

2024.08.09 Meeting Minutes

Commission on Indigent Defense Services

Quarterly Meeting – August 9, 2024

Virtual Meeting via Webex

Commissioner Attendees:

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

Staff Attendees:

Chad Boykin (Assistant General Counsel, Financial Services), Jamie Blackwell (IDS Business Analyst), Amanda Bunch (Communications Specialist), Tucker Charns (IDS Regional Defender), 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), Joseph Oder (IDS Research Associate), Mary S. Pollard (Executive Director), Chris Sadler (IDS Research Director), Max Silva (Legal Assistant), Becky Whitaker (IDS Policy and Planning Attorney)

Local and State Public Defender Program Attendees:

Janna Allison (District 43), Laura Gibson (District 2), Jennifer Harjo (District 5), Niccoya Dobson (District 5), Bert Kemp (District 3), Jonathan McInnis (District 21), Jennifer Rierson (District 24), Tonza Ruffin (District 7), Jacob Ward, (District 15), Joshua Willey (District 4), J. Chad Perry (Chief Special Counsel), Glenn Gerding (Appellate Defender), Robert Sharpe (Capital Defender), Wendy Sotolongo (Parent Defender), Annick Lenoir-Peek (Deputy Parent Defender), Woodrena Baker Harrell (District 18), Eric Zogry (Juvenile Defender)

Other Attendees:

Meredith Randolph (NC Legislature), Mark White (NC Legislature), John Rubin (UNC SOG), Izzy Hernandez-Cruz (OSBM), Terri A. Johnson (OSBM), Jackie Parker/Jaclyn Arnette (OSBM), Beth Hopkins Thomas (NCPLS)

Call to Order

The meeting was called to order at 10:00 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

Commission Chair Hairston Mitchell moved the Social Workers in Public Defense to earlier on the agenda. Commissioner Art Beeler moved to approve the amended agenda. Commissioner Bryan Jones seconded the motion. The amended agenda was adopted unanimously.

State Government Ethics Act

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

Minutes from the May 3, 2024, Commission Meeting

Commissioner Brian Cromwell moved to approve the minutes from the May 3, 2024, IDS Commission meeting. Commissioner Bryan Jones seconded the motion. Commissioner Karen Franco abstained. The minutes were adopted as written.

Remarks from the Chair

Chair Hairston Mitchell extended a welcome to all in attendance. She welcomed Commissioner John Nieman who was recently appointed by the North Carolina Association of Public Defenders. Commissioner Nieman stated he was proud to be part of the Commission and looks forward to the work ahead.

Social Workers in Public Defense

UNC School of Government presenters Jessica Smith, Hannah Turner and Alex Cowell from the Criminal Justice Innovation Lab (“CJIL”) presented on their use of grant funds to explore hiring social workers to serve public defender offices in North Carolina. The group described, among other things, how public defender offices utilize social workers and how social workers impact client outcomes.

The CJIL aims to give a full report in June 2025 that describes how social workers are used in North Carolina public defender offices this pairing of services improves outcomes for some clients, which in turn, impacts the safety and health of the communities they live in.

Director’s Report on IDS Business

2024 Legislative Short Session Update

Executive Director Mary Pollard said there was not much to report from the Legislative Short Session. Both chambers proposed continuation budgets that would have adjusted the biennial budget to add \$12 million to the Private Assigned Counsel (“PAC”). But lawmakers adjourned without passing a budget adjustment. At the time of the meeting, it was uncertain when the General Assembly would return and address budgetary issues.

2025 Legislative Long Session Forecast

Director Pollard said one of the top items for the November 15 agenda would be IDS’s request for sufficient funding to meet FY demand and increase hourly rates for PAC.

To aid development of additional 2025 Long Session Requests, the IDS Research Department developed a survey aimed at assessing our state’s indigent defense system and identifying areas where improvements can be made. Regarding Public Defender expansion, Pollard reported that several judicial districts in public defender offices. Pollard said she is working with them and their County Commissions. She reminded the

Commission that its expansion request would have to address underfunding in staffing for current office. She encouraged the Commission and all in attendance to amplify IDS's voice by helping to educate lawmakers on how important the work is and what the needs currently are.

Fiscal Reports

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

Chief Fiscal Office Aaron Gallagher gave an update on PAC fund. As was previously forecast, IDS ran out of appropriated funds before the end of the fiscal year because the General Assembly funded the 8 new PD offices immediately shifting money from the PAC fund to the PD fund. The shortfall was further amplified by steady growth in PAC demand. Gallagher and the fiscal team managed the end-of-year shortfall by daily spending analysis, constant monitoring of lapsed salary, and maximizing other funding sources such as Set-Off Debt, Federal IV-E funds from DHHS for attorneys who handle A/N/D cases, and the IDS Set-Off Debt reserve.

Fiscal Services cashflow management ensured that the shortfall had no adverse impact on PAC or IDS operations. He reported that the originally predicted FY2025 PAC projection prepared in May of 2024 predicted a \$43.9 million shortfall, which when adjusted for over-realized receipts, the impact of PD expansion and the use of lapsed salary could potentially be reduced to \$32 million.

However, forecasting is volatile, especially considering unprecedented demanded and new stressors on cashflow such as eCourts impact on recoupment. Continuous evaluation has led to some fluctuation, but current forecast is \$39 million. (Presentation available on request.)

Gallagher said IDS will pursue an emergency appropriation of \$12 million from the General Assembly in the upcoming session. If the legislature does not appropriate the additional funds, then fiscal staff would have to weight the risks/ benefits of slowing payments versus running out of money before the end of the fiscal year.

Staff Reports

Regional Defender

Regional Defender Tucker Charns gave a report on efforts toward outreach, recruitment and retention of attorneys to do court appointed work. Highlights included:

- The attorney on call program ensures every letter or call from a jail is addressed.
- Increased outreach meant more attorneys were utilizing IDS resources such as consultation services.
- Recruiting efforts in MAC counties added 11 new attorneys to the rosters.

Introduction to defenderData

IDS Deputy Director/General Counsel Whitney Fairbanks reported on the launch of defenderData. She said MAC attorneys transitioned in June 2024 from monthly spreadsheet reports to the defenderData billing platform. She covered the timeline for implementation, including details about the vendor/developer selection, launch, communication and training.

Fairbanks shared some key details about the product's functionality. She thanked the IDS MAC team and the developers with Justice Works for working diligently to custom build a platform that would be most useful to attorneys.

Noting the unprecedented data now available, Fairbanks asked the Chair to convene an *ad hoc* committee to work with staff on establishing guardrails and guidelines for the review and approval of applications for payment. The Chair agreed to convene the committee.

Committee Reports

Workload Study

IDS Defender Policy and Planning Attorney Becky Whitaker reported on the work of the Workload Committee. The committee includes chief public defenders, assistant public defenders, PAC, and representatives from the Commission. Noting that it had only met twice since May, Whitaker observed that it was off to a slow start. There is currently no timeline for the completion of the work.

Whitaker invited interested Commissioners and others on the call to volunteer to participate on the Workload Committee to enhance the efforts already made.

Digital Discovery

Whitaker reported that the Digital Discovery Team has met consistently since March. The committee includes IDS staff, chief public defenders, and PAC. The purpose is to identify all the tools PAC are using for digital discovery.

The team collected a comprehensive list of all products and services being used by PAC to look at digital evidence. Whitaker reported that AXON/Evidence.com is one product under consideration because many PD offices already have it, and many DA and law enforcement offices use it. The committee would like to offer it to every PD office and make it available to PAC.

Executive Director Pollard thanked all involved with these two committees. She stated further that the work of these two committees is connected and is important to the

work of IDS because of how overwhelming amounts of digital evidence impacts attorneys' workloads.

Commission Business

Pollard reported that until around 2010, attorneys doing capital postconviction work could file a MAR in state trial court, followed by state supreme court, then federal habeas court, U.S. Supreme Court, and, ultimately, to the governor for clemency.

In 2010, the Commission implemented a policy that limited the circumstances under which a Successor MAR (*second* or *subsequent* MAR filed after an earlier one has already been resolved) could be filed. This successor MAR policy was in place until 2018, when Pollard's predecessor asked the Commission to rescind it because he did not see sufficient return on investment considering time involved and likelihood of approval. The Commission agreed to rescind the policy.

Director Pollard asked the Commission to reinstate the policy for new successor MARs. Successor MARs currently being investigated or litigated would be allowed to proceed, albeit with increased budgetary scrutiny. Commissioner Bryan Jones made a motion to reinstate the policy. Commissioner John Nieman seconded the motion. The motion carried.

Convene Personnel Committee

Chair Hairston Mitchell convened the personnel committee to report that State Parent Defender Wendy Sotolongo announced her plans to retire in April 2025. The committee would convene the same way it did when Executive Director Pollard was reappointed. The Chair additional members are needed because some Commissioners' terms are expiring prior to the work of securing a replacement for Sotolongo can begin. She told the commissioners that she would reach out to some regarding their participation in the search.

Waiver of the One Year Deadline for Fee Applications

IDS Assistant General Counsel Chad Boykin reported on three attorneys who submitted fee apps outside the one year and ninety-day deadline for the executive director to approve payment. Boykin said IDS recommended paying all three attorneys in full.

1. The first attorney's show cause was the illness of family members. Commissioner George Doyle made a motion to pay the attorney in full. Commissioner Art Beeler seconded the motion. John Nieman abstained from this vote. The motion carried.
2. Attorney Matt Craven's show cause was case overload. He works in an attorney desert (Franklin County) where he and only 2 other attorneys take court appointed work. IDS recommended payment in full for 59.8 hours on a Class A Felony. Commissioner Bryan Jones made a motion to pay in full; Commissioner Nieman seconded; the motion carried.

3. The third waiver under consideration was for multiple cases from the same attorney, whose show cause for all 10 fee apps was that the DA entered voluntary dismissals off-docket, without providing notice to the attorney. The deadline for these 10 cases was surpassed beyond the range of seven months to upwards of nine years.

While acknowledging that out of court dismissals by DAs present an issue for PAC, the majority of Commissioners felt that three or more years was excessive. Commissioner Nieman made a motion to accept the recommendation from Commissioner Cromwell to only pay two of the ten cases in full; the motion was seconded by Commissioner Miriam Thompson, and the motion carried.

Other

Business

Commissioner Doyle mentioned a recent ruling by a federal district court judge in Oregon set precedent so that incarcerated clients who have been without representation for a certain number of days can be released from jail. Commissioner Doyle said that issues like attorney shortages and clients going too long without representation are national issues. He said that without ideas like this, he doesn't believe these issues will improve. He suggested considering the idea of commissioning a study on this issue. He asked if judges and legislators are being educated on these issues.

Executive Director Pollard replied, "We educate judges and legislators. I think the most important thing we can do is educate *lawyers*, who do not do indigent defense work and who do not do criminal defense work, about how important the work is and how they should be supporting this work... As colleagues in the profession—all of whom have taken an oath to support the constitution, which includes the 6th amendment—they should be in the trenches with us asking for resources. That's all."

There was no other business.

Adjournment

All agenda items having been addressed, the Chair adjourned the meeting at 12:44 p.m.