

IDS

OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

August 9, 2024 Quarterly Commission Meeting

Meeting Material

Commission on Indigent Defense Services

August 9, 2024

Virtual

Proposed Agenda

10:00 AM – 3:00 PM

Call to Order

Dorothy Hairston Mitchell

Introductions

Adoption of Proposed Agenda

State Government Ethics Act Reminder

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

Minutes of May 3, 2024, Commission Meeting

Remarks from the Chair

Dorothy Hairston Mitchell

Welcome New Colleagues (John Nieman, IDS Commissioner; Traynham Dorn, District 13 Chief PD)

Director's Report on IDS Business

Mary S. Pollard

2024 Legislative Short Session Update

2025 Legislative Long Session Forecast

Fiscal Reports

Update on FY23-24 Spending and Projections for FY24-25

Aaron Gallagher

Social Workers in Public Defense

Jessica Smith, Hannah Turner, &
Alex Cowell, UNC SoG

Staff Reports

Regional Defender

Tucker Charns

Introduction to defenderData

Whitney Fairbanks

Committee Reports

Becky Whitaker

Workload Study

Digital Discovery

Commission Business

Policy on Successor MARs

Mary Pollard

Convene Personnel Committee

Dorothy Hairston Mitchell

Waiver of One Year Deadline for Fee Applications

Chad Boykin

Other Business

Adjournment

Dorothy Hairston Mitchell

Next Meeting: November 15, 2024 (Location: TBD)



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OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

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DOROTHY HAIRSTON MITCHELL

CHAIR

Memorandum

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

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

I. STATE GOVERNMENT ETHICS ACT

A. COVERAGE AND DEFINITIONS:

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

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

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

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

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

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

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

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

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

C. OBLIGATIONS OF PUBLIC SERVANTS:

1. Annual Statements of Economic Interest:

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

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

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

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

See G.S. 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

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NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES

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DOROTHY HAIRSTON MITCHELL

CHAIR

To: Members of the Commission on Indigent Defense Services

Re: Reimbursement of Expenses

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

Reimbursable Expenses

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

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

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

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2024.05.03 Meeting Minutes

Commission on Indigent Defense Services

Quarterly Meeting – May 3, 2024

Location: The Whitted Building, Hillsborough, NC & Virtual Option via Webex

Commissioner Attendees:

The Honorable Dorothy Hairston Mitchell (Chair), Bryan Jones (Vice Chair), Art Beeler, Tonya Barber (*virtual*), The Honorable Joseph Crosswhite (*virtual*), George Doyle, Marshall Ellis (*virtual*), Caitlin Fenhagen, Staples Hughes, Stacey Rubain

Staff Attendees:

Chad Boykin (Assistant General Counsel, Financial Services), Kevin Boxberger (Regional Defender), Amanda Bunch (Communications Specialist), Sonia Colon (Budget Manager), Whitney Fairbanks (Deputy Director/ General Counsel), Aaron Gallagher (Finance Officer), Angela Henderson (Contracts Administrator), Carla Huff (Recruitment and Training Coordinator), Sarah R. Olson (IDS Resource/Forensic Counsel), Mary S. Pollard (Executive Director), Max Silva (*virtual*) (Legal Assistant), Becky Whitaker (IDS Policy and Planning Attorney)

Local and State Public Defender Program Attendees:

Laura Gibson (District 2), Jennifer Harjo (*virtual*) (District 5), Ricky Champion (District 17), Traynham Dorn (*virtual*) (District 13), Jonathan McInnis (District 21), J. Chad Perry (Chief Special Counsel), Robert Sharpe (Capital Defender), Wendy Sotolongo (Parent Defender), Woodrena Baker Harrell (District 18), Eric Zogry (Juvenile Defender)

Other Attendees:

Daniel Spiegel and Phil Dixon (UNC SOG), Casey Harris-Pratt (*virtual*) (OSBM), Izzi Hernandez-Cruz (OSBM), Kathleen Johnson (OSBM), Jackie Parker/Jaclyn Arnette (OSBM)

Personnel Committee of the IDS Commission (Closed Session)

The Personnel Committee of the IDS commission met in closed session as allowed by G.S. 143-318.11a, beginning at 10 a.m. and prior to the open portion of the meeting.

Call to Order (Open Session)

The meeting was called to order at 11:01 a.m. by the Honorable Dorothy Hairston Mitchell, who then proceeded with the welcome and asked all attendees to introduce themselves.

Adoption of the Agenda

Commissioner Stacey Rubain moved to approve the proposed agenda. Commissioner Caitlin Fenhagen seconded the motion. The agenda was adopted unanimously.

State Government Ethics Act

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

Minutes of the February 2, 2024, Commission Meeting

Commissioner Art Beeler moved to approve the minutes from the February 2, 2024, IDS Commission meeting. Commissioner Caitlin Fenhagen seconded the motion. The minutes were adopted as written.

Remarks from the Chair

Chair Hairston Mitchell announced that after a 9- to 10-step process and by a unanimous vote, **Mary S. Pollard** was recommended for reappointment by the Personnel Committee for the IDS Commission to serve another four-year term as Executive Director for IDS, to begin immediately after the expiration of her current term, August 1, 2024. The recommendation was unanimously accepted by the Commission.

Commissioner Art Beeler acknowledged the lives of the four law enforcement officers who were involved in a recent standoff in Charlotte and were killed in the line of duty. He expressed heartfelt sympathy for the families of the fallen, as they courageously gave their own lives to protect and to serve.

Chair Hairston Mitchell acknowledged **Commissioner Art Beeler** for being named an American Correctional Association E.R. Cass Award recipient. This national award is *the* highest achievement one can attain in the field of Corrections. Beeler stated that it is the staff who do the work, day in and day out, who are most deserving of the comments and fanfare.

Director's Report on IDS Business

Welcome New Staff

IDS Executive Director Mary Pollard introduced two new IDS staff members, Sonia Colon (IDS Budget Manager) and Joseph Oder (Senior Research Associate).

2024 Agenda for the Legislative Short Session

IDS Executive Director Mary Pollard noted that the primary purpose of the short session is to adjust the biennial budget that was approved in the prior long session. The highest priority for the short session, she reported, was to ask for enough funds for the Private Assigned Counsel ("PAC") Fund that would allow IDS to continue to pay PAC uninterrupted through FY 2025.

IDS initially requested \$12 million for the PAC Fund. The initial request also included five fiscal staff positions for the central office (2 of which already existed but would be moved from receipt-supported to appropriations); 14 full time positions in the existing statewide and PD offices that were not previously funded in the biennial budget; and \$1 million for hardware and software updates related to the eCourts rollout.

Since the original short-term request, IDS asked for an additional \$20 million to be held in reserve due to an “historic and unabated demand on the PAC Fund.”

Pollard reported that the Governor’s *recommended* budget granted all requested positions, the \$12 million for the PAC Fund, and \$250,000 for the technology upgrades. It also included (1) a provision for greater raises than what was granted as well as (2) some additional labor market reserve funds. Pollard assured the Commission that she was in regular contact with legislators, including Justice and Public Safety Committee members and that she would continue to communicate the needs of IDS to lawmakers.

OASIS Update

Executive Director Pollard reported that since the Commission’s February 2 approval to launch the Online Attorney State Invoice System (OASIS) electronic invoicing system to pay PAC faster, the project went from incubation stages to issuing its first successful payment to PAC in just three months. Steps along the timeline included: building the initial code; acquiring web hosting and domain name; building the site; cooperation with NCAOC on Python code to keep the data secure; internal and external testing; and finally, issuance of the first payment to PAC in the pilot group on April 25. Pollard described this timeline as nothing short of “amazing.” She said thanks to a modest \$6K investment and hundreds of hours of staff effort, OASIS is a “game changer.” And it will launch for PAC in the first eCourts district (District 2) in June, with future spread into all Odyssey counties.

Efforts to Address Attorney Deserts

With regard to “attorney deserts,” Commissioner Marshall Ellis (an attorney in District 1), sought input from the Commission, IDS staff, and others in attendance on ways to address and improve upon what was described as a “dire” need for PAC, specifically in Districts 1 and 2, and other rural areas. He stated he believed if every criminal defense attorney in these two “desert districts” would step up and do *some* of the work, it [the problem] would “go away, or at least mitigate itself quite a bit.” So he posed the question of how the Commission can help get lawyers to step up and take (some) indigent cases.

First, the group identified other parts of the state where PAC shortages are dire, noting also that the shortage of attorneys is an issue that is not unique to criminal defense but is problematic for the legal profession overall. The group agreed that soliciting help from the local benches and the local bars could be a good way to build awareness about the problem and to recruit attorneys to take on court appointed work. Commissioners and others shared ideas on what, besides a much-needed increase in the pay rates, might entice attorneys to do the work.

In addition to PAC rate increases, the Commission suggested exploring additional resources such as promoting free and low-cost CLE, loan repayment assistance, direct

outreach to firms and attorneys close to attorney deserts, reservation wages, increased court costs, and launching campaigns with professional associations. The Commissioners presents supported seeking more resources in addition to more money for PAC in in the upcoming legislative long session.

Jonathan McInnis, Chief Public Defender in District 21, cautioned against judges appointing attorneys to cases they “do not want;” that it can be equally harmful for a client as it is to go for an extended period without representation.

Chair Hairston Mitchell noted that at the State Bar level and the Office of the Chief Justice, there are subcommittees working on addressing legal deserts. But, as an entity, the State Bar cannot raise funds for differentiated pay.

Executive Director Pollard mentioned that, since the State Bar is a regulatory agency, they cannot lobby for a PAC rate increase. However, *individuals* may help by urging their representatives to support and engage in discussion about the issue of legal deserts.

Laura Gibson, Chief Public Defender for District 2, shared that Districts 1 and 2 work together to attempt to cover all the cases, but geography and logistics inhibit this strategy from being a long-term solution; PAC are still very much needed. For one PD office to provide assistance to another, defenders may drive upwards of 2-3 hours just to appear for a client in another county.

Commissioner Caitlin Fenhagen stated for the record she is against an increase in any fee for indigent clients.

Commissioner Doyle stated he plans to go to the annual meeting of the Bar Association (June 20-21) and would like to give remarks at the Board of Governors about legal deserts. Executive Director Pollard said she would share IDS talking points with him and anyone else willing to engage in discussion prior to that date.

Therapeutic Courts

Executive Director Pollard reported there is a movement in many areas in North Carolina for IDS to employ staff for treatment courts (i.e., recovery, veterans, mental health). She said in areas where there is a public defender office, typically that office will staff the courts there. However, IDS received inquiries about whether the agency can pay PAC to work in treatment courts in areas where PD offices do not exist.

She said that some treatment courts operate like probation violation courts; in others, there is deferred prosecution, still others where they are diverted. Given the varieties of these treatment courts and that each no two are probably the same, Executive Director Pollard requested for Chair Hairston Mitchell to lead an *ad hoc* committee of interested

commissioners, PAC and public defenders to develop a policy on *when* IDS can pay, when IDS can't pay and when we can't, should IDS pay?

This could mean seeking an amendment to the enabling statute in certain circumstances to allow IDS to pay. The Chair agreed to establish the *ad hoc* committee.

Staff Reports

Year to Date Spending for FY2024/IDS PAC Fund Update

IDS Chief Fiscal Officer Aaron Gallagher reported that IDS will run out of funds in the fiscal year 2025 unless the General Assembly appropriates additional funding to support the agency.

He reported the last time IDS ran out of money was in 2016, and PAC went for several months without compensation. He said that additional funds for IDS were approved in the Governor's Recommended Budget this year, and IDS is hopeful as the General Assembly considers those recommendations and makes a favorable decision.

Gallagher gave a presentation that outlined current challenges to everyday fiscal operations, the unprecedented demand upon the PAC Fund, year-to-date PAC spending, the potential shortfall / worst case scenario, and a realistic look at how much additional money is needed from the Legislature to stay afloat and meet the demand of the PAC Fund. But he began by sharing that IDS is doing business at a rate faster than ever, thanks to being fully staffed with efficient professionals, their technical mastery of the state's new financial system (NCFS) and some (new) online automation to processes by way of OASIS.

The following challenges were noted:

- eCourts
- Set-Off Debt module still needed in eCourts (In addition, all receipts are down.)
- Budget reductions: The cut/shift from the PAC Fund to establish 8 new PD Offices was immediate (IDS was not given discretion on how to fund the new offices, and it will take time for those new offices to absorb cases and offset the heavy need to rely upon PAC.)
 - This year (FY 2024), the budget was reduced by \$4.5 million; next (FY 2025) year, the reduction is set for \$9.7 million and looks "grim."
 - IDS is hopeful that the new PD offices will be able to take on 65-75% of the PAC demand in those counties, but this is not immediate.

Mr. Gallagher reported that the demand for the PAC fund is increasing rapidly and has been rising since 2022. He expected it to continue to trend upward into the next several years. He said because of the increasing demand, IDS could face a budgetary shortfall next year of upwards of \$40 million. Gallagher advised that even if the work is there the agency cannot spend beyond its appropriation," he added.

Mr. Gallagher explained reasons for this increase in demand, citing first, the uptick of murder cases during the pandemic that are now coming to trial. Second, since the last fiscal report to the Commission back in October 2023, fiscal staff productivity increased; the team that was processing approximately 11,000 fee apps per month is now processing roughly 14,000 fee apps per month. In addition, the numbers of cases overall, and especially the capital cases, are being disposed of more rapidly since the lift of the pandemic.

For FY 2025, Mr. Gallagher projected the demand on the PAC Fund to be about \$100 million / \$8.33 million per month. He anticipated an approximate \$32 million shortfall, given existing resources and other miscellaneous monies that may be acquired to address that projected shortfall (i.e., via over realized IV-E receipts, the impact of PD expansion, PD lapsed salary, additional receipts through recoupment).

IDS asked for an additional \$12 million to “address the possible shortfall immediately and for an additional \$20 million in reserve funds to be accessible to IDS the needs arise.

Gallagher concluded that he was erring on the side of caution in his projection. Pollard added that the unknown is whether the recent spike in demand was the new normal.

Report of the Capital Defender

State Capital Defender Robert Sharpe gave a presentation that included numbers/stats related to capital defense—or cases in which the death penalty is sought—in the state, post-COVID.

The presentation covered the following main data points:

- Currently there are 2,247 potentially capital cases pending in the state as of mid-April 2024.
- Capital roster numbers have remained relatively the same over the past few years. Mr. Sharpe noted a slight increase in the number of capital roster members. He said it is trending in the right direction, and he outlined the latest recruitment and retention efforts made by the Office of the Capital Defender. He also noted an apparent correspondence between the most recent rate increase and apparent improved recruitment and retention in the capital roster.
- In FY2019, there were 480-500 case dispositions. The number dropped drastically in 2020 and 2021, due to the pandemic. But the latest reports indicate that dispositions for FY2022, FY2023, and the projected numbers for end of FY2024 saw a sharp uptick.
- In a little less than four years, the OCD went from having 1,475 pending cases to 2,247.
- Since 2018, the total number of appointments made by the OCD reached a new record level with each passing year. Mr. Sharpe said perhaps the number for FY ending 2024 would *not* be a new “high,” but it will be close to the numbers from 2023.

- The ideal caseload cap capital defense attorneys to be effective is eight (8) or fewer capital cases. In December 2023, roughly 362 attorneys across the state were servicing the need for 2,133 instances of clients who had asked for representation from the OCD.
 - Currently, one-third of those attorneys have 1-3 cases; one-third have 4-7 cases; and one third have 8-18 cases they are currently working.
 - Ninety-seven per cent of the clients facing capital/potentially capital charges have appointed attorneys—not retained counsel.
- Assistant Public Defenders handle about 10% of appointments, and Mr. Sharpe said they are a tremendous help to the OCD.
- From 2015 to present, the trend of the number of death verdicts in North Carolina declined. Mr. Sharpe shared a Center for Death Penalty report on the number of death verdicts rendered per year. The report indicated the decline went from roughly 21 instances per year in 2015 to, at present, a little less than one per year, statistically.
- A May 2, 2024, snapshot of roster attorneys indicated 348 current members. Nearly 69% of those are PAC. And of those who are on the roster now, 31% of those were added from the year 2020 to present.

Mr. Sharpe pointed out that having qualified counsel at the onset of a capital case is leads to improved outcomes at most points in a case, including appeals and motions for appropriate relief.
- Sharpe noted that OCD sends assistant capital defenders to NC legal deserts. While not all OCD staff are based in Durham, travel has increased for them as well as for PAC. There are six Regional Capital Defender Offices located in the following counties: Buncombe, Durham, Forsyth, Nash, New Hanover and Robeson.
- Mr. Sharpe noted once a case *begins* with the OCD, it *remains* with the OCD—and at that capital rate (\$100/hour). He said it is disruptive to remove counsel, even if the District Attorney later decides not to seek the death penalty.

Commission Business

Before continuing with the next item on the agenda, Chair Hairston Mitchell announced that official word was given that Kevin Boxberger, IDS Regional Defender, was appointed to the Wake County district court bench by Governor Roy Cooper. She said, “While we will miss you tremendously in your role with us here at IDS,” she said, “we know you are going to do super ... well as a district court judge... Congratulations.”

The John Rubin Award for Excellence and Training

Deputy Director and General Counsel Whitney Fairbanks read into the record that the Commission voted on the recipient of the John Rubin Award for Excellence and training. Seven commissioners voted. Six of the seven votes were for David Andrews from the Office of the

Appellate Defender. Mr. Andrews was notified of the honor, and it was reported he would be recognized for this award at the 2024 Spring PD conference in Winston-Salem, May 8-10.

Waiver of the One Year Deadline for Fee Applications

This item was not set up for a vote prior to the May 3 meeting so that it could be read into the record. Ms. Fairbanks sent an email to all Commissioners with the applications along with the reasons given by Executive Director Pollard as to why she recommended the waivers be granted. A motion was made by Commissioner Art Beeler to approve all waivers as presented. The motion was seconded by Commissioner Caitlin Fenhagen and was unanimously approved.

Other Business

There was no other business.

Adjournment

All agenda items having been addressed, the Chair adjourned the meeting at 1:44 p.m.

Next Meeting: Virtual via Webex – August 9, 2024 | 10:00 a.m.

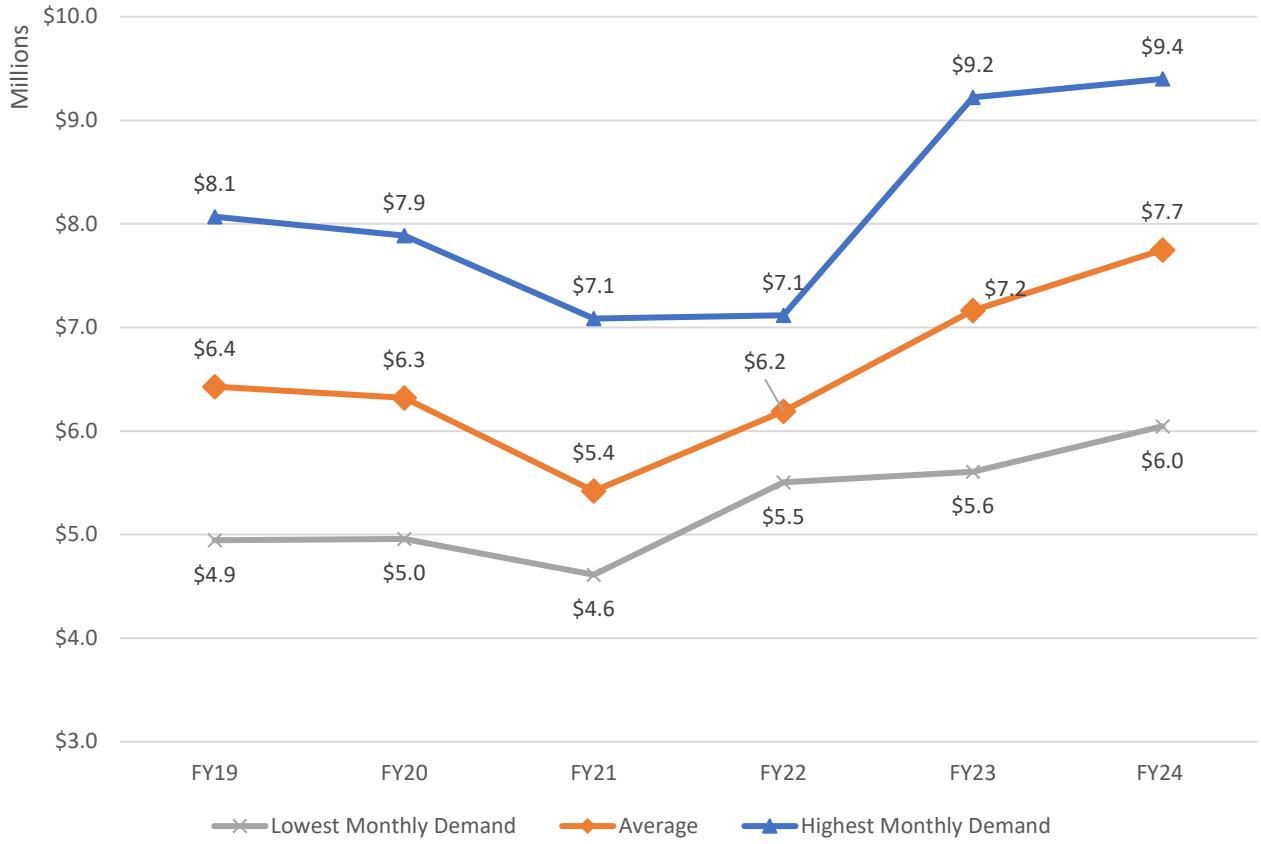
Fiscal Reports



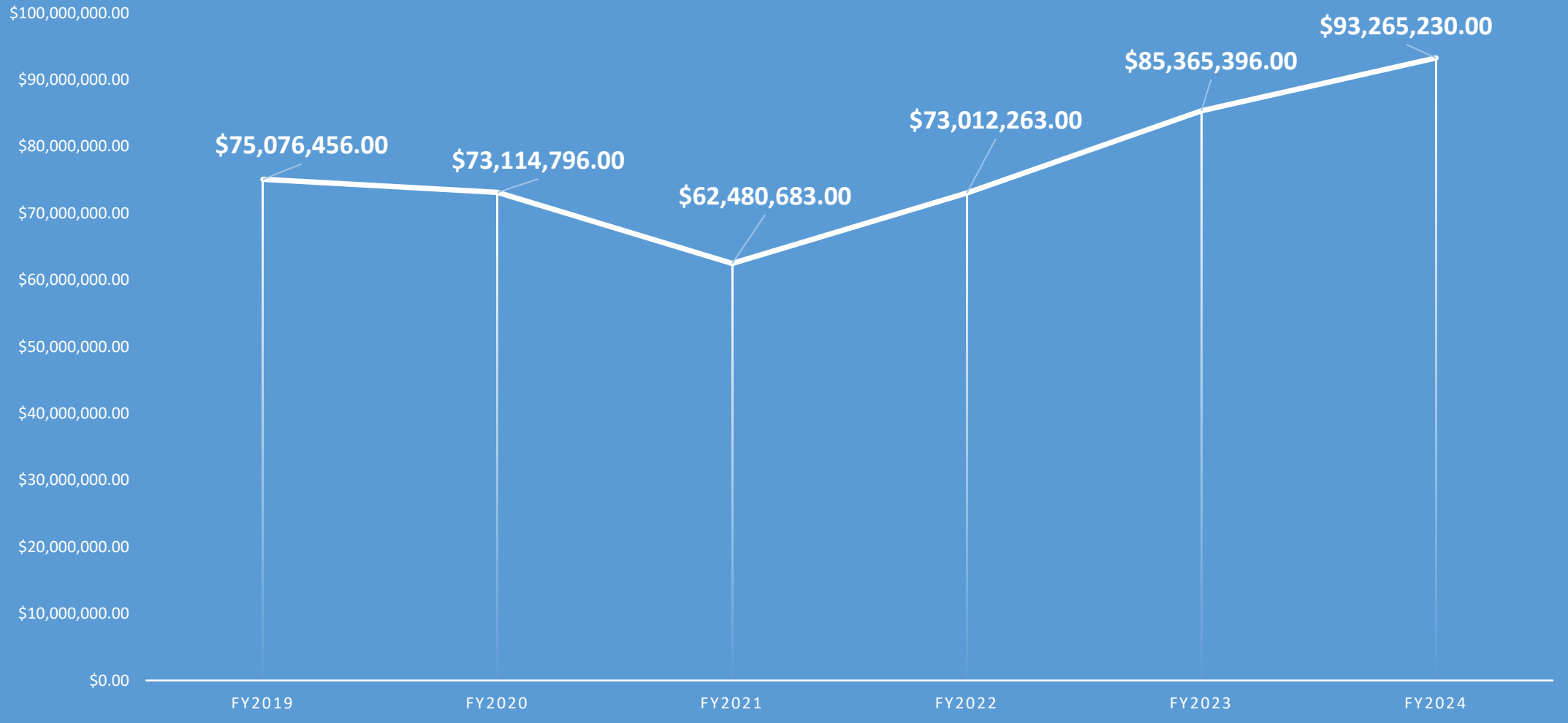
AUGUST 9, 2024

IDS PAC FUND UPDATE

PAC Fund Monthly Demand



PAC EXPENDITURES BY FISCAL YEAR



HOW IDS MANAGED FY24 SHORTFALL

- Daily expenditure monitoring
- Use of lapsed salary
- Maximized the use of all revenue sources
 - Set-off debt
 - Federal IV-E funds
 - IDS set-off debt reserve

Resulted in no adverse impact to PAC or IDS operations

FY25 PAC PROJECTION ORIGINAL

FY25 Net Appropriation	\$ 56,085,288.00
FY25 Projected PAC Exp.	\$ 100,000,000.00
\$8.33m per month	
Projected Shortfall	\$ (43,914,712.00)
Funds to address shortfall	
Overrealized IV-E receipts	\$ 500,000.00
Impact of PD Expansion	\$ 5,000,000.00
PD Lapsed	\$ 6,414,712.00
Revised Shortfall	\$ (32,000,000.00)



FY25 PAC PROJECTION REVISED

FY25 Net Appropriation \$ 56,085,288.00

FY25 Projected PAC Exp. \$ 108,000,000.00
 \$9m per month

Projected Shortfall \$ (51,914,712.00)

Funds to address shortfall

Carry Forward \$ 769,000.00

Impact of PD Expansion \$ 5,000,000.00

PD Lapsed \$ 7,000,000.00

Revised Shortfall \$ (39,145,712.00)



HOW IDS WILL MANAGE FY25 PROJECTED SHORTFALL

- Control spending with monthly expenditure caps
- Use of lapsed salary
- Maximized the use of all revenue sources
 - Set-off debt
 - Federal IV-E funds
 - IDS set-off debt reserve
- Potential emergency appropriation

CHALLENGES TO MANAGING FY25 PROJECTED SHORTFALL

- Continued high PAC demand
 - \$10.6m spent in July 2024 (highest ever monthly expense)
 - Please note that this included fee app keyed in June that were not paid until July
- “Fixed costs” for contract attorney, difficult to throttle these payments
- Potential decrease in availability of lapsed salary
- Volatility of set-off revenue due to eCourts
- Prior utilization of set-off debt reserve
 - \$1.1m remains in the fund
- Ability to obtain emergency appropriation

IDS OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

THANK YOU

Aaron Gallagher, IDS Fiscal Officer

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IDS OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

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Social Workers in Public Defense



Evaluating Implementation of Social Workers in NC Public Defender Offices

THE
LAB

Project Goals



Provide offices with information and practical recommendations on the use of social workers



Determine data availability to support a future evaluation

Workshop: Using Social Workers as Part of a Holistic Public Defense Practice

35 participants

14 Chief Public Defenders

21 offices represented

Workshop Agenda Overview

Presentations

- Introduction to Holistic Defense, Social Work Credentials

Panels

- The Defender & Social Work Perspectives, Getting Creative About Funding, The Client Perspective, Nuts & Bolts of Implementation

Participant Work Sessions

- Client Needs & Resource Assessment, Identifying Priority Next Steps

Implementation Evaluation



Interviews



Staff & Client
Feedback Surveys



Case File Review



Social Work
Tracking Log

Outcomes



Project Report



Webinar



Off-the-shelf Resources for Public Defender Offices



Proposal for Social Work Impact Evaluation

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Commission Business

**PRIOR AUTHORIZATION REQUIRED TO INVESTIGATE OR LITIGATE A
SUCCESSOR MOTION FOR APPROPRIATE RELIEF IN A CAPITAL CASE**

IDS Policy:

Appointed counsel who ~~desires~~seek to be compensated from IDS funds for investigating or litigating a successor Motion for Appropriate Relief (“MAR”) on behalf of a client who has been sentenced to death must seek pre-approval from the IDS Director. Appointed counsel shall seek pre-approval by providing the following information to the IDS Director on a form to be provided by the IDS Office:

- 1) A brief procedural history of the case, including any time constraints faced by counsel in conducting the investigation or initiating litigation;
- 2) A description of the potential legal and factual claims to be litigated, including a summary of any prior litigation in the case that may affect those claims;
- ~~2)3)~~ A explanation of why counsel believes the successor would not be procedurally barred pursuant to N.C. Gen. Stat. 15A-1491; and
- ~~3)4)~~ An estimate of the resources counsel expects to need in the investigation or litigation, including estimated attorney time and the number and type of experts.

The IDS Director shall grant approval upon a good faith showing that there are claims that warrant further investigation or litigation.

The IDS Director shall provide counsel with a written response to the request for pre-approval within ~~10~~30 business days of receipt, unless counsel demonstrates a need for approval on a more expedited basis. The IDS Director’s written response may impose reasonable restrictions on the scope of the work to be done.

If the IDS Director determines that appointed counsel’s showing is insufficient to establish a good faith basis for believing that there are claims that warrant further investigation or litigation, the IDS Director may:

- 1) Direct that counsel provide further information; and/ or
- 2) ~~Direct that counsel consult with the Center for Death Penalty Litigation and then present a renewed request for pre-approval; and/or~~
- 3) Direct that counsel will not be compensated for services performed or expenses incurred.

Counsel who received approval to investigate or litigate a successor MAR prior to July 2019 need not re-apply for approval. Counsel who have not previously sought approval for investigation or litigation of a successor MAR should do so on or before October 1, 2024. In the event that approval is not granted, IDS may elect to pay for reasonable work expended in the investigation or litigation of a successor MAR during the period predating the adoption of this policy on August 9, 2024, subject to IDS Policy Number 04.01.07, Adverse Decision of Executive Director and Procedures for Review. (upon a showing that counsel had a good faith basis to pursue a claim.)

Adoption:

Policy adopted August 16, [2010](#) and updated July 19, 2012. Applies to successor investigation or litigation initiated on or after August 16, 2010. [July 2019?](#) Does not apply to claims that were pending in a successor motion for appropriate relief on August 16, 2010, but applies to any new claims that are included in a successor motion or an amended successor motion filed on or after that date. Does not apply to motions that were amended ~~as a result of~~ the amendments to the Racial Justice Act in Session Law 2012-136.

[Policy revised and reinstated August 9, 2024.](#)

Authority:

G.S. 7A-451(d); 7A-498.3(c) and (d); 7A-498.5(f).

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- 4) An estimate of the resources counsel expects to need in the investigation or litigation, including estimated attorney time and the number and type of experts.

The IDS Director shall grant approval upon a good faith showing that there are claims that warrant further investigation or litigation.

The IDS Director shall provide counsel with a written response to the request for pre-approval within 30 business days of receipt, unless counsel demonstrates a need for approval on a more expedited basis. The IDS Director’s written response may impose reasonable restrictions on the scope of the work to be done.

If the IDS Director determines that appointed counsel’s showing is insufficient to establish a good faith basis for believing that there are claims that warrant further investigation or litigation, the IDS Director may:

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- 2)
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To the IDS Commission,

It is with mixed emotions that I announce my retirement as IDS' Parent Defender effective April 30, 2025.

It has been a great honor to be appointed as North Carolina's first Parent Defender in 2018 and to have served as IDS' Parent Representation Coordinator for 12 years prior to that. I am grateful for the support I have received from the IDS Commission and IDS Central staff, especially Whitney Fairbanks and Mary Pollard. And it would be impossible to overstate my gratitude to Staples Hughes for hiring me and supporting me throughout my tenure.

My role has allowed me to meet hundreds of attorneys across the state who are committed to providing quality legal representation to parents who have lost custody of their children, largely because of issues relating to poverty, trauma, housing instability, and mental health and substance use issues. Attorneys who represent parents in these abuse, neglect and dependency (A/N/D) cases are zealous advocates and I appreciate their dedication, professionalism, and commitment to service.

The Office of the Parent Defender's mission is to support these attorneys through training and providing resources and consultations. Our office is also responsible for evaluating and assigning A/N/D and TPR appeals to qualified appellate attorneys including assistant parent defenders within the office. I have a talented and dedicated staff and I am indebted to them for their years of service.

I am stepping down next year for several reasons, including the desire to spend more time with my family, to travel, and to have an opportunity to explore interests that have been put on hold. My retirement is also motivated by a desire to create a leadership opportunity for the next generation of lawyers. I know that the IDS Commission will choose a new Parent Defender who will have a vision for elevating the work of the office to a new level.

Thank you again for your support over the years. I will always treasure the relationships I have made during my time at IDS.

Wendy Sotolongo

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