



STATE OF NORTH CAROLINA

PERFORMANCE AUDIT

OFFICE OF INDIGENT DEFENSE SERVICES

FEBRUARY 2007

**OFFICE OF THE STATE AUDITOR
LESLIE W. MERRITT, JR., CPA, CFP
STATE AUDITOR**

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February 28, 2007

The Honorable Michael F. Easley, Governor
Members of the North Carolina General Assembly
Mr. Malcolm Ray Hunter, Jr., Executive Director, Office of Indigent Defense Services

Ladies and Gentlemen:

We are pleased to submit this performance audit entitled *Office of Indigent Defense Services*. The objectives of the audit were to determine whether the Office of Indigent Defense Services' policies and procedures provide reasonable assurance that independent and competent legal services are provided to indigent defendants, determine whether payments for legal services are made accurately and efficiently, and make recommendations regarding process improvements. Mr. Hunter has reviewed a draft copy of this report. His written comments are included in the appendix.

This audit was initiated by the General Assembly's 2006 Session Law 2006-66, Section 14.16, which required the State Auditor to "conduct an analysis of the fee payment practices of the Office of Indigent Defense Services and make recommendations for process improvements of fee applications, including recommendations regarding automation."

We wish to express our appreciation to the staff of the Office of Indigent Defense Services for the courtesy, cooperation, and assistance provided us during the audit.

Respectfully submitted,

A handwritten signature in cursive script that reads "Leslie W. Merritt, Jr.".

Leslie W. Merritt, Jr., CPA, CFP
State Auditor

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Summary

North Carolina is constitutionally required to provide legal counsel to indigent defendants, and is statutorily required to provide legal counsel to civil respondents in some proceedings. An indigent defendant is a person charged with a crime and found by the court to be unable to afford an attorney. Civil respondents in some proceedings such as abuse, neglect, dependency, termination of parental rights, and commitment cases are also entitled to counsel if they are found by the court to be unable to afford an attorney.

The Indigent Defense Services Act was enacted to ensure that competent and independent legal services are efficiently and cost-effectively provided to entitled persons. The Office of Indigent Defense Services was established under the Indigent Defense Services Act and is tasked with providing oversight for the State's indigent defense delivery system. The Office of Indigent Defense Services also makes payments for legal services provided by private attorneys who are approved or appointed by the capital defender, appellate defender, public defenders, and local committees on indigent appointments to represent indigent defendants.

The objectives of this audit were to determine whether the Office of Indigent Defense Services' policies and procedures provide reasonable assurance that independent and competent legal services are provided to indigent persons, determine whether payments for legal services are made accurately and efficiently, and make recommendations regarding process improvements. The scope of this audit includes the operations of the Office of Indigent Defense Services for the period of November 1, 2005, through October 31, 2006.

RESULTS IN BRIEF

Attorneys representing indigent defendants and respondents are not sufficiently independent of judicial influence because judges perform managerial functions, such as appointing public defenders to office, assigning cases to attorneys, establishing attorney rosters, and approving attorney fee payment applications. As a result, attorneys may be more concerned with maintaining the goodwill of the judge and obtaining future assignments than with ensuring that a proper defense is provided to their indigent clients. This lack of independence may create a conflict between an attorney's financial interest and his or her responsibility to provide a vigorous defense.

The Office of Indigent Defense Services' policies and procedures do not adequately ensure that competent legal representation is provided for indigent defendants. No Statewide criteria are used to select qualified attorneys, attorney performance is not systematically evaluated, and standard procedures have not been established to monitor and resolve client complaints.

Attorney fee payment procedures are not adequate to prevent duplicate payments, overcharges, or unauthorized payments. Procedural weaknesses include failure to verify case numbers on fee applications, lack of detailed time sheets to support charges, attorneys with multiple vendor numbers, and inadequate segregation of duties.

The current attorney fee payment application processing procedures require extensive data entry time and result in duplication of efforts. The labor intensive process also results in

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longer than necessary turnaround time on fee applications. Additionally, the current manual process is inefficient and ineffective for preventing or detecting case number errors, duplicate payments, and overcharges.

With current technology and staff levels, the Office of Indigent Defense Services cannot properly monitor the private attorney appointment process, address deviations from the attorney rotation process, ensure the consistent evaluation and monitoring of private attorneys, or obtain indigent case information when cases are initiated.

AGENCY'S RESPONSE

The Agency's response is included in the appendix.

Introduction

BACKGROUND

North Carolina is constitutionally required to provide legal counsel to indigent defendants, and is statutorily required to provide legal counsel to civil respondents in some proceedings. An indigent defendant is a person charged with a crime and found by the court to be unable to afford an attorney. Civil respondents in some proceedings such as abuse, neglect, dependency, termination of parental rights, and commitment cases are also entitled to counsel if they are found by the court to be unable to afford an attorney. The Indigent Services Act, North Carolina General Statutes Chapter 7A Article 39B, was created to ensure that competent and independent legal services are efficiently and cost-effectively provided to entitled persons. The Office of Indigent Defense Services, located in Durham, was established in North Carolina General Statute 7A-498.2 and acts independently of the Administrative Office of the Courts to provide oversight for the State indigent defense delivery system.

The Office of Indigent Defense Services list its responsibilities as “1) overseeing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law; 2) developing training, qualification, and performance standards to govern the provision of legal services to indigent persons; 3) determining the most appropriate methods of delivering legal services to indigent persons in each judicial district; and 4) providing services in the most cost-effective manner possible.” The agency operates with an administrative staff of ten, including an executive director, an assistant director, and two part-time employees. Effective July 1, 2006, the agency also obtained four financial services positions, which were previously maintained by the Administrative Office of the Court, to process attorney fee payment applications; a fifth position was added in January 2007. A 13-member Commission on Indigent Defense Services provides oversight of the Office of Indigent Defense Services.

Legal services for indigent persons are delivered through the following participants who act in cooperation with of the Office of Indigent Defense Services:

Capital Defender

The capital defender and the assistant capital defenders are State employed attorneys who provide legal services to indigent defendants in capital cases. The Office of the Capital Defender is located in Durham with the Office of Indigent Defense Services and is responsible for assigning attorneys, including privately assigned counsel, to represent indigent defendants in all capital cases. The Office of the Capital Defender maintains seven positions: the capital defender, an administrative assistant, four assistant capital defenders, and an investigator. There are also three regional capital defender offices, each staffed with one to two assistant capital defenders. The Commission on Indigent Defense Services provides oversight of the Office of the Capital Defender.

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Appellate Defender

The appellate defender and the assistant appellate defenders are State employed attorneys who provide legal services to indigent defendants in appellate cases. The Office of the Appellate Defender is located in Durham with the Office of Indigent Defense Services and is responsible for assigning attorneys, including privately assigned counsel, to represent indigent defendants and respondents in all appellate cases. The Office of the Appellate Defender maintains 18 positions: the appellate defender, an administrative assistant, a parent representation coordinator, 13 assistant appellate defenders, and 2 legal assistants. The Commission on Indigent Defense Services provides oversight of the Office of the Appellate Defender.

Public Defenders

Public defenders are State employed attorneys who provide legal services to indigent defendants in non-capital non-appellate cases. Public defenders also handle capital cases that are assigned to them by the Capital Defender. Each public defender maintains a staff of assistant public defenders and investigators. Public defenders may also appoint private attorneys to indigent cases when the office cannot represent entitled persons due to conflicts of interest or insufficient staff. Public defenders are appointed by the senior resident superior court judge of the district where the office is located. There are currently 14 public defender offices that cover 22 of North Carolina's 100 counties.

Committees on Indigent Appointments

Committees on indigent appointments evaluate and appoint private attorneys to a roster for the purpose of representing indigent clients in non-capital non-appellate cases. In all but one public defender district, the committees assist the public defender in establishing the roster. The public defender then assigns attorneys to cases according to their sequence on the list. In non-public defender districts, or 78 of North Carolina's 100 counties, a judge or the clerk of court appoints attorneys to cases from the list on a rotational basis. Members of the committees are volunteers appointed according to the legal representation plans submitted to and approved by the Office of Indigent Defense Services.

Legal services for indigent defendants and respondents are provided by State employed attorneys and appointed private attorneys. State employed attorneys are paid through the regular State payroll process while appointed private attorneys are paid through the Office of Indigent Defense Services' attorney fee payment process. Private attorneys represented indigent persons in approximately 199,000, or 71%, of the 280,000 indigent cases that were completed during the period of November 1, 2005, through October 31, 2006. The Office of Indigent Defense Services paid \$61 million for private attorney fees during that period. When private attorneys are required, the Office of Indigent Defense Services essentially manages a purchase of services function in which it is responsible for ensuring that independent and competent legal representation is obtained, monitored, and paid in an effective and efficient manner.

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OBJECTIVES, SCOPE, AND METHODOLOGY

The audit objectives were to determine whether the Office of Indigent Defense Services' policies and procedures provide reasonable assurance that independent and competent legal services are provided to indigent persons, determine whether payments for legal services are made accurately and efficiently, and make recommendations regarding process improvements.

This audit was initiated by the General Assembly's 2006 Session Law 2006-66, Section 14.16, which required the State Auditor to "conduct an analysis of the fee payment practices of the Office of Indigent Defense Services and make recommendations for process improvements of fee applications, including recommendations regarding automation." An important function of any service acquisition process is to ensure that purchased services meet the established service criteria. Therefore, we included an examination of service independence and competence policies to ensure that the Office of Indigent Defense Services is only paying for legal services that comply with the purposes of the Indigent Defense Services Act as stated in North Carolina General Statute 7A-498.1.

The scope of this audit includes the operations of the Office of Indigent Defense Services for the period of November 1, 2005, through October 31, 2006.

To accomplish our objectives, we performed tests of attorney fee payments, observed operations, and measured the time and cost of work performed. We also interviewed Office of Indigent Defense Services personnel, superior court judges, district court judges, public defenders, members of the committees on indigent appointments, representatives of the North Carolina Academy of Trial Lawyers, and representatives of the North Carolina State Bar.

We conducted this performance audit according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This report contains the results of the audit including conclusions and recommendations. Specific recommendations related to our audit objective are reported. Because of the test nature and other inherent limitations of an audit, together with the limitations of any system of internal and management controls, this audit would not necessarily disclose all weaknesses in the systems or lack of compliance.

We conducted the fieldwork from November 2006 to February 2007. We conducted this audit under the authority vested in the State Auditor of North Carolina by Section 147-64.6 of North Carolina General Statutes.

Findings and Recommendations

1. ATTORNEY SELECTION AND APPOINTMENT PROCEDURES DO NOT ENSURE ADEQUATE INDEPENDENCE

Attorneys representing indigent defendants and respondents are not sufficiently independent of judicial influence because judges perform managerial functions such as appointing public defenders to office, assigning cases to attorneys, establishing attorney rosters, and approving attorney fee payment applications. As a result, attorneys may be more concerned with maintaining the goodwill of the judge and obtaining future assignments than with ensuring that a proper defense is provided to their indigent clients. This lack of independence may create a conflict between an attorney's financial interest and his or her responsibility to provide a vigorous defense.

The Indigent Defense Services Act and the American Bar Association stand on independence. The Indigent Defense Services Act was established, in part, to “ensure the independence of counsel.” The American Bar Association also recognizes the importance of attorney independence in its standard 5-1.3 of the Standards for Criminal Justice Providing Defense Services, which states:

The legal representation plan for a jurisdiction should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice.

This standard recognizes that the defense counsel may not be free from judiciary influence and control when judges perform supervisory or managerial functions that are outside of the judge's inherent authority to discipline attorneys and ensure the proper operation of the court. Nevertheless, judges do exercise supervisory or managerial control over several of the State's indigent defense service delivery functions in accordance with North Carolina General Statute 7A-498.7b and the legal representation plans approved by the Office of Indigent Defense Services.

Attorney independence is particularly crucial when representing indigent defendants because the defendants have no voice in choosing their attorney and must rely on their assigned counsel to provide a zealous defense. Therefore, attorneys must be appointed in the best interest of the defendant and should not have to concern themselves with remaining in the good graces of the judiciary. For the same reasons, the judiciary should not be in a position to use the attorney selection process to show favoritism or simply to expedite caseloads.

Judges appoint public defenders. One way that judges exercise managerial control and compromise the independence of attorneys is by appointing public defenders to office. An individual cannot be considered free from the influence and control of the person that can hire and fire them. Similarly, public defenders cannot be considered independent from the judges that appoint them to office. Public defenders are appointed to four-year terms according to North Carolina General Statute 7A-498.7b which states “The appointment shall be made by the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-44.1 that includes the county or counties of

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the defender district for which the public defender is appointed.” The staff and private attorneys operating under the public defender’s direct authority then represent indigent clients before the very same appointing judge. Since it is reasonable to assume that each public defender has an interest in being reappointed to the next four-year term and would like to remain in the judge’s favor during the interim, neither the public defender, his or her staff, nor the private counsel they appoint can be considered free from judicial influence.

Judges appoint attorneys to committees on indigent appointments. Judicial involvement with the public defender offices is also evidenced by the composition of the committees on indigent appointments in the public defender districts. These committees evaluate and appoint private attorneys to a roster for the purpose of representing indigent clients in non-capital non-appellate cases. In 13 out of 13 public defender legal representation plans that require committees, a senior resident superior court judge and a chief district court judge are engaged to appoint one or more members to the committees. In non-public defender districts, however, only 2 out of 35 legal representation plans that require committees use judges to appoint committee members.

Judiciary involvement with the committees on indigent appointments and in appointing public defenders to office precludes any claim that appointed attorneys are as free from judicial influence and control as would be privately retained counsel.

American Bar Association says judges should not appoint chief defenders. To avoid this independence issue, standard 5-4.1 of the American Bar Association’s Standards for Criminal Justice Providing Defense Services states that the “Selection of the chief defender and staff by judges should be prohibited.” Although some may argue that the senior resident superior court judge is in the best position to evaluate the qualifications and job performance of public defender candidates, staffing is clearly a managerial function, and one that subordinates the public defender position to the hiring authority. For this reason, public defenders should be appointed by the independent agency tasked with providing oversight for the State’s indigent defense delivery system, the Office of Indigent Defense Services, or by some other authority that would ensure the independence of the public defenders.

Judges can override the established attorney-roster rotation process. Attorney independence is also compromised in the indigent defense delivery system because judges retain the authority to override the established attorney-roster rotation process. The Office of Indigent Defense Services approved the legal representation plan for each judicial district. A judicial district may cover one or more counties. The plans require private attorneys to be assigned to indigent defendants on a rotational basis according to rosters established by the public defender’s office or by the local committee on indigent appointments. In all 100 counties, the plans allow judges to override the established attorney rotation process and assign an attorney for non-capital non-appellate indigent cases. Additionally, the Office of Indigent Defense Services does not monitor attorney appointments or require judges to provide any explanation when they override the attorney rotation process, although good internal control requires that deviations from established procedures be fully explained and documented.

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In some instances, judicial control over the attorney rotation process was even more direct. The Office of Indigent Defense Services did not monitor and ensure that the committees on indigent appointments were actually formed, operating, and establishing the attorney-rosters as required by the approved legal representation plans. We found that committees on indigent appointments have not been established in 41 counties. In those counties, the judge or the clerk of court established the attorney-roster and directly appointed attorneys to cases.

American Bar Association says judges should not select lawyers for specific cases.

Judicial management of the attorney rotation process directly conflicts with standard 5-1.3 of the American Bar Association's Standards for Criminal Justice Providing Defense Services which states "The selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by the administrators of the defender, assigned-counsel and contract-for-service programs." There may be instances where it is necessary, in the interest of justice, to override the attorney-roster and assign a particular attorney to a case. That function, however, should be performed by an independent body, such as the Office of Indigent Defense Services, and not by the judiciary. Attorneys cannot be considered independent of judicial supervision when the judiciary manages case assignments and directs specific attorneys to represent specific cases.

Judges approve attorney fee payment applications. Finally, attorney independence in the indigent defense delivery system is impaired due to judicial supervision of attorney fee payment request. Attorneys representing indigent defendants may be influenced by the judiciary because the Office of Indigent Defense Services requires judges to approve attorney fee payment applications for non-capital and non-appellate indigent cases. Therefore, judges can influence the amount of reimbursement that the attorney will receive. Standard 5-1.3 of the American Bar Association's Standards for Criminal Justice Providing Defense Services states that attorneys representing indigent defendants "should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice." Private attorneys hired by defendants and respondents would not be similarly influenced because judges would not have approval authority over the attorney's billing.

It may be argued that the judge is simply performing an administrative function and is only acting as a witness that the attorney did indeed provide the legal services being charged. To the contrary, the Office of Indigent Defense Services requires judges to evaluate the reasonableness of the hours claimed and ensure compliance with approved billing practices. Judges may approve fewer reimbursement hours than an attorney requests and the judge's signature is considered authorization to make payment by the financial services personnel at the Office of Indigent Defense Services. For these reasons, attorney independence may be impaired.

Recommendations: The Office of Indigent Defense Services should propose legislation to gain appointment authority for public defenders or propose some other authority that

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would ensure the independence of the public defenders. The Office of Indigent Defense Services should monitor judicial overrides of the attorney appointment process, ensure that all committees on indigent appointments are established and operating according to the approved plans, and discontinue judicial approval of attorney fee payment applications.

2. ATTORNEY SELECTION AND PERFORMANCE ARE NOT ADEQUATELY MONITORED TO ENSURE COMPETENT REPRESENTATION

The policies and procedures of the Office of Indigent Defense Services do not adequately ensure that competent legal representation is provided for indigent persons. No Statewide criteria are used to select qualified attorneys; attorney performance is not systematically evaluated; and standard procedures have not been established to monitor and resolve client complaints.

Office of Indigent Defense Services has not established procedures to screen attorneys. One purpose of the Indigent Defense Services Act is to improve the quality of representation for indigent defendants and respondents. Prudent service acquisition practices require that all attorneys, as legal service vendors, provide the level of service expected and required of them by the Indigent Defense Services Act. A fair judicial system requires that the defense and prosecuting attorney are equally competent and prepared. It is also important to ensure that an effective defense is provided to defendants due to the high personal costs of ineffective representation to the wrongfully accused.

The Indigent Defense Services Act requires the Office of Indigent Defense Services to develop “standards prescribing minimum experience, training, and other qualifications for appointed counsel.” The agency is also tasked with providing oversight and ensuring that quality legal representation is acquired and provided to indigent persons. Nevertheless, inexperienced or unqualified attorneys could represent indigent persons because consistent screening procedures to select attorneys have not been established.

Each judicial district has its own plan for recruiting, selecting, and placing attorneys on a roster of potential legal representatives. The district plans are approved by the Office of Indigent Defense Services, but no procedures are in place to ensure that the plans are followed. No master list of private attorneys is maintained by the Office of Indigent Defense Services. Management is not aware that an attorney has represented an indigent client in non-capital non-appellate cases until after the case has been resolved and an attorney fee payment application has been submitted. As a result, the Office of Indigent Defense Services does not know who may potentially represent indigent defendants. Consequently, attorneys that do not meet national and local quality standards could be added to the attorney rosters and represent indigent persons.

Office of Indigent Defense Services does not monitor or evaluate attorneys. Indigent persons could also receive an ineffective defense because assigned private counsel for non-capital non-appellate cases are not methodically monitored or evaluated. We interviewed the Office of Indigent Defense Services’ management, public defenders, and members of several committees on indigent appointments and found that private attorneys

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are not consistently supervised or systematically reviewed. As a result, attorneys who do not provide a quality defense could continue to represent indigent clients.

Standard number ten of the American Bar Association's Ten Principles of a Public Defense System requires that the "Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards." The standard states "The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency."

The system of handling complaints against attorneys has weaknesses. Consistent procedures for monitoring complaints against privately assigned counsel have not been established. As a result, attorneys who do not provide quality representation, and should be removed from the attorney roster, could continue to represent clients and receive payment.

We reviewed several complaints on file where indigent defendants in custody had not seen their assigned attorney for periods ranging from three weeks to 10 months. In one case, a defendant's attorney even failed to appear in court to represent him. When clients complained that they had not been visited by their assigned attorney, sometimes the complaints were forwarded to the public defender's office, sometimes they were forwarded to the appointed attorney, and sometimes the Office of Indigent Defense Services simply forwarded the attorney's contact information to the defendant. Management told us that in most cases, the Office of Indigent Defense Services does not receive notice of a complaints final resolution.

Standard 4.4 of the National Legal Aid and Defender Association Standards for the Administration of Assigned Council Systems say that the supervision of assigned counsel "shall include a procedure for handling complaints from clients and others."

Recommendations: The Office of Indigent Defense Services should establish consistent evaluation and monitoring procedures for attorneys representing indigent defendants and respondents. Management should also establish standard procedures for handling client complaints.

3. ATTORNEY FEE PAYMENT PROCESS LACKS ADEQUATE CONTROLS

Attorney fee payment procedures are not sufficient to prevent duplicate payments, overcharges, or unauthorized payments. Procedural weaknesses include failure to verify case numbers on fee applications, lack of detailed time sheets to support charges, attorneys with multiple vendor numbers, and inadequate segregation of duties.

Current attorney fee payment procedures do not prevent duplicate payments. From August 2005 through March 2006, a clerk at the Office of Indigent Defense Services was assigned to research and document suspected duplicate payments. The clerk identified 69

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duplicate fee application payments totaling \$44,000. We reviewed the payment documentation and determined that the duplicate payments occurred for the following reasons:

- 27 were processed with incorrect case numbers;
- 21 were paid to vendors who had two or more vendor numbers in the accounting system;
- 6 were paid to multiple vendors;
- 6 were identified and returned by attorneys;
- 3 applications were paid with incorrect disposition dates;
- 3 were incorrectly filed by the attorney;
- 2 were due to judges submitting two copies of the application; and
- 1 was due to undetermined causes.

Although the Office of Indigent Defense Services has implemented collection procedures for the duplicate payments and experimented with methods to identify duplicate payments, management has not established permanent procedures to address the weaknesses that caused the duplicate payments. As a result, duplicate payments could continue to occur. Good internal controls require management to promptly resolve identified problems.

Case numbers are not verified. One reason that the duplicate payments occurred is fee payment application processors did not verify the validity of case numbers before authorizing payment. We tested 162 randomly selected payments and found that nine cases were paid under the wrong case number.

Prudent business practices require that the case numbers on attorney fee payment applications be verified before authorizing payment. This procedure is particularly important because the Office of Indigent Defense Services is not notified by the court when a new non-capital or non-appellate indigent defense case is initiated. Consequently, the Office of Indigent Defense Services is not aware that a non-capital or non-appellate indigent defense case exists until an attorney fee payment application for the case is submitted. Thus, if case numbers are not verified, payments may be made for cases that do not exist.

Attorneys are paid under multiple vendor numbers. Management did not control the addition of attorneys as vendors to the accounting system, thus presenting another reason why duplicate payments occurred. We reviewed the payment data for our audit period and noted that 176 attorneys and law firms were paid under two or more vendor numbers during that time. Duplicate payments could occur if an attorney submits the same fee application under different vendor numbers. Payments may also be made to unauthorized vendors since vendor additions to the accounting system are not properly controlled.

An accounting specialist at the Administrative Office of the Court adds attorneys to the accounting system as fee applications are received. Although good business practices

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require it, no management approval is obtained before new attorney names are added to the accounting system. Additionally, attorney names and information in the vendor file are not periodically updated or reviewed to identify errors or duplicate entries. As a result, there are attorneys with multiple vendor numbers in the accounting information system.

Incorrect disposition dates, vendor numbers, or case numbers could cause duplicate payments. Attorney fee applications are paid through the North Carolina Accounting System which identifies duplicates by comparing the disposition date (the date the case is closed), vendor, and case number of an attorney fee application to those of previously entered fee applications. If an application is submitted twice and any of the three fields is changed, intentionally or by error, a duplicate payment will not be identified.

The attorney fee payment process is also susceptible to overcharges. Overcharges may occur where an attorney has charged for the same time to several cases or when an attorney charges an excessive number of hours to a case. For example, an attorney may be in court three hours while representing two or more clients. An overcharge will occur if the attorney charges the same three hours to each of the cases. An attorney may also simply charge for service hours not provided to the individual client. We did not perform tests to identify overcharges. We reviewed the policies and procedures of the Office of Indigent Defense Services and determined that the agency does have a policy that prohibits these practices. The agency, however, does not have any procedures in place that are sufficient to prevent or detect overcharges if they occur.

Good internal controls require that vendors submit detailed records of work performed to support payment requests. In addition, good internal controls require agency personnel to review payment requests for reasonableness to identify possible overcharges. Excessive charges on attorney fee applications would be difficult to identify, however, because the Office of Indigent Defense Services does not require attorneys to provide detailed time sheets to support payment requests for non-capital non-appellate cases. Furthermore, the hours charged to a case are not compared to any standard or case type average to identify excessive hours. Consequently, excessive hours charged to cases may be paid and not identified by the Office of Indigent Defense Services.

Fee payment process duties are not adequately segregated as required by policies and procedures issued by the Office of the State Controller. A segregation of duties problem exists because personnel who enter attorneys as vendors into the North Carolina Accounting System also print checks, mail checks, and receive returned checks. In general, it is an internal control weakness to allow an individual with access to the accounting information system to also have custody of assets such as signed checks. Specifically, the potential for fraudulent disbursements exists where one person has the ability to both enter vendors into the accounting system and issue checks to those vendors. Furthermore, the potential to make errors and conceal those errors exists where one person issues checks and then receives checks returned due to incorrect recipient names or addresses.

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Recommendations: Management should establish procedures to obtain indigent case information, including attorney appointments, when cases are initiated. Attorney fee application processors should verify case numbers on attorney fee applications before payment is made. Management approval should be obtained before establishing attorney vendor numbers. Management should require attorneys to submit detailed time sheets to support charges. Application processing duties should be adequately segregated.

4. ATTORNEY FEE PAYMENT PROCESS IS INEFFICIENT AND LABOR INTENSIVE

The current attorney fee payment processing procedures are inefficient, requiring extensive data entry time and resulting in duplication of efforts. The labor-intensive process also results in longer than necessary turnaround time on fee applications. We performed a time study and determined that approximately 3,000 labor hours are spent just to key fee application data into the agency database and the North Carolina Accounting System. We estimate that \$126,000 is spent annually on coding, keying, batching, and scanning paper attorney fee payment applications and an additional \$48,000 is spent on courier services. Another \$24,000 in labor is used to prepare system printed checks for the private attorneys who do not receive electronic fund transfers. In total, we believe approximately \$198,000 in unnecessary labor and courier costs could be saved and/or applied to an alternative method of processing fee payments. Additionally, the current manual process is inefficient for detecting case number errors, duplicate payments, and overcharges (see finding 3).

Processing Capital and Appellate Case Applications: For capital and appellate case applications, fee payment data is entered in one form or another at least three times. Attorneys enter fee payment data the first time by completing the application and submitting it to Office of Indigent Defense Services administrative personnel. Office administrative personnel review the application for accuracy and enter the data a second time into a database. Administrative personnel then forward the applications to the Office of Indigent Defense Services' financial services personnel. The financial services personnel then review the fee payment application for accuracy and enter the data a third time, this time into the North Carolina Accounting System.

If a capital or appellate case application is incomplete or inaccurate, Office of Indigent Defense Services personnel have to return the application by mail or fax to the attorney. The attorney has to correct the application and return it to the Office of Indigent Defense Services where the application is reprocessed.

Processing Non-Capital and Non-Appellate Case Applications: For non-capital and non-appellate cases, fee payment data is entered at least twice. Attorneys enter fee payment data the first time by completing the application and submitting it to the judge to obtain a signature. The clerk of court then mails the application to the financial services personnel at the Office of Indigent Defense Services. Financial services personnel review the fee payment application for accuracy and then enter the data into the North Carolina Accounting System.

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If a non-capital and non-appellate fee payment application is incomplete or inaccurate, Office of Indigent Defense Services personnel return the application by mail to the clerk of court. The clerk of court then returns the application to the attorney. The attorney has to correct the application and return it to the clerk of court. The clerk of court then mails the fee payment application back to the Office of Indigent Defense Services where the application is reprocessed.

Paying Attorneys by Electronic Fund Transfer: Additional efficiency could be realized if private attorneys were required to register for electronic funds transfer. Currently, only 421, or 16 percent, of the 2,700 private attorneys paid to represent indigent defendants receive payment by electronic funds transfer. The labor used to produce checks and prepare the mail, as well as the cost of postage, could be saved and reallocated if the use of electronic fund transfers were increased.

Recommendations: The Office of Indigent Defense Services should automate the attorney fee payment process and require attorneys to register for electronic fund transfer.

A web based fee payment process would allow the attorney to enter the data directly into a webpage. The data would then be available electronically and thus eliminate the need for agency personnel to manually enter data into its database and then again into the North Carolina Accounting System. In conjunction with a database, a web-based application could also verify case numbers, ensure the accuracy of calculations, and automatically reject duplicate and incomplete applications, thus eliminating the costs of processing them. Budgets could also be established by case or case type so that the web-based system would automatically identify applications that exceed budgeted or standard charges for management review and approval.

5. THE OFFICE OF INDIGENT DEFENSE SERVICES LACKS SUFFICIENT RESOURCES

With current technology and staff levels, the Office of Indigent Defense Services can not properly monitor the private attorney appointment process, address deviations from the attorney rotation process, ensure the consistent evaluation and monitoring of private attorneys, or obtain indigent case information when cases are initiated.

Insufficient Personnel to Monitor Appointment Process: The Office of Indigent Defense Services does not have sufficient personnel to properly monitor the private attorney appointment process and address deviations from the attorney rotation process. During the period of our audit, the agency was responsible for 280,000 indigent cases, approximately 199,000 of which were represented by about 2,700 private attorneys. The agency operates with an administrative staff of ten positions, including an executive director, an assistant director, and two part-time positions. The Office of Indigent Defense Services simply does not have sufficient personnel to monitor and ensure that the attorney rotation process is operating according to the approved legal representation plans in all 100 counties. In the public defender districts, the agency may be able to rely on the public defender office to monitor the appointment process. In the 78 non-public defender

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counties, however, the agency must rely on the committees on indigent appointments, which are composed of volunteers, to monitor the attorney rotation process. Our audit procedures indicate that most of the committees are not performing this function, particularly in the 41 counties where no committee has been established.

Agency Lacks Resources to Monitor Attorney Performance: Additionally, the Office of Indigent Defense Services lacks sufficient resources to ensure that consistent evaluation and monitoring of private attorneys is performed. This lack of resources also affects the agency's ability to investigate and resolve client complaints. Again, the Office of Indigent Defense Services was responsible for approximately 199,000 indigent cases that were represented by about 2,700 private attorneys. The agency does not have adequate personnel to become adequately familiar with each case, evaluate attorney performance, determine the validity of client complaints, and ensure that corrective action is taken to address attorney performance issues. The agency may be able to rely on the public defender offices to perform this function in the 22 counties covered by a public defender. However, in the other 78 counties there is no agent who can reliably perform these duties.

Insufficient Personnel to Obtain Initial Case Data: Finally, with its current level of technology, the Office of Indigent Defense Services lacks sufficient personnel to obtain indigent case information from the courts at the time cases are initiated. The Administrative Office of Court's case information systems and the North Carolina Accounting System are not integrated. Therefore, to obtain indigent case information and set up an account for each case, the Office of Indigent Defense Services would be required to contact the court system, obtain the case information, and manually key the information into the North Carolina Accounting System. To key information for the 280,000 indigent cases processed during our audit period would require significant additional personnel. Again, the agency may be able to rely on the public defender offices to perform this function in 22 counties, but there is no agent who can reliably perform this function in the 78 remaining counties.

Expansion of Public Defender System Needed: One solution is to increase the number of public defender offices so that each county is covered and to place the offices under the managerial control, including appointment authority, of the Office of Indigent Defense Services. This restructuring would allow each public defender to monitor the attorney appointment process, evaluate attorney performance, handle client complaints, and obtain initial case data in his or her district. It would also give the Office of Indigent Defense Services the management authority that it needs to achieve its statutory mission. This solution may also provide some cost savings. A 2005 report from the Office of Indigent Defense Services indicates that use of the "public defender offices saved \$2.87 million compared to what it would have cost to use private attorneys." Based on a similar report in 2002, the Governor's Commission to Promote Government Efficiency and Savings on State Spending also recommended "creating public defender offices, rather than use of the private bar." The need for adequate public defender offices is also indicated in national standards. Standard 5-1.2 of the American Bar Association's Standards of Criminal Justice Providing Defense Services states, "The legal representation plan for each jurisdiction should provide for the services of a full-time defender organization when

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population and caseload are sufficient to support such an organization. Multi-jurisdictional organizations may be appropriate in rural areas.”

Recommendation: The Office of Indigent Defense Services should propose legislation to increase the number of public defender offices. The agency should also propose legislation to obtain management authority over the Public Defenders, or propose another authority that would ensure proper management of private attorneys.

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Mr. Leslie W. Merritt, Jr., CPA, CFP
State Auditor
Office of the State Auditor
2 South Salisbury Street
Raleigh, NC 27699

Re: Response to February 2007 Performance Audit of the
Office of Indigent Defense Services

Dear Mr. Merritt:

Thank you for the opportunity to respond to the Performance Audit of the Office of Indigent Defense Services. Initially, on behalf of the IDS Commission and staff, I want to express our appreciation to you and your staff for the time and attention that you devoted to our office during this performance audit.

The IDS Commission and staff are committed to ensuring that North Carolina's indigent defense system is as strong as possible, to providing high quality legal services to indigent defendants and respondents across the State, and to maintaining the confidence of the taxpayers who fund this system. We were already aware of and concerned about the vast majority of the issues contained in this report. We have devoted enormous amounts of time and energy to solving many of the problems you have identified, and have not yet been able to reach other problems in light of the competing demands on our staff and resources. We assure you that we will take prompt steps to address all of the issues and recommendations contained in this report, including discussing the problems and potential solutions with the IDS Commission, consulting with other system actors as appropriate, and making recommendations to and requests of the General Assembly.

As we have said in a number of our responses to the specific audit findings and recommendations in this report, we believe that an expansion and regionalization of North Carolina's existing public defender system would be the best solution to a lot of the problems identified by your office, and would vastly improve our ability to fulfill our statutory mission. However, we strongly believe that such a system must include a more appropriate management and supervisory relationship between IDS and the chief public defenders.

In addition to our support of a properly managed public defender system, IDS also values the contributions and talent of the private appointed bar and is committed to maintaining private bar involvement in North Carolina's indigent defense programs. In light of that commitment, and because the population and caseload in many rural areas of North Carolina would be

insufficient to support a traditional public defender office, we believe a regionalized public defender system would be most suited to this State.

Under the regionalized system that we envision, a chief public defender could oversee an office in one or more counties and also oversee appointed lists, contracts, and/or part-time state employed defenders in the more rural areas within the region. The regional public defender office could be responsible for managing the regional rosters, appointing private attorneys in non-conflict cases, documenting the reasons for any deviations from the systematic rotation, reviewing attorney fee applications in non-conflict cases, and resolving client complaints within the region. In other words, the regional public defenders could perform administrative functions at a more local level, which IDS currently does not have the resources and infrastructure to perform. The central IDS staff could then assume more direct responsibility for appointments and compensation in cases in which the public defender office has a conflict of interest.

IDS inherited an existing system when we assumed responsibility for North Carolina's indigent defense programs less than six years ago, a system with many weaknesses and many strengths. The IDS Commission and staff have worked conscientiously to remedy the weaknesses and to shore up the strengths, and will continue to apply our best efforts to ensure that indigent people receive the quality legal services to which they are constitutionally and statutorily entitled. We would like to recognize and thank all of the attorneys around the State, both public and private, who competently and zealously represent indigent people in North Carolina. Without their talent and commitment, none of our work would be possible.

Because this is a performance audit, the IDS Commission and staff feel strongly that our significant accomplishments since IDS was established should be recognized in this report. To that end, we have attached to this letter a summary of IDS' main accomplishments since July 2001.

Thank you again for your time and attention, and for the recommendations contained in this report. We believe those recommendations, and our present and future responses to them, will strengthen IDS' ability to fulfill our statutory mission and to serve our clients and the taxpayers of North Carolina.

Sincerely,



Malcolm Ray Hunter, Jr.
Executive Director

IDS RESPONSES TO THE OFFICE OF THE STATE AUDITOR REPORT

1. ATTORNEY SELECTION AND APPOINTMENT PROCEDURES DO NOT ENSURE ADEQUATE INDEPENDENCE

Organization's Response:

The IDS Commission and staff recognize that judges in North Carolina are still performing a number of managerial functions for the indigent defense system, which conflicts with the national standards cited by the auditors. We agree that judges should not exercise control over indigent defense counsel beyond their inherent authority to discipline attorneys and ensure the proper operation of the courts. Indeed, that was one of the primary recommendations of the Indigent Defense Study Commission in May 2000, and IDS has made a number of improvements in this area since we assumed oversight of indigent defense in July 2001. However, we find it helpful for judges to have an opportunity to share their unique perspective and provide input into decisions that impact the defense function.

We are grateful to the judges for the time and energy they devote to managerial tasks for the indigent defense system, especially in light of the fact that they are also understaffed and overburdened. We suspect that many judges would be pleased to be relieved of some or all of the administrative burdens that the auditors have described, particularly the responsibility for approving fee applications. However, before IDS can relieve judges of those responsibilities, we need to be in a position to replace the functions judges are currently performing. We also need alternative systems to provide us with the knowledge and insight judges now bring to the tasks.

We agree that the current systems in North Carolina do not lend themselves to extensive management and oversight by IDS. Indeed, IDS' efforts to oversee the delivery of legal services to indigent defendants and respondents, and to ensure attorney independence, are frustrated by our reliance on public defenders who are not accountable to IDS, on local committees that are composed of volunteers, and on judges who operate independently of IDS. It is our belief that an expansion and regionalization of the existing public defender system would be the best solution to these problems and would vastly improve our ability to fulfill our statutory mission. However, we also strongly believe that a regional system must be coupled with a more appropriate and effective management and supervisory relationship between IDS and the chief public defenders, which can only be accomplished if IDS has hiring authority, as we do with the Appellate, Capital, and Juvenile Defenders.

In addition to our support of a properly managed public defender system, IDS also values the contributions and talent of the private appointed bar and is committed to maintaining private bar participation in North Carolina's indigent defense programs. In its standards for administering indigent defense services, the American Bar Association recommends that indigent defense programs utilize a mix of private counsel and public defender services, concluding that substantial private bar involvement is crucial to an effective program. Moreover, because the population and caseload in many rural areas of North Carolina would be insufficient to support a traditional public defender office, we believe a regionalized public defender system would be best suited to this State.

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Under the regionalized system that we envision, a chief public defender could oversee an office in one or more counties and also oversee appointed lists, contracts, and/or part-time State employed defenders in the more rural areas within the region. The regional public defender office could be responsible for managing the regional rosters, appointing private attorneys in non-conflict cases, documenting the reasons for any deviations from the systematic rotation, reviewing attorney fee applications in non-conflict cases, and resolving client complaints within the region. In other words, the regional public defenders could perform administrative functions at a more local level, which IDS currently does not have the resources or infrastructure to perform. The central IDS staff could then assume more direct responsibility for appointments and compensation in cases in which the public defender office has a conflict of interest. Such conflict cases typically amount to 15% of the indigent caseload in a public defender district. While the added administrative responsibilities of regional offices would necessitate some additional administrative staff in those offices, regionalization could also generate savings, particularly if some of the existing defender offices are consolidated.

We would like to point out that this model of a defender office with full-time assistant defenders and oversight responsibility for appointed attorneys in other counties is similar to the model IDS has already successfully established in the Statewide Offices of the Appellate Defender and Capital Defender. In addition, regionalized public defender systems are successfully used in other states, such as Minnesota.

Appointment of the Chief Public Defenders:

The IDS Commission and staff agree that senior resident superior court judges should not be responsible for appointing the chief public defenders, and believe the IDS Commission and central IDS Office have the resources to assume a more appropriate management and supervisory role with the chief public defenders. In May 2000, the Indigent Defense Study Commission submitted its report and recommendations to the General Assembly pursuant to S.L. 1998-212, § 16.5, as amended by S.L. 1999-237, § 17.11. One of the Study Commission's findings was that "[s]everal serious problems arise by placing authorities over appointment of public defenders. . .with judges, including: These judicial authorities compromise the independence that defense lawyers should have for effective representation of clients, and for that reason, conflict with standards adopted by the American Bar Association." As a result, the Study Commission recommended the following:

Public defenders should be appointed by the Commission for four-year terms, with present incumbents serving to the end of their terms. The local bar would submit nominees to the Commission, as under present law, but in exceptional circumstances, the Commission should be allowed to appoint from outside the bar's list of nominees. Public defenders should be subject to removal for cause by two-thirds of the full Commission, with a right to hearing before the Commission, and judicial review of the Commission's decision on the record (not *de novo*). Subject to rules and policies adopted by the Commission, public defenders should be responsible for the day-to-day administration and operation of their offices.

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While the General Assembly enacted into law almost all of the Study Commission's recommendations, it did not adopt the recommendation that the IDS Commission be given authority to appoint the chief public defenders.

Since IDS was established and assumed responsibility for the indigent defense fund in 2001, IDS has informed the General Assembly on several occasions of our belief that savings and quality improvements in public defender offices can best be assured if the Commission is given authority to select and appoint the heads of those offices. In addition, if our vision of regionalized public defender offices is implemented, most public defender regions would encompass more than one superior court district, which would also necessitate changes to the current system of appointment by the local senior resident superior court judge. At the earliest opportunity, the IDS Commission will consider proposing legislation to implement this recommendation of the auditors.

Other Judicial Involvement in the Indigent Defense System:

Since assuming responsibility for the indigent defense fund in 2001, IDS has taken a number of steps to limit judicial involvement in and control over the indigent defense system. We established a new screening, appointment, and compensation system for capital cases and appeals; with the assistance of the Capital Defender and Appellate Defender, IDS evaluates the qualifications of roster applicants, and appoints and pays attorneys in those cases. For non-capital cases at the trial level, we also required each chief public defender to develop a plan for the appointment of counsel in his or her district that provides for more significant oversight of the quality and efficiency of local indigent representation. We continued the system of judges setting fees in non-capital cases at the trial level because of the sheer volume of those cases and our limited staff. Rather than relieving judges of that responsibility and assuming direct control, we established rules and procedures that encourage uniformity, and thus enhance attorney independence, such as the standard \$65 hourly rate and expenditure billing policies.

In order to assist judges in evaluating fee petitions, we also completed Statewide studies of appointed attorney fee applications in district and superior court and determined average hours and frequency distributions by type of charge. The district court study was mailed to all district court judges in August 2005, and the superior court study was mailed to all superior court judges in January 2006. Both reports are available on the IDS website (www.ncids.org). Thus, the judges who are setting fees in non-capital cases at the trial level now have data available to compare and evaluate fee petitions. We also established a receipts-supported position in Mecklenburg County (called an Attorney Fee Coordinator) who compares time claims in criminal cases to the average hours in our studies and, based on that comparison, sometimes returns fee awards to judges for additional review and reconsideration before they are forwarded to Financial Services for payment.

While we recognize the problems with judicial responsibility for setting fees, until we have a system of more local administration, such as regional public defenders, we believe the judge who presided over a case may be in the best position to evaluate the reasonableness of the time claimed in non-capital cases at the trial level. In addition, we are concerned that ordering and collecting recoupment from indigent clients could become more difficult and

cumbersome if judges no longer entertain fee requests in open court. The United States Supreme Court has held that indigent clients may not be ordered to repay the value of their attorney's fees without notice and a meaningful opportunity to be heard. *See Fuller v. Oregon*, 417 U.S. 40 (1974). Under our current system, the judge who sets the attorney fee in a non-capital case at the trial level is in the best position to give the client the constitutionally required notice and opportunity to be heard before entering a recoupment order, because the client is before him or her in open court. In capital and appellate cases where IDS sets the attorney fees directly, we mail to the client written notice of the amount of the attorney's fees before sending the fee application to the judge to order recoupment. Although administratively burdensome, mailing the notice has been possible and effective because of the relatively small number of capital and appellate cases Statewide. Mailing written notice to 280,000 indigent clients annually would require significant additional staff and resources and could be very complicated, because indigent clients are often difficult to locate.

Local Indigent Appointment Plans and Committees:

The auditors' statement that IDS "approved the legal representation plan for each judicial district" is correct in all of the public defender districts, where indigent committees are established and operating according to the local appointment plan in all but one district. The only exception is in Durham County, where the local plan does not provide for a committee. However, in the vast majority of the 78 non-public defender counties, the local indigent appointment plans were approved by the North Carolina State Bar before IDS was created. When we assumed responsibility for indigent defense in 2001, we grand-fathered in the existing plans and adopted a rule requiring future plan modifications to be approved by the IDS Commission. It is true that our Commission and staff have not yet devoted significant time to reviewing all of the local plans, working with local actors to organize and revitalize the committees, and monitoring local compliance with the approved plans. The simple reason is that it would be a massive undertaking to do so in all of the 78 non-public defender districts. However, we agree that this is an area in need of our attention, and the IDS Commission has formed a committee to develop one or more model appointment plans for non-public defender districts. Once those model plans are developed, we will begin working with the local bars to make improvements in this area; however, in the long run, we believe this task would be better undertaken by the appropriate regional defender with IDS' assistance and oversight.

2. ATTORNEY SELECTION AND PERFORMANCE ARE NOT ADEQUATELY MONITORED TO ENSURE COMPETENT REPRESENTATION

Organization's Response:

The IDS Commission and staff agree that more needs to be done to ensure high quality legal services are provided to indigent persons in non-capital cases at the trial level. We have established centralized systems for screening the qualifications and competency of attorneys in potentially capital cases and appeals. However, those centralized systems have been possible because of the comparatively small number of such cases each year. Because there are 280,000 non-capital indigent cases at the trial level each year, and approximately 2,700 private lawyers are providing representation in 190,000 of those cases, we believe that

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effective quality controls can not be implemented by a small centralized administrative staff. As above, IDS believes that a system of regional administration, with defense managers supervised by and accountable to IDS, would enable us to screen attorney qualifications and to monitor and evaluate the attorneys who represent indigent clients in non-capital cases at the trial level.

Screening and Evaluation:

We believe that the use of public defenders is a natural way to increase IDS' oversight of quality. As mentioned above, IDS has worked with each of the chief public defenders to develop a plan for the appointment of counsel in non-capital cases in his or her district, and has required that those plans provide for more significant oversight of the quality and efficiency of local indigent representation. Thus, in the public defender districts, the public defenders and/or a local committee screen the qualifications of private attorneys who handle indigent cases due to conflicts or office overload. The chief public defenders also screen the qualifications of the assistant public defenders they hire as staff. In addition, for the past year and a half, IDS staff have been conducting site visits to the public defender offices around the State to evaluate the performance of each office as a whole. However, our ability meaningfully to evaluate and monitor qualifications and performance is impaired in public defender districts by the fact that IDS does not have a management relationship with the chief public defenders.

In non-public defender districts, we do not currently have the infrastructure and resources to screen attorney qualifications and to monitor and evaluate attorney performance. During fiscal year 2005-06, there were approximately 280,000 indigent non-capital cases at the trial level, with about 190,000 of them handled by 2,700 private appointed attorneys across North Carolina. As the auditors recognize in Section 5. of their findings and recommendations, IDS' small central staff simply is not adequate to perform a monitoring and evaluation function in all of those private counsel cases. In addition, there are wide variations across the 100 counties in North Carolina in the numbers and experience of attorneys available to handle indigent cases, with many rural counties having fewer than a handful of attorneys on the indigent lists. Given that variability, it may not be possible or appropriate to require identical qualifications in every North Carolina county. In the long run, we believe this would be another task best undertaken by a regional defender office with IDS' assistance and oversight.

In light of the auditors' recommendations, a committee of the IDS Commission will be developing one or more model appointment plans for non-public defender districts and will explore the feasibility of including more uniform qualification standards in those model plans. Once those models are developed, the staff will begin working with local districts to implement some version of the model plans at the local level. Moreover, IDS has been working on a Systems Evaluation Project for almost two years. The goal of this project is to develop an objective tool to evaluate the quality of overall indigent defense systems at the county, district, and Statewide levels. Because there are no existing national models for this type of evaluation, and because the Commission is committed to involving other stakeholders in the criminal justice system in the development of this evaluation tool, we expect this project to be a long-term undertaking.

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Finally, IDS' ability to recruit and retain high quality counsel is impaired by the fact that we pay an hourly rate far below the market rate for private attorneys. For example, in a typical DWI case, private retained lawyers generally charge between \$1,000 and \$3,000. By comparison, based on IDS' standard \$65 hourly rate, we pay an average of \$240 for representation in an indigent DWI case. Similarly, while the market rate for a non-capital felony case is in the range of \$2,500 to \$3,000, based on IDS' standard \$65 hourly rate, we pay an average of less than \$650 for such a case when the defendant is indigent. We are not aware of any other professional service offered by private practitioners to the State at such a steep discount, and we have requested funding in next year's budget to implement a modest raise to \$75 per hour.

Client Complaints:

We agree that the current system for addressing client complaints is inadequate. At a Statewide centralized level, it is tremendously difficult to determine which client complaints have merit, and IDS does not have the staff or resources we would need to investigate and evaluate complaints. Moreover, our general view is that client complaints are better handled at a local or regional level, because the local actors are in a position to become familiar with the case and the skills of the appointed attorney, and to notice any patterns in complaints about particular attorneys.

As noted above, the appointment plans in public defender districts provide for more significant oversight of the quality of local indigent representation. Thus, whenever IDS receives a complaint about attorney performance in a public defender district, we are able to refer the matter to the chief public defender to review the merits of the complaint and take any corrective action that he or she may deem appropriate. However, in non-public defender districts, there are no local actors, other than judges, who are directly responsible for quality and equipped to investigate complaints and take corrective action. As with other findings and recommendations in this audit report, IDS believes that expansion and regionalization of the public defender system, coupled with a more appropriate management structure and increased accountability, would significantly improve our ability to investigate and resolve client complaints.

3. ATTORNEY FEE PAYMENT PROCESS LACKS ADEQUATE CONTROLS

Organization's Response:

The IDS Commission and staff believe that automation of the attorney fee application and payment systems, as recommended by the auditors in Section 4. of their findings and recommendations, would eliminate or minimize many of the existing deficiencies in internal payment controls. We also agree there would be a number of other benefits from implementing the auditors' recommendations in this area, including minimizing the susceptibility to fraud and the potential for duplicate payments, an ability to flag high time claims for additional review and auditing, and improved budgeting capabilities because we would know our liabilities in advance. Until we are able to develop and implement the needed technology, however, we are taking steps to improve our current systems and to overcome the technological barriers we face.

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Financial Services Employees:

Initially, we want to point out that, for the first eight months of the audit period covered by this report, all of the accounts payable staff who key and process attorney fee applications were employees of the Administrative Office of the Courts (“AOC”). Thus, while we had input into and shared responsibility for internal controls, we did not have authority to implement system or procedural changes. IDS assumed responsibility for and supervision of four Financial Services employees on July 1, 2006, and added a fifth position in January 2007. Since assuming responsibility for this function, we have taken a number of steps to improve the training, support, and supervision of the accounts payable staff. For instance, we reviewed and reformulated procedures for the processing staff to minimize keying errors, and began having management review any invoices that raise concerns for the processing staff. In order to minimize the problems with duplicate payments addressed below and to provide additional information for auditing, we also began requiring attorneys to report the beginning and ending date of services rendered on the fee application forms.

Duplicate Payments:

IDS staff began looking into problems with duplicate payments after a financial audit of the AOC during the Spring of 2005. Using an FTP data download that we receive from the North Carolina Accounting System (“NCAS”), we developed a procedure for manipulating the data in SPSS to identify suspected duplicates based on overlap among certain fields in NCAS. That procedure allows us to identify potential duplicates that may have slipped through the safeguards in NCAS due to time lag, data entry error, or resubmission of a fee application with slightly different information. Once a suspected duplicate is found, a member of our staff investigates it by viewing the imaged fee applications, consulting with one of IDS’ legal staff if necessary, and verifying that multiple checks were issued and cleared. Based on that investigation, we determine whether there is sufficient evidence that payment was issued twice for the same services to justify writing the attorney and asking for repayment.

Because of the labor and inefficiencies associated with identifying and collecting duplicate payments after they have been issued, as well as the tax consequences for the attorneys, our staff have been working with the Office of the State Controller to develop a program that can be run before each payment date to enable us to identify potential duplicates in SPSS. The procedure would involve: 1) capturing the mainframe data on the current day’s check run to compare to our history file and to identify suspected duplicates; 2) holding the checks in question while researching prior payments; and 3) canceling payment before the check is mailed if appropriate. This system would be less time consuming than recovering duplicate payments after the fact, but may need to be modified if we require all attorneys to switch to e-payment as recommended by the auditors.

Finally, in almost all instances where duplicate payments have been issued, it has been because the same fee claim was sent to Financial Services twice by a clerk’s office, typically either due to error or because the original submission was not paid promptly. The quicker our turn-around time in processing fee applications, the less often this happens. Thus, until we

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have improved technology, timely data entry and payment may be the most effective ways to prevent inadvertent duplicate payments.

Technological and Resource Barriers to Obtaining Case Information in Advance and Verifying Case Numbers:

IDS agrees with the auditors' recommendations that we should obtain indigent case information when cases are initiated and verify case numbers before payment is made. However, as the auditors recognize later in this report, there currently are a number of technological and resource barriers to implementing these recommendations for the 190,000 private appointed counsel cases that IDS oversees annually.

All criminal cases in North Carolina are entered into a Statewide automated criminal information system ("ACIS"). However, ACIS is not capable of directly communicating with NCAS. In addition, while ACIS identifies the attorney of record in a case, it does not distinguish between retained and appointed counsel, and it is not always up to date. AOC is in the process of phasing in a Statewide automated case information system for juvenile cases ("J-Wise"), including abuse/neglect/dependency, termination of parental rights, and delinquency cases. At this time, 75% of the counties have access to J-Wise, with the remaining 25% expected to be on line by the summer of 2007. IDS staff believe that, like ACIS, J-Wise is not capable of directly communicating with NCAS. In addition, because juvenile cases are highly sensitive and confidential, AOC has informed the IDS staff that it will likely be at least one year before the security modules can be established to allow access to J-Wise by the central IDS Office. Chapter 35A competency cases and child support contempt cases are entered into a Statewide civil information system ("VCAP"). However, VCAP also is not capable of directly communicating with NCAS, does not distinguish between retained and appointed counsel, and is not always up to date. Finally, there are some confidential civil cases under IDS' oversight, such as commitment proceedings, that are not currently entered into any Statewide automated information system and for which all records are kept manually. Thus, with our current systems, obtaining all indigent case information in advance would be difficult and cumbersome at best.

Verifying case numbers in ACIS or VCAP before payment issues for all 190,000 private attorney fee applications would also significantly increase the fee application coding time in Financial Services. By our calculations, the additional work would necessitate another full-time employee in Financial Services. And, as noted above, we do not yet have access to J-Wise and some confidential civil cases are not entered into any Statewide information system. Thus, the only way to verify case numbers in those cases would be to contact each individual clerk's office.

Because of the complicated issues involved with establishing these procedures, including the technological barriers, IDS suggests that the General Assembly direct AOC and IDS to consult, conduct a feasibility study, and develop a proposal for implementing these audit recommendations.

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Payments Under Multiple Vendor Numbers:

We agree with the auditors' findings and recommendations in this area, and plan to work with AOC to establish a system for obtaining management approval before new vendor numbers are added to NCAS. We would like to review and update the vendor file, particularly to remove taxpayer identification numbers that are no longer valid, because that should improve our keying accuracy and speed. We will work with the Office of the State Controller and AOC to determine how frequently they will permit vendor files to be updated.

Susceptibility to Overcharges and Itemized Time Sheets:

While we agree that it is possible for attorneys to charge the same time to several cases, the IDS Rules do prohibit that practice. IDS Rule 1.9(a)(1a) states: "If an attorney seeks compensation for time spent waiting in court for multiple cases to be called or working on multiple cases simultaneously, the attorney's time shall be prorated among each of the cases involved." Moreover, in August 2006, IDS begun requiring attorneys to report the beginning and ending date of services rendered in an effort to minimize this possibility and increase our ability to detect billing problems.

Since July 2001, we have required attorneys to submit itemized time sheets in all cases in which IDS is responsible for setting attorney fees—*i.e.*, potentially capital cases and appeals. On a number of different occasions, the IDS Commission has considered and discussed a possible IDS Rule requiring time sheets in non-capital cases at the trial level. Before reaching a decision, the Commission asked the IDS staff to conduct additional research and analysis. The staff have now completed that analysis and, at its next quarterly meeting, the Commission will discuss a possible rule requiring private appointed attorneys to submit time sheets in non-capital cases at the trial level whenever they claim more than a certain number of hours.

The IDS staff believe there are potential advantages and disadvantages to requiring time sheets in some or all indigent cases. Some potential advantages of a time sheet requirement would be that time sheets should assist the fee setter in evaluating the reasonableness of the amount of time claimed in individual cases, and should enhance IDS' ability to conduct audits in the cases in which they are submitted. A potential disadvantage is that a time sheet requirement could make attorneys less prepared to submit their fee application in open court at the conclusion of a case. This, in turn, could make judges more reluctant to enter civil judgments, because they would be unable easily to afford a defendant his or her constitutional right to notice and an opportunity to be heard before entry of a judgment for recoupment of attorney fees. If fewer civil judgments are entered, IDS' recoupment revenues would likely decrease. In addition, under our current system, the sheer volume of paper handled by clerks' offices, the State courier service, and IDS Financial Services would increase substantially, as would the costs associated with scanning time sheets into the State imaging system and storing paper copies.

Segregation of Duties:

The segregation of duties problem identified by the auditors—*i.e.*, the same person enters vendors into the accounting system, issues checks to those vendors, and receives checks returned due to incorrect recipient names or addresses—involves an employee of AOC

Financial Services, not IDS Financial Services. IDS will work with AOC to address and remedy this problem.

4. ATTORNEY FEE PAYMENT PROCESS IS INEFFICIENT AND LABOR INTENSIVE

Organization's Response:

The IDS Commission and staff agree with this audit recommendation and have attempted to obtain funding to pilot test a web-based fee application system. In 2003 and 2006, IDS submitted grant applications to the Governor's Crime Commission seeking funds to develop a pilot system. Neither of those applications was selected for grant funding. In addition, IDS asked the General Assembly for funds to pilot test an automated system during the 2006 legislative session; while that request was not granted, the General Assembly directed that this performance audit report include recommendations on automation.

One of IDS' 2007 expansion requests to the Governor and General Assembly is for \$175,000 in non-recurring funds to create a pilot web-based system for electronic submission of fee applications. Our goal is to pilot test a system with the fee applications that come directly to IDS (potentially capital cases and appeals), and then expand it Statewide to all indigent cases. While additional funds would be necessary later to expand the system, IDS believes the long-term efficiency savings to the State would significantly outweigh the initial costs for development and implementation.

We believe that an automated fee application system would have a number of benefits, including but not limited to: 1) more timely processing and payment of attorney fee applications; 2) a reduction in data-entry errors; 3) increased efficiencies from reduced data entry and paper shuffling; 4) the capacity for more sophisticated data collection, reporting, and analysis; 5) a decreased risk of duplicate or other improper payments; 6) enhanced ability to audit attorney fee applications; and 7) diminished costs for courier service and paper storage. As noted above, we also believe there will be long-term savings to the entire Judicial Branch from the increased efficiency of such a system, both in terms of saved time for IDS staff and other court system actors, and from increased accuracy and prevention of errors. However, we do not necessarily anticipate requiring fewer staff in the central IDS Office or in IDS Financial Services; instead, we anticipate redirecting the existing staff to other duties associated with maintaining the electronic system and enhancing internal controls.

Because IDS' ability to improve and automate the processing of fee applications Statewide is dependent on the technology available to other court system actors, we believe AOC must be an active partner in this endeavor. In addition to the funding that would be needed to create a pilot web-based system, IDS suggests that the General Assembly direct AOC and IDS to consult about a Statewide system of electronic fee submission, conduct a feasibility study of such a system, and develop a proposal for Statewide implementation of this recommendation.

5. THE OFFICE OF INDIGENT DEFENSE SERVICES LACKS SUFFICIENT RESOURCES

Organization's Response:

The IDS Commission and staff agree with these audit findings and recommendations. Since our inception, IDS has had a very lean administrative staff, which currently accounts for less than 1% of IDS' total annual budget. If IDS is to assume more active oversight and management of the indigent defense system, we will need the resources and tools to do so.

Since IDS was established in 2001, we have expanded the public defender system into three new districts in North Carolina—Forsyth County, Wake County, and the First Judicial District. We will recommend additional expansion during the 2007 legislative session. As noted in other sections of this report, IDS believes that expansion and regionalization of the public defender system, coupled with a more appropriate management structure and increased accountability, would significantly improve our ability to provide quality and cost-effective legal services to indigent people across North Carolina.

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INDIGENT DEFENSE SERVICES' MAIN ACCOMPLISHMENTS SINCE JULY 2001

(Updated February 2007)

The following list summarizes IDS' main accomplishments since assuming responsibility for North Carolina's indigent defense fund in July 2001. While the accomplishments have been grouped into 4 main categories—improving quality, controlling spending, enhancing data collection and reporting, and oversight of other programs—many accomplishments actually relate to more than one category.

IDS' annual reports to the General Assembly describe these initiatives and accomplishments, as well as others, in much more detail than is set forth below. The 2003, 2004, 2005, and 2006 reports are posted on the IDS website (www.ncids.org) under the "Reports & Data" link. The 2007 report is due in March and will be posted when it is complete.

Initiatives to Improve Quality and Enhance the Independence of Defense Counsel:

- ❖ *IDS Rules:* The IDS Commission developed and published rules governing the delivery of services in non-capital cases, capital cases, and non-capital and non-criminal appeals. See Rules of the Commission on Indigent Defense Services (July 1, 2001, last amended December 8, 2007), available at www.ncids.org.
- ❖ *Statewide Attorney Rosters:* The IDS Rules contain detailed qualification standards for attorneys to be included on the Capital Trial (Lead and Associate), Capital and Non-Capital Appeal, and Capital Post-Conviction Rosters. IDS Office staff, in conjunction with the Capital and Appellate Defenders, continue to review applicants' qualifications and expand the rosters of qualified attorneys in each district across the State.
- ❖ *Appointment and Compensation of Attorneys and Experts:* In all potentially capital cases and appeals, IDS has assumed direct responsibility for appointing and compensating attorneys, and approving and compensating necessary experts.
- ❖ *Public Defender Appointment Plans:* The IDS Commission and staff worked with all public defender offices to develop plans for the appointment of counsel in non-capital cases in their districts, and required that those plans provide for more significant oversight by the public defenders over the quality and efficiency of local indigent representation.
- ❖ *Capital Defender Expansion:* The IDS Commission established a Statewide Capital Defender position, expanded the capital defender office in Durham, and created new regional capital defender offices in Beaufort, Forsyth, and New Hanover counties.
- ❖ *Improved Training:* In conjunction with other groups, IDS has developed and offered new and innovative training programs for criminal defense attorneys, as well as attorneys working in specialized areas of non-criminal representation. Examples of these new training programs include: a hands-on program for private appellate attorneys; new programs for attorneys who handle involuntary commitment cases; training for attorneys who represent parent-respondents in Chapter 7B cases, including

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abuse, neglect, and dependency, and termination of parental rights proceedings; training for attorneys who represent juveniles in delinquency proceedings; a new five-day trial advocacy program for public defenders; and a management training program for public defenders and their administrative assistants. All materials that are used in IDS co-sponsored programs are posted on the IDS website (www.ncids.org) and available for free to attorneys who were unable to attend the training. IDS plans to continue expanding its training calendar in the coming years.

- ❖ *Improvements to the North Carolina Defender Manual:* IDS provided funding for improvements to the School of Government's North Carolina Defender Manual, and has made that manual available to more attorneys by posting it on the IDS website.
- ❖ *North Carolina Civil Commitment Manual:* IDS provided funding for the development of a North Carolina Civil Commitment Manual, which was published jointly by IDS and the School of Government. The manual is available for free on the IDS website.
- ❖ *Electronic Communication:* Through electronic means, IDS has taken significant steps to increase communication with and resource-sharing among the bar.
 - ✓ IDS developed an independent website (www.ncids.org) that allows greater and more comprehensive communication with the bar, bench and public, and enhances the resources available to defense attorneys across the State. The website contains news and update links addressing the State of indigent defense funding, timing of attorney payments, and any other recent developments or matters of interest. In addition, the following materials, among others, are posted: all approved minutes of IDS Commission meetings; IDS rules, policies, and procedures; reports and data generated by Office staff; fill able applications for the capital and appellate rosters; attorney and expert fee application forms; the public defender appointment plans; the North Carolina Defender Manual and Civil Commitment Manual; all materials used in IDS co-sponsored training programs; an index of all posted training materials by topic; an index of capital case trial motions; and an appellate brief bank.
 - ✓ In conjunction with other groups, the IDS Office has established listservs for attorneys representing indigent persons on appeal, capital trial attorneys, capital post-conviction attorneys, involuntary commitment attorneys, public defenders and assistant public defenders, attorneys representing parent-respondents in Chapter 7B cases, attorneys representing juveniles in delinquency proceedings, and mitigation specialists.
- ❖ *Improved Juvenile Representation and New Office of the Juvenile Defender:* In conjunction with the ABA Juvenile Justice Center, the National Juvenile Defender Center, and the Southern Juvenile Defender Center, the IDS Office conducted a Statewide assessment of juvenile delinquency representation in North Carolina. The ABA released its report in October 2003, which identified a number of deficiencies in the services being provided to our State's children. In response to the ABA's report, the IDS Commission formed a Juvenile Committee to review the ABA's findings and

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prepare recommendations for reform initiatives. That Committee in turn sought the assistance of 13 outside juvenile experts, including delinquency attorneys, special education and mental health advocates, and academics and law school clinical faculty. The Committee's primary recommendations were to create a new Statewide Juvenile Defender position so that someone is working full-time on needed reform initiatives, and to develop and offer comprehensive training programs for juvenile defense attorneys. The General Assembly authorized the creation of a new Statewide Juvenile Defender position, and the Commission appointed an attorney to that position in November 2004.

The Juvenile Defender began work in January 2005. Some of his duties are to serve as a central resource and contact person for individual juvenile defenders and juvenile associations Statewide; develop ways to connect and support juvenile defense attorneys across the State; evaluate the existing systems and practices, and the current quality of representation, in various areas of the State; identify training needs and work with the School of Government and other groups to formulate a long-term training plan; and develop and maintain a clearinghouse of materials on North Carolina juvenile law and practice. The Juvenile Defender is also undertaking a number of long-term responsibilities, such as developing specialized performance guidelines and caseload standards for juvenile defense attorneys. Model qualification standards for attorneys who represent juveniles in delinquency proceedings have been developed and implemented in four public defender districts.

- ❖ *Performance Guidelines for Attorneys Handling Non-Capital Criminal Cases:* The IDS Commission has adopted "Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level." The guidelines are based largely on the National Legal Aid and Defender Association Performance Guidelines, but have been tailored to the nuances of practicing law in North Carolina. Proposed draft guidelines were mailed to the bar and bench for comments in August 2004. After making a number of improvements to the draft based on the comments that were received, the IDS Commission adopted final guidelines in November 2004. The guidelines, as well as a report on all of the comments submitted by the bar and bench, are posted on the IDS website under the "IDS Rules & Procedures" link.
- ❖ *Improved Representation of Parent-Respondents:*
 - ✓ *Performance Guidelines for Attorneys Representing Parent-Respondents:* The IDS Commission obtained grant funding from the North Carolina Court Improvement Project to develop performance guidelines for attorneys representing parent-respondents in abuse, neglect, or dependency and termination of parental rights proceedings ("Chapter 7B cases"). The IDS Office contracted with a parent attorney to staff the project, and he is currently working with a multi-disciplinary committee to develop guidelines that are tailored to North Carolina law and practice in this area. Proposed draft guidelines will be mailed to the bar and bench for comments during the Summer of 2007.
 - ✓ *New Parent Representation Coordinator:* In the Fall of 2006, the IDS Commission established a new position in the Office of the Appellate Defender

called the Parent Representation Coordinator; that position was filled in November 2006. Among other things, the Parent Representation Coordinator is responsible for coordinating appellate representation of indigent parent-respondents in Chapter 7B cases; appointing counsel in all indigent Chapter 7B appeals Statewide; helping ensure that appellate counsel are able to comply with the expedited deadlines in Rule 3A of the Rules of Appellate Procedure; working with the School of Government, Court Improvement Project, and others to develop training programs for trial and appellate lawyers who handle Chapter 7B cases; evaluating appellate briefs in Chapter 7B cases for inclusion in a Statewide on-line brief bank; and performing case consultations with trial and appellate attorneys who represent parent-respondents.

- ❖ *Qualification Standards for Mitigation Specialists:* On May 6, 2005, the IDS Commission adopted qualification standards for individuals who want to serve as mitigation specialists in capital cases. The standards include three different levels of mitigation specialists, which are based on educational background and experience. The IDS Office has developed a procedure for applicants to seek approval for one of the levels, and has set hourly pay rates for the various levels.
- ❖ *Systems Evaluation Project:* One of the IDS Commission's main statutory responsibilities is to evaluate the existing methods of service delivery in North Carolina, and implement changes where they may be needed to improve quality. To accomplish this goal, the Commission has begun work on developing an objective tool to evaluate the quality of overall indigent defense systems at the county, district, and Statewide levels. The Commission plans to involve other stakeholders in the criminal justice system in the process of developing an evaluation tool. Because there are no existing national models for this type of evaluation, IDS expects this project to be a long-term undertaking. For information about this project, go to www.ncids.org and click on the "Systems Eval. Project" link.

Initiatives to Standardize and Control Spending:

- ❖ *Financial Audits:* The IDS Office has developed detailed financial audit policies that are applied to all fee petitions where IDS sets the amount of the award, and has adopted billing policies in cases where judges are still responsible for setting the fees. (These policies are posted on the IDS website under the "IDS Rules & Procedures" link.) In addition, IDS Office staff perform random audits of appointed attorneys around the State.
- ❖ *Standard Hourly Rate:* Based on a study of fees set in district and superior court during the first quarter of fiscal year 2001-02, the IDS Commission established a uniform Statewide hourly rate of \$65 in all non-capital and non-criminal cases. That rate was intended to be revenue-neutral, but has the advantages of increasing the stability and predictability of payments to private assigned counsel, and improving pay equity and fairness across the State. The IDS Commission and IDS Office are currently working to obtain an additional appropriation from the General Assembly to increase the standard hourly rate.

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- ❖ *Increased Recoupment Revenues:* IDS has strived to increase the amount of revenues to the indigent defense fund by improving recoupment. IDS Office staff have worked with all public defender offices to increase the levels of recoupment in public defender districts, and have held a number of meetings with court personnel in other districts around the State. Between fiscal years 2003-04 and 2005-06, total revenues from recoupment (including the \$50 attorney appointment fee) grew by an average of 9.4% annually. Overall since fiscal year 2002-03, total revenues from recoupment have increased by 31%.
- ❖ *Slowed the Overall Rate of Growth in the Fund:* During its first 5 fiscal years of existence, IDS has slowed the rate of increase in spending and obligations for indigent defense. During the 7 years before IDS was created, the average annual increase in the fund was more than 11%. During IDS' first 5 years of operation, the average increase in overall spending and obligations on indigent defense has been 6.4%: Spending and obligations during fiscal year 2001-02 were 1.4% above fiscal year 2000-01; spending and obligations during fiscal year 2002-03 were 4.6% above fiscal year 2001-02; spending and obligations during fiscal year 2003-04 were 7.6% above fiscal year 2002-03; spending and obligations during fiscal year 2004-05 were 7.1% above fiscal year 2003-04; and spending and obligations during fiscal year 2005-06 were 11.1% above fiscal year 2004-05. The higher 11.1% growth in demand during fiscal year 2005-06 was attributable to a number of factors, including new deadlines for the submission of fee applications. Current projections suggest the growth rate during fiscal year 2006-07 will be 5.3%.
- ❖ *New Public Defender Offices:*
 - ✓ *Forsyth County:* Based on the IDS Commission's recommendation, the 2002 Appropriations Act established a new Forsyth County Public Defender Office. After the Chief Public Defender was appointed in Forsyth County, IDS Office staff members assisted in establishing the new office and developing a plan for the appointment of counsel in non-capital cases. By May 2003, the new office was fully staffed and disposing of cases on a regular basis. Because the office was not fully operational until late in fiscal year 2002-03 and there was insufficient time to absorb start-up costs, the office generated losses during its first partial fiscal year. However, the office has saved significant funds annually since fiscal year 2003-04 compared to what it would have cost to pay private attorneys to handle the same cases.
 - ✓ *First Judicial District:* Based on the IDS Commission's recommendation, the 2004 Appropriations Act established a new First District Public Defender Office, which is responsible for providing representation in indigent cases in Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans counties. The Chief Public Defender was appointed in October 2004, and IDS Office staff subsequently worked with him to develop a plan for the appointment of counsel in non-capital cases and to get the office operational. The office began accepting cases on December 1, 2004 and now employs eight assistant public defenders.

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- ✓ *Wake County:* The 2004 Appropriations Act also established a new Wake County Public Defender Office, effective July 1, 2005. The Chief Public Defender was appointed in March 2005, and IDS Office staff subsequently worked with him to develop a plan for the appointment of counsel in non-capital cases and to get the office operational. The office began accepting cases on July 1, 2005 and now employs 18 assistant public defenders.
- ✓ *Other Areas for Public Defender Expansion:* IDS Office staff regularly analyze cost data to determine where new public defender offices may result in substantial savings. Based on those studies, in February 2007, the IDS Commission recommended that the General Assembly create two new offices, in the 5th Judicial District (New Hanover and Pender counties) and the 22nd Judicial District (Alexander, Davidson, Davie, and Iredell counties).
- ❖ *Public Defender Cost-Effectiveness Studies:* The IDS Office conducts annual studies of the cost-effectiveness of all public defender offices, and has conducted a cost-benefit analysis of the Office of the Appellate Defender.
- ❖ *Consultation about Cost-Saving Measures:* Section 14.2 of the 2005 Appropriations Act directs IDS to “consult with the Conference of District Attorneys of North Carolina, the Conference of District Court Judges, and the Conference of Superior Court Judges in formulating proposals aimed at reducing future costs” and to “include these proposals in its reports during the 2005-2007 fiscal biennium.” Pursuant to that legislation, IDS has consulted with other court system actors and will be including recommendations in our March 2007 report to the General Assembly.

Initiatives to Improve Data Collection and Reporting:

- ❖ *Data Collection for Capital Cases and Appeals:* The IDS Office developed a detailed internal database to track, among other things, all attorney appointments, expert authorizations, and payments in the cases under IDS’ direct oversight—namely, potentially capital cases and appeals. That database has significantly improved the Office’s ability to collect, analyze, and report data concerning those cases.
- ❖ *Data Collection for Non-Capital Cases at the Trial Level:* IDS Office staff periodically work with the Administrative Office of the Courts’ Forms Committee to revise the fee application forms for private appointed counsel and capture increasingly nuanced data about the cases under our oversight. In addition, effective July 2006, IDS assumed direct responsibility for and supervision of the accounts payable staff who process attorney fee applications. On an ongoing basis, IDS staff takes steps to develop and implement more detailed and helpful data collection and reporting systems.
- ❖ *Analyses of Budgetary Trends and Fund Demand:* Because of the increased availability of data, IDS Office staff regularly conduct analyses of budgetary trends, as well as caseload and financial demand on the indigent defense fund, which are increasingly more accurate and reliable than previous studies.
- ❖ *Studies of Average Hours Claimed by Appointed Attorneys in District and Superior Court:* In order to assist judges in evaluating fee petitions, the IDS Office has

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completed Statewide studies of appointed attorney fee applications in district and superior court, including average hours and frequency distributions by type of charge. The district court study was mailed to all district court judges in August 2005, and the superior court study was mailed to all superior court judges in January 2006. Both reports are available on the IDS website.

- ❖ *Private Assigned Counsel Waiting in Court Study:* The IDS Office completed a study of the costs to IDS during fiscal year 2004-05 from private assigned counsel waiting in court for their cases to be called. The study demonstrated that defense attorney wait time under the current scheduling systems adds substantial costs to indigent defense and the taxpayers. The IDS Office hopes to use this study, which is available on the IDS website, to work with other system actors to identify ways to reduce these unnecessary expenditures.

Oversight and Evaluation of Other Programs:

- ❖ *Sentencing Services:* In 2002, IDS assumed responsibility for the Office of Sentencing Services. Under IDS' leadership and oversight, the programs have increased their efficiency and continue to operate in most counties. Despite a 40% decrease in funding for Sentencing Services, there was only a 22% decrease in prepared plans during fiscal year 2002-03. The programs then increased the number of prepared plans in fiscal year 2003-04 by 6% above fiscal year 2002-03, and further increased the number of prepared plans in fiscal year 2004-05 by another 8% above fiscal year 2003-04. The General Assembly reduced Sentencing Services' funding by another 30% for fiscal year 2005-06, resulting in the closure of ten programs and additional budget reductions for the remaining programs. The programs that are still in operation are striving to maintain quality services despite the budgetary setbacks.
- ❖ *Evaluation of North Carolina Prisoner Legal Services:* Pursuant to a contract with the State of North Carolina, North Carolina Prisoner Legal Services, Inc. ("NCPLS") provides legal advice and assistance to prisoners in the custody of the Department of Correction. NCPLS also works toward administrative resolutions of inmate problems, and provides representation in State and federal court in criminal post-conviction proceedings, jail credit cases, and civil proceedings challenging conditions of confinement or the actions of government officials. Effective October 1, 2005, the General Assembly transferred NCPLS' contract from the Department of Correction to IDS, and directed IDS to evaluate the program and report its findings. IDS in turn enlisted the assistance of a UNC School of Government Professor who specializes in program evaluation. The evaluation has consisted of documenting NCPLS' case-management process in work-flow format, recruiting 16 specialists in one or more of the areas covered by the contract to review a random sample of case files, and interviewing NCPLS staff. IDS' report on the evaluation will be submitted to the General Assembly by May 1, 2007.

ORDERING INFORMATION

Copies of this report may be obtained by contacting the:

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