolved by following the screening and notice requirements as set out in Subparagraphs (c)(1) and (c)(2) of this Rule.
- (g) Disqualification pursuant to Rule 1.9 as prescribed by Paragraphs (a) and (b) of this Rule when applied to members of a public defender's office may be resolved by following the screening and notice requirements as set out in Subparagraphs (c)(1) and (c)(2) of this Rule.

Comment

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(d). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in Paragraph (a) of this Rule gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) of this Rule operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in Paragraph (a) of this Rule does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in Paragraph (a) of this Rule also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does Paragraph (a) of this Rule prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(l) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Where the conditions of Paragraph (c) of this Rule are met, imputation is removed, and consent to the new representation is not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation.

[7] Requirements for screening procedures are stated in Rule 1.0(l). Paragraph (c)(2) of this Rule does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, nor does it specifically prohibit the receipt of a part of the fee from the screened matter. However, Rule 8.4(c) prohibits the screened lawyer from participating in the fee if such participation was impliedly or explicitly offered as an inducement to the lawyer to become associated with the firm.

[8] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] Rule 1.10(d) removes imputation with the informed consent of the affected client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(f).

[10] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11 (b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[11] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, Paragraph (j) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

[12] Lawyers working in a public defender's office provide clients with constitutionally guaranteed representation. Similarly, lawyers working in the North Carolina Department of Justice provide government entities, agencies, and individuals with statutorily guaranteed representation. See, e.g., N.C. Gen. Stat. § 114-2. Historically, lawyers working in either of these offices have been considered part of a single "firm" for conflict analysis. See, e.g., 98 FEO 5. However, application of the imputed conflict rules set out in Rule 1.10 can create a limitation on the provision of constitutionally or statutorily guaranteed representation, thereby hindering the public's or the government's ability to avail itself to the legal representation provided by law. Considering the Rules of Professional Conduct are "rules of reason" (see Rule 0.2 Scope [1]; see also RPC 55), Rule 1.10(f) and (g) permit the North Carolina Department of Justice and public defender offices, respectively, to resolve certain imputed conflict issues by taking reasonable precautions to screen disqualified lawyers from participation in the representation giving rise to the conflict under this Rule and provide notice to the affected individual(s) as set out in Rule 1.10(c). Rule 1.10(f) and (g) only apply to the referenced agencies or offices and do not permit private law firms to avoid imputed disqualification under Rule 1.10 by employing screening measures other than as set out in Paragraph (c) of this Rule.

[13] The Chief Public Defender of any public defender office is tasked with making reasonable efforts to ensure all assistant public defenders employed by the office conform their conduct to the Rules of Professional Conduct. See generally Rule 5.1. Accordingly, the Chief Public Defender of a public defender office should review and make the determination as to whether a public defender office can proceed with representation pursuant to this Rule.

History Note: Authority G.S. 84-23;
Eff. July 24, 1997;

Amended Eff. February 27, 2003.

Amendments Approved by the Supreme Court: March 18, 2026.

1 **CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR**

2
3 **SECTION .0100 - CLIENT-LAWYER RELATIONSHIP**

4
5 **27 NCAC 02 RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE**

6 (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them
7 practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal
8 interest of the prohibited lawyer, including a prohibition under Rule 6.6, and the prohibition does not present a
9 significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

10 (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a
11 person with interests materially adverse to those of a client represented by the formerly associated lawyer and not
12 currently represented by the firm, unless:

- 13 (1) the matter is the same or substantially related to that in which the formerly associated lawyer
14 represented the client; and
15 (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material
16 to the matter.

17 (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person
18 in a matter in which that lawyer is disqualified under Rule 1.9 unless:

- 19 (1) the personally disqualified lawyer is timely screened from any participation in the matter; and
20 (2) written notice is promptly given to any affected former client to enable it to ascertain compliance
21 with the provisions of this Rule.

22 (d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule
23 1.7.

24 (e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by
25 Rule 1.11.

26 (f) The disqualification prescribed by paragraphs (a) and (b) when applied to members of the North Carolina
27 Department of Justice may be resolved by following the screening and notice requirements as set out in paragraphs
28 (c)(1) and (c)(2).

29 (g) Disqualification pursuant to Rule 1.9 as prescribed by paragraphs (a) and (b) when applied to members of a public
30 defender's office may be resolved by following the screening and notice requirements as set out in paragraphs (c)(1)
31 and (c)(2).

32
33 **COMMENT**

34
35 Definition of "Firm"

36 [1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership,
37 professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in

1 a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(d). Whether
2 two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments
3 [2] - [4].
4

5 Principles of Imputed Disqualification

6 [2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as
7 it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of
8 lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that
9 each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated.
10 Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to
11 another, the situation is governed by Rules 1.9(b) and 1.10(b).

12 [3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection
13 of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client
14 because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs
15 of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On
16 the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be
17 materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer
18 would be imputed to all others in the firm.

19 [4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited
20 from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit
21 representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for
22 example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any
23 personal participation in the matter to avoid communication to others in the firm of confidential information that both
24 the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(l) and 5.3.

25 [5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly
26 adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies
27 regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a
28 person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm
29 may not represent the person where the matter is the same or substantially related to that in which the formerly
30 associated lawyer represented the client and any other lawyer currently in the firm has material information protected
31 by Rules 1.6 and 1.9(c).

32 [6] Where the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is
33 not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon
34 motions to disqualify a lawyer from pending litigation.

35 [7] Requirements for screening procedures are stated in Rule 1.0(l). Paragraph (c)(2) does not prohibit the screened
36 lawyer from receiving a salary or partnership share established by prior independent agreement, nor does it specifically
37 prohibit the receipt of a part of the fee from the screened matter. However, Rule 8.4(c) prohibits the screened lawyer

1 from participating in the fee if such participation was impliedly or explicitly offered as an inducement to the lawyer
2 to become associated with the firm.

3 [8] Notice, including a description of the screened lawyer's prior representation and of the screening procedures
4 employed, generally should be given as soon as practicable after the need for screening becomes apparent.

5 [9] Rule 1.10(d) removes imputation with the informed consent of the affected client under the conditions stated in
6 Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by
7 Rule 1.7(b) and that each affected client has given informed consent to the representation, confirmed in writing. In
8 some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the
9 effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition
10 of informed consent, see Rule 1.0(f).

11 [10] Where a lawyer has joined a private firm after having represented the government, imputation is governed by
12 Rule 1.11 (b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served
13 clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are
14 not imputed to government lawyers associated with the individually disqualified lawyer.

15 [11] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (j) of that Rule,
16 and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the
17 personally prohibited lawyer.

18 [12] Lawyers working in a public defender's office provide clients with constitutionally guaranteed representation.
19 Similarly, lawyers working in the North Carolina Department of Justice provide government entities, agencies, and
20 individuals with statutorily guaranteed representation. See, e.g., N.C. Gen. Stat. § 114-2. Historically, lawyers working
21 in either of these offices have been considered part of a single "firm" for conflict analysis. See, e.g., 98 FEO 5.
22 However, application of the imputed conflict rules set out in Rule 1.10 can create a limitation on the provision of
23 constitutionally or statutorily guaranteed representation, thereby hindering the public's or the government's ability to
24 avail itself to the legal representation provided by law. Considering the Rules of Professional Conduct are "rules of
25 reason" (see Rule .02 Scope [1]; see also RPC 55), paragraphs (f) and (g) permit the North Carolina Department of
26 Justice and public defender offices, respectively, to resolve certain imputed conflict issues by taking reasonable
27 precautions to screen disqualified lawyers from participation in the representation giving rise to the conflict under this
28 Rule and provide notice to the affected individual(s) as set out in paragraph (c). Paragraphs (f) and (g) only apply to
29 the referenced agencies or offices and do not permit private law firms to avoid imputed disqualification by employing
30 screening measures other than as set out in paragraph (c).

31 [13] The Chief Public Defender of any public defender office is tasked with making reasonable efforts to ensure all
32 assistant public defenders employed by the office conform their conduct to the Rules of Professional Conduct. See
33 generally Rule 5.1. Accordingly, the Chief Public Defender of a public defender office should review and make the
34 determination as to whether a public defender office can proceed with representation pursuant to this Rule.

35
36 *History Note: Authority G.S. 84-23;*
37 *Eff. July 24, 1997;*
38 *Amended Eff. February 27, 2003.*

**SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT
3 GOVERNMENT OFFICERS AND EMPLOYEES**

4 (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee
5 of the government:

- 6 (1) is subject to Rule 1.9(c); and
- 7 (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated
8 personally and substantially as a public officer or employee, unless the appropriate government
9 agency gives its informed consent, confirmed in writing, to the representation.

10 (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer
11 is associated may knowingly undertake or continue representation in such a matter unless:

- 12 (1) the disqualified lawyer is timely screened from any participation in the matter; and
- 13 (2) written notice is promptly given to the appropriate government agency to enable it to ascertain
14 compliance with the provisions of this rule.

15 (c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential
16 government information about a person acquired when the lawyer was a public officer or employee, may not represent
17 a private client whose interests are adverse to that person in a matter in which the information could be used to the
18 material disadvantage of that person. As used in this Rule, the term "confidential government information" means
19 information that has been obtained under governmental authority and which, at the time this Rule is applied, the
20 government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not
21 otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation
22 in the matter only if the disqualified lawyer is timely screened from any participation in the matter.

23 (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

- 24 (1) is subject to Rules 1.7 and 1.9; and
- 25 (2) shall not:
 - 26 (A) participate in a matter in which the lawyer participated personally and substantially while
27 in private practice or nongovernmental employment, unless the appropriate government
28 agency gives its informed consent, confirmed in writing; or
 - 29 (B) negotiate for private employment with any person who is involved as a party or as lawyer
30 for a party in a matter in which the lawyer is participating personally and substantially,
31 except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator
32 may negotiate for private employment as permitted by Rule 1.12(b) and subject to the
33 conditions stated in Rule 1.12(b).

34 (e) As used in this Rule, the term "matter" includes:

- 35 (1) any judicial or other proceeding, application, request for a ruling or other determination, contract,
36 claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a
37 specific party or parties, and
- 38 (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

1 Comment

2 [1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules
3 of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In
4 addition, such a lawyer may be subject to statutes and government regulations regarding conflicts of interest. Such
5 statutes and regulations may circumscribe the extent to which the government agency may give consent under this
6 Rule. *See* Rule 1.0(f) for the definition of informed consent.

7 [2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently
8 serving as an officer or employee of the government toward a former government or private client. Rule 1.10, however,
9 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation
10 rule for former government lawyers that provides for screening and notice. Because of the special problems raised by
11 imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as
12 an officer or employee of the government to other associated government officers or employees, although ordinarily
13 it will be prudent to screen such lawyers.

14 [3] Paragraphs (a)(2) and (d)(2) impose additional obligations on a lawyer who has served or is currently serving as
15 an officer or employee of the government. They apply in situations where a lawyer is not adverse to a former client
16 and are designed to prevent a lawyer from exploiting public office for the advantage of another client. For example, a
17 lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later
18 private client after the lawyer has left government service, except when authorized to do so by the government agency
19 under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the
20 claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and
21 (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

22 [4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government
23 agency and another client, public or private, the risk exists that power or discretion vested in that agency might be
24 used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client
25 might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage
26 could accrue to the other client by reason of access to confidential government information about the client's adversary
27 obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or
28 formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and
29 from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high
30 ethical standards. The provisions for screening and waiver in paragraph (b) are necessary to prevent the
31 disqualification rule from imposing too severe a deterrent against entering public service. The limitation of
32 disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending
33 disqualification to all substantive issues on which the lawyer worked, serves a similar function.

34 [5] When a lawyer has been employed by one government agency and then moves to a second government agency, it
35 may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed
36 by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by
37 paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The

1 question of whether two government agencies should be regarded as the same or different clients for conflict of interest
2 purposes is beyond the scope of these Rules. *See* Rule 1.13 Comment [6].

3 [6] Paragraphs (b) and (c) contemplate a screening arrangement. *See* Rule 1.0(l) (requirements for screening
4 procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by
5 prior independent agreement nor do they specifically prohibit the receipt of a part of the fee from the screened matter.
6 However, Rule 8.4(c) prohibits the screened lawyer from participating in the fee if such participation was impliedly
7 or explicitly offered as an inducement to the lawyer to become associated with the firm.


8 [7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures
9 employed, generally should be given as soon as practicable after the need for screening becomes apparent. When
10 disclosure is likely significantly to injure the client, a reasonable delay may be justified.

11 [8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual
12 knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

13 [9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency
14 when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

15
16 *History Note:* Authority G.S. 84-23;
17 Adopted Eff. July 24, 1997;
18 Amended Eff. October 6, 2004; February 27, 2003.
19

Agency Business



IDS OFFICE OF INDIGENT DEFENSE SERVICES
SAFEGUARDING JUSTICE

MAY 1, 2026

2026 FORENSIC RESOURCE COUNSEL UPDATE

1

TRAINING - WEBINARS

- 2025 IDS Forensic Webinar Series
 - Offered twelve 90-minute webinars
 - Averaged 112 attendees per session, with over 1,300 hours of continuing education provided to defenders.
 - First 5 sessions focused on managing digital evidence and ranged from 107-164 attendees.
 - Partnered with the State Crime Lab for remaining 7 sessions which had 75-107 attendees.
- 2026 IDS Forensic Webinar Series
 - Focus on neurodiversity
 - Averaged 115 attendees for first 3 sessions of 2026
 - Thank you to Amanda Bunch, Shonkyra Ridley, and Anthony Monaghan!

IDS OFFICE OF INDIGENT DEFENSE SERVICES

2

ADDITIONAL TRAININGS

- Mar. 2025 Death by Distribution training with NACDL (72 attendees)
- Juvenile defense presentation on AI and ethics
- Direct and Cross of Experts workshops
- Whiskey in the Courtroom – Evolving Trends in Forensic Science: Neurodiversity (135 attendees)
- Annual New Felony Defender presentation
- Forensic update for the NCAJ Death Penalty Seminar
- Forensic update for annual Office of the Capital Defender training
- Intern and class presentations at Campbell Law, Duke Law, summer interns

IDS OFFICE OF INDIGENT DEFENSE SERVICES

3

LOCAL TRAININGS



- High Point Bar presentation on 702 challenges and cross-exam of experts
- Brunswick County presentation on working with experts
- Johnston Co Lunch n Learn on cross-exam of experts and AI
- Union County webinar on toxicology
- Western DNA webinar
- DNA Updates in Johnston, Mecklenburg, and Brunswick Counties

4

CASE CONSULTATION

- Provided assistance to PAC and public defenders daily. Consulted on obtaining and reviewing discovery, assisted teams with identifying appropriate experts and obtaining funding for those experts, drafted motions and memorandum of law in support of motions to exclude unreliable forensic evidence, and drafted direct and cross-examination of experts.



5

WORKING WITH EXPERTS



- Recruitment of mental health and other experts - added 15 experts to database of experts in 2025
- Completed Expert Witnesses in Criminal Cases guide
- Expert Contract Pilot Project – continued supervision of contract with Envista Digital Forensic experts and Dr. Ed Brown, drug chemistry expert. Expanded to contract to Dr. Korin Leffler and Dr. Rohan Parekh (pharmacology/toxicology).
- Continued work on Private Investigator Directory which contains listings for 116 investigators (25 added in 2025).
- Reviewed requests for funding for experts in capital post-conviction cases and other cases where IDS authorizes expert assistance

6

EXPERT SERVICES PROJECT

What attorneys are saying...

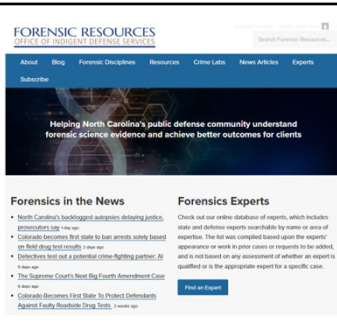
- "I've worked with Dr. Leffler in each case so far, and she is always remarkably prompt. She is also reliably clear and concise in her assistance: she will tell me exactly what the results mean, what the implications are for my client, and what she can do for me. I've used her principally for DWIs. In some cases, she has told me that the results indicate impairment, and I save so much time that I might have spent barking up the wrong tree.
- In other cases, she's been able to tell me how and why the results cannot prove impairment and has prepared me an expert report to that effect. In my most recent DWI case with her, she wrote me a report explaining that the levels of THC found in my client's blood were not conclusively impairing, and that the symptoms the officer mistook as impairing were more consistent with symptoms from the manic episode my client was experiencing. The prosecution stipulated to the report. I submitted it without Dr. Leffler having to testify, and the judge found my client not guilty. He said the report was the deciding factor."



7

WEBSITE

- Forensicresources.org
- Posted 33 blog posts on various topics of forensic evidence, reaching an audience of 850 subscribers



8

ADDITIONAL PROJECTS



- NC Forensic Consultant Network
- Staffed IDS Commission Sub-Committee on Digital Discovery
- Lab tours
- Forensic Book club
- Supervisor for IDS Recruitment and Training Coordinator
- Co-presented monthly IDS Attorney Orientation program with Carla Huff

9



2026 Forensic Resource Counsel Update

Training

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- Expert Contract Pilot Project – continued supervision of contract with Envista Digital Forensic experts and Dr. Ed Brown, drug chemistry expert. Expanded to contract to Dr. Korin Leffler and

Dr. Rohan Parekh (pharmacology/toxicology) who are working about 4 cases per month, roughly 1-4 hours per case.

- Continued work on Private Investigator Directory which contains listings for 116 investigators (25 added in 2025).
- Reviewed requests for funding for experts in capital post-conviction cases and other cases where IDS authorizes expert assistance

Website

- Posted 33 blog posts on various topics of forensic evidence, reaching an audience of 850 subscribers

Additional projects

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The [IDS Expert Fee and Expense Applications memo](#) from Dec. 6, 2022 defines in the chart below which expert types fall within each rate category set by the AOC.

Highest Education Level or Field of Expertise	Base Hourly Rate
High School or Equivalent	\$30
Associate's Degree	\$50
Bachelor's Degree	\$70
Master's Degree	\$85
Crime Scene and Related Experts (e.g., Accident Reconstruction, Arson, Ballistics, Blood Spatter, DNA, Drug Chemistry, Fingerprint, Gang Expert, Handwriting, Toxicology, Use of Force)	\$100
CPA/Financial Expert	\$100
Pharmacy/PharmD	\$125
Information Technology Experts (e.g., Computers, Telecommunications, Digital Forensics)	\$150
Ph.D./Psy.D/Other Licensed Doctor (e.g., Doctor of Veterinary Medicine, Doctor of Nursing, Doctor of Dental Medicine)	\$200
Medical Doctor	\$250
MD with Specialty (e.g., Psychiatrist, Pathologist)	\$300

The rates for some of these experts are significantly lower than those paid for indigent defense in other states and in the federal system which is making it more difficult to find NC experts willing to work for these rates. NC experts report they are “subsidizing” their NC work with work from other states and in the federal system, reducing their availability to NC attorneys.

For reference, the Fourth Circuit CJA Expert Presumptive Rates are as follows:

- Accident Reconstruction \$150-200
- DNA (BS or PhD) \$150-250
- Chemist/Toxicologist (BS or PhD) \$150-275
- Nurses (LPN or RN) \$100-125
- Nurses (MSN or DNP, including SANE certified) \$150-250

In NC, nurses with a master’s degree have a rate of \$85. Nurses with a DNP have a rate of \$200 per hour.

In order to increase availability of NC experts to perform work on NC cases, IDS proposes:

1. Broaden definition of Information Technology Experts in IDS Fee Policies to include additional fields with a strong technical background, specifically, Accident Reconstruction, DNA, Chemistry, and Toxicology. This would increase the hourly rate for experts in these fields who do not have a PhD from \$100 per hour to \$150 per hour.
2. Include MSN and SANE nurses in the Crime Scene and Related category.

Chief Justice's Committee on Enterprise Justice Improvements



**Additional materials available upon request*

Briefing Memorandum

Subject: Enterprise Justice (eCourts/Odyssey) – Cross-stakeholder Findings

Date: March 6, 2026

Prepared by: Jamie Blackwell, IDS

Purpose

This memorandum synthesizes written feedback submitted by six core judicial stakeholder groups regarding the statewide implementation of **Enterprise Justice (Odyssey)**. The goal is to present **common themes, operational risks, and priority improvement areas** to support informed decision making, governance planning, and system remediation efforts in 2026.

Background

IDS submitted a report to the Chief Justice identifying 15 points of improvement for eCourts on 12/15/25. These priorities span IDS, PD and State Defender's needs. IDS met with the Chief Justice and other stakeholders on 1/23/26 to initiate the stakeholder process and subsequently 2/27/26 to identify the five most important needs of each stakeholder. Find the IDS report linked below; reports from other stakeholders are available upon request.

Stakeholders Submitting Reports:

- Clerks of Superior Court
- District Attorneys
- District Court Judges
- Superior Court Judges
- North Carolina State Bar
- Office of Indigent Defense Services: [*Requested Enhancements to eCourts.pdf*](#)

Internal Committee:

- Chief Paul James, District 31
- Chief Laura Gibson, District 2
- Chief Traynham Dorn, District 13
- Appellate Defender, Glenn Gerding
- APD Carrah Franke, District 10
- Admin Asst. Kimberly Whitehouse, District6
- IT Manager, Jamie Blackwell, IDS

Executive Summary

Across all stakeholder groups, the feedback is consistent in one central finding:

Enterprise Justice is not currently reliable, fast, or intuitive enough to support day-to-day court operations at scale.

While stakeholders support the long-term goals of eCourts, they report that performance instability, lack of automated notice, and inefficient workflows are systemic and not transitional issues. These problems delay court proceedings, increase risk of error, shift administrative work to judges and attorneys, and erode public confidence in the courts.

Importantly, many of the highest impact fixes are crosscutting and would benefit every court role simultaneously.

Top System Wide Priorities (Consensus Across Stakeholders)

1. System Performance, Stability, and Latency

Raised by: All six stakeholder groups

- Frequent freezing, spinning, and crashes occur during live court.
- Users routinely restart applications or entire computers.
- High-volume calendars (traffic, district criminal) are particularly affected.
- Work comes to a halt when the system is unavailable, forcing paper workarounds.

Risk:

Delayed justice, continued case continuances, incorrect dispositions or payments, and reputational damage to the courts.

2. Automated Notice and Service of Case Activity

Raised by: Judges, Clerks, IDS, State Bar, District Attorneys

- There is no reliable, automated notice when:
 - filings are made
 - orders are entered
 - hearings are scheduled or changed
- Attorneys must repeatedly check cases manually.
- Private counsel does not receive the same visibility into case activity as institutional users.

Risk:

Missed deadlines, uneven access to information, ethical concerns, and growing reliance on off-system communication.

3. Usability and Excessive Clicks

Raised by: Judges, Clerks, District Attorneys

- Routine tasks require unnecessary steps.
- Navigation is inconsistent and non-configurable.
- Users cannot easily prioritize or customize views.

Risk:

Reduced courtroom throughput, user fatigue, and higher error rates.

4. Search, Case Visibility, and Calendars

Raised by: All judicial roles, IDS

- Searching for cases or parties is slow and unreliable.
- Users cannot easily see:
 - all cases for one defendant
 - essential case context directly on calendars
- Calendars lack key fields (charges, bond, counsel) and bulk tools.

Risk:

Inefficient court sessions and incomplete situational awareness for judges and counsel.

5. Task Management and Accountability

Raised by: Judges, Clerks, District Attorneys

- No “return to sender” or consistent task routing.
- Completed tasks are hard or impossible to locate.
- No effective audit trail for time-sensitive work.

Risk:

Lost filings, uncertainty over responsibility, and inability to verify whether work occurred.

Secondary but High Impact Issues

- **Reporting and Data Accuracy:** unreliable case status and workload reports undermine management and legislative reporting.
 - **Bulk Actions:** lack of batch processing (signing, updating, dispositions) dramatically increases staff time.
 - **Filing and Acceptance Delays:** work is invisible until clerk acceptance, even when time sensitive.
 - **Security and Access Controls:** inconsistent handling of sealed/confidential information and ethics concerns.
 - **Governance Gaps:** field stakeholders report diminished influence postimplementation, despite having the most hands-on experience.
-

Strategic Observations

1. **These issues are not role specific.**
Nearly every major concern appears in **at least four of the six submissions**, indicating systemic design and governance problems rather than training gaps.
 2. **Performance and communication issues amplify all others.**
Fixing stability and notice would immediately reduce friction in nearly every workflow.
 3. **Workarounds are now the norm.**
Stakeholders increasingly rely on email, paper, and parallel tools, undermining the value of a unified court system.
 4. **Trust is at risk.**
Clerks report public frustration; attorneys report skepticism; judges report loss of courtroom efficiency.
-

Closing

Enterprise Justice remains a transformational effort with long-term value. However, stakeholder feedback now reflects an urgent need to shift from implementation mode to stabilization, optimization, and trust rebuilding. The next stakeholder meeting is 3/27/26, to discuss the development of workgroups to tackle the top five issues across all stakeholders.

Graphic Summary Identifying Stakeholders' Response to Generalized Priorities

Legend: ● Critical • High • Medium • Low • ○ Not raised

Enterprise Justice (eCourts) — Cross-stakeholder Priority Heat Map

Stakeholder → Themes ↓	Performance & Stability	Automated Notices / Service	Search & Navigation	Calendars & Dockets	Task Mgmt & Audit Trail	Bulk Actions (Batch)	Reporting & Data Accuracy	Filing / Acceptance & Access Parity	Security / Access & Ethics	Governance & Roles
Clerks of Superior Court	●	•	•	●	•	•	•	•	•	●
District Attorneys	●	•	•	•	●	●	●	●	●	•
District Court Judges	●	●	•	•	•	•	●	●	●	●
Superior Court Judges	•	•	•	•	•	•	●	•	•	•
Indigent Defense Services (IDS)	•	●	•	•	•	•	●	•	•	•
NC State Bar	○	●	●	○	•	○	○	•	•	●



NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES

MARY POLLARD

EXECUTIVE DIRECTOR
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OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

BRYAN JONES

CHAIR

NCIDS.org

Subject: Requested Enhancements to Enterprise Justice

Date: December 14, 2025

To: Liz Mashburn, General Counsel and Chief of Staff to the Chief Justice

The fifteen enumerated items below, in order of preference, identify the most beneficial modifications to the Enterprise Justice platform for IDS and its affiliated offices. Supporting documentation for each topic is included in the attached pages. The documentation is intended to contextualize the problem, identify high-level constraints and initiate conversation. For all items listed it is assumed additional information and requirements gathering will be conducted prior to development or implementation of solutions.

- 1) Enhance functionality to send/receive notices and serve filed documents
- 2) Correct the record of appointment to accurately reflect Retained vs Appointed counsel
- 3) Enhanced reporting capabilities
- 4) Create workflows for the Office of Capital Defender to initiate cases and appoint attorneys
- 5) Improve the efficiency of Setoff Debt (SOD) data and workflows
- 6) Update the process of appointing Probation Violations
- 7) Allow batch updates in Attorney Manager
- 8) Create a secure pathway to send *ex parte* requests to judges
- 9) Improve conflict checking capabilities
- 10) Add additional roles to stratify permissions
- 11) Provide visibility to prior juvenile cases for attorneys representing juveniles
- 12) Enhance search screens and display of results in Odyssey Navigator
- 13) Report and calculate prior record level to assist in determination of sentence length
- 14) Provide IDS staff attorneys access to daily court calendars
- 15) Refine portal search results such that more detailed data is displayed

Supporting Documentation:

1) Enhance functionality to send/receive notices and serve filed documents

Prior to Enterprise Justice, orders were handed directly to the attorney or sent to their mailbox. At present, the platform does not offer an option as expedient. To keep pace with efficiencies created by the new system state attorneys using Odyssey need the ability to serve filed documents on registered parties or attorneys and send/receive notifications regarding court date changes, filing of tasks, bond modifications/orders, indictments being filed, dismissals filed, appeal, withdrawals, entries of appearance as counsel, signed orders, etc. In the absence of these capabilities inconsistent workflows are spawn outside the system. For example, the state appellate and capital defenders receive notice of appeals and appointments via mail or email. There is a huge loss of efficiency because current configuration does not allow these parties to be served or be notified of filings and attorneys must constantly check their cases for updates. When a document is tasked to the clerk for filing through Attorney Manager, the user could select the opposing counsel(s) to receive a copy of the filing via email as service and record service. Additionally, when tasking a document to the clerk for filing the system needs to attach a filing date for the date it was sent, not the date the clerk accepts it. Filing through Portal does this now, which is critical for time sensitive documents like notice of appeal. Automating this process can standardize where documents are stored. Presently, attorneys must look in several places including documents and events.

2) Correct the record of appointment to accurately reflect Retained vs Appointed counsel

Presently the attorney type in Case Manager is not accurate on thousands of cases. These records need to be corrected, the underlying issue resolved, and a streamlined update process defined should PDs identify inaccurate entries. In public defender districts, when someone is found indigent, the client is appointed to the public defender's office, and the public defender either assigns the case to a public defender or farms it out to private assigned counsel. Attorney manager has the attorney type for staff defenders as "PUBLIC DEFENDER" and farmout counsel as "PRIVATE ASSIGNED COUNSEL". The attorney type does not migrate over to Case Manager. In fact, all public defender appointments migrate from Attorney Manager to Case Manager as "RETAINED". This is a loss of functionality from prior iterations of case management systems. This discrepancy compromises the integrity of the court record and renders some system reports useless and is an obstacle for complying with mandatory reporting requirements set by the legislature. A suggested work around was to ask the clerk to change the attorney type after the Public Defender assigns counsel. This is not tenable for even moderately sized districts as the clerks are already overburdened. BAPM has advised the easiest solution is to unlock the Parties Tab in Case Manager for Public Defender users so they can be accountable for the attorney type in cases they appoint, and the court record can be accurate. AOC has done this in the past when public defender appointed cases were not factored into the initial iteration of CCIS-CC. Additionally, expanding the attorney types to include "WAIVED COUNSEL" would capture "self-waived" or waived appointed". This change more accurately defines counsel and partitions the data.

3) Enhance reporting capabilities

System reports are essential to PD Office workflows; enhanced reporting capabilities are critical both to effective operation of high-volume PD offices and for accurate reporting by IDS in response to legislative requests. More reports are needed to optimize office productivity as Enterprise Justice matures, and we move away from paper-based systems. Existing canned reports are available, but not all are available in .csv format, which is a more versatile format than a static .pdf. Added flexibility to build *ad hoc* reports that allow users to select fields and perform compound queries will streamline office workflows. Two examples of needed reports include caseload reports by ADA identifying active cases and case disposition reports which are essential for annual legislative reporting by IDS.

4) Create workflows for the Office of Capital Defender to initiate cases and appoint attorneys

The Office of the Capital Defender (OCD) needs workflows to identify additional cases that fall within its authority to appoint attorneys to capital cases. . The list must contain all cases that meet criteria for OCD appointment including notices of withdrawals. While OCD receives a list of cases daily, not all cases that meet the criteria for inclusion appear on the list. OCD is presently unable to generate reports to identify any names not on its list.

Currently, the office is limited to performing statewide searches using the defendant's name and/or the case number. OCD does not have the means to enter attorneys or process appointments through Odyssey. Clerks and DAs often call to inquire about counsel. As a work around the office utilizes File & Serve to submit appointment paperwork to the court. This method has several drawbacks including the inability to categorize paperwork correctly, because, while the correct filing code exists, it is not available in File & Serve system. This means that all appointments are filed as either "Miscellaneous" or "Notice of Appearance." OCD's need to appoint attorneys is similar to that of district public defenders, but its jurisdiction spans the state and all offices because OCD assigns not only attorneys within OCD but also private counsel and assistant public defenders. File and Serve is not intended for nor suitable for this practice. This could be resolved by granting OCD access to input counsel directly into Odyssey and task the appointment paperwork to the clerk.

5) Improve the efficiency of Setoff Debt (SOD) data and workflows

The SOD program is required by statute and has traditionally yielded approximately \$10 million in revenue to pay for court appointed work. One facet of the IDS Setoff Debt Program generates half these funds by intercepting funds from lottery winnings and state income tax refunds to satisfy civil judgements for attorneys' fees. This program is managed by one staff member; thus accuracy and efficiency are essential to success. IDS research staff has been able to identify existing erroneous records but correcting them is cumbersome and can only be done by clerks or AOC staff. The SOD process is currently affected by seven distinct system errors that prevent judgments from being properly applied to an interceptee's record, significantly disrupting downstream enforcement. These errors also hinder the timely generation and delivery of SOD notices, placing compliance with statutory deadlines at risk. Errors occur in approximately 35–40% of cases, indicating a systemic reliability issue rather than isolated incidents. In addition, interest is incorrectly calculated using simple interest instead of the required compound interest, resulting in inaccurate debt balances. The only tenable path forward is to prevent future errors of this magnitude.

Frequently the SSN of debtors is not correct, which leads to erroneous intercepts and a prolonged refund process. Updating the workflow to confirm the identity of applicants when they complete the Affidavit of Indigency would resolve this issue. Additionally, updating how the SOD cases are flagged and adding the capability to query and/or filter flagged cases once a party is searched would improve efficiencies and save approximately two hours per day during tax season. Presently, the Party Search screen returns a list of parties that may list several pages of parties, which operators examine iteratively. After exiting the case records the display reverts to the first page of listed parties. Lastly, adding a separate flag, with a different color, specific to SOD cases would help; allowing the flag and the financial data to persist even after a debt is paid is required to and allow for staff to reference the payment history. IDS frequently receives inquiries about intercepts on accounts that are paid-in-full. Currently, we are unable to answer those callers' questions in the absence of flags and full payment history.

6) Update the process of appointing Probation Violations

The case assignment workflow for probation violations (PV) differs from that for other case types. PVs are not sent to PD offices through task queue. In a criminal case, a the clerk enters a CAPD event assigning it to the PD through the task queue. For PV cases, the PD is alerted that a new case exists through a notification report but the assignment is not sent through the task queue. This means that the PD must compare two different resources and search the system to find the missing cases. PDs rely heavily on reports to capture these cases, spending several hours a week verifying data and removing original attorney names from PV cases. On average 30% of the PD case load is comprised of PV cases; the current situation is not efficient or sustainable for the clerk, PD or courtroom staff.

Entries of prior Counsel in the system complicate the assignment of PV and prevent getting useful results when the attorney's name is searched. If the PV case has not been updated with the new attorney assignment, the court will continue to call the original attorney even if that attorney no longer represents the defendant. The update process for this differs by county but it is largely handled by telephone and email.

7) Allow batch updates in Attorney Manager

Allow for batch updating of client contact information, attorney assignments and general non-case related notes in Attorney Manager. This can currently be done by relating cases, but this practice is time-consuming when a client has many cases. Additionally, staff regularly receive requests from clerks to unrelate cases to facilitate expunction workflows. Implementing a means to quickly identify a client or group of cases and update fields on multiple cases/clients would increase office productivity, maintain parity across records and eliminate potential information gaps. Similar functionality is desired for attorney time entry. The ability to equally distribute time across many cases with a single action was a key feature of legacy systems that eliminated repetitive tasks and saved attorney time.

8) Create secure pathway to send ex parte requests to judges

Develop a secure pathway to send *ex parte* requests to the appropriate judge and prevent anyone from seeing it as it passes through the clerk's office. Currently, all requests go to the clerk unsealed and unprotected, then goes to judge and back to clerk to send to the PD. These communications are currently being dealt with outside of the system. PDs mail the requests to the senior resident superior court judge and then file them in the system after the case is disposed. Throughout the case there is no record of these transactions and no trigger to ensure these communications are entered at disposition.

9) Improve conflict checking capabilities

The conflict checks PDs perform in both Case and Attorney Manager often are hit-or-miss. Additionally, they use flags to identify why cases were farmed out for future reference. Adding a note field to identify why a case was farmed out would help with future conflict checks. PDs are presently using work arounds to improve conflict check results, such as adding co-defendants as states witnesses. To improve conflict checking, PDs would like access to the Co-defendant Tab and to update the Attorney Manger conflict checker to search by name or case number.

10) Add additional roles to stratify permissions

Currently there is not enough flexibility in the system to grant users an appropriate level of access in one area without granting too much access in another. For example, the Details Tab presently offers the access options of Chief or All Staff. Adding a middle access tier would help bridge the gap between the Chief PD's system permissions and staff. The preference would be to allow selected staff to have permission to use the attorney assignment feature. Likewise, the notes field can be edited and updated by all staff, which can be problematic. If adding additional roles is not an option, making audit trails visible and/or preventing update and deletion of these data fields is necessary.

11) Provide visibility to prior juvenile cases for attorneys representing juveniles

Attorneys who represent juveniles need to be able to see the juvenile's prior case files not just the currently assigned file. The Department of Juvenile Justice, District Attorney, and judge all have access to prior case files. Access to this knowledge is critical for adequate representation. Additionally, the PD has no visibility of the case history as it transfers between juvenile and criminal, which means the PDs may not know that the case originated in juvenile or if the client has other pending juvenile cases. The ability to search for juvenile cases would benefit the attorney and client, even if the results only displayed name, charge and counsel.

12) Enhance search screens and display of results in Odyssey Navigator

When using Odyssey Navigator, the default is all available nodes are checked on. When a user customizes nodes, they do have the ability to save the custom settings for later use. It would be more efficient to allow users to save more than one customized setting or enhance the system to update subordinate items based on the parent box status. For example, uncheck all counties when the state box is unchecked. Applying a similar filter to the queues would improve searching. Currently, searching in queues appears to search all queues in the state, which is very slow. Additionally, allowing for search by last name only in Attorney Manger and including the pending court date and case disposition on the results screen would provide significant daily time savings. Lastly, search results appear in chronological order. Listing newer cases first or more preferably allowing the user to select the results display by various attributes would benefit all users.

13) Report and calculate prior record level to assist in determination of sentence length

Attorneys need a means to compile the defendant's criminal history and calculate his prior record level, to help with determining length of sentence. All data needed for this calculation is stored in Odyssey. District attorneys submit this calculation based on previous convictions, but the PD needs to quickly verify these calculations. This is a tool that could potentially benefit both parties.

14) Provide IDS staff attorneys access to daily court calendars

IDS staff attorneys don't have access to the same court calendars as court staff and PD, which is the actual calendar used in court. It would be very helpful and more efficient to allow them to see the same calendar as court staff.

15) Refine portal search results such that more detailed data is displayed

Portal is frequently used by IDS staff for quick searches while roaming the state. When searching by attorney or hearing, a summary is provided. Presently, the defendant's name is and file number are displayed. Including the charges, or at least the lead charge, would be helpful.

Commission Business

File #	Client Name	Offense Level	Hours	Disposition Date	One Year Deadline	1 YR + 90 Days	Date Submitted	Length Past Deadline	Rate at Time	Total Fee	10%	20%	30%
16CRS53120-110	Scott Hemphill	A	509.1	11/1/2024	11/1/2025	1/30/2026	2/19/2026	0 years, 3 months, 18 days	\$ 100.00	\$ 50,910.00	\$ 45,819.00	\$ 40,728.00	\$ 35,637.00
Totals			509.1							\$ 50,910.00	\$ 45,819.00	\$ 40,728.00	\$ 35,637.00

Attorney: Ken Darty

Show Cause: Attorney had 3 overlapping Capital trials
Reached out to IDS before the deadline
Minimal length past deadline (only 18 days past 1+90)
Long history of Capital work
No prior waivers.

Recommendation: *Full payment*